



Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

Issued subject to correction upon revision.

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 06/10/2005

..DAY 19

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COMMISSION RESUMED AT 10 A.M.

GLENN PHILLIP CUFFE, CONTINUING EXAMINATION-IN-CHIEF:

MR DOUGLAS: Commissioner, do you wish to deal with some administrative matters before I proceed with Dr Cuffe?

10

COMMISSIONER: There's just two matters I should mention. One relates to submissions. I propose to give a direction tomorrow morning at 9.30 with respect to those, and the second relates to whether Mr Leck should give evidence in this Commission. I've only just received the final of the submissions with respect to that, and I'll give my ruling with respect to that matter also at 9.30 tomorrow morning. Yes, Mr Douglas?

20

MR DOUGLAS: Dr Cuffe, yesterday I was taking you to various matters pertaining to your statement which you've given to the Commission, and you recall that questions were asked of you, including an exchange with the Commissioner about submissions being, in effect, draft submissions. Do you recall that exchange?-- Yes, I do.

I wish to take you now, if I could, to a related topic. Are you familiar with a document storage or registration system within Queensland Health known as RecFind, R-E-C-F-I-N-D?-- Yes, I'm familiar with it. I haven't personally used it or made entries to it, but I'm aware of its existence.

30

Thank you. A couple of things about that. For how long have you known of its existence?-- Oh, a few years. I couldn't put an exact time on it, but it's been a system that's been around for a few years, a document tracking/index system.

Is it a system still in use within Queensland Health?-- Yes, to my knowledge.

40

Could you describe to the Commissioner what you understand to be tracked on RecFind with respect to Queensland Health documentation?-- The sort of documents that would be entered on RecFind would be briefings, submissions, papers et cetera which passed from unit to unit or from unit to a senior officer. The document is registered on RecFind, given a number or a particular coding. It's then - its title is entered on RecFind. It's not a data warehouse in the sense that the document is scanned in, as I understand it, so it is readily retrievable in whole. It's a system that says, you know, "Yes, it exists. It's currently in the office of a particular person, and that's its title." But I have never actually physically, you know, used the system. I just put that caveat on it.

50

A submission such as that which is canvassed in your

statement, namely that of the 30th of July 2003, is that of a genre of document which you would expect would be registered within RecFind?-- Yes, I would.

1

And how would RecFind assist any person in order to track the progress of that document through the system?-- Well, RecFind, you know - it obviously has, as I understand it, an in and out entry in that sense of the word. So if, for example, I'd sent a document - or our unit had sent a document to a particular location and we hadn't heard back after a reasonable period of time and we wanted to know where that document was, you could interrogate RecFind and it would say it was still in someone else's office pending action, or it had left that office, in which case we'd expect to get it back in the unit within a day.

10

Take the hypothetical case of a submission which you cleared in mid-2003 which was directed to the General Manager of Health Services, Dr Buckland. Once that hypothetical submission was dealt with by Dr Buckland in the sense of it being approved or disapproved or anything in between-----?-- Yes.

20

-----what would happen to the RecFind entry?-- My understanding, the RecFind entry would have that it - if it left Dr Buckland's office and was to come back to me, it would be - you know, it would be outwardly noted that it had departed that particular location.

So if you wished to come along, say, 12 months later and again peruse that document, could you do so by accessing RecFind?-- RecFind would give you - it would certainly tell you the last apparent location, and if the document was then placed on a unit file, there are officers who - and all the files are barcoded, and there are records officers who come around, I think twice a week, and, using a device, read the barcode, and it would then tell you that - the actual physical location. So you could put the name in, say yes, and it would tell you that file was on the desk of a particular officer somewhere in the Department.

30

You're familiar, of course, with the legislative provision for Freedom of Information access?-- Yes.

Is that something that you have had to deal with from time to time in assisting in locating documents the subject of an FOI request?-- Yes, in the - particularly in the elective surgery domain, we had - wouldn't say frequent, but we certainly had requests from time to time for documents from our FOI section.

40

50

I want you to assume that now, in October 2005, Richard Douglas wishes to make an application under the FOI legislation to identify the existence of any submission that might have been made between 2002 and 2004 to the General Manager of Health Services by which it was suggested to him from the SAS that an audit be undertaken of hospitals in respect of the reclassification of patients from emergency patients to elective surgery patients. Can you assume that,

please?-- Yes, I can make that assumption.

1

Could you also assume that I, the applicant, Richard Douglas, doesn't know whether or not such a document exists. Can you assume that, please?-- Yes, correct.

I'd ask you to assume also that the persons who are handling the FOI request ask you, given your role in respect of the SAS, to assist in locating whether or not any such submission does exist?-- Yes.

10

Is there any particular record indexed within Queensland Health that you would suggest to the FOI officer that he or she should first access in order to identify the existence of any such hypothetical submission?-- Those officers - I'm not sure if they have access, but the first port of call would be RecFind.

Why would that be?-- Because it actually stores an index which contains the titles of the particular submissions that went up, and, you know, during that period of time that you, in your scenario - that you've listed.

20

If the result of that endeavour was you were informed by the FOI officer that no such submission of any kind - of that kind - was demonstrated upon a search of RecFind, what would be your response in relation to a question as to whether or not otherwise such a submission may in fact exist, albeit not recorded on RecFind?-- What you would do on that occasion would be then go to the relevant work area - in this case the SAS - and a document search of the physical, you know, paperwork would be undertaken within that work unit, or you could go to the file directories of the individual officers in that unit and get them to consult their file directory to see if such a document exists.

30

Those two alternatives which you've just canvassed with the Commissioner, are they, in effect, more laborious exercises-----?-- Yes.

40

-----than the RecFind search?-- Undoubtedly they would be more laborious.

COMMISSIONER: If there was such a document in existence - that is, a submission to the General Manager for Health Services on that topic - you would expect to find it on RecFind, wouldn't you?-- Yes. I mean, if it had gone, you know, from our unit up through and been registered, it would - should exist on RecFind, which would-----

50

Well, if it had gone up to the General Manager for Health Services it would have been put on RecFind, wouldn't it? Should have been put on?-- Should have been entered on RecFind on the way into his office, yes.

MR DOUGLAS: Can I put to you that the concern that might be expressed is that if the FOI officer didn't find it on RecFind, that is such a hypothetical submission, the view

might be formed, "Well, it isn't there. It should be there. I don't have to look any further."?-- No, the FOI officers, in my experience, are quite vigilant. If it's not on RecFind then they will pursue with the relevant work unit to undertake the manual search, or the search the individual officers' file directories.

1

COMMISSIONER: But you would expect if it hadn't been entered on RecFind it would be because of some error?-- Yes, if it wasn't on RecFind then - I'm not sure why it wouldn't be on RecFind.

10

Well, it would have to be a mistake, wouldn't it?-- It would have to be a mistake or an oversight or omission or something like that, if it hadn't actually been entered. The very purpose of it is so that there is a quick and efficient way to locate these documents for all sorts of reasons.

Thank you.

20

MR DOUGLAS: Dr Cuffe, before giving evidence this morning I invited you, did I not, to read paragraph 20 of a statement which you were told was that of Ms Deb Miller?-- That's correct.

You know Ms Deb Miller, do you not?-- I do.

How do you know her?-- She's the - at the time was the Chief of Operations Liaison Officer in Dr Buckland's office, and also, I might add, had been for the previous incumbent Dr Youngman and Dr Buckland's successor, Dr Scott.

30

Thank you. Commissioner, I'm in your hands. I can read it into the record or just ask the witness questions about it.

COMMISSIONER: Read what into the record? The paragraph?

MR DOUGLAS: Yes.

COMMISSIONER: What paragraph is it?

40

MR DOUGLAS: It's paragraph 20 on page 6.

COMMISSIONER: Well, I don't see any need to read it out, is there?

MR DOUGLAS: Thank you. I'll just read the preface, Commissioner, then I'll precis the rest.

COMMISSIONER: Right.

50

MR DOUGLAS: "I'm not aware whether documents were removed from RecFind during the period Dr Youngman was GMHS, however the office of GMHS under both Dr Buckland and Dr Scott had a process to manage documents that were removed from RecFind, particularly documents that would be resubmitted where requests for revisions had been made. That process was", and then Ms Miller goes on. Do you recall reading that this

morning?-- Yes, I do.

1

And do you recall reading in that same paragraph that she identified two instances in broad terms where that would occur? The first is where there were minor revisions that were required, and that the departmental officer would be contacted and informed of the changes required?-- Yes, I remember reading that.

And the second instance she identified was this, and I'll quote this part: "If there were significant concerns with the accuracy of the content of the document, the GMHS would often meet with the relevant departmental officers to discuss the issues directly with the departmental officers concerned." Do you recall reading that?-- Yes.

10

And she also said that the document would be removed from RecFind and, in most instances, be held until revisions were made, and the document would then be tracked back on to the system. Do you recall that?-- Yes, yes.

20

Before reading that document today, is that a mode of utilisation or disposition of submissions with which you were familiar?-- No, it's not.

Do you see any concerns that might be had, having regard to your experience, about the efficacy of such an approach to the disposition of submissions?-- No - well, yes, I do see an issue with it. I mean, I think in discussion with the Commissioner yesterday-----

30

This is in exchange with the Commissioner?-- Yes. If a document goes up, and it may contain an issue that the recipient wants a discussion about, or if there's an error, then that document still stands in its own right as a permanent record. Further work may be undertaken, an additional document produced to address the concerns of the recipient, and that document is added, you know, to the contemporaneous record on that issue.

40

It becomes a further submission?-- It becomes a further submission, but the original submission stands. If it's in error then, you know, be it on the head of those authors should that document be accessed at a later date under FOI.

So on a particular issue, if further information was sought, say, by Dr Buckland or to whomsoever it was directed, another submission would be forthcoming, and it may in fact be a series of submissions?-- It could be a series of submissions to take the issue through to some conclusion acceptable to whoever the recipient was.

50

In your experience, can you also say that the GMHS might have sought submissions from other persons within other divisions on the same topic to properly inform him about the issue so as to ultimately make a decision?-- Quite possibly yes, to balance out a view. If he thought he was getting a particular view that didn't seem right, he's quite at liberty to call for

briefings or submissions from any party he so wishes.

1

And each of those submissions would be a discrete, freestanding final submission?-- They would be. They would be entered on the system and would stand in their own right and decisions would be made.

Thank you. Can I take you to a different topic now. In paragraph 7 of your statement you are addressing what occurred at the 15th August 2003 meeting with Dr Buckland which followed the 30th July 2003 submission?-- Yes.

10

You didn't take any notes of what transpired at that meeting?-- No, I don't have any notes of that meeting.

You express in paragraph 7 that Dr Buckland gave instructions to the SAS unit, the members thereof, in your presence to liaise with the district managers of districts that had been highlighted within those submissions?-- That's correct.

20

And you're referring in that respect to the portion of the 30th of July submission which identified in table form a number of hospitals where allegedly it may have been that reclassification had occurred?-- That's correct, yes. He highlighted a number of districts that were there, and the instructions were that the members of the team were to go out, they were to have the discussions with the relevant people in those districts and hospitals to ascertain the veracity of the figures, or was there some explanation as to why there was a change from elective - correction, from emergency to elective classification.

30

In paragraph 7 you go on to say that the instruction included that the SAS members were, I quote, "to confirm the accuracy of the statistics that had been reported"?-- That's correct.

Those statistics were those encapsulated in the 30th July submission?-- That's correct, yes.

Thank you. You say in paragraph 9 that you don't recall anyone at that meeting of 15th August expressing any displeasure that the 30th July submission did not have the endorsement of the zonal managers following consultation with the zones and districts?-- Not to the best of my recollection.

40

If there has been some displeasure expressed in that regard by Dr Buckland at that meeting, do you think you'd recall it?-- I simply don't recall him saying that at that meeting. I couldn't guarantee that I would unless it was put, I guess, in a very forceful way that impinged upon my memory. I don't have that recollection.

50

Thank you. You told the Commissioner yesterday, and as you say in paragraph 10, your view was that a prior direction given by the General Manager Health Services about consultation in relation to submissions didn't apply to the 30th July submission?-- No, I didn't consider it applied. We

were raising an issue of a genuine concern and seeking his permission to pursue a path of further investigation. 1

Can I take you to paragraph 11 of your statement now?-- Yes.

What you relate there is your recollection of an event which occurred, as you put it, shortly after that meeting of 15th August 2003?-- Yes.

The events recorded by that paragraph, were they something of which you took a note at the time?-- No, I didn't take - I didn't make a file note or a diary note of it, but I communicated with Mr Walker and Mr Roberts straight afterwards. 10

You identify a person there by the name of Cheryl Brennan whom you describe as the Executive Secretary of Dr Buckland at that time?-- Yes, that's correct.

You knew Ms Brennan at that time?-- Yes. 20

Had you known her for some time?-- I've known her for many years.

Was she a person at that time - that is, shortly after 15th August 2003 - with whom you were used to conversing?-- Yes. I mean, she was, if you like, the sort of day-to-day conduit between Dr Buckland's office and myself. If there was a meeting to be scheduled or a particular briefing to be prepared, then Cheryl Brennan was typically the person who would phone me and say, "Can you do this or that." 30

You dealt with her very regularly-----?-- I did.

-----prior to having this conversation?-- Oh yes, yes.

Did you find her a reliable individual?-- Yes. She's held Executive Secretary positions to the most senior manager of the Department for many, many years. A very hard-working officer. And very busy, I might add. 40

What you say in paragraph 11, in your language, is, and I'll quote, "She communicated a direction that hard copies of the 30 July 2003 submission held in the SAS were to be destroyed and that the copies on the network were to be deleted." I think I've read that correctly from the statement?-- That's correct, yes.

How clear is your recollection as to the communication that you received in that regard?-- In terms of the direction to destroy the hard copies and delete it from the network, it's very clear. 50

Did she go into any detail that you recall as to who had asked her to give that direction?-- No, I'm unable to recall that she named a particular person that had given that direction.

COMMISSIONER: You wouldn't have been in any doubt as to where

it came from, though?-- I mean, as I think I've said further on in my statement, Commissioner, you know, if Ms Brennan had given that direction I would have understood it clearly to have come from Dr Buckland's office.

1

MR DOUGLAS: Did you query her at all about the direction?-- No, I didn't.

Were you surprised at the direction?-- Very surprised. I've never had a direction like that in my career.

10

Did you consider, in light of what you've just said, that the circumstances warranted that you should take the matter up directly with Dr Buckland?-- I contemplated the matter, but - how could I put it. Dr Buckland's - I don't mean this in a derogatory sense - a decisive and - person who, if he had given a particular direction, you would never go to your grave wondering why he did so, and so my thought was, he being such a decisive person, if this direction had emanated from his office, that it was very clear that that was his intention.

20

COMMISSIONER: You didn't think there was any room for argument with him?-- I - he is a very decisive gentleman and when he gave a direction it was intended as a direction without any - generally without much room for debate.

MR DOUGLAS: You say in paragraph 12 of your statement that immediately after receiving such direction you attended upon Mr Walker and Mr Roberts?-- That's correct.

30

That's Mr Gary Walker and Mr Colin Roberts?-- That's correct.

They were the two gentlemen from the SAS unit who had attended the 15th August meeting with you?-- That's correct.

And you say that you conveyed that direction communicated by Ms Brennan to them?-- Yes, correct.

You go on to say that in that discussion that ensued between you, Mr Walker and Mr Roberts, the three of you agreed that the SAS would retain an electronic copy of the 30 July submission?-- That's correct.

40

Why did you decide, at least on your part, to adopt that course?-- My understanding of the - I can't quite recall exact name, but the Records Act, for want of a better word, was quite explicit about not destroying or removing entire, you know, public documents. They were to be retained as a record of public administration.

50

At any time subsequent to that communication to Mr Walker and Mr Roberts, did you discuss the issue of the disposition of that 30 July submission with Dr Buckland?-- In what respect, if I could just clarify?

Did it ever arise in conversation, this event?-- You know, episodically, I think, you know, we would have had ad hoc conversations about the decision that had been made to destroy

the document, and those discussions were along the lines that, you know, we didn't think it was appropriate, they weren't - it wasn't the most compelling thing on our mind as time went by.

1

Do you recall at any time raising the issue with Dr Buckland and him responding in any way to the fact that you had received this direction?-- No, I didn't.

Do you recall at any time telling Dr Buckland, "Oh, by the way, we complied with your direction."?-- No, I didn't.

10

How was it that the issue arose in any one of these ad hoc discussions about which you've just given evidence? How did the issue arise?-- Would you just clarify that, please?

Yes. What I'm seeking to identify with you, sir, is this: you say that there were ad hoc discussions about the issue?-- With Mr Walker and Mr Roberts.

20

I'm sorry, we're at cross-purposes. Did you subsequently - that is subsequent to you dealing with this document in compliance with your direction, did you have at any time a discussion with Dr Buckland during which he or you raised the subject matter of this direction?-- No.

30

40

50

Thank you. The ad hoc discussions that you were averting to a moment ago, they were discussions that you had with Mr Roberts and Mr Walker subsequently about that issue?-- That's - that's correct, yes. 1

Thank you. You do relate in your statement however that you subsequently later that year I think, that is later in 2003, if not the early - early the following year, had a conversation which resulted in Mr Walker being asked to have a meeting with Dr Buckland pertaining to the 30 July submission; do you recall that?-- That's correct. I'd - I'd had a conversation with Dr Buckland and as I've said in my statement I can't recall whether it was him telephoning me or at the end of another routine meeting that I had had with him that a staff officer of his had sighted a copy of the submission. 10

You mean the 30 July submission?-- 30th of July submission on that officer's desk.

How certain are you that in this conversation you had with Dr Buckland that he was in fact referring to the 30 July submission, that is the 30 July 2003 submission, as opposed to any other submission that may have preceded it or followed it?-- Well, he - his words were, if I can recall to the best of my ability, the document that was asked to be destroyed had been seen on the officer's desk, which was the 30th of July submission. 20

You then took that up with Mr Walker?-- I did, yes. I went and saw - immediately went and saw Mr Walker. 30

And you asked him to attend upon Dr Buckland?-- Not at that time. I just communicated with him what had been passed on. A day or so later he came up to my office and we had a discussion in which he suggested that he should really go and see Dr Buckland to clear the air or clarify the concerns he had and I said, yes, I thought that was a good idea and that he should seek a one-on-one meeting with Dr Buckland, a personal meeting, to clear those issues up, because there was another issue that had also arisen in the conversation with Dr Buckland. 40

That other issue pertained to some remark allegedly made or some topic covered by Mr Walker at a meeting?-- Yes, there was a Medical Superintendents meeting and these are held each month and Mr Walker was - and the members of the Surgical Access Team were regular attendees at that meeting and I can't recall what the issue was but Mr Buckland - sorry, Mr Walker had quoted I guess what would be describing it as almost ex cathedra, to use a term, Dr Buckland and, presumably, that had been fed back to Dr Buckland and he - he was displeased with being - being quoted in that manner. 50

He expressed that to you?-- He did.

You passed on the expression?-- I passed that on to Mr Walker.

Thank you. Commissioner, those are the questions I have of this witness.

1

COMMISSIONER: Thank you. Who is going first.

MR MARTIN: I'm happy to go first.

CROSS-EXAMINATION:

10

MR MARTIN: Doctor, just a couple of questions. The measure quality program was in fact a major new initiative for Queensland Health and the government; is that correct?-- It was, yes. It was almost an Australian first. No-one else had attempted to do what we were doing. We based it on a program from Ontario that the Canadians had done and it was, yeah, a new initiative.

20

And Mrs Edmond, the Minister at the time, was supportive and encouraging of the program?-- That's my understanding, and at the meeting which we provided a briefing for her, she was most impressed and enthusiastic about it.

Could I then just take you to your supplementary document which I think was marked Exhibit 427 yesterday?-- Yes.

And just dealing with the questions about your conversation with Justin Collins a little time before the presentation to the Minister and the Director-General in August - do you recall that?-- Yes.

30

Okay. Could I just understand what the conversation was. Did you say to Mr Collins something along the lines of, "If this goes to cabinet, the outcome could be a number of things. It could be simply that the cabinet notes, the contents of the reports, both the public and the hospital reports"?-- Yes.

40

"Could be other decisions or it could even be that the program is killed", something like that?-- That's correct.

So that was the conversation, that it was a range of things that could be the outcomes of cabinet?-- Absolutely. I mean, cabinet - cabinet has the prerogative to hand down decisions on these matters as they see fit.

Okay?-- So it was a possible - yeah, complete range.

50

Could I then just take you to answer D under question 2?-- Yes, I have that.

Okay. Where it says, "Justin Collins has said that he and Dr Cuffe shared the view around the time 13 August 2002 presentation that submitting the measure quality data and reports would effectively kill the measured quality program, is this true?", can I suggest that the word should be "could"

rather than "would", consistent with your evidence?-- I would agree with you.

1

Okay. Thanks, Commissioner.

COMMISSIONER: Thank you. Who is next?

MR APPLGARTH: I think I am.

COMMISSIONER: Right.

10

CROSS-EXAMINATION:

MR APPLGARTH: Dr Cuffe, my name is Applegarth. I appear for Dr Buckland. When you were a manager of procurement management back in 2003, you would have been a very busy individual?-- Yes.

20

You weren't only the line manager for the surgical access service or Surgical Access Team, you had a lot of other responsibilities?-- I had four other teams as well as the surgical access service.

And the General Manager Health Service, be it Dr Youngman, Dr Buckland, Dr Scott, they're also very busy individuals?-- Busier than me.

30

Probably busier than the Director-General?-- The General Manager Health Service was I guess the job that if you had to take the number of people that directly reported to would be by far the largest position.

Because they have a management role of managing in a general sense hospitals, statewide services, dealing with professional bodies, negotiating industrial matters and so on. They have a wide portfolio, don't they?-- That's correct.

40

Now, can I just deal with the issue of briefings and submissions. Now, apart from routine correspondence that goes to the General Manager Health Service, the General Manager Health Service receives briefings and submissions. They're two categories of documents, aren't they?-- That's correct.

Briefings typically are for noting?-- Briefings are, yes, for noting, to bring the issues to the GMHS, yes.

50

And submissions are typically for approval or non-approval?-- They're for a decision, yes, when you're requesting a decision be made.

And the system that you've come to understand depends upon people around you and people around the General Manager Health Service handling the flow of documents?-- Could you just clarify that again, please.

You have support staff?-- Yes, yes, indeed there are administrative officers and executive secretaries in the case of Dr Buckland that process the correspondence through and in a ministerial - and a departmental correspondence unit as well.

1

And given the volume of briefings and submissions that go into the General Manager Health Services office, I take it from your understanding there'd be hundreds of submissions and briefings going to the General Manager Health Service each year?-- I predict it's an amount daily.

10

And the volume requires briefings and submissions to be comprehensive so that decisions can be made on the papers so to speak?-- Yes, briefings should be comprehensive and accurate to enable decisions to be made but they-----

When you say briefings, I take it you mean briefings and submissions?-- Briefings and submissions, yes.

20

Because the General Manager Health Service doesn't have time to have meetings to discuss these matter. The idea is to absorb, be told what's in the document, have a look at it, make a decision and ideally record the decision on the front page?-- Oh, that's not always correct. I think there are numerous occasions in which briefings which may raise a particular issue, would certainly require meetings for Dr Buckland or anyone to follow up on.

30

I accept that, but if the submission is comprehensive, it doesn't require further follow up, ideally the submission can be dealt with on the papers so to speak by a notation on the front of "approved", "not approved", "further work needs to be done", or something like that?-- That would be the normal course of events. If-----

Yes, that's all. I just wanted to know the normal course of events?-- Yes.

40

And if the submission or briefing is inadequate in some respect, then you'd expect it would be the Director-General or the General Manager Health Services to note a comment in writing or even requires someone to have a discussion about the matter?-- Yes, a comment could be made in writing and the submission sent back or call a meeting in order to, you know, make some questions about the issue.

Can I turn to the submission of the 30th of July 2003. You may not have a copy in front of you?-- I think I do. If you just bear with me-----

50

This might be quicker if I have this handed up to you. I'm handing to the witness attachment DFM3 with some tabs on it. Just while you're looking at that, yesterday at page 6540 line 10 you were asked some questions by my learned friend Mr Douglas about clearing briefing papers and you said, "Clearing the briefing means that you've read and understood

the components of that briefing and are prepared to send it on through the correspondence chain to the relevant party." Do you remember giving that evidence?-- Yes, I do.

1

And you went on to say that the person who clears it accepts accountability for it?-- Yes.

That submission of the 30th of July 2003 was cleared by Mr Walker, wasn't cleared by you?-- Cleared by Mr Walker then submitted through - this is a-----

10

That's the chain-----?-- That's the chain.

-----of transmission?-- So ultimately, you know, I am the last signatory, therefore I accept the accountability for the document apropos the discussion I had with the Commissioner yesterday.

But you may not have read it as closely as a person who cleared it?-- No, I read the document.

20

I'm not suggesting you didn't?-- Yes.

But in terms of the relevant responsibilities, you have got someone who prepares it, someone who clears it and then you have a look at it and you're satisfied sufficiently to submit it; correct?-- If - if I had particular issues with the content of it, then I would have had discussions with Mr Walker or Mr Roberts prior to submitting that.

30

How closely did you read the submission on the 31st of July 2003 before submitting it?-- I read it - I read through it, yeah.

Right. Do you remember how - you presumably can't remember how close you read it or what you were doing that day. It would be unfair to ask you. Can you remember?-- No, I can't recollect spending an hour on it or, you know, any nature like that but I read the document and the issues contained therein.

40

Did you understand on the 31st of July 2003 that the surgical access team had done an analysis based upon its own data repositories?-- The 30th of July, yes, they had based on the - well, the department started the repositories where this is stored and they just have access to the departmental record.

And in terms of that, they were looking at, as it were, gross figures, trying to see patterns and see changes between one year and another, and specifically on reclassifications?-- That's correct, a desktop analysis for want of a better word.

50

They weren't looking at individual files?-- No, no, they - this was-----

That's sufficient for - for my purpose. So you understood that the people who prepared and cleared this submission hadn't gone out and interviewed the hospitals?-- No, they

hadn't at that stage, that was what they were seeking to do.

1

They hadn't even contacted them by phone or e-mail or letter so far as you knew?-- If I could just refer to-----

Well, if you look at-----?-- -----this submission.

If you look at the back in terms of consultation, I think I might have put a tag on it. You're ahead of me, Dr Cuffe. Towards the back you will see the consultation is only within the Surgical Access Team?-- Yes. However, on page 3 I'd draw your attention, Mr Applegarth, to probably about the second or third paragraph down that, "Staff at some hospitals are interpreting the data", et cetera, et cetera. Now, that would have been the basis of probably, I suggest to you, ad hoc discussions between members of the team and those hospitals.

10

Right. But you don't know the extent of that discussion?-- No, I don't.

20

And I put a tag on a page that had a figure of \$4.5 million. I don't have a page number?-- Yes.

That's why I put the tag there?-- Yes, I have that.

And you see that figure was stated to be based on an assumption, "Assuming none of these cases are genuine planned elective admissions." You see that?-- I see that, yes.

And when you read the document, did you understand that was an assumption that this went forward on?-- That's an assumption that if - if all the cases as indicated here, that was the - the worst case scenario to the extent of \$4.5 million had been overpaid.

30

Now, when you read this document on the 31st of July 2003, did you appreciate that was a matter of assumption?-- That - yes. I mean, it's quite clear that it states it's an assumption in worst case-----

40

And you understood it was a very important assumption?-- It is an important assumption, if, you know, a subsequent audit would have proved those figures to be correct.

Right. Now, the consultation as we've seen was internal within the surgical access service and it says consultation with Gary Walker, Michael Zanco and Simon Wenck?-- That's correct.

Did you assume that the other members of the Surgical Access Team, Mr Zanco and Mr Wenck, had been consulted in relation to this matter and approved of the contents of this submission?-- If the consultation - I didn't actually question Mr Zanco and Mr Wenck about that.

50

No?-- I have made the assumption that the members of the team jointly and severally had been involved in - to some extent in - you know, in these issues here with Mr Roberts, as the

person who put the document together.

1

COMMISSIONER: Not that every one of them approved everything that Mr Roberts put in the document?-- No, no, I couldn't make that assumption.

MR APPLGARTH: Now, can I take you to the 15 August 2003 meeting and the upshot of that was that Dr Buckland said there should be consultation with the zones and districts?-- Dr Buckland's direction was to go out and talk to a number of districts and hospitals which had been earmarked and to ascertain were there any reasons or circumstances behind the desktop figures.

10

Now, you're welcome to look at this, it might speed things up if you do, but you have probably seen Deborah Miller's statement, which is Exhibit 416, where she sets out notes that she took of that meeting of the 15th of August?-- I haven't seen those notes.

20

Well, if you could look at this. If you could just read to yourself-----?-- Yes.

-----those notations?-- Yes.

Does that accord with your recollection of the matters that were discussed at the 15th of August meeting?-- I mean, my primary recollection of that meeting was the issue about the reclassification of issues. I don't actually recall some of the - can I say points 2, 3 and 4.

30

That's fine?-- As I didn't take notes of that meeting but Mr Roberts or Mr Walker may have notes that can throw some light on that.

In any case, you have got - you have got my copy of it but from memory, in those notes of the first topic, Nambour is singled out for some special mention in the last dot point is, "Discuss what should be given to Nambour this year. Needs to be flagged in a conversation with the District Manager." Do you remember that?-- I don't specifically remember a conversation about Nambour but if I recall, Nambour was one of the hospitals that had one of the most dramatic set of changes in figures.

40

And just in essence, at that meeting Dr Buckland went through the table-----?-- He did, yes, yes.

-----and canvassed reasons why there might be these reclassifications in different hospitals?-- He - I'm not sure if he canvassed reasons why. He and I - to the best of my recollection, he made some ticks on the ones that he thought-----

50

Needed investigation?-- -----needed the team to go out and actually discuss with the districts and facilities.

And was one of the things he raised that at least in some of

the instances it may be that a member or members of the Surgical Access Team had been out to these hospitals and instructed them to modify their practices and those instructions had in actual fact led to substantial reclassification?-- I don't recall him saying that at the meeting.

1

But, anyway, when you looked at the table, Nambour jumped off the page, didn't it?-- It certainly appeared to be the hospital with the most change.

10

And so although, as this note suggests, there was concern in relation to a number of major hospitals, PA, QEII and some regional ones?-- Yes.

That was on the basis that - of the data suggesting a shift between emergency and elective and those were to be looked at?-- That's correct.

But Nambour was, subject to some extraordinary explanation, likely to have some funding adjustment?-- Nambour's - I can't actually recall whether the funding adjustment conversation occurred at the meeting but in terms of the data, Nambour was in, you know, sharp relief if I could use that term.

20

Sure. Now, you see the second document, "Gary to feed back to GMHS the reasons for the shift in a fortnight"?-- Yes, I see that.

That accords with your recollection?-- I can't recall the fortnight bit but we were - the instruction was along the lines of the team was to go out, meet with the hospitals and get back to them - to get back to Dr Buckland with a series of explanations or otherwise based on those discussions with the hospitals and the facilities.

30

So the upshot of the 30 July submission and the discussion that was had on the 15th of August was that there were a number of hospitals, including major hospitals like Princess Alexandra, who were being said by Mr Walker and-----?-- Mr Roberts.

40

Thank you, Mr Roberts, of actively reclassifying?-- That's correct. That's what the memo contained.

And the memo suggested that these several hospitals were engaging in some kind of abuse?-- It suggested that, yeah, there was a need for an audit to ascertain, which was the - I think the prime purpose on the front of the 30th of July submission, to see whether in fact from the desktop analysis there was reasonable explanations for those figures or whether in fact there was wholesale recoding or reclassification.

50

Well, the submission didn't mince words. It used the term "abuse", didn't it?-- It did.

Now, that minute indicates in the second dot point or that file note that a memo is to be sent out by Mr Walker and the

memo was to say that he was writing with the authority of the General Manager Health Services; you see that?-- I see that dot point, yes.

1

Does that accord with your recollection?-- I can't recall-----

It doesn't matter if you-----?-- Yeah, I don't.

Can I show you these documents. I have given a copy to the gentleman with the overhead and a copy for the Commissioner. If I could hand one to the witness and one to counsel assisting. Just in terms of that first single page that I have given you, do you recognise that to be a letter under Dr Buckland's hand that went to the Princess Alexandra Hospital apparently on the 21st of August?-- Yes, I can see that, that's Dr Buckland's signature.

10

And so, instead of the manager writing to these hospitals and saying he had the authority of the General Manager Health Service, Dr Buckland in fact gave it his own authority by writing this letter?-- From my memory I think Mr Walker wrote the letter and-----

20

Well, he may have drafted it but-----?-- He drafted the letter and it was signed by Dr Buckland.

And so Dr Buckland as it were was going into bat for the Surgical Access Team?-- Yes, he was - this particular one was to the Princess Alexandra Hospital yes, he was-----

30

You have got no reason to doubt that similar letters were written to QEII and others in similar terms?-- Well, I don't know but I would assume so, yes.

I tender the letter of the 21st of August 2003 from the General Manager Health Services to the District Manager Princess Alexandra Hospital.

COMMISSIONER: Yes, that will be Exhibit 428.

40

ADMITTED AND MARKED "EXHIBIT 428"

MR APPLGARTH: Now, it is the case, isn't it, Dr Cuffe, that various hospitals and zones responded in September and October to these issues and gave reasons why their classification and re-classification practices were appropriate and accorded with the business rules?-- Yes, they did.

50

Commissioner, I have told counsel assisting this, I have given the witness and counsel assisting and our learned friends a bundle of documents. Unfortunately, these documents only came to us from Queensland Health yesterday and so that's why I couldn't put them to Mr Walker or Mr Roberts.

COMMISSIONER: There is nothing new about that.

1

MR APPLGARTH: Sorry?

COMMISSIONER: I said there is nothing new about that.

MR APPLGARTH: I just didn't it want to be suggested that I was holding them back and-----

10

MR DOUGLAS: No, there is no question of what Mr Applegarth said is correct.

MR APPLGARTH: Thank you. I don't want to take too much of your time, Dr Cuffe, or the time of Commission but you will see I have given a bundle there that has some tags on it?-- Yes, I do.

A, B, C, D, E I think is the organisation?-- Yes, I have it.

20

You will see there that the one on top is a memorandum from the Princess Alexandra Hospital, which was one of the hospitals that had been suggested was abusing the system, and have you seen that document before?-- No, I haven't.

Was its contents reported to you soon after it was received?-- No, I haven't seen that document at all.

Well, take your time to read it if you need but are - you know the signatory to that letter, Dr Ashby?-- Yes, I do.

30

He is a very experienced clinician and hospital administrator?-- Very experienced.

You hold him in the highest regard?-- Yes, a man who, you know, is a very reliable and experienced administrator.

You see that they're saying that the Princess Alexandra Hospital has audited these matters. At the instance of the recent communications it has done a complete clinical audit and so on, do you see that?-- Yes, I do.

40

And if you turn over the second page, I don't want to take up your time but you will see that Dr Ashby attaches a two-page memorandum from the - looks like the Deputy Director Medical Services Dr John Wakefield?-- Yes, I have that.

You will see how that goes into an explanation of the rules and the practices at Princess Alexandra Hospital?-- Yes.

50

And deals in greater detail with the PA's processes of auditing; do you see that?-- Yes, I do.

And you see about halfway down the first page Dr Wakefield talks about the number of admissions points. If there is any doubt when someone goes in, they go through the emergency department, after hours patients for elective admission go through there and so on. You see that explanation?-- Yes, I

see that paragraph highlighted.

1

Now, was this news to you personally that a hospital like the Princess Alexandra Hospital had these sorts of practices?-- Princess Alexandra had a - from my recollection had a fairly thorough audit process of clinical review.

Did you-----?-- They-----

Did you know that before the 31st of July?-- No. My knowledge of that came about as a result of a memo - a response memorandum that Mr Roberts wrote which was what Buckland - Dr Buckland had asked for as a follow-up from the 1st of July.

10

Thanks?-- And in that - for each of the hospitals that they visited, there was a detailed explanation for reasons given and a rationale as to whether the practice was reasonable in each of those hospitals.

20

I'll just try and move quickly through these if I can. If you just turn to B, that's a letter from the Logan Beaudesert Health Service District and I have highlighted a sentence where they explain that, "A review of the data in 2002/2003 admission errors, changes in theatre management practices and quality improvement initiatives that resulted in approved elective surgery data integrity", you see that point?-- I see that highlighted, yes.

So they're making the point that improvements in their systems actually had resulted in what appear to be a reduction in emergency surgery activity and a transfer to elective surgery?-- That's - that's what they have provided as an explanation.

30

40

50

And were you aware of that kind of explanation on 31st of July, as why there may be reclassification by hospitals such as this?-- Not at that point in time.

Okay, just dealing then with tab C, you will see that's from a regional hospital?-- Yes, I have that.

And I have highlighted a passage which you can read to yourself, the one starting "the rationale", and that hospital explains that it saw good clinical reasons not to send people home and then readmit them, and they say, "The administration cost and risk management aspects of not following the discharge and readmit process, not considered to outweigh the administrative requirements of the elective surgery business rules in keeping the patients as admitted, ie clinical practicality and patient issues having a higher priority than administration." Do you see that?-- That's there. That was the approach that they obviously adopted.

Were you aware that hospitals adopted that approach on the 31st of July 2003?-- That that particular hospital had, no, no.

That any hospital adopted that approach?-- No, not at that point in time.

Well, that would be an explanation as to why a hospital might be in Mr Roberts', Mr Walkers' eyes not complying with the rules that someone who comes in through emergency, they are kept there and they later undergo elective surgery?-- I think the comment on the second last line there, "outweigh the administrative requirements of the elective surgery rules", is a decision that was clearly made at that district, and the rules were vague on that particular issue and, hence, they were able to adopt that practice.

But if you read on it says: "At the time the district requested from your area" - being the Surgical Access Service area - "an audit to verify the integrity of its actions. This was done so no objection was raised and the district proceeded with this approach."?-- Yes.

So it wasn't just them going off on a frolic of their own or having their own interpretation; they are saying that this approach had been, as it were, assented to by the Surgical Access Service?-- That's what's said there. I can't recall whether there was a visit to Hervey Bay. There may well have been.

Wouldn't have been by you, of course?-- No, it wasn't by me.

But you have got no reason to doubt the accuracy of that statement?-- I would hope not.

Now, if you just turn to item D, you will see that's an email from Mr Morrissey, who is at the Toowoomba Health Service District, and I have highlighted a passage where he's

corresponding by email with Col Roberts and he's talking about this term "reclassification"?-- Yes.

1

And he says, well, arguably patients may have been incorrectly classified in the first instance but they are not reclassified. The term reclassification has an implied connotation of deliberate gaming attached to it. That's my interpretation. Maybe I am getting too sensitive in my old age. Do you see that?-- Yes, I do.

10

Turn the page and you will see Mr Roberts replies, "Ken, clearly that is the implication". Do you see that?-- I do.

So far from being sensitive, or hypersensitive, or getting the wrong message, Mr Morrissey and the Toowoomba people get the message from Mr Roberts that he is accusing them of deliberate gaming?-- That he isn't?

He is accusing them of deliberate gaming?-- It is a moot point, I guess.

20

Were you aware that Mr Roberts was accusing health districts like Toowoomba of deliberate gaming?-- No.

Well, he did in the 30 July submission, didn't he?-- I think in that submission he indicated that from the analysis that he had done, that there were indications that required an audit, and gaming is probably a word which is chosen, I suggest, here by Mr Morrissey rather than Mr Roberts.

30

Well, you have never heard the term deliberate gaming used by Mr Roberts?-- Not that I can recall.

Now, leaving aside this audit, wouldn't it have been possible for Mr Roberts and Mr Walker to get the point of view of the hospitals by some less extensive process than going out and auditing? They could have ascertained the types of propositions that I have shown you in A, B, C and D by some ordinary communications; writing to them, sending a little memo, getting a memo back?-- I mean, they may have been able to do that and get communications back, but to get to the bottom of the story, it would really require a detailed audit of the charts-----

40

Well-----?-- -----of the individual patients-----

Leave aside getting to the bottom of the story-----

MR DOUGLAS: Commissioner-----

50

COMMISSIONER: You shouldn't interrupt the witness.

MR APPLGARTH: I am sorry, I will move on, because I am conscious of the time. Commissioner, may I tender that bundle, which is a bundle of memoranda and e-mails between various hospitals and the Surgical Access Service in September 2003.

COMMISSIONER: Yes, that will be exhibit number 429.

1

ADMITTED AND MARKED "EXHIBIT 429"

MR APPLGARTH: Now, these types of documents - I could show you more, if you would particularly like, Dr Cuffe - involve communications by hospitals indicating to them - indicating to Mr Walker and Mr Roberts what was actually going on on the ground?-- They were district explanations as they ascertain their practices.

10

Now, did you understand that Mr Roberts and Mr Walker somehow didn't know about these types of practices and explanations for them?-- No, I am not suggesting that.

Well, if they knew about it, they didn't put it in the 30 July submission, did they?-- These - these explanations are some time after that, I think.

20

Yes, but if they already knew about the point of view of the hospital before the 30 July submission was prepared, you would expect them, in fairness, and for the purpose of being comprehensive, to at least put a short explanation in that submission as to what the hospital's point of view was.

COMMISSIONER: You mean all the possible interpretations that could be drawn from the business rules.

30

MR APPLGARTH: Not all of the possible interpretations, but they would have been able to give the type of recurrent explanation about people coming through the emergency department and so on?-- Could I suggest that the real way forward was, as the 30th of July submission was seeking, to do an audit which would then provide an opportunity to test the veracity of the explanations provided by those hospitals.

40

Now, the Commissioner's raised an issue of interpretation. Could you look at this bundle, which for everyone's purposes is the bundle the witness Mr Walker saw a few days ago, again for convenience.

COMMISSIONER: Yes.

MR APPLGARTH: Now, if you turn to the post-it sticker 4, that's a copy of Exhibit 384. Dr Cuffe-----?-- Yes, I have that.

50

-----you may have seen that document before?-- Yes, I have.

And tell me if you need to refresh your memory, but it is the interpretation and explanation given by the central zone in September 2003?-- Yes, I recall that.

And you see on it there is a note from Dr Buckland, which we

think must have been about the 1st of October, to you: "Does the assertion that the business rules do not include source of referral code have substance. If it is, then SAS have no legitimate call." Do you see that?-- Yes, I do.

1

And you mightn't then be able to see on this one, but on the complete document it ends "advice, please"?-- Yes.

Do you remember receiving that?-- Yes, I do.

10

And did you seek advice from the Surgical Access Team?-- Yes, from memory they provided a follow-up document to Dr Buckland.

And you can't assist us with whether that document is addressing this particular issue?-- No, I don't have that document.

Might it be the one that's tab 6? You will see Mr Roberts wrote another memo-----?-- Yes.

20

-----on the 8th of October 2003?-- Yes, that's possible. That's it, I think, yes.

You see again Dr Buckland was saying that this brief didn't address the question that he'd asked?-- I see what he's written on the front.

Do you see that?-- I do.

And, again, it is a little obscured but he ended "please advise". Do you remember if there is any subsequent advice about that matter?-- No, I can't recall if there has been any subsequent advice. There was a subsequent meeting about the business rules, because, I mean, the key point here is that there wasn't a source of referral code in the current business rules and that was essentially the point where this all turned on.

30

Right?-- That if the business rules, you know, did not permit a source of referral code from emergency to elective, then none of these issues would have arisen, and that was the point, I guess, of ideological difference, that-----

40

Well - I am sorry, I don't want to interrupt?-- That's the key point that was - that we were trying to make.

Well, you call it an ideological difference, let's - we could just call it theological, I suppose. Let's just call it a difference of interpretation. If the interpretation put forward by the central zone in the document I just took you to before Exhibit 384 was right, then the Surgical Access Team's interpretation was therefore wrong?-- I think the key point to be made, Mr Applegarth, is not whether you could find a way around the business rules or use the business rules as they were so written at that time, because we were unable to get the business rules negotiated with the zones to have that particular clause, in that you could not have a source of referral from emergency to elective, but, rather, the key

50

point to be made is that this was about preserving total elective surgery, and using the funds available for elective surgery rather than having the practice where the business rules were silent on it, where people had the option of going from emergency to elective.

1

Well, you say getting around the rules. If the rules permitted that, no - the hospitals weren't getting around anything; they were accessing funds to which they were properly entitled?-- They were accessing funds to which they were entitled. However, the business rules - we could not get agreement on the business rules to actually have the dollars which the government had assigned; in other words, the 80 odd million, I think, in that year, subsequently 100 million in other years, purely used for doing additional elective surgery.

10

When you look at it, the submission of the 30th of July 2003 was accusing not only Nambour Hospital, but other hospitals of abuse of classification and reclassification practices?-- Yes. I will find that document.

20

Well, if I could - check it if you will but I would suggest to you that's the thrust of the document?-- Yes.

Yet, after the hospitals have been consulted and they come up with explanations of what's happening on the ground and put forward their interpretations of the business rules, then save for Nambour, they seem to rebut the allegation of abuse or deliberate gaming, or call it what you will?-- But for Nambour?

30

Well, Nambour clearly was engaging in some irregularity?-- Yes.

But the other hospitals, like Princess Alexandra Hospital, they come up with their explanation of what's going on at the ground, they provide their interpretation of the rules, they say what they're doing is appropriate. And effectively rebut any suggestion that they're abusing the system?-- That's the explanation that you have provided there, yes.

40

COMMISSIONER: The question at the end, I suppose, is whether that explanation is acceptable?-- I mean, that was the key point. I mean, these were meetings which I understood went for a couple of hours, with various key representatives of the hospitals, with primarily Mr Walker and Mr Roberts, and they made a decision as to whether those explanations, given the current business rules that were operating at the time, were fair and reasonable.

50

MR APPLGARTH: An issue of interpretation seems to run out when Dr Buckland asks the Surgical Access Team as to whether the interpretation that's been advanced by the hospitals is wrong? The argument seems to end there, doesn't it?-- The argument following - yes, there was - after the submission that Mr Roberts prepared on the 12th of September, which was a synopsis of all those various meetings that were held, there

was nothing further addressed on the issue, other than Nambour receiving a penalty. 1

Now, is there any reason that the process of consultation and seeking the views of the hospitals about the proper interpretation could not have been undertaken by the Surgical Access Team before Mr Walker and Mr Roberts compiled the submission of 30 August 2005?

COMMISSIONER: Mr Applegarth you have asked that question in various ways about three or four times. 10

MR APPLEGARTH: Thank you.

WITNESS: I might answer it, though, Commissioner, if you wish?

COMMISSIONER: You can if you like, yes?-- Quite simply - I mean, there is a line management issue here that - you must appreciate, Mr Applegarth, that the Surgical Access Service had no line management affiliations with the zones or the districts. We were an independent unit which reported directly to Dr Buckland. So in order for us to go out and have detailed discussions with those district managers, we obviously needed to seek his permission and acquiescence to do so. 20

MR APPLEGARTH: Isn't it the case, at least the hospitals tell us and there is other documents tell us, that people from the Surgical Access Team actually went out to the hospitals and did that very thing; they discussed with the hospitals on the what the proper approach to classification and reclassification was?-- On request from the zones. 30

Yes, so this thing about line management-----?-- Well-----

-----that didn't prevent members of the Surgical Access Team dealing directly with hospitals in person, over the phone, or----- 40

COMMISSIONER: At the request of those zones?-- I mean, the request to actually seek assistance from officers of the Surgical Access Team came from the zonal managers. Likewise, if we wished to go out and, you know, interact with them, then the appropriate person, through the way the hierarchical systems worked, were for me to seek Dr Buckland's permission to do so and then we would go and do those explanations, but - I don't want to labour the point, I am sorry.

MR APPLEGARTH: I want to move on, too. Dr Buckland, at the meeting on the 15th of August, wanted that assumption that was in the 30 August document investigated?-- Yes. 50

And tested?-- The table drew attention to the potential. They were the issues and the zones that he actually wanted investigated.

He said words to the effect that until that was done, these

allegations and the like were really untested?-- I can't recall him actually saying that, but he - you know, the clear indication was, as we had requested in that document, that an audit be undertaken, and that was his instructions, that our members of the Surgical Access Service were to go out and talk to those hospitals-----

1

Right?-- -----which had been highlighted.

Okay. Now, just in terms of the document?-- 30th of July document?

10

Getting back to where we started from, because you had this discussion on the 15th of-----?-- August.

-----August, the submission wasn't dealt with on the papers, as it were; it was dealt with in person?-- The-----

The 30 July submission?-- Yes, yes.

20

Was dealt with in person rather than Dr Buckland just having the document on his own, looking at it and writing back. It was dealt with in person for the reasons you explained earlier?-- Yes. He had the document, I believe, there with him.

So given the upshot of the 15 August meeting, you didn't expect that document to come back to you with "approved/not approved" circled?-- My expectation would have been that that document would probably have come back with a notation on it which would have reflected the discussions that we had had or the conclusion of that meeting, that, you know, "I want the Surgical Access Service to go and talk to the hospitals highlighted and report back to me." That would be the normal correspondence.

30

But there didn't seem to be any ambiguity at the end of that 15 August meeting as to what happened? You had Ms Miller taking notes there, perhaps someone from the Surgical Access Team taking notes there?-- Yes, I - Ms Miller and probably Mr Roberts and Walker took notes. There was no ambiguity about-----

40

Everyone knew what had to be done?-- It had to be done. If the question you are asking me was how formally should the document have been dealt with-----

No, I am not asking you that question. Just in terms of the question of dealing with documents, and the RecFind system?-- Yes.

50

I take it there is people who are specially trained to put documents on or take them off RecFind?-- I am not sure what the training is, but - not having used the dreaded RecFind system myself - but I presume, yes, you would need - you would need some coaching on how to use it, although I don't think it is rocket science.

COMMISSIONER: You have never heard of anyone taking documents off RecFind?-- No, I haven't, Commissioner.

1

MR APPLGARTH: But you were asked earlier, just on this topic - the Commissioner's question prompts me to ask it - you were taken to Ms Miller's affidavit in paragraph 20 where she talks about a process whereby-----?-- That's the process within the General Manager Health Service office. Yes, I recall that.

Paragraph 20, she talks about a process in cases where there is minor revisions or, secondly, where there was concerns about accuracy. You were taken to that earlier by Mr Douglas?-- Yes, Mr Douglas took me through that.

10

Now, you can't say, based on your experience, how rare that process is, whether it happens frequently, exceptionally?-- I-----

That's the sort of thing you would be involved in personally?-- I had never heard of that particular practice before.

20

That's not to say it didn't occur as Ms Miller indicates?-- It obviously did occur as Ms Miller indicates.

Thank you. Now, dealing with your discussions with Ms Brennan, this occurs some time after 15 August?-- Yeah, shortly afterwards.

When you say shortly, a matter of days or weeks?-- Oh, within days, from my recollection. But I can't pinpoint the day or the time.

30

You can't say whether you were contacted by phone or in person?-- No, it was by phone.

Okay. And you can't recall exactly what she said?-- I can't recall her - I can recall her saying that the hard copies were to be destroyed and the electronic copies removed from the network but I don't recall her mentioning any person from Dr Buckland's office as the authority for that to occur.

40

Nor mentioning that Dr Buckland was the authority?-- No, no, she did not mention that.

So from what she said, or from what you inferred from what she said, you understood that someone in the General Manager Health Services office had instructed her to do certain things?-- It had. I mean, there were only two other people - it was Dr Buckland and Ms Miller were the only other people in that office, and Ms Brennan, and the idea that Ms Brennan would do such a thing off her own bat would seem very unlikely to me.

50

No. And did Ms Brennan tell you she had been instructed to remove the document of 30 July from RecFind?-- No, there was no mention of RecFind.

Are you sure about that?-- Absolutely.

1

It would have been a sensible thing for her to tell you, "There is no point looking this up on RecFind because it has been removed or about to be removed"?-- The idea of removing things from RecFind is something which has only been brought up with me today by Mr Douglas. I have never heard of things being removed from RecFind.

Did you look for the document on RecFind?-- I personally didn't, no.

10

Did anyone from Surgical Access Team go and have a look to see if it was still on RecFind?-- Not that I am aware of. I can't recall that.

Did you infer from what Ms Brennan told you that the General Manager Health Services office had concerns about the further use of the 30 July document until the assumptions and data in it had been verified?-- Could you repeat that, sorry?

20

Did you infer, from what you were told by Ms Brennan, that the General Manager Health Services office had concerns about the further use by people within Queensland Health of the 30 July document, at least up until the time when the assumptions and data in it had been verified?-- I wouldn't say it would be that - the issue that, you know, other people within Queensland Health would be using that data and making misinterpretations. I mean, the document was - would only be retained within the Surgical Access Service and they were to undertake the subsequent investigations. But, in any case, whether the document was 100 per cent right or 100 per cent wrong, it should have stood in its own right.

30

COMMISSIONER: I think the answer to your question is no.

MR APPLGARTH: I think that's right.

WITNESS: Thank you, Commissioner.

40

MR APPLGARTH: You understood that the July document could be interpreted as accusing several hospitals of taking \$4.5 million to which they weren't entitled?-- The thrust of that document was that on the desktop audit, if there was 100 per cent agreement with that, then there was potential for \$4.5 million that had been overpaid.

Now, by the end of August, the start of September, were you starting to get any feedback, from the consultation process that the Surgical Access Team had gone through, that these allegations of abuse were being hotly contested by various hospitals, including Princess Alexandra Hospital?-- There was ad hoc conversations prior and leading up to the document provided by Mr Roberts on - I think it was the 13th of September.

50

I think it was 11?-- About some of the visits, yes, and-----

So did you become increasingly concerned at the end of August, the start of September that this document might have falsely accused several hospitals of inappropriate conduct?-- I think by that particular time my view was that the explanations that had been provided seemed reasonable and fair. However, the whole process had been a valuable one, in the sense that it had elicited what appeared, on face value, on a desktop audit, to be a significant issue.

1

Now, there was a yes or no in that answer but I don't want to be unfair to you?-- Yeah.

10

Were you concerned, by the end of August, start of September, that the 30 July document, in the light of the information that had come back from the hospitals, was falsely accusing several hospitals of inappropriate conduct?-- No.

You didn't have that view?-- I didn't have that view, no. The reason for that was that-----

20

Did you ever-----

COMMISSIONER: Let him finish the reason?-- The reason for that was, I mean, what the visits had done was simply listened to the explanations of the hospitals on what they had particularly done. The real way to get to the bottom of the issue would have been a detailed audit of the charts for all those patients that had been affected. Now, some hospitals had a process in place to do that, but an independent audit may have provided a more definitive case. Now, at the end of the day, there was no money or willingness, what you like, to undertake that and so the matter was closed off as we were moving into the case of actually refining the business rules for the ensuing year and bringing the matter to finality.

30

MR APPLGARTH: Well, you would have expected Mr Walker and Mr Roberts to tell you about the comprehensive response that they obtained from the Princess Alexandra Hospital?-- I had - the submission of the 13th of September actually provided that explanation and an agreement with the explanation provided by the PA Hospital.

40

And you didn't think any - don't want to use the term apology, but you didn't think it was important to clear the air with the Princess Alexandra Hospital that any suggestion that they may have been abusing the system was unwarranted?-- I didn't think it was required at that point in time. I mean, the hospitals are subject to periodic audits by internal audit branch. I mean, this is just a routine part of administration, where questions may or may not be asked.

50

It wasn't the case that by September 2003 you were at all embarrassed by the contents of the 30 July submission?-- No, no, I was not.

I suggest to you that Ms Brennan didn't use the term that you were being directed to destroy documents or words to that effect?-- Well, I disagree.

Okay. I suggest to you that whatever she said to you, that was your inference that there - you inferred that because there was some problem or perceived problem within the General Manager Health Service about the document; that you interpret what she said to you as a request for the Surgical Access Team to limit or even take the document off the system and reduce the number of hard copies that are around?-- No, I totally disagree with that. I mean, it was such a stark and unusual request that I had never encountered before, that to quote the words, you know, "remove destroy the hard copies and remove it from the system", that component of the conversation impinged on my memory quite significantly.

You would expect it to impinge on Ms Brennan's memory too?-- I would hope so. However, I suppose-----

COMMISSIONER: It happens often in Ms Brennan's office.

MR APPLEGARTH: There is no suggestion from her or anyone else that it does on the evidence so far.

COMMISSIONER: No suggestion one way or the other about that.

MR APPLEGARTH: Well, I think when one looks at the witness statements, that's a matter for submission.

COMMISSIONER: Yes.

WITNESS: I mean, my comment, Mr Applegarth, would be - and this is not a defence of Ms Brennan in any way, but Ms Brennan was the conduit of seven directors to Dr Buckland, plus 38 district managers who variously may phone up. She had an enormous workload and the very idea that she could recall one conversation with me compared to the almost dozens and dozens that she would have each day would not be surprising.

MR APPLEGARTH: Anyhow, you have seen her statement?-- No, I haven't.

Okay. But you have got lawyers acting for you? You would expect them to have looked at her statement. They have been acting for you in recent days?-- They have. I don't recall having seen Ms Brennan's statement, no, and I don't think we have it.

Now, if I could turn to the-----

COMMISSIONER: It doesn't matter.

1

MR BRADLEY: We've not been provided with a copy of that statement.

COMMISSIONER: You haven't been?

MR BRADLEY: No.

COMMISSIONER: It doesn't matter. I wouldn't have thought either - it sounds like it's your fault, Mr Applegarth.

10

MR APPLGARTH: Sorry?

COMMISSIONER: It sounds like it's your fault. You wanted to ask that question. Perhaps you should have provided a copy of the statement.

MR APPLGARTH: I apprehend the Commission provides copies of the statements. It's not my job to provide Ms Brennan's statement. We heard yesterday, and no-one wanted to cross-examine her-----

20

COMMISSIONER: If anyone thought it was relevant - I can't see that it's relevant, but anyway.

MR APPLGARTH: I'll deal with it in submissions.

COMMISSIONER: By all means, yes.

30

MR APPLGARTH: Just dealing with the conversation that you had with Dr Buckland late in 2003 which prompted him - prompted a visit from Mr Walker to go see Dr Buckland?-- Yes.

Was that close to Christmas?-- I really can't pin a date on it. I suspect it may have been in the New Year, for the simple reason that Mr Walker's follow-up meeting with Dr Buckland also included a conversation about the election commitments, and the election had been held early in '04.

40

So doing the best you can, it was probably December or-----?-- Early '04, I suspect, is probably more of the time, and I was on leave the January period of '04, so it's probably closer to the February.

Sure. The conversation that you had with Dr Buckland was short?-- Quite short.

It covered the two topics you've mentioned?-- Yes.

50

The second topic was that someone had told someone in the General Manager's office that there was some document in circulation in the Surgical Access Team?-- That's correct, yep.

Dr Buckland wasn't specific about the document?-- No, he - my recollection is that he said that the document that he had asked - or that had asked to be destroyed was - had been seen

on the desk in the Surgical Access Service.

1

Now, he was saying someone's told someone a document's been seen on the desk?-- He had clearly been told by someone that they had seen the document, yeah. That was the implication.

Now, by December 2003 things had moved on, as it were, in terms of the status of the July document, or the September briefing, or Mr Walker's personal briefing?-- Yes, yes.

10

These things had been overtaken by events?-- Yes, new business rules had been signed off. In fact I convened a meeting which I can recall on 22 October with the zonal managers and their representatives. We signed off on the business rules. The zonal managers, to my satisfaction, were - gave a genuine commitment to, you know, ensure that the practices were good. So we'd moved on.

And so the theories and interpretations that were contained in the documents that we've been concerned with in the last day or two, the July document, the September document, Mr Walker's personal briefing, they were a bit redundant?-- I'd probably - a truce would be a better way of explaining it.

20

Fine. The point of Dr Buckland's discussion was that someone had expressed concern about an out-of-date document still being used in the Surgical Access Team?-- No, I think he was-----

COMMISSIONER: I don't see how you can possibly get that inference, or how you can ask him to draw any inferences from the statement that was made to him about that. He said that the document which someone in his office had said should be destroyed was found on someone's desk.

30

MR APPLGARTH: Yes.

COMMISSIONER: I can't see why that's got anything to do with an out-of-date document or how you can ask this witness to infer that.

40

MR APPLGARTH: I'll move on. I suggest to you, Dr Cuffe, that you may have had in your mind that the document that Dr Buckland was talking about was one that had been ordered to be destroyed, but Dr Buckland didn't use the word "destroyed"?-- No, he - my recollection is that he used the word "destroyed". I mean, he would - it would be most unlikely for Dr Buckland to say, "Someone's seen a document on the desk and that document shouldn't be there." The only document to which this whole series of events related to was the 30th of July document.

50

Couldn't have been the September or the October one?-- No, because there was - there had never been any conversation about destruction, keeping, or anything in relation to any other document that had been provided.

Just a couple of final topics. In paragraph 10 of your statement, Dr Cuffe, you deal with a standing instruction about the types of submissions that should be the subject of consultation?-- Yes, I see that.

1

And if you've still got the July 2003 submission, you see there that it sought approval for amendment of business rules. If you turn to the final page, the recommendations. Do you see recommendation two, that-----?-- I'm just trying to locate it, Mr Applegarth.

10

If you're looking for it, it's the one that had a couple of orange tabs on it, Dr Cuffe?-- Sorry.

That might be the quickest way to find it?-- I can't see it in my copy. I'll find yours. Can you recall the tab number? The first one, probably.

It just should be a single document. Look at mine. It might be quicker?-- Yes, I have it now, yes.

20

And you see there the second recommendation?-- Yes.

Could you just read it out? I don't-----?-- I'll read it out. "Approves amendment of the elective surgery business rules and" - and this is QHAPDC, which is an acronym for the Queensland Health Admitted Patients Data Collection - "admission procedures to specifically exclude presentation from Emergency Departments from claimable elective surgery activity."

30

So it's not only recommending an audit process or whatever, it's actually recommending amendment to the business rules?-- This is what we were asking for, yes.

Well, look back at paragraph 10 of your statement, and you say in the second sentence there, "My understanding is that that direction" - referring to the direction to consult - "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."?-- Yes.

40

Now, if that is your understanding of the standing direction, shouldn't this submission have been the subject of consultation?-- I think the primary reason - even though those recommendations are there, I think we should refer to the purpose on the first page.

Well, we can refer to that-----

50

COMMISSIONER: Just a minute. What were you going to say about that?-- I mean, the main purpose of this briefing was to - or submission, was to "gain approval to establish an ongoing audit process to identify the extent of the classification of emergency presentations to elective and to maximise surgical access funding."

MR DOUGLAS: I think the witness meant "reclassification". He was reading from the document?-- "Reclassification", yes.

1

COMMISSIONER: Do you mean that any question associated with amendment of the business rules was something which-----?-- This would be a flow-on effect.

-----will ultimately occur at a later stage?-- Let's do this first, and the flow-on effect is if we can get the - let's - can we then, if there's an issue here, amend the business rules and reaffirm the issue of total surgery target, and if there are - if there's a case to answer by the districts, that financial adjustments be considered.

10

MR APPLGARTH: Dr Cuffe, if that submission of the 30th of July had come back to you with the word "approved" circled, you would have taken that as authority for the amendment of the business rules that's in recommendation two?-- I mean, what - I mean, the typical-----

20

Is it possible to answer that yes or no?-- No, it's not possible to answer it yes/no. What could have come back as a reasonable result was, for example, if we have the four recommendations here - as you will see, there's adequate space on the front of the document. Dr Buckland could have said, for example, "1. No, not approved. 2. Not approved. 3. Approved. 4. Not approved."

He could have done lots of things, but-----?-- That's typically what happens.

30

But if he'd said, "All approved", or if he said, "2. Approved", that would have been your authority to amend the business rules?-- That would have been.

Isn't it the case that Mr Walker and Mr Roberts were trying to get an amendment to the business rules through without consulting the hospitals?-- I mean, this has been a longstanding issue. If we had - and we would have been delighted if Dr Buckland had put "approved" there, and the business rules could have been clarified as per the suggestion. Of course, he was reluctant to do that, and at that stage, until we'd followed the process later on which I convened in October to get some closure on the deal. I might add, if I may, prior to Dr Buckland coming into this position, Dr Youngman would sign off on the business rules from the Elective Surgery Team as put up in his own right.

40

You mention there's a signing off. Could I suggest to you that on 27 October there was the Health Services meeting which discussed the business rules?-- The Health Services meeting?

50

Along with zone managers?-- Yes, 27 October?

Yes?-- I don't recall being there.

You would normally go to the Health Services meeting?-- No, there were regular meetings with the members of the Health

Services division, but Dr Buckland also had another series of meetings which just included the zonal managers, himself, and I think he used to include the district managers of both Royal Brisbane and the Princess Alexandra Hospital.

1

You've got my document?-- You may have it.

The one that I gave you earlier of Ms Miller's statement has a tag on it of 27 October. That might be the quickest way I can deal with that?-- Would you like it back?

10

Have you still got Ms - I'd like as much back as I can?-- We have a considerable collection of yours here, Mr Applegarth.

If you've got Ms Miller's affidavit there - her statement - do you have that?-- Ms Miller's-----

Statement?-- No, I do not. I'm not sure.

MR DOUGLAS: A copy is in the witness's hands.

20

WITNESS: Thank you. I do now.

MR APPLEGARTH: That's a note of the meeting on 27 October 2003, zonal managers and Health Services.

COMMISSIONER: Where are you? What paragraph?

WITNESS: What paragraph?

30

MR APPLEGARTH: I'm working off-----

COMMISSIONER: I thought you wanted Ms Miller's statement. That's what's been put in front of him.

MR APPLEGARTH: I think the witness has it. I don't have it, I don't think.

WITNESS: I have Ms Miller's statement.

40

MR APPLEGARTH: He's got mine.

COMMISSIONER: I thought you were asking some questions about the statement.

MR APPLEGARTH: Yes, I'm taking the witness to - I'll turn it up - paragraph 50 on page 16.

COMMISSIONER: He hadn't mentioned it - you hadn't mentioned it.

50

MR APPLEGARTH: Have you got that? The one with the post-it sticker on it that I gave you, Dr Cuffe?-- Paragraph 50, you say?

Yes?-- I now have it, yes.

That's some notes of a meeting on 27 October 2003, zonal managers and Health Services meeting?-- Yes.

1

Do you go to those Health Services meetings?-- I didn't go to that meeting. As I said, there was two meetings held. There was a-----

That's enough for my purposes if you weren't there?-- I wasn't at that meeting.

10

Did the decision of that meeting to deal with business rules come to your attention?-- The business rules had been dealt with prior to that.

They were finally signed off by Dr Buckland on 29 October?-- Yes, but the - my recollection of the business rules is that I convened a meeting on the 22nd - and there is a facing page, which I believe is written into the evidence, probably attached to Mr Walker's documentation, which has a series of signatures on it dated the 24th.

20

Yes?-- Mine, two of the zonal managers, I think Terry Mehan, the northern zonal manager, and Dr Buckland subsequently.

You're completely correct.

MR ANDREWS: Exhibit 348 in this proceeding.

MR APPLGARTH: This notes that there - a discussion in terms of business rules, "All negotiations to occur before final draft going to GMHS. No more behind door bidding. It must go through the district managers." Did that come to your attention that that was discussed?-- I haven't seen this before.

30

You weren't-----?-- I wasn't at this meeting.

I accept that. Leading to up to when you signed the new business rules on the 24th of October, did it come to your attention that there was a complaint that the Surgical Access Team was putting it - lobbying, as it were, the General Manager Health Services directly without consulting the zones and the hospitals?-- I'm not sure how to interpret the second dot point.

40

I'm not asking you to interpret that any more?-- Yes.

You never were aware of any criticism of the Surgical Access Team of lobbying directly the General Manager Health Services to get the business rules their way without first consulting the hospitals?-- Not that I'm aware of, other than what's contained in the submission of the 30th of July.

50

Just finally, Dr Buckland treated that submission that went forward on the 30th of July very seriously?-- I believe so, yes.

He went into bat in the letter that followed?-- The letter to-----

1

That we saw earlier today?-- The letter to the districts, yes.

He encouraged discussion and generation of further documents about classification and reclassification? You've seen his request?-- Yes, yes.

10

He didn't direct the Surgical Access Team to drop off its concerns about classification or reclassification?-- No, he did not.

In fact he encouraged the Surgical Access Team to state its case in writing, didn't he?-- At what time are you referring to?

Well, you've seen two documents here today where he's asking for advice about the proper interpretation-----?-- Yes. I'm with you now, yes.

20

Thank you, Dr Cuffe. If I can do an audit of the documents that are in the witness box at some stage?-- They're all here, Mr Applegarth, I can assure you.

MR BODDICE: No questions.

MR DOUGLAS: There's no re-examination. May Dr Cuffe be excused, Commissioner?

30

COMMISSIONER: Thank you, doctor?-- Thank you, Commissioner.

You're excused.

WITNESS EXCUSED

40

MR DOUGLAS: I assume the Commissioner would be taking a break now.

COMMISSIONER: I suppose it's a good idea, if counsel who want to have Dr Krishna back aren't here, and we have to ring him. Is that what we're going to do first?

MR DOUGLAS: Commissioner, I had thought that at this particular point it might be appropriate to deal with the correspondence you received yesterday from Dr Patel's solicitors.

50

COMMISSIONER: Yes, I forgot about that.

MR DOUGLAS: I'm told a number of documents have been distributed this morning.

COMMISSIONER: I'm going to make these exhibits. A Notice of Potential Adverse Recommendations was sent to Dr Patel on 26 September 2005. I should say that I would not ordinarily disclose that at this stage of the Inquiry, because I would be giving to any party - or any person to whom such a notice is given, an opportunity to apply in submissions before I would disclose the fact that such a notice had been given. But in this case Dr Patel's solicitors have replied, indicating that their client has no intention of providing a written statement or making any submissions to this Inquiry.

1

10

So I will make as exhibits the Notice of Potential Adverse Recommendations against Dr Patel dated 26 September 2005, and a reply by his solicitors, Quinn & Scattini, to this Commission dated 5 October 2005. They will together be Exhibit 430.

ADMITTED AND MARKED "EXHIBIT 430"

20

MR DOUGLAS: Thank you, Commissioner. The only other matter is an administrative one. As you're aware, Dr Cuffe took a little longer than expected.

COMMISSIONER: Yes.

MR DOUGLAS: Dr Krishna was to be recalled by telephone at 11.30.

30

COMMISSIONER: Yes.

MR DOUGLAS: Those arrangements - and after that Dr Naidoo was to give evidence.

COMMISSIONER: Yes.

MR DOUGLAS: That's been re-arranged for various reasons, the particulars of which I haven't been given, and the proposal is, Commissioner, that either now or after a break - it's a matter for you, Commissioner - we proceed with Dr Naidoo, and that Dr Krishna be called by telephone at 2.30. It's anticipated that Dr Krishna won't be long giving any further evidence.

40

COMMISSIONER: On the basis that there's no great urgency, I will take a break.

MR DOUGLAS: Thank you.

50

THE COMMISSION ADJOURNED AT 11.47 A.M.

COMMISSIONER: Yes, Mr Andrews?

MR ANDREWS: Commissioner, according to the day's agenda it was Dr Krishna who was to be recalled at this stage for some further cross-examination.

10

COMMISSIONER: Yes, we've heard it's Dr Naidoo now.

MR ANDREWS: Yes. Dr Krishna is on standby, expecting to be giving evidence by telephone for a few minutes at 2.30.

COMMISSIONER: Yes.

MR ANDREWS: So I propose that when Dr Naidoo is given leave to depart at lunchtime, that he should be back at 2.35 to recommence.

20

COMMISSIONER: Yes.

MR PERRY: I won't be asking Dr Krishna any questions, and I've already informed Mr Andrews of that this morning.

COMMISSIONER: You won't be?

MR PERRY: I will not be. His recall is at Mr Andrews' requirement rather than mine.

30

COMMISSIONER: I see. All right.

MR ANDREWS: I call Dr Naidoo.

MR PERRY: In respect of Dr Naidoo, might he be afforded the same privilege as Dr Krishna was in respect of filming et cetera? That is, of course, there has to be a transcript, but not otherwise.

40

COMMISSIONER: It's probably a bit late for what's happening outside the Court, Mr Perry. In other words, he would be filmed coming into the Court, he'd be filmed in the passageways outside there-----

MR PERRY: I know that, but just simply giving his evidence. I know he has to be - he will be photographed, no doubt, entering and leaving this building with the same degree of persistence that Dr Krishna was yesterday afternoon, and that's part and parcel of it, but simply while he gives evidence.

50

COMMISSIONER: All right. I make such a ruling. We'll have no television of Dr Naidoo's evidence.

MORGAN NEELAN NAIDOO, SWORN AND EXAMINED:

1

MR ANDREWS: Good afternoon, Dr Naidoo?-- Good afternoon, Mr Andrews.

Doctor, have you prepared a statement dated 28 September 2005 of 16 pages, with Annexures 1 to 7, paginated to page 98?-- Yes, I did.

10

Doctor, are the facts set out in that statement true to the best of your knowledge?-- Yes, they are.

And are the opinions you express in it opinions you honestly hold?-- Yes, I do.

I tender that statement, Commissioner.

COMMISSIONER: That will be Exhibit 431.

20

ADMITTED AND MARKED "EXHIBIT 431"

MR ANDREWS: Doctor, I see from paragraph 2.10 to about paragraph 2.16 you deal with your own illness?-- That's correct.

30

Is it correct for me to deduce from the fact that you've been hospitalised three times in respect of your depression, that at times the symptoms of it are extremely debilitating?-- It was debilitating to the extent that it affected my sleep and my general work ability in terms of being tired and my diet, and at that time they were manageable problems, and I found being hospitalised and being away from home more comfortable than being at home.

40

And on the occasions when you'd be hospitalised, subsequent to it you would always have two weeks of therapeutic counselling from your treating psychiatrist?-- Whatever was recommended. Usually it was that period.

It would be fair to say that your depression, even when you were not hospitalised and being counselled, would have been a matter that would have affected your energy and your enthusiasm for work?-- I was able to carry out the duties that was allocated to me.

50

I have a different question in mind, and that's - let me put it another way. Was the Morgan Naidoo of 2002, 2003 and 2004 showing the same energy and enthusiasm for work as the Morgan Naidoo in the 1990s?-- I believe I did.

Do you mean to say that your depressive symptoms didn't reduce the enthusiasm and energy that you were able to show at

work?-- Yes.

1

The symptoms of your depression would have affected your relationships with other hospital staff. Would you agree?-- I don't think it did.

Doctor, you speak of the leave entitlements that you had, and I've had the advantage of some portions of your personnel file which set out units of leave that were recorded at the Hervey Bay Hospital as leave that you had taken. Would you look, please, at the document of five pages which is about to appear on the monitor? Without going through it and asking you to do the impossible, which is to recall whether you had leave on each of those days, does that appear to be part of the first page of a number of pages setting out your leave from the 15th of July 2002?-- That would seem to be correct, yes.

10

Doctor, I have from, that personnel file, had someone compile for me a schedule which sets out in diagrammatic form the dates which correspond to those appearing on that apparent computer print-out of leave. Would you look, please, at this hard copy document handed to you now? You will see that it begins on January 2002, but I'd ask you to concentrate more on the period from July 2002 which appears on the third page.

20

30

40

50

And from July 2002 until September 2005 I'd ask you to confirm that it represents with reasonable accuracy the periods of leave that you recall taking during those months?-- To the best of my memory that appears to be correct, yes.

1

Doctor, your evidence would span the one and a half hours which is usually allowed for lunch. If you or your lawyers wish to check these matters at that stage, you will each have the opportunity to do so. Commissioner, I tender the records from the personnel file together with the schedule which Dr Naidoo has just considered.

10

COMMISSIONER: Thank you. That will be Exhibit 432.

ADMITTED AND MARKED "EXHIBIT 432"

MR ANDREWS: Doctor, by my reckoning, you had about 13 weeks' leave in 2002, about 11 weeks' leave in 2003 and about 19 weeks' leave in 2004. Is that approximately in accordance with your recollection that you have had in those years?-- That would be correct, yes.

20

From the time that Dr Krishna began, which was on the 20th of July 2002, you have been the - predominantly, the only orthopaedic surgeon available to personally supervise him or, indeed, Dr Sharma, who began in 2003; is that correct?-- That's - that's correct, yes.

30

And on the periods when you were away on leave they were, for the most part, left without supervision. That's correct?-- Dr Mullen was available in the district and I can't-----

Dr Mullen was mostly not employed by the hospital during those three years, was he?-- I can't recall the exact date that he - he left. I think it was in April 2002.

40

COMMISSIONER: He was never a full-time employee, was he?-- He was a visiting medical officer.

Yes?-- With a two-sessional commitment.

Yes?-- One of which was an operating commitment and the other was a clinical commitment. And that initially was on a Wednesday.

And that amounted to how much a week in time?-- About seven hours.

50

MR ANDREWS: And he certainly wasn't on-call for the remaining hours of the week, was he?-- Well, his initial commitment was that he would do one day on-call per week and one weekend in four.

Yes. And it means that when you were on leave, Doctors Sharma

and Krishna were mostly left unsupervised. Surely you agree with that?-- Oh, yeah, I agree with that.

1

And you'd agree that's far from ideal?-- It's not - it's not an ideal situation, I agree with that. But could I go back to the period before Sharma and Krishna were employed. I was still the only orthopaedic surgeon but working with much junior doctors which were either a resident medical officer or a principal house officer and these doctors were mainly overseas-trained with very poor clinical skills, particularly in orthopaedics, and we still operated on a system of where one - one in four and-----

10

Would you explain for the lawyers in this room what a system of one in four means?-- It means one in four weekends.

So you would be on-call one weekend in four?-- In four.

And those persons who were junior to - or had lesser skills than Doctors Sharma and Krishna would be on-call one weekend in four?-- No, there is no - no orthopaedic cover for the remaining three weeks, and I'd go further to say that prior to Dr Sharma and Dr Krishna arriving at the hospital and prior to Dr Mullens coming to the hospital, I covered every week night.

20

Now, that sort of workload is enormous, isn't it?-- It's huge, yes.

Doctor, the Australian Orthopaedic Association suggests that there should be a maximum of one in four on-call commitment, does it not?-- That's right.

30

And you're talking about a commitment for you of seven out of seven at that stage - once upon a time?-- That was, yeah, once upon a time, yes.

That was not just terrible for you but that was likely to be unsafe for the patients too, was it not?-- At that time Hervey Bay wasn't particularly busy in orthopaedics so the call-out wasn't great but you would still be called out, not to the extent that your fatigue level was such that you couldn't work.

40

Doctor, the amount of supervision that should be provided for persons who are practicing the discipline of orthopaedics but who are not specialists, for instance the amount of supervision that might be given to a registrar, is the subject of some evidence and I wish to ask your opinion about it. From page 6515 of the transcript is evidence which was given yesterday by Dr Krishna speaking of his experience in Toowoomba. Now, at Toowoomba it's - the orthopaedic department is quite different from your own?-- That's correct, yes.

50

There are a number of visiting medical officers?-- As far as I am aware there is about seven, mmm.

Yes. And in Toowoomba, according to Dr Krishna, there was 100

per cent supervision. There were consultants all the time and any new case he saw he had to tell the consultant?-- That was correct, yes.

1

Now, that level of supervision is appropriate for a registrar, is it not?-- I would regard a senior medical officer-----

COMMISSIONER: No, no, you're asked about a registrar?-- It depends on the level of the registrar and Krishna at Toowoomba was not a registrar but a principal house officer. And he does state in his documents that he was sometimes not supervised by Dr Ivers even though he said there was 100 per cent supervision.

10

MR ANDREWS: Let me take you back to my question. That degree of supervision, that is 100 per cent supervision with consultants all the time and any new case we see he had to tell the consultants - let me rephrase the question. Is that level of supervision appropriate for a principal house officer, PHO?-- That's right.

20

And that was the level of supervision which he received at Toowoomba. It was not the level of supervision he received at Hervey Bay Hospital, was it?-- I wasn't available to supervise them 100 per cent of the time.

There wasn't enough manpower at Hervey Bay, was there? There was only one specialist most of the time who would have been able to supervise them and that's you?-- That's - that's me, yeah.

30

And you had other jobs to do?-- That's right, my duty roster indicates that, yes.

Now, I suggest that persons such as Doctors Krishna and Sharma would, according to guidelines of the Australian Orthopaedic Association, properly be supervised to the extent that they were supervised in Toowoomba?-- That was the guideline of the Australian Orthopaedic Association.

40

Now, is it the case that at Hervey Bay there just wasn't the manpower to be able to supervise to the extent that the Australian Orthopaedic Association-----?-- The supervision-----

-----recommended?-- I apologise. The supervision did not exist when I was away from the hospital but when I was at the hospital, I was always available.

Yes, but available - you would not have been asking either Dr Krishna nor Dr Sharma to tell you about any new case they saw. You allowed them much more independence than that, did you not?-- I did, and that was based on the information I had received about their skills and that's in the - in my documents as well.

50

Now, I'll put up on the screen another orthopaedic specialist's level of supervision. This is again from the

evidence of Dr Krishna yesterday in the transcript at page 6481, speaking of Dr Kwon's level of supervision. You will see it too was 100 per cent supervision but apparently even more so, more intense than had been provided in Toowoomba?-- I agree with that but Dr Kwon didn't do any of the trauma and didn't do any of the administrative work that I do and certainly had more time on his hands than I did.

1

Do you agree that it would have been appropriate for patient safety if at the Hervey Bay Hospital there had been engaged other orthopaedic specialists so that there were sufficient specialists to supervise Doctors Sharma and Krishna 100 per cent?-- I did prepare a document for the future provision of orthopaedic services for the Fraser Coast District and on that recommendation I indicated that there should be four orthopaedic surgeons.

10

Now, with four orthopaedic surgeons, would you be recommending that there be a much more intensive supervision of Doctors Krishna and Sharma?-- There would be. And-----

20

COMMISSIONER: But you - sorry. But you seem to be content to let them make judgment as to their own competence; is that correct?-- No, I didn't - normally their levels of skill and their competence is determined by a clinical privileges committee.

And there was none-----?-- Which didn't exist in Hervey Bay.

Yes?-- And the document that I provided on their scope of service was not a certification of what they could do but based on what they indicated to me they had done in the past and my observations of some of the work based on their recommendations or their references they received from Toowoomba, and that's Dr Sharma's references, and also based on their post-operative review of patients.

30

Yes. But whatever that was based on, as you said in paragraph 4.14 of your statement, you thought that they were skilled enough to make a clinical judgment as to what they could deal with. 4.14, the second sentence in that paragraph?-- Yes, I did.

40

Yes. And consequently, what you instructed them was that they were to treat patients whom they thought were within their skill level?-- That's correct, yes.

And if they couldn't handle the situation, it was then that you were supposed to - that you were to be called?-- If I was not on leave, I'd be called. If I wasn't on leave-----

50

Yes?-- -----the arrangement was that the patients would be transferred to another tertiary hospital.

Yes?-- Which would be either be Nambour, Bundaberg, Royal Brisbane or PA.

Thank you. But my point is that they were to make the

decision as to whether they could handle the situation or not; that's correct?-- That's correct, yes.

1

Thank you.

MR ANDREWS: When speaking about your leave, Doctor, at paragraph 2.25 you say, when you were taking planned leave, you always filled out a leave form. Were there occasions when you took unplanned leave?-- The unplanned leave was sick leave-----

10

If you took sick leave, that would be leave to which you were entitled and for which you would be paid?-- That's right. That's correct, yes.

And it would be, no doubt, recorded as a sick leave day?-- It would be recorded a sick leave day and the call would go to what we had at that time a clinical support person, who will respond - will report the leave of absence to the HR.

20

And so, for instance, in 2005, was your practice, if you were sick, to call that person so that there could be some record taken of the fact that you were taking sick leave on that particular day?-- I had to do that on every occasion that I was away because of my clinical duties. There were clinics arranged, there were theatre arranged and I varied from doing initially five operations - five operative sessions a week to three and up to about four clinics. So if I didn't ring anybody, then no arrangements would be made for these clinics or the operating sessions, yes.

30

At paragraph 2.29 you say that when taking planned leave you always prepared a memorandum setting out what was to occur in your absence?-- Yes, I did, yes.

As I perused the personnel file, I found a bundle of memoranda. I beg your pardon. I have a bundle of memoranda that are not from the personnel file but provided by Queensland Health. I wonder if you would look at them and tell me whether they represent the memoranda that you created when you took planned leave?-- There'd be two memorandums for each occasion that I was on leave. One would go to the elective surgery co-ordinator to indicate what's to happen to my operating sessions and one to go to the clinic supervisor to indicate what's to happen to the clinics.

40

I see that on some dates there were even more than two memoranda created. You will find that for each date, if there was more than one, they have been stapled together. Do you see that?-- On the first one there's three and that was an addendum to indicate that the new patient and the hand clinic had to be cancelled because it wasn't included in the other memorandum. The one memorandum that's addressed to Dr Terry Hanelt was to indicate leave that I was planning to take. It wasn't actually leave that I took. I may have taken some of that leave. When I look at the other documents-----

50

Which one is that dated, thanks?-- That's dated the 12th of

December 2003.

1

Thank you?-- And I have indicated in that, "In the light of the planned leave, that we should be looking at recruiting a locum." The rest of the documents are correct, yes.

Thank you. May I have those returned or, actually, taken to the monitor. Before displaying them, Doctor, having compared the schedule setting out what leave has been recorded as being taken by you I see that there are some occasions where there doesn't seem to be a leave arrangements protocol that covers some of your scheduled - I beg your pardon, some of your recorded leave. Would you agree that there were a few occasions where such documents were not created by you?-- That would be right. Those occasions would be where the leave was unplanned, like sick leave.

10

Thank you. Would you display the first of those documents. This memorandum is dated, I see from the bottom of the page, the 2nd of October 2002 to the waiting list co-ordinator. It's referring to two weeks of leave and in it you indicate that Dr Krishna can do elective cases that he's willing to do without your supervision?-- I had - at that stage I had an operating list all day on a Tuesday and to utilise that time, I made that decision.

20

Now, at that stage, the 10th of October 2002 when you wrote that memorandum, Dr Krishna had been at the hospital for about nine weeks. Had you during that time observed him performing surgery without your supervision?-- Dr Krishna was with me in - in the operating theatre at that stage I think I was doing about four operating lists a week and he was with me on all of those occasions doing various bits and pieces of a procedure.

30

Can I see the next document with a red tab. The date of this is the 2nd of October also and I see that you've asked that the Orthopaedic New Patient Clinic be cancelled. Why would you do that? Is that because it's inappropriate for someone of Dr Krishna's experience to be dealing with new patients unsupervised?-- We had two categories of new patients on our waiting list, one which only a consultant can see, either myself or Dr Mullens, because of the nature of the problem the patient had. The second waiting list was of a - of what we would consider of a minor nature based on the GP's referral and we'd allocate some of those patients to be assessed by the SMOs and then referred to us if they needed further assessment. The hand clinic, neither of the doctors, including Dr Kwon, had any experience with hand surgery.

40

And were you a hand - what's a hand surgeon?-- A hand surgeon will - is one who does most orthopaedic procedures on - in the - on the hand, that's including tendon and nerve repairs, broken fingers, broken - by fingers I mean the phalanges and the metacarpals.

50

Are you a hand surgeon?-- All the time that I was in practice in Brisbane I did most of the hand surgery in Ipswich and when

I went to - to Hervey Bay, I had to restrict my hand practice because some of the procedures were fairly demanding, like, microsurgical repairs of nerves which can take several hours and you need support for that so that someone can cover you the next day if you're exhausted by having done - been up all night. So, we clearly defined the hand procedures we were going to do so they were what we would call relatively simple hand procedures.

1

Thank you. May I see the next one marked with a red tab. This is dated the 2nd of December. And, again, you've closed your - recommended the closure of your hand clinic?-- That's correct.

10

And, again, that will be because Dr Krishna didn't have sufficient experience?-- That's right.

This one is dated the 12th of December 2003. Regarding your planned leave in 2004 and you say, "In light of recent events we may have to consider recruiting a locum to provide consultant cover." Were those recent events of which you spoke in December 2003 the interest shown by the Australian Orthopaedic Association in the Fraser Coast District and that association's concern with the orthopaedics department?-- Sorry, could I see the date of that letter?

20

30

40

50

1
You may?-- I can't exactly recall what it was related to but could raise two possibilities. One is that the waiting list for patients to be seen was growing, and because I was away so often, there were a lot of cancellations. But each time we tried to recruit a locum, were unable to do so.

COMMISSIONER: That's one. What was two? You said there were two possibilities?-- The first possibility was that - the second possibility was the Australian Orthopaedic Association issue that you raised. 10

Oh, right, I see.

MR ANDREWS: It was something you certainly discussed with Dr Hanelt, the Australian Orthopaedic Association issue?-- We did discuss that, mmm.

And you'll have been aware that a matter of significance to Dr Mullen at that stage and to the Australian Orthopaedic Association was that there was inadequate supervision of the senior medical officers because there were too few specialists in Hervey Bay?-- I would agree the supervision wasn't ideal but often surgeries would be occurring concurrently; in other words, I would be in one operating theatre and the senior medical officer would be doing a procedure that he considers capable, and mostly they discuss that with me, in another theatre. And if when you look at the clinic rosters, you will notice that for vast majority of clinics, I was on the floor, or Dr Mullen was on the floor whilst the senior medical officers were doing the clinics. 20 30

May I see the next red tabbed page? This is dated the 24th of October 2004.

COMMISSIONER: 21st, I thought, wasn't it?

MR ANDREWS: 21st, thank you, Commissioner. It relates to the leave you were proposing to take from the 29th of November 2004. Dr Gupta, the local SMO, who would be covering your sessions, what are Dr Gupta's qualifications?-- Dr Gupta was an overseas-trained doctor who was in the position of Director of Orthopaedic Surgery at Logan Hospital. 40

I see. Did he have either deemed specialist qualifications or an Australian specialty qualification?-- Yeah, deemed - I am not sure whether it was deemed specialist qualification but, yes, sat the Australian orthopaedic examination twice without success, yeah. 50

Are there any other red tabbed documents in the list? The memorandum dated the 30th of November 2004 shows that for this period of approximately three weeks Dr Gupta would not be relieving you. May I see further down the page, please? And it seems that during that period, Doctors Krishna and Sharma would be doing hand clinics?-- To answer your first question first, we had discussions with Dr Gupta, and both Dr Hanelt and I weren't happy with his level of service during the first

period of locums. We thought that both - well, in my view, that both Dr Sharma and Dr Krishna were superior, or provided a superior service comparable to Dr Gupta, and the hand clinic - that clinic would have been left open to review any patients that are operated on that would need to be seen before I came back.

1

Well, I see that on Thursday there was a review clinic, but on Friday the hand clinic doesn't seem to suggest that it is limited to review of patients?-- Well, on the hand clinic on a Friday I see new patients and review patients. On Thursdays I just - I see only review patients.

10

And my - the point is that that document doesn't suggest that for Fridays Doctors Krishna and Sharma were to be limited to reviewing hand clinic patients?-- It would have been my verbal instruction to the clinic staff.

I see. And what was it about Doctors Sharma and Krishna that meant that you changed your view, that you apparently had from one of the earlier memos, which was that hand clinics would be cancelled? Why did you not cancel them with that last proposed leave? Why did you allow those two doctors?-- From memory, they would have did relatively simple hand surgery, operations like carpel tunnel decompressions or excision of ganglions, that's cysts, which just required a medical officer to follow the patient up.

20

When you were working at the hospital and residing in Brisbane, it was your practice to set out from Brisbane to Hervey Bay at 5 a.m. on a Monday morning?-- That's correct, yeah.

30

And to arrive at work at 9 a.m.?-- That's correct, yeah.

And on Fridays, you would work till about 4 p.m. and set out for Brisbane then?-- Mostly so, yeah.

On how many occasions did you cut short your working week by arriving late or leaving early when you weren't on leave?-- My clinics were always scheduled to start at 9, so if I ran late it meant that I would stay behind late, and I would work through the lunch break, and, in fact, I hardly ever took a lunch break.

40

Yes, but you haven't answered my question. On how many occasions did you arrive late or leave early; that is how many Mondays did you arrive late, how many Fridays did you leave early? Did it happen very often?-- No.

50

Did it happen at all?-- It happened, yeah, but certainly I wouldn't leave on a Friday at the time that's indicated, 12 o'clock, because I always had a hand clinic on a Friday.

Indeed, the time indicated in your statement is that you would work until 4 p.m. on a Friday. Do you mean that you would often leave at noon on a Friday?-- No.

Can you tell me what your working hours were?-- On a Friday?

1

In the, say, last three years that you have worked at the hospital, do you remember what working hours you had for Fridays?-- I would do a clinic from 8 to 12 and in the afternoons I would do some administrative work, some preoperative planning for the following week, and once every month there was a surgical management committee meeting which would commence at one o'clock.

10

Doctor, what were your hours on a Friday? I wasn't so much interested in the duties that you did on that day, but in the hour that you would depart?-- I would say very seldomly I departed before 3 o'clock.

When you were in Brisbane for a weekend, it seems that, you say from paragraph 3.4, someone would call you for advice on the phone when there was an emergency. Would that be when you were on call or when you were not on call?-- Not - when I was not on call. I always did my on call from Hervey Bay. So I would spend the week before, the weekend and the week after in Hervey Bay.

20

The mobile phone that you had, did you - was this a work phone?-- It was a work phone, yeah.

Not one that you shared with your family?-- No. Each member of my family has their own mobile phone.

Thank you. And you kept this work phone, what, in case doctors such as Dr Sharma and Dr Krishna would need to contact you in an emergency?-- It was my means of contact with the hospital, and because we had a duty medical officer, or SMO, all emergency calls were directed towards them. That includes calls from accident emergency and from general practitioners, and if they assessed the patient and felt that I should see the patient, then they would contact me. I could also say that I was equipped with a pager, which I was reluctant to use because of the difficulty I had getting back towards the switchboard - to the switchboard. It was very difficult to get back.

30

40

Doctor, I don't want to advertise your mobile phone number to the world. Would you have a look at this document, please, and tell me whether in its margin it shows your mobile phone number?-- That's right, it does, mmm.

Thank you. May I have that document returned? Doctor, would you look, please, at this bundle of mobile phone accounts relating to that phone? It should contain the January, February - I beg your pardon, it should contain accounts issued on the 23rd of February 2004, the 22nd of March 2004, the 24th of May 2004, and the 25th of January 2005, 22nd of February 2005. Actually, can I exchange my bundle for yours? The significance of that bundle is that it contains not just the accounts, but it seems to show account details, including the time and geographical origin for some of the telephone calls that were made from that phone, and it

50

shows also the destination of the calls. Do you see that?--
Yes, I do.

1

Now, for example, do you see that the account issued the 23rd of February 2004, shows a page of account details? You can see on the monitor the page to which I now refer. It shows, for instance, for Monday, the 19th of January, that that mobile phone appears to have been used to originate calls from Kangaroo Point to Maryborough and Nambour at various times from 7.42 a.m. to about 8.58 p.m. Do you see that?-- On the 19th?

10

Yes, I beg your pardon, on the 19th, the calls seem to have originated from Kangaroo Point only from 7.42 a.m. and 9.28 p.m. Do you see that?-- Yes, I do, yeah.

And there seem to have been calls originating from that phone on the Thursday the 22nd and Friday the 23rd. Do you see that?-- Yes, I do.

20

Kangaroo Point, is that somewhere near your home?-- It is where I live, yeah.

And on the 26th, again a Monday, it seems to suggest that the phone was in Brisbane for the day and not at Hervey Bay. Do you see that?-- Yes, I see that, yeah.

And again on the 27th, a Tuesday, the 28th, a Wednesday, the 29th, a Thursday, and the 30th, a Friday, the phone seems to have been in Brisbane throughout the week. Now, according to the records at the Hervey Bay Hospital, you weren't on leave at that stage. Are you able to - this is a January. The last two weeks of January of last year?-- Mmm.

30

Are you able to say - is it a fortnight when the hospital records were wrong or a fortnight when your telephone was left in Brisbane?-- My telephone wouldn't have been left in Brisbane.

The last two weeks of January then, the phone seems to have been with you, you would agree?-- That's right, yes.

40

And you seem to have been in Brisbane on, according to these records, Monday the 19th, Thursday the 22nd, Friday the 23rd and then from the 26th to the 30th. That's a Monday to a Friday?-- If it is that length of time, I would suggest that I was on leave.

COMMISSIONER: This might be a convenient time. We will adjourn till 2.30.

50

THE COMMISSION ADJOURNED AT 1.03 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.30 P.M.

COMMISSIONER: Before we proceed, Mr Andrews, I want to deal with some statements from witnesses from Cairns and Toowoomba Hospitals concerning recategorisation of elective surgery patients. I think all counsel know that statements have been obtained by Commission staff and by Queensland Health from Queensland Health employees at Cairns Hospital District and Toowoomba Hospital District dealing with that matter. Those statements are in respect of the Toowoomba Hospital District of Lee Hunter, dated 16 September 2005, and Leo Zeller, dated 23 September 2005. Those obtained from staff employed at Cairns District Hospital are those of Jillian Neuland dated 16 September 2005, Christina Steffen, dated 8 September 2005, Timothy Elston, dated 8 September 2005, Juanita Ling, dated 9 September 2005, Jaeme Swart, dated 8 September 2005, Lorraine Matthews, dated 15 September 2005, and Philip Cammish, dated 16 September 2005.

10

20

I am told that those statements have been distributed to the parties.

The evidence in those statements pertain, for the most part, to recategorisation of patients within the three categories for elective surgery, yesterday predicated as a matter of Queensland Health policy.

30

Subject to consideration by me of any submissions which any party may wish to make, I propose to admit those statements into evidence but not to require any of the witnesses to attend for examination or cross-examination. I don't propose to give any of those witnesses, or any persons to whom they refer as being involved in such recategorisation, a notice of intention to make adverse findings or recommendations. I think it is reasonably plain from the evidence of those witnesses that the recategorisation, whilst probably inappropriate and unfounded, was almost certainly undertaken by those members of staff under policy and funding pressure or pertaining to elective surgery programs but not pursuant to any specific direction.

40

If any party wishes to contend that any of those witnesses ought to be made available for cross-examination, then a written submission containing the reasons for that contention must be lodged in writing with the Commission by no later than 2 p.m. tomorrow afternoon.

50

Yes, Mr Andrews? Mr Douglas, do you want to say something?

MR DOUGLAS: No, nothing more to what you have just directed, Commissioner. The main person, in terms of representation at the Bar table here, that that affects is Mr Boddice.

COMMISSIONER: Yes, I understand.

MR DOUGLAS: Really, Mr Boddice, if he considers that anything else is required, he should perhaps say so now. 1

MR BODDICE: I have had discussions with my learned friend Mr Douglas about this and, of course, we won't be making submissions to the contrary in relation to it.

COMMISSIONER: I think you are the only one affected. There is, I suppose, a possibility that Dr Buckland, who is represented, Dr Stable, who is represented, might be affected. I don't think that's likely, particularly in view of the intimation I have given. 10

MR DOUGLAS: Thank you, Commissioner.

COMMISSIONER: Very well. Mr Andrews?

MR ANDREWS: Commissioner, arrangements have been made for the inquiry to call Dr Krishna now by telephone. 20

COMMISSIONER: Yes.

DAMODARAN KRISHNA, VIA TELEPHONE LINK, RECALLED AND FURTHER EXAMINED:

MR ANDREWS: Hello, doctor, is that Dr Krishna?-- Yes, it is. 30

It is David Andrews speaking. Dr Krishna, you're still on your former oath?-- Yes.

Doctor, do you have with you a two-page document?-- I can't hear you.

Do you have with you a two-page document?-- Yes.

At the bottom of the first page is there the figure 50 showing that it is a page number 50?-- Yes. 40

And at the bottom of the second page does it show page 51?-- Yes.

Thank you. On top of the first page, does it read "Dr D Krishna"?-- Yes.

And beneath that does it read-----?-- "SMO orthopaedics". 50

Thank you. And is the first page a summary of orthopaedic surgery performed from 17 July 2002 to 19 November 2003?-- That's correct.

Did you create that document?-- No.

Did someone create it under your supervision?-- No.

Did you give instructions to someone as to what was to be included in it?-- No.

1

Where there is a list of elective procedures said to be, for instance, unsupervised - do you see that column?-- Yes.

And do you see the first item relates to knee arthroscopy and it says that you performed 20 unsupervised? Do you see it?-- Yes.

10

Did you inform anyone that by that date you had performed 20 unsupervised?-- No.

Do you know who filled in those particulars?-- No.

Is it correct that you had performed 20 unsupervised, as shown in that document by that date?-- I couldn't confirm that because I have to check in the operating notes.

COMMISSIONER: Do you know who prepared this?

20

MR ANDREWS: Do you know who prepared it?-- No.

COMMISSIONER: Do you, Mr Andrews?

MR ANDREWS: No, Commissioner, the evidence is unclear on that. Doctor, have you ever seen that document before today?-- No, sir.

Would you - you will see that from that first page, it shows that there were almost no procedures on the first page that were performed with supervision?-- Except two arthroscopies.

30

Is it accurate that you performed two arthroscopies with supervision?-- That would be correct but I am not sure about the exact date.

On the second page, you will see there is a list under heading "emergency surgery" that shows you performed only two supervised procedures?-- Yes.

40

Is it correct that you had performed only two supervised emergency procedures to that time?-- Again, I would be guessing but looking at the procedures, I would think that could be right.

Would you look again at the first page-----?-- Yes.

-----at the elective procedures. Would it be correct that to that date you had a consultant's assistance for only two of the elective procedures that you had performed?-- It has been a long time and I have never received - I am not sure, but one thing I can say is for arthroscopy, I can remember at least two or three times I got assistance from Dr Naidoo and this mention of two assisted procedures could be that, but I am not sure about the timing.

50

Yes. Look at the procedures beneath it. For instance, for

knee arthroscopy, there is another category "removal of metals, K wires, screws and plate intramedallary nails". And it suggests that you had done about 27 procedures. Is that approximately correct, according to your memory?-- One thing is for sure the number of consultant assistance would be zero procedures. I am not sure if that's the right number or not.

1

COMMISSIONER: Does that look right to you?-- It is possible it could be right.

10

MR ANDREWS: And you began by saying "one thing is for sure, the number of consultant assistance would be zero"?-- Yes.

For the other elective procedures on that page, is it correct that the number of consultant assistance would be zero?-- Yes.

Thank you, doctor, I have no further questions for you?-- Thank you.

20

COMMISSIONER: Are you going to tender that document?

MR ANDREWS: Yes, I tender that document, Commissioner.

COMMISSIONER: That will be Exhibit 433.

ADMITTED AND MARKED "EXHIBIT 433"

30

MR ANDREWS: Doctor, some others may have some questions for you. Would you wait while I inquire?-- Thank you.

COMMISSIONER: You do?

40

MR FITZPATRICK: Yes, thank you, Commissioner.

1

MR PERRY: I'm sorry, I do as well, so I should perhaps go before Mr Fitzpatrick.

COMMISSIONER: Yes.

CROSS-EXAMINATION:

10

MR PERRY: Dr Krishna, Richard Perry. I represent Dr Naidoo, as I told you yesterday?-- Yes.

Do you recall filling out a document called Application for Clinical Privileges referable to the Hervey Bay Hospital?-- I can't remember.

20

Now, what was sent up to you was just two pages, wasn't it?-- The one I've got in front of me?

Yes?-- Yes.

Can the witness - the contact be put on hold while I make a submission to you so that the witness doesn't hear what I'm about to say to you?

COMMISSIONER: I suppose it can.

30

MR PERRY: Can that be done?

CLERK: Yes.

MR ANDREWS: Doctor, the telephone is going to be put on hold. You're not going to be disconnected. Do you understand?-- Yes.

CLERK: Just check that he can't hear you.

40

MR ANDREWS: Can you hear me now?

COMMISSIONER: Right. Yes.

MR PERRY: The provenance of this document that you asked Mr Andrews about is that it's an exhibit to Dr Naidoo's statement, hence the page numbers down the bottom.

COMMISSIONER: Yes.

50

MR PERRY: If you go to that document you'll see that immediately in front of this two page document-----

CLERK: It's okay. We can hear him, but he can't hear us.

MR PERRY: Thank you. Is a document in handwriting referable to Dr Krishna and an application for Senior Medical Officer

(Orthopaedics) at the Hervey Bay Hospital. I was going to ask him whether the two pages that were faxed to him had any reference to this first page, but obviously he doesn't have it-----

1

COMMISSIONER: No.

MR PERRY: -----available, unfortunately, which, in the timeframe probably isn't something that we can get around.

10

COMMISSIONER: No.

MR PERRY: The best I can do, if it's in accordance with your view, is describe to him this handwritten document - faithfully I hope - and get him to answer some questions about it. That's what we propose, with your leave.

COMMISSIONER: You can try it that way.

MR PERRY: Thank you. Can we switch him back on again?

20

CLERK: Yes.

MR PERRY: Sir, you might assist us by putting this up on the screen. Dr Krishna, can you hear me again?-- Yes.

Right. Do you recall filling out ever, referable to Hervey Bay Hospital, a document entitled Application for Clinical Privileges?-- I can't recall.

30

Righto. Thank you. I have with me a document titled that in which a number of handwritten entries appear concerning you, and an application by you for such a position - sorry, for clinical privileges with respect to orthopaedic surgery. Do you recall now at all filling out such a document?-- I can't recall, but if I see the document then I might be able to recall.

I know that, but that's not something that we can readily achieve in the short-term save by having it faxed up to you, and I'll-----

40

COMMISSIONER: There is no long-term, Mr Perry.

MR PERRY: I know that. I rather understand that. It's something that we can e-mail. If you have readily available e-mail access, I might make arrangements with counsel assisting in that regard. We'll see. Doctor, the two page document that Mr Andrews has asked you about, that is a document prepared by you, isn't it?-- Like I said before, I can't actually remember doing this.

50

So is the position you don't say that you didn't prepare it, you just can't remember?-- That's right.

See, I really rather suggest to you that this is a document prepared by you and given by you to Naidoo. Does that jog your memory at all?-- Well, again, I don't want to deny this,

plus I don't want to say yes because it just doesn't come to memory at this stage.

1

You don't want to say yes because you just can't remember it?-- Yes, that's correct.

Mr Andrews, and indeed the Commissioner have taken you through some of the entries, and you've probably had the opportunity to read it. Does it, to the best of your recollection, whomsoever may have prepared it, accurately reflect the orthopaedic surgery undertaken by you during the period specified, that is July '02 to November '03?-- That would be correct.

10

Right. So whomsoever prepared it, you would be prepared to abide by it as an accurate record of what you did?-- Yes, the scope of procedures shown in this document is what I've been doing.

Right. And, in particular, what you had done between the two dates which are referred to on the document?-- Yes.

20

Thank you. It's probably not necessary to have that handwritten document sent up to him, Commissioner, thank you very much. If I could have it back? Thank you, sir. That's all I have.

COMMISSIONER: Thank you. Yes, Mr Fitzpatrick?

MR FITZPATRICK: Yes, thank you, Commissioner.

30

RE-EXAMINATION:

MR FITZPATRICK: Dr Krishna, it's Chris Fitzpatrick speaking. Doctor, do you have the two page document still handy to you?-- Yes.

40

Do you remember - if you could look, please, at page 1 of it?-- Yes.

Now, do you remember being asked about the procedures that you did with consultant assistance? You see on page 1 in the first box it lists that on two occasions you did a certain class of knee arthroscopy with consultant assistance?-- Yes.

And for the remainder of the document, the procedures that are listed you did unassisted by a consultant?-- That's correct.

50

How is it that you can be so certain that you performed those procedures without consultant assistance?

COMMISSIONER: He doesn't say with certainty, Mr Fitzpatrick. He said that accords generally with his recollection. He was by no means certain about it, but he seemed to be sufficiently

convinced of it for it to be allowed to be put into evidence.

1

MR FITZPATRICK: All right, Commissioner. Doctor, is there something about those procedures that leads you to answer in the way that you did?-- I can remember the scope of the procedures. I'm pretty familiar with those, and I'm sure I wouldn't have called Dr Naidoo in any of those procedures, except for the two arthroscopies which are - I think it would be up to - now there's three or four, but during that period it could be possible it was two.

10

Yes, thank you, doctor. That's all I have, Commissioner.

COMMISSIONER: Thank you. Anything further?

MR ANDREWS: No, Commissioner. May the doctor be excused?

COMMISSIONER: Thank you, doctor. You're excused from further attendance?-- Thank you, sir.

20

WITNESS EXCUSED

COMMISSIONER: Yes?

MR ANDREWS: I ask that Dr Naidoo be recalled.

COMMISSIONER: Yes.

30

40

50

MORGAN NEELAN NAIDOO, RECALLED AND FURTHER EXAMINED:

1

MR ANDREWS: Dr Naidoo, have you had the opportunity during the lunch hour to consider whether you were on leave in the week of Monday - I'm looking at the wrong document. Would you be patient with me for a moment? Monday, the 26th of January 2004. Have you considered that?-- I looked at the memos that you presented, and in the memo it does indicate that I've informed Dr Hanelt that it was to be part of my planned leave. But I'd taken it earlier. I've taken a week extra.

10

Would you look, please, at this memo? Is that the memo that you speak of that shows that you had asked - may I see the bottom of the page - that you had asked on the 12th of December 2003-----?-- Yes, for leave to begin from the 27th of January, but looking at the itemisation on the phone bill, I would say I've taken it a week earlier.

20

I see. Do you appreciate that looking at the leave which is recorded in the records of Queensland Health, you didn't take leave in the week commencing the 26th of - that is Monday, 26 January, nor did you take leave in the week commencing Monday, 19 January, and it seems nor did you ask for leave in the week commencing Monday, 19 January?-- On Monday, the 19th, to the best of my recollection it would seem that I left Brisbane late to Hervey Bay and returned to Brisbane the same day, and then was subsequently on leave.

30

COMMISSIONER: How can you recall that?-- By the times that I'd left and come back.

Well, it's equally consistent with your being in Brisbane over the whole of that day, isn't it?-- It could be.

MR ANDREWS: So you have no recollection of what you did on Monday, the 19th?-- No, I don't.

You know that you - the memoranda that you sent to Dr Hanelt show that you were asking for leave for a different week, not the week commencing Monday, the 19th?-- Yes, I asked for leave - or the planned - the planning was for the 27th of January.

40

You know that according to the records of Queensland Health you did not have leave on either the week of the 19th, nor the week of Monday the 26th of January?-- I certainly looked through the HR documents and couldn't find any at this stage, and it would be unusual for me not to put in a leave form. On the same token, I was on leave in June but came back to work a week earlier. So that often happened in my situation.

50

Doctor, is it fair to deduce you don't remember taking leave in the week of Monday, the 19th of January, you don't have a memorandum that shows that you took leave in that week, and you don't have a record that shows that you took leave in that week, and you have no memory of taking leave in that week?--

I would say I have taken leave for that length of time.

1

Yes, but can you answer my question? You have no record to show that you took leave, Queensland Health has no record to show that you took leave, there is a record that suggests you asked for leave for the following week, and you have no memory of taking leave in the week commencing Monday, the 19th of January 2004?-- Yes.

COMMISSIONER: All of that's correct, isn't it?-- Yes.

10

MR ANDREWS: Commissioner, immediately before lunch there was a discussion with respect to a bundle of memoranda which were applications - I beg your pardon, which were relating to planned leave. I tender that bundle of memoranda dated the 30th of - dated the 2nd of October 2002 for which there are four memoranda, the 2nd of December 2003, the 12th of December 2003, the 1st of July 2004, the 21st of October 2004, the 30th of November 2004 and two of the 31st of January 2005. I submit it would be appropriate to classify them as one exhibit.

20

COMMISSIONER: All right. They will be Exhibit 434.

ADMITTED AND MARKED "EXHIBIT 434"

MR ANDREWS: Do you still have with you, doctor, the mobile phone account issued on the 23rd of February 2004?-- Yes, I do.

30

Well, I've led you to the wrong document. Do you have then the one dated 22nd of March 2004? Commissioner, I tender the mobile phone account dated the 23rd of February 2004. I do propose to tender several. Would it be convenient if I tendered them as a bundle?

COMMISSIONER: I think so, yes.

40

MR ANDREWS: In the circumstances, I will hold it in the interim.

COMMISSIONER: All right.

MR ANDREWS: Have you located the account issued 22 March 2004?-- I have.

If you look to the date 27 February, you should see that it corresponds with the one which appears on the monitor. You can take from me that the 27th of February was a Friday, and according to the records of Queensland Health, it was not a day on which you were scheduled to be on leave. Do you accept that you made a phone call from Stones Corner, or thereabouts, at 10.43 a.m. to Maryborough?-- I accept that.

50

That would show that you were, on a rostered workday, absent from the Fraser Coast district?-- Yes, that would be right.

1

And for you to be at Stones Corner at 10.30 - I beg your pardon, 10.43 a.m., it suggests that you left some time very early that morning or late the night before?-- Or late the night before. If it was a Friday, my recollection would be that I attended a medical appointment in Brisbane.

But-----

10

COMMISSIONER: How do you recall that, that it was on Friday, the 27th of February that you attended-----?-- Because Friday was - Fridays and Thursdays was most convenient as far as my schedule was concerned.

Yes, but I'm just saying why on that particular day can you be so confident you attended a medical appointment in Brisbane?-- It's the only explanation I have for that day.

20

Well, another possible explanation is you just simply didn't go to work that day?-- Well, I can't confirm that.

No, all right.

MR ANDREWS: Doctor, I ask you now to look at the telephone account issued on the 24th of May, and to look at the dates of 20 and 21 April?-- Okay. That period I can clearly recall attending a conference on the Gold Coast.

30

According to the-----?-- Whether I've taken it as conference leave or recreation leave, I'm uncertain about.

It does appear that from the 1st of March 2004 for a week you were on leave called "external training". That was Monday, the 1st of March 2004, and then you had another five weeks of leave, according to the records of Queensland Health, ending on Thursday, the 8th of April, but I'm speaking now of a period almost two weeks later, being the 20th and 21st of April?-- I recall attending a conference during that period.

40

And was that at the Gold Coast?-- At the Gold Coast, yes.

MR PERRY: Indeed the document that Mr Andrews tendered earlier, being one of the memoranda of 12 December, refers to the 21st of April to the 23rd of April as being a planned leave period.

MR ANDREWS: Thank you, doctor?-- May I go back to a document of the account in January? In that period-----

50

Do you mean the telephone account?-- The telephone account. One of those days was a public holiday included in that group of period we're talking about.

You're not referring to the 19th, 22nd or 23rd?-- I think the date would have been the 26th.

Yes, thank you. Yes, it seems from the records, doesn't it, that you have been in Brisbane on the - making telephone calls, on the 19th, 22nd and 23rd, being a Monday, a Thursday and a Friday?-- Mmm hmm.

1

And in the following week on the Monday, Tuesday, Wednesday, Thursday and Friday?-- Yes, that's correct.

One of those eight days being a public holiday?-- That's correct.

10

Thank you. Would you look, please, to the telephone account for 24 January 2005, in particular to the 20th of December? Now, it seems from the records, doctor, that from Monday, the 29th of November, Queensland Health shows you to have been on holiday for four weeks ending on Friday, the 17th of December. Now, you'd have to be recalling last December. Perhaps you have a memory of that month?-- I do. That's a period I've indicated in my report that I was in hospital.

20

Yes. On the 20th of December it appears that you were not on holiday. Do you have a different recollection?-- I was still on sick leave at that time.

I see. So you had more than four weeks. Is that the position?-- That's the position.

COMMISSIONER: How long did you have, doctor?-- I recall going to work around the 4th of January.

30

MR ANDREWS: According to your statement at paragraph 2.8, you had three weeks' sick leave in December 2004. According to the records of Queensland Health you had three weeks of sick leave commencing on Monday, the 29th of November, ending on the 17th of December. Are they not the three weeks that you had?-- No, I certainly was in hospital in December.

Yes, doctor, I'm speaking of three weeks of December save for two days in November?-- I may have been on sick leave in November, but the period of hospitalisation we're talking about is in December.

40

Were you hospitalised for three weeks?-- I can't recall for certain.

COMMISSIONER: How long do you think it was, doctor?-- It was certainly more than two weeks.

Well, that takes you up to - is it the 17th of December?

50

MR ANDREWS: Yes, Commissioner.

COMMISSIONER: That takes you up to 17 December?-- And Dr Hanelt was certainly aware of the period that I was hospitalised.

Yes, but you're being asked about a period after that, after your sick leave period. If you look at the screen, look at the period on the screen. That's after your sick leave period which ended on about the 17th of December. Do you see that?-- Yes, sir. I'm sorry, I would need to check my hospitalisation documents to confirm that.

1

All right.

MR ANDREWS: Now, while hospitalised, were you confined to a hospital in New Farm?-- That's correct.

10

May I see the top of that page? Doctor, would you look again at that record on the monitor for the 20th? Do you accept that in the week commencing the 20th of December, that is a Monday, the 20th, that you certainly did not attend at Hervey Bay? That you were apparently at home at Kangaroo Point?-- That's correct.

And would you turn the page, please?-- Sorry, can I go back to that same page?

20

Yes, you may?-- It also shows a call being made from New Farm on the 22nd of-----

On the 22nd?-- 22nd of December.

I see that. And why are you bringing that to my attention?-- To indicate that that was the period that I was probably hospitalised.

30

But you were-----?-- Or attended a doctor's appointment.

Well, you won't have been hospitalised that week, will you, if you attended only on one day?-- Not at the period that we're talking about from the 20th of December-----

To the 23rd?-- -----to the 22nd, but on the 22nd I made a call from New Farm, and that would indicate that following that period-----

40

COMMISSIONER: But on the 22nd you also made several calls from Kangaroo Point?-- Yes, well, they were following-----

If you look at the time, from 8 o'clock in the morning until 10.30 you were at Kangaroo Point. That's where you live, isn't it?-- That's right.

So you were at home over that period?-- But I did also attend an appointment.

50

In the afternoon you went to New Farm, as you say, to see a doctor?-- That's right.

And you were home again by, at the latest, 4.20?-- That's right.

I think the point you're being asked is that over the whole of that week commencing the 20th of December, you were at home except for a period on the afternoon of the 22nd when you visited a doctor in New Farm. Do you agree with that?-- Yes, I would, but as I said, I would need to see my hospitalisation records to confirm whether the hospitalisation was actually in November and the period we're talking about is the period of recuperation.

1

10

20

30

40

50

Well, whatever the hospital records might show, it appears that you were at home for all the week commencing the 20th of December except for a short period apparently in the afternoon of the 22nd of December; is that right?-- That's right.

1

From as I understand it, you weren't on leave at that time?-- To the best of my recollection, Dr Hanelt was aware that I was - that I was in hospital and I was recovering.

No, no, you weren't in hospital. You weren't in hospital?-- Prior - prior to the period we're talking about?

10

I beg your pardon?-- Prior to the period we're-----

Yes, yes, just stay with the week commencing the 20th, Doctor?-- Then I would have been on sick leave at that time.

Well, there was no indication you were on sick leave, is there, in the records?-- Yeah, well, if I was in Brisbane, then - the only way I can contact the hospital is by telephone informing them that I'm on sick leave or I'm in hospital.

20

All right.

MR ANDREWS: Could you turn to the next page of the telephone account which shows that for the balance of the week commencing Monday the 20th of December and ending on Friday the 24th, it seems you were in Brisbane and then it shows that for the week commencing Monday the 27th of December you were at Luscombe, Yatala, Jacobs Well, Paradise Point, Kangaroo Point, Ferny Grove, East Brisbane. Do you accept that in that week - I beg your pardon, on those two days in any event you were not at Hervey Bay or the Fraser Coast?-- I accept that, yes.

30

May I see the next page, please. And to the end of the week ending on Friday the 31st of December it seems you did not go - oh, you did attend Hervey Bay on the 29th. Is that - may I see further up the page-----

40

MR PERRY: And the point ought to be made the 27th and the 28th in that year would have been public holidays because Christmas Day and Boxing Day fell on a Saturday and a Sunday.

MR ANDREWS: Doctor, do you not work on public holidays?-- We share the workload, so if someone is doing the Christmas/New Year period, then the other person will do Easter weekend and - because there are so many public holidays, they - they get shared around.

50

Did you have any days off as - despite the records of Queensland Health in the week commencing Monday the 27th of December?-- If it was a public holiday, I would have had the day off, yes.

Who was the person who shared the workload with you that day?-- I can't recall.

Well, who could it have been? There weren't too many staff in the orthopaedic department at Hervey Bay?-- Well, it could be one of the SMOs.

1

I see.

COMMISSIONER: Doctor, is Urangan somewhere near Hervey Bay?-- Yes, that's right, yes.

MR ANDREWS: Does it appear, Doctor, that you went back to work for the first time from - in December on about the 29th?-- That would be correct, yes.

10

Now, in January you had no vacation, is that correct, January of 2005?-- Unless there was a public holiday I probably didn't have any vacation that I can recall, because the locum started at that period and I was with the locum most of the - most of the time, yes.

Doctor, do you have with you a mobile phone account issued on the 22nd of February 2005?-- Yes, I do.

20

Good. I'll put on screen a page showing the 20th. The 20th was a Thursday. At 8.12 p.m. you were at Burpengary. Does that suggest that you were - had left Hervey Bay that day and were heading to Brisbane?-- Yes, yes.

8.12 p.m.?-- Yes, that's.

That Thursday doesn't appear to have been a leave day for you. Do you have any explanation for why you were not at the hospital?-- I would - the only explanation I could have is that I have taken that Thursday or Friday off, yes.

30

Did you tell anyone?-- Usually I - I do.

But if you were telling somebody - member of the staff that you were taking the day off it would - is this any explanation for why it would not be recorded as one of your holidays?-- Well, I have to tell some - the clinic and theatre, so there was - scheduled sessions can be cancelled and if there was - and this is my usual practice to put in a leave form as I have done in the past.

40

That wasn't your invariable practice though, was it, Doctor?-- It was my usual practice.

Yes, usual, meaning that there were exceptions sometimes?-- The only exceptions would occur at times when I was on sick leave and came back but the clinical support officer would have made a note of the times I was away and informed the HR department.

50

So you have no recollection of requesting leave for that Thursday and Friday in January and no recall of why you took it?-- No.

Would you look, please, at the entries for the 3rd and 4th of

February. Doctor, the 3rd of February was a Thursday. Does that entry suggest - I beg your pardon. Can you accept by looking at that entry that you were - you had left the Fraser Coast on the Wednesday evening and were in Brisbane on Thursday the 3rd of February?-- Yes, I can accept that, yes.

1

Would you look, please, at the entries for the 4th of February, which is a Friday. Do you accept that you were in Brisbane on that Friday?-- That's right, I accept that, yes.

10

Now, do you have any explanation for why you did not work on that Thursday and Friday the 3rd and 4th of February, which according to the records of Queensland Health were not days when you were on leave?-- Again, looking at that - I was on leave subsequently but on those days, I would think that I took leave on Thursday and Friday, yes.

Yes, it seems you took it. Why did you take it?-- I can't recall.

20

It seems you-----?-- It's probably - it was part of my recreation leave.

COMMISSIONER: Do you have any recollection that that's so or are you just speculating, Doctor?-- I'm speculating.

Well, I think your speculation would be you just decided to take a couple of days off work, wouldn't it?-- It could be, yes.

30

MR ANDREWS: Doctor, when you were in New Farm in hospital in December 2004, you recall that?-- Yes, I do.

And as I remember, you can't remember whether you were in there for three weeks or a lesser period?-- That's correct, yes.

Doctor, would that be because you weren't in the hospital at all in December 2004?-- I can't recall that for certainty.

40

COMMISSIONER: Well, it doesn't look like it from the phone records, does it?

MR ANDREWS: Well, Doctor, you won't have seen the records-----

COMMISSIONER: I'm sorry, you didn't answer my question. It doesn't look like it from the phone records?-- I haven't got a copy of-----

50

Oh, sorry.

MR ANDREWS: Doctor, the records that you have looked at relating to December 2004 showed that you visited the New Farm - you were in New Farm on the 22nd of December and that otherwise between the 17th - I beg your pardon, the 18th of December and the end of December you didn't go to New Farm at all. You remember that, don't you?-- That's right. I spent a

period of time before I went to New Farm, yes.

1

Yes, but between the 18th and the 31st of December you were in New Farm on one day only.

COMMISSIONER: One afternoon for a short period.

MR ANDREWS: One afternoon at 2.31 p.m. approximately?-- Again, sir, all I could say is I'll have to go and look at my records and confirm the date.

10

COMMISSIONER: No, no, but you can see that from the phone records can't you?-- Pardon?

You can see that from the phone records which you had on the screen in front of you before. That over that period you spent a very short period in New Farm and the rest of that period it appears you spend at home?-- I spent at home, yes.

MR ANDREWS: I'd like you to look now at the monitor at a set of records you don't hold a copy of. These are the records issued on the 22nd of December 2004 for your mobile phone and they include a period which runs from the 29th of November 2004 when you were on leave, according to the records of Queensland Health, until the 17th of December 2004 when your leave ended, according to the records of Queensland Health. Now, do you agree with me that it seems the only entry that appears on screen that shows you to have been at New Farm between the 29th of November and the 3rd of December appears to have been at 5.13 p.m. on the 1st of December and at 4.28 p.m. on the 3rd?-- That's correct, yes.

20

30

And it seems that you were sleeping at Kangaroo Point?-- That's correct, yes.

Could I see further down the page, please. It seems you, until the 5th of December, continued to reside at Kangaroo Point?-- That's correct, yes.

Can I see the next page. Now, Doctor, on the next page it seems on the 7th of December you made two calls from New Farm but it appears you were residing at Kangaroo Point. Do you see that?-- Yes, I do.

40

And do you agree that you - your memory being refreshed by this document, do you agree that you were not hospitalised in the period displayed on the screen?-- That's - that's correct, yes.

May I see to the bottom of the page, please. Do you agree that until the 10th you remain residing at Kangaroo Point?-- Yes, I do, yes.

50

May I see the next page, please. Doctor, can you see that it suggests you resided at Kangaroo Point on the 11th and 12th of December?-- Yes, I do.

And on the 13th and 14th and 16th - oh, I beg your pardon, and

the 14th?-- Yes, I do, yes.

1

On the 16th it appears you were at the Gold Coast. What were you doing there?-- My brother-in-law lives there, so I spent time there.

Thank you. Please turn the page. And it seems at 1.21 p.m. on the 17th you were at New Farm. Doctor, those few occasions, which seems to have been about four, when you made phone calls from New Farm in the month of December 2004 you were not hospitalised there, were you?-- That's right, looking at those records, yes.

10

It seems you weren't hospitalised in December 2004 on any one day?-- That's correct, yes.

And you weren't hospitalised in January 2005?-- No, I wasn't.

Doctor, when you told Dr Hanelt that you were having time off to be hospitalised at New Farm, it was untrue, was it not?-- January 2005, I can't be certain about that.

20

You can't be certain?-- That I wasn't hospitalised in January 2005. If I told Dr Hanelt I was being hospitalised-----

COMMISSIONER: We just looked at the January '05 phone records. Don't they indicate fairly clearly to you that you weren't in hospital at any time in January? I thought you agreed with that?-- Oh, I would have - oh, I would have indicated to him that I was unwell.

30

MR ANDREWS: And where your statement says that you were hospitalised for three weeks - I beg your pardon, no, it doesn't say that. You had three weeks' sick leave in December, yes. You say you were at 2-----

COMMISSIONER: He did say he was hospitalised in December 2004.

MR ANDREWS: So he does, thank you, Commissioner. That's at 2.12. That's incorrect, isn't it?-- Those-----

40

COMMISSIONER: No, is that correct or not, that you were hospitalised in December 2004?-- No.

Thank you.

MR ANDREWS: Commissioner, I tender those telephone records.

COMMISSIONER: Yes. They'll be Exhibit 435.

50

ADMITTED AND MARKED "EXHIBIT 435"

COMMISSIONER: Thank you.

MR ANDREWS: At paragraph 3.1 of your statement, Doctor, where you talk about the times when you depart Brisbane to go to Hervey Bay and Hervey Bay to come to Brisbane, they're plainly not always correct, are they?-- There would be times where I would have varied from those times, yes.

Yes. The records that you've got from Toowoomba relating to Dr Krishna appear to be all dated May 2002. Would you look at the three which seem to be exhibit MNN2 to your statement. Is it correct that you were recruiting Dr Krishna as early as May 2002?-- No, I didn't recruit him. The position was advertised and Dr Krishna expressed interest in the position.

I see. But-----?-- But I was certainly involved in the interview process with Dr Hanelt.

Now, this first reference comes from Dr Ivers. Because he is a doctor working at Toowoomba, you would be aware that all of the procedures performed by Dr Krishna at that hospital would have been under supervision?-- That's what Dr Krishna had stated in his document.

Thank you?-- But he also states that there was some operations that he wasn't supervised.

You'd be aware that in Toowoomba all the procedures would have been supervised. That's what you'd have thought when you read this on the 14th of May 2002. You'd expect that, wouldn't you?-- I would expect that, yes.

And that particular reference to Dr Krishna from Dr Ivers is - well, it is not a particularly glowing reference, is it? It's reasonably neutral about the doctor's qualifications?-- I certainly know Dr Ivers very well. He was-----

Please answer the question. The reference is reasonably neutral about the qualifications, is it?

MR PERRY: Excuse me, give him the opportunity. He says, for example, he is quite capable of performing most of the acute trauma that comes from a busy hospital. If he wishes, by reference of his knowledge of Dr Ivers to put a colour on those words which rather do seem somewhat glowing, he might be given the opportunity to do so.

COMMISSIONER: I will let you ask the question, Mr Andrews.

MR ANDREWS: It is a reasonably neutral reference, is it not, about his capacities?-- From my reading of it, it indicated that Dr Krishna was capable of doing most of the common trauma procedures that came through a busy hospital.

And you would read that as meaning capable of performing them under supervision, because you would know that he would be supervised at that hospital?-- Well, I wouldn't know for certain that he'd be supervised.

COMMISSIONER: You just told us you knew that. I thought you just told us that you knew-----?-- I said that Dr Krishna indicated that he was supervised.

1

Well, that's - well, you did know, from what Dr Krishna said?-- That was only what I read in the transcript, not what Krishna - Dr Krishna told me personally.

Oh, I see, all right.

10

MR ANDREWS: On the-----?-- And if I can make a point about Dr Ivers, is Dr Ivers at that time when he wrote that was the clinical director of orthopaedics, so he was in a fairly responsible position in the orthopaedic association and he also worked as my registrar at some stage, at Royal Brisbane.

May I see the second of the references, please. This one from Dr Waiki Pun, that's a fairly neutral reference, would you agree?-- I would agree and I would also agree with Dr Pun's comments about arthroscopy and this is why I initially under - took Dr Krishna under my arm, to teach him the process of arthroscopy.

20

May I see the third reference, please. Is that a fairly neutral reference except with respect to elective surgery matters, which suggests that he's lagging behind?-- By that I mean - you mean that he's lagging behind in elective surgery?

Yes. Do you see the part that's marked with a highlighter: "His trauma skills are at a good level while his elective skills lag behind this"?-- That's correct, yes.

30

Now-----?-- And I recognised that as well and I'd also like to qualify this reference. I know Dr Wilson very, very well, and he was my registrar at Ipswich.

Fairly neutral reference?-- Yes.

Thank you. Nothing in them suggests that he was working - nothing in those references of May 2002 would have led you to believe he was working unsupervised at Toowoomba?-- Well, certainly, I had the impression by my talks with Dr Krishna that he didn't-----

40

No, no, I'm asking you about the references you got in May 2002, not about your conversations with Dr Krishna?-- Well, yes, nothing suggested that he was working unsupervised.

When did you have your talks with Dr Krishna?-- Over the phone after his application and at the interview with Dr Hanelt.

50

Well, bearing in mind that he started on the 20th of July, these references were received probably in mid-May or by mid-May 2002. Does that help you to determine when you had your conversations with him?-- I would say that I had quick conversations with him about the time he inquired about the job prior to the date of the references and the interview with Dr Hanelt would have occurred some time in about May or June

2002. I can't remember the date for sure and there was only two of us present at the interview.

1

Thank you. Doctor, at paragraph 4.5 of your statement you say that because of your clinical commitments it was impossible to provide personal supervision of the SMOs for the entire working day. Now, you'd know that at a busy hospital like - I beg your pardon, at a hospital like Toowoomba's, where there are generous numbers of VMO and staff specialists, that they would have been supervised for their entire working days, to a level you were just simply physically incapable of doing in Hervey Bay?-- I was - I couldn't completely supervise the SMOs.

10

Yes, and you would be aware that in Toowoomba there was ample specialist cover to completely supervise them. You'd have known that, wouldn't you?-- For the training registrars, yes, for sure. But I'm yet to be convinced that the registrars were always supervised.

20

30

40

50

1
Would you look, please, at exhibit MNN5. I will put this document, which is annexed to your statement, with the operator of the monitor so that a few of the pages can be put on the screen. And I would ask that page 41 be put on the monitor. You see this document, dated the 13th of November 2003 from Dr Hanelt to you?-- Yes, I do.

10
Drawing to your attention the Australian Orthopaedic Association and media attention given to your orthopaedics department?-- Yes, I do.

And the services there?-- Yes, I do.

Now, he asked you to prepare a number of documents as a matter of urgency?-- Which I did.

Would you look at page 42, please? You say that on a regular working day-----

20
COMMISSIONER: Excuse me, before you go to that, is that the document that you prepared in answer to this memorandum which you saw just before?-- That's right. It was a covering letter to the scope of service.

Covering letter to?-- The scope of service for each senior medical officer.

Yes.

30
MR ANDREWS: Is that page 1 of several pages you prepared in response?-- That's right. May I say, sir, this is not only the role of the director to do this as a sole person. It is usually done by a credential or clinical privileges committee which would consist of two or more people so there is no bias in the assessment.

40
Now, if you look at the highlighted section, it suggests that except when you were on leave, you can be contacted. When you were on leave, it meant that these gentlemen were unsupervised?-- That's correct.

And the practice at Hervey Bay seems to have been that if you weren't about, they could ring someone at Nambour or Brisbane?-- That's correct, yeah.

That is a most inadequate level of supervision, you would agree?-- It is not ideal.

50
It is better than nothing but it is inadequate?-- It is inadequate, yes.

Thank you. The next paragraph, the issue regarding "consultant availability for advice and assistance when SMOs are on call alone after hours is yet to be resolved." You talk about an issue to be resolved. Should I - is it right to infer that Dr Mullen said they should be supervised, they should not be on call without supervision, and that you and

Dr Hanelt held a different view?-- No, I didn't hold a different view. My view was that I was prepared to provide a service which involved covering one weekend in four.

1

Yes, but what about the other-----?-- The issues-----

-----28 days a month.

COMMISSIONER: Just listen to the question. It would be very helpful if you listen to the question, doctor, and answer that.

10

MR ANDREWS: If you were providing cover one weekend in four, that means that for 28 other days a month, Dr Sharma and Dr Krishna were not covered, doesn't it?-- Dr Mullen did one weekend when he was attached to the hospital, I did one week night or sometimes I would do two weeknights.

Well, then, for 20 days a month Drs Sharma and Krishna would be uncovered, unsupervised?-- That's correct.

20

Now, you would agree that that's unsatisfactory?-- It is not satisfactory.

Thank you. May I see, please, page 43? Where did you learn that Dr Krishna conducted fracture clinics, orthopaedic outpatient clinics and elective surgery clinics at Toowoomba?-- From what he told me personally.

I see. And where did you learn that though there was a consultant on call, Dr Krishna did approximately 90 per cent of the emergency procedures on his own without consultant supervision?-- That was from Dr Krishna himself.

30

So you didn't call your good friends Drs Ivers or Wilson?-- I certainly called them. I called Dr Ivers and I spoke to him about Krishna's capabilities and was informed that he was capable of doing general orthopaedic trauma, what we would call routine trauma that comes through.

40

Did Dr Ivers tell you how seldom he had seen Dr Krishna work in his time at Toowoomba?-- No.

COMMISSIONER: And you didn't ask him that question?-- I didn't ask him that question, no.

MR ANDREWS: You see the next sentence is that "the range of procedures is similar to that outlined in his scope of service at Fraser Coast Health Service District." Where did you learn his range of procedures at Toowoomba?-- From what he told me and the document he produced.

50

And the "excellent reference also from the orthopaedic"-----

COMMISSIONER: Sorry, which document that he produced to you?-- One of the documents Mr Andrews produced to Dr Krishna about the number of procedures he had done.

Oh, I see, right. But they were procedures which he had done at Hervey Bay?-- And Toowoomba as well.

1

No, they were procedures, as I understood, which he had done between 17 July 2002 and 19 January 2003 during the whole of which period he was at Hervey Bay?-- Oh, I am sorry, I am mistaken about that. My understanding that did include some procedures he had done at Toowoomba.

MR ANDREWS: Would you look, please, at Exhibit 433? Mr Secretary, Exhibit 433 was tendered during the telephone evidence of Dr Krishna. I have a copy of it. I will put this copy on the monitor. You will see, doctor, that this list of elective procedures on one page and emergency surgery on the other relates to a period from the 17th of July 2002 until about the time that that document was created. And that was, save for three days, when Dr Krishna worked at Hervey Bay. So he is talking about what he did at Hervey Bay. You can see that, can't you?-- Because of the figures that are presented.

10

COMMISSIONER: No, can you see that that is a summary of orthopaedic surgery performed whilst he was at Hervey Bay? Either you can see that or you can't?

20

MR ANDREWS: Look at the top - near the top of the page do you see the line "summary of orthopaedic surgery performed from 17/07/02 to 19/11/03"?-- That's right.

Now, do you remember that Dr Krishna began work at Hervey Bay on about the 20th of July 2002?-- Yes, I do, yeah.

30

Yes. And you would appreciate that you were asked by Dr Hanelt to provide documents to him urgently about a week before the 19th of November 2003?-- That's correct, yeah.

Yes. So you can be in no doubt, or would have been in no doubt in November 2003, that this document related to Dr Krishna's practice at Hervey Bay, surely. It is obvious from the document, isn't it?-- That's right.

40

He is talking about his Hervey Bay experience Hervey Bay experience, yeah.

May I - that exhibit can be returned. Would you please return page 43 to the monitor? The page numbers are at the bottom of the page. Where did you learn that the range of procedures that he was doing at Hervey Bay were similar to that outlined in his scope of service at the Fraser Coast?-- This is-----

"The range of procedures done at Toowoomba were similar to those in his scope of service at the Fraser coast"?-- This was based on the document that we had just viewed.

50

I see?-- And-----

COMMISSIONER: That doesn't show anything of the sort, does it? It doesn't show anything of the sort, does it? It shows simply what work he did at Hervey Bay? It shows nothing about

Toowoomba?-- Well, that's what he indicated that he did at Toowoomba and each senior medical officer was asked to put down what procedures they had done in the previous employment and they were actually given the documents to read before it was submitted to Dr Hanelt.

1

MR ANDREWS: The excellent references that you refer to in this document, were they the three references that I displayed on the monitor 10 minutes ago?-- Correct, yeah.

10

Now, you would agree that they weren't excellent references; they were neutral references, weren't they?-- I think you could look at it either way.

Well, you were very generous with your choice of the word "excellent", you would agree?-- Possibly.

Now, the purpose of producing these documents was to satisfy, what, the Australian Orthopaedic Association's interest?-- We requested an investigation by the Australian Orthopaedic Association and we presented these documents for them to review with regard to what services the SMOs were producing.

20

Please look at the bottom of the page. "Dr Krishna is acutely aware of his limitations and level of competence." Where did you get that belief?-- By observation of his clinical work, his assessment, his post-operative care.

Would you look, please, at page 49 from that bundle? Do you see that document?-- That's correct, yeah.

30

Whose handwriting is that?-- That was Dr Krishna's handwriting.

That was an application for clinical privileges. It doesn't seem to be dated, but at the bottom of the page - would you move to the bottom of the page, please - am I right in deducing from it that it is a document created some time after June 2003, because the form seems to bear that date in the bottom left-hand corner?-- That would be correct, yeah.

40

Would this have been a document created at about the time Dr Hanelt asked for things to use to respond to the Australian Orthopaedic Association?-- No, this document was not related to the documents I prepared. A clinical privileges committee was to be established involving Bundaberg Hospital, Hervey Bay and Maryborough.

Do you know when this document was created, the one that's on the screen?-- No, I am not sure.

50

You have put it in a bundle of documents that you say you, as I understand it, gathered together to give to Dr Hanelt?-- That's correct, yeah.

Where did you get this request for clinical privileges?-- Dr Krishna filled the form out and handed it to me and I handed it over to Dr Krishna.

Doesn't that mean that it was filled out at the time that Dr Hanelt wrote because of the interest that was shown by the Australian Orthopaedic Association?-- I am not certain of the date.

1

Thank you. It is an application for specialists. Did you tell Dr - it is a form to be filled in by specialists seeking to be privileged. Did you tell Dr Krishna to go and get the right form?-- It was the form that was handed out to me to give to Dr Krishna and I think he was capable of reading the form.

10

COMMISSIONER: But so were you? Why didn't you say, when you got that form to hand to Dr Krishna, "This must be the wrong form. He is not a specialist."?-- This form would normally not come to me, it would go to-----

No, no, but you said it did come to you?-- I make the statement that it would normally not come to me.

20

No, no, don't tell us what normally would happen. You have already told us it came to you and you handed it on to Dr Krishna. What I am asking you is when it came to you why didn't you look at the document and say, "This is the wrong document"?-- I would say I-----

I beg your pardon?-- I would say I overlooked that segment.

I see, all right.

30

MR ANDREWS: You say the document came to you and you gave it to Dr Krishna?-- As far as I can recall, yeah.

I see. Who gave it to you?-- It came from Dr Hanelt's office and this was at the time the hospital was trying to establish a clinical privileges committee and-----

COMMISSIONER: That was in response - I am sorry to interrupt you - that was in response, wasn't it, to the media and AOA attention to the orthopaedic services at Hervey Bay?-- Again, I can't recall with certainty whether this document was done before mine or after mine.

40

All right.

MR ANDREWS: Now, pages 50 and 51 of your exhibit MNN5 appear on - one of them appears on the screen. You will see the elective procedures page?-- Correct, yeah.

50

Who prepared that document?-- I prepared that document - sorry, no, that document was prepared by Dr Krishna. Is Dr Krishna's name at the bottom of the document or Dr Sharma?

It has Dr Krishna's name at the top?-- Yeah, okay, it was prepared by Dr Krishna.

Doctor, why did you say you prepared it?-- No, I was thinking

of a document that's going to follow.

1

All right. Did you read it when you received it?-- I read it and the SMOs also read them.

In reading that one, it suggests that a number of elective procedures were performed by Dr Krishna unsupervised at Hervey Bay. Practically every elective procedure bar two he claims that he did unsupervised?-- That's correct, yeah.

10

And it is correct that he did them unsupervised?-- That's correct.

If you look at the next page, you will see he claims to have done a number of other procedures unsupervised with one exception?-- That's correct, yeah.

So he was, was he not-----

COMMISSIONER: Two exceptions, I think.

20

MR ANDREWS: So there are, Commissioner, thank you. He was a person who did not hold specialist qualifications, who was practising orthopaedic surgery in Hervey Bay unsupervised?-- That's correct, yeah.

Dr Sharma was, likewise, practising orthopaedic surgery unsupervised in Hervey Bay-----?-- That's correct.

-----wasn't he? Now, you prepared scope of practice documents, didn't you?-- That's right.

30

For each of Drs Sharma and Krishna?-- As well as Dr Padayachey.

Yes, but for Dr Sharma and Krishna, you prepared them after the Australian Orthopaedic Association had shown an interest in-----?-- That's correct, yeah.

-----the orthopaedic department?-- In response to Dr Hanelt's letter.

40

Yes. And you dated them the 1st of January 2004?-- And there was a typing error in one of the documents with regard to the date.

If there had not been an error, what date should they have shown?-- The dates on the 1st of January - could I refer to my documents?

50

Of course you may?-- In January 2004.

That's the date they should have shown?-- Yes.

Thank you. How did you - now, am I right in recalling that for Dr Sharma and Dr Krishna they were identical? I must say, I haven't compared them to be certain of that, but my general recollection was that they were identical?-- With regard to

the clinical competence?

1

No, the scope of practice documents?-- No.

That set out the procedures they could perform supervised and unsupervised?-- They were-----

Identical?-- -----identical.

Thank you. How did you fix upon the list of procedures that you were going to include in Dr Sharma's scope of practice?-- I prepared the list as it is shown and indicated by a tick, and a tick as to whether they could do that.

10

Thank you. How did you decide which ones to tick and which ones not to tick for unsupervised?-- Based, again, on their references and observing their clinical practices, because they did clinics with me and they did surgery with me, and I had a look at all their postoperative patients, so I made my clinical determination on that.

20

And you have read the transcript of what Dr Krishna said yesterday?-- I did, yes.

Yes?-- If I could go back to that document, it is - something just has come to my mind is that in his scope of service we talked about acetabular fractures, and by that it was meant to be a simple acetabular fracture. So by that I mean-----

A simple fracture of the hip joint?-- Involving the acetabular, that's the cup where the hip fits, and this often will occur with a dislocation, usually posterior dislocation of the hip and the hip is reduced, and sometimes the fracture would need to be fixed to stabilise the hip, and that's about the only type of acetabular fractures we do in Hervey Bay. The rest of the fractures that are more complex are sent to a specialist orthopaedic surgeon in Brisbane.

30

Doctor, you have said in your statement that when called by either of the SMOs you would attend?-- That's correct.

40

Why did you not attend when they asked you to, that is when Dr Sharma asked you - Dr Krishna asked you twice to attend in January this year when you were in the motel across the road?-- It was a working day and I wasn't in a motel because I have normal duties to do on Tuesday morning, and I can't recall the exact conversation that took place but I would say again that in all my time in Hervey Bay and most other hospitals when I was called to assist someone, I always did so.

50

To help you recall, I will put on the monitor page 6492 of the transcript. The conversation seems to have been that Dr Krishna told you the patient had a lot of swelling. "It might be a very difficult situation.", and you said, "Open. If there is any problem let me know." It seems that the conversation was recommenced a time later and you'll have been told that there was a - the fracture of the fibula was more

comminuted than they had expected and Dr Krishna or Dr Sharma asked you to come. I beg your pardon, Dr Krishna or perhaps another doctor assisting that day asked you to come and you said, "You are an SMO, you should be able to do this." Now, that's the conversation. Do you recall it?-- I can't recall it but I can-----

1

You don't deny it was like that, do you?-- No. I can also state at that period we didn't have any junior staff. By that I mean resident medical officer in orthopaedics, and that frequently happened at Hervey Bay, that you would be without junior staff, and when Krishna asked for assistance, I would have thought that he wanted someone to give him a hand rather than a consultant being there.

10

COMMISSIONER: Can you remember this conversation?-- I read the transcript.

No, no, can you remember this conversation?-- No, I don't.

20

Well, are you making this up then, what you think might have happened?-- I can't remember the correct conversation.

Doctor, was it you - from paragraph 4.25 of your statement it appears that you put the name of the SMOs on the on-call roster as consultants. Did you do that paperwork for the hospital?-- Yes. And that again was an oversight by myself because we used the standard format roster that was used previously when the general surgeons provide cover for orthopaedics.

30

Well, if you had used any - say you had had any form you liked and it didn't have the word "consultant" at the top of the column, to put somebody on an on-call roster, it means that you are putting there someone who should be able to do the work after hours without supervision, doesn't it?-- That's correct, yeah.

And Drs Krishna and Sharma were persons who required supervision, didn't they?-- They did - required supervision for the procedures that were indicated. Certainly the protocol was that based on their assessment of the patients, if they could not handle the problem, then they had to transfer the patient to a tertiary hospital, and that was standard protocol, and we actually have a document which indicates who to contact.

40

50

Doctor, at paragraph 4.32-----

1

COMMISSIONER: Just before you leave that point, you recall an article in the local newspaper at about that time - that is about the time that they were described on the on-call rosters as consultants, do you remember an article in the local newspaper saying that Hervey Bay had, or would soon have, two new orthopaedic surgeons? Am I putting that correctly or was it two new consultants?

10

MR ANDREWS: I don't remember which way it was expressed.

COMMISSIONER: Well, let's put it either way, either two new orthopaedic surgeons or two new consultant surgeons. Do you remember such an article?-- I can't remember the article, but I would think-----

No, no, don't speculate. If you can't remember, just tell me you can't?-- I can't remember.

20

Did you have anything to do with that article going in the local newspaper?-- No, I didn't.

Did anyone from the local newspaper speak to you about it?-- No, they didn't.

All right. Thank you.

MR ANDREWS: When you prepared the scope of practice for each of Drs Krishna and Sharma, you were aware that the credentials and privileges guidelines for Queensland Health existed and required that privileges be allotted by a committee?-- That's right.

30

Why didn't you get another orthopaedic specialist in Hervey Bay, or even further afield, to assist you to prescribe the privileges?-- I responded to what the Director of Medical Services wanted.

Well, he wanted something urgently. Why didn't you get them privileged?-- As I said, there was no privileges committee, and it was up to the hospital to establish a privileges committee. To date there's still not one.

40

COMMISSIONER: It wasn't up to you, you're saying?-- It's not up to me.

MR ANDREWS: And to date, did you say, there still isn't one?-- Still.

50

Why didn't you establish one, or ask for one to be - to consider these new SMOs when each of them arrived in 2002 and 2003?-- That's the role of the Director of Medical Services.

Did you say to the Director of Medical Services, "It's time to get them privileged."?-- Well, I think they started the process, but it was incomplete.

COMMISSIONER: Did you ask - did you say, "I think it would be a good idea if these people were privileged."?-- No, I didn't.

1

You didn't ever say anything to Dr Hanelt-----?-- No.

-----about having them privileged?-- As far as I'm aware there's three orthopaedic surgeons in Hervey Bay and none of us are clinically privileged or have been credentialled.

10

Sorry, three orthopaedic surgeons-----?-- That's correct, yes.

In Hervey Bay Hospital?-- In the district - that's Dr Mullen, myself and Dr Khursandi - and to the best of my knowledge none of us have been in the presence of a privileges committee, and in all the other hospitals that I've worked for you would have to apply for clinical privileges.

Yes.

20

MR ANDREWS: So Hervey Bay was deficient in that respect. Its administrators were different from administrators in any other hospital in which you had worked because they let you work without privileges?-- That's correct.

Well, surely you brought it to Dr Hanelt's attention, you said it's the proper thing to do. There must have been a discussion?-- Certainly we discussed it on occasions, that for the department to go forward we'd need to have four orthopaedic surgeons, and the ultimate aim would be that we then would secure trainee or non-trainee registrars. Without that complement of orthopaedic surgeons it would have been very difficult to do so, and certainly the Australian Orthopaedic Association would not have accepted the situation.

30

Doctor, please look at Exhibit 372. It seems - if you look at the second page of it, you will see that it bears the typing of your name, Dr Hanelt's and Dr Mullen's, and three signatures. You're a signatory?-- Correct.

40

Now look at the first page, please. Do you remember there was some kind of meeting and - on 16 January 2004?-- Correct.

It was agreed there should be formal teaching sessions for the senior medical officers. Had there been a difference of opinion about this?-- Yes, there was.

Does that mean that until this time there had been no formal teaching sessions for the SMOs?-- No, I disagree.

50

Did someone else think that there had been no formal teaching sessions?-- Yes.

Dr Mullen?-- That would be correct.

And it was agreed that they should be on a regular and pre-determined and published basis. Did Dr Mullen complain

that if there were formal teaching sessions, they weren't regular, pre-determined and published?-- The duty rosters do indicate when the meetings occurred, and Dr Mullen couldn't attend on a Tuesday morning.

1

Doctor, were they regular, pre-determined and published?-- Yes, they were.

It was agreed that formal Morbidity & Mortality Meetings are to commence. Does that mean that the formal meetings had not been occurring?-- They had been occurring.

10

I beg your pardon?-- They had been occurring, yes.

Well, then that second paragraph's nonsense, isn't it?-- The audits which record the morbidity and mortality documents were presented to the District Manager, and I submitted years 2003 and years 2004-----

COMMISSIONER: Sorry, you're not directing yourself to the question. Look at the second sentence there. It says, "Agreed that formal Morbidity & Mortality Meetings are to commence." It was put to you that that indicates that they had not existed prior to that time?-- I am stating that they existed.

20

Well, why did you sign a document which said that you agreed that they were "to commence"?-- I can't recall why I did that.

30

MR ANDREWS: Doctor, at paragraph 4.32 of your statement you say, "Sometimes I would determine that it was not necessary to have a formal Morbidity & Mortality Meeting." It's fair to say, isn't it, that they often did not occur?-- We certainly had a meeting on every Tuesday.

COMMISSIONER: No, no, no. We're talking about formal Morbidity & Mortality Meetings, and Dr Krishna - I'll stand corrected if I'm wrong - said in his evidence that there were only two such meetings in the whole of the time that he was at Hervey Bay.

40

MR PERRY: What he said, Commissioner - and it may be where this is going. You might recall there are two different types of meetings Dr Krishna referred to.

COMMISSIONER: Yes, I'm talking about Morbidity & Mortality Meetings.

MR PERRY: Yes. I think he described the weekly one that way, and the quarterly ones as well that way yesterday.

50

COMMISSIONER: I didn't think he did, but all right.

MR PERRY: That may be the point. I won't take it any further.

COMMISSIONER: I won't ask that question.

1

MR McDUGALL: Actually, Commissioner, I may be of some assistance. The witness was about to say - tell the Inquiry about the audits and the gathering of information for formal Morbidity & Mortality Meetings, and I think that might be the distinction in issue, the word "formal". There was some software, as I understand it, created that became available to the hospital, and Dr Naidoo started to tell the Inquiry about that and was stopped. That's the issue.

10

COMMISSIONER: I don't want to stop him giving any evidence, Mr McDougall. Will you tell us what you mean by the formal Morbidity & Mortality Meetings were "to commence"?-- It was a three-monthly meeting and this was to discuss all the data that we had collected in a three month period.

Yes?-- And it was Dr Mullen's suggestion that we have this meeting afterhours, but in our own department we had what we called audit forms, and I think Dr Krishna stated yesterday that this was created by myself, but it's exactly the same form that we had used at Ipswich Hospital for all the time I've been there, which was about eight years or so, and the form was in two parts, one which indicated an early complication, and by that I mean a complication that occurred before the patient left the hospital, and that was always filled out by the resident medical officer. We had a late complication form which was left in the outpatient clinic, and that was filled out by the specific person doing the clinic, and I had no problems with collection of the inpatient audits, but a lot of difficulty getting the doctors to fill in the late complication forms, and we would collect the forms and look at them at the time of the Mortality & Morbidity Meeting we used to have on Tuesdays.

20

30

All right?-- Can I further say that at times where we decided that we wouldn't have a meeting, it was because there was no relevant material to discuss, but we would then increase the period of the meeting. Most hospitals have their Mortality & Morbidity Meetings about three-monthly.

40

MR ANDREWS: Doctor, a Mortality & Morbidity Meeting is an opportunity for hospitals to improve their quality?-- Correct.

And at such meetings, even your own procedures ought to be discussed by your peers?-- Correct.

At such meetings there ought to be orthopaedic specialists to whom you reveal the complications that you've had so that they can critique you?-- Correct.

50

That wasn't happening, was it?-- It happened.

It wasn't happening three monthly?-- No, it wasn't happening three monthly.

COMMISSIONER: How often did it happen in the time that you were there?-- Since Dr Mullen came back we had, I would think, two meetings.

1

Yes. Were they the only two meetings that you had during the whole time Dr Krishna was there?-- No, we had the weekly meetings.

No, no, no. Were they the only meetings at which you were properly critiqued as well as you critiquing the SMOs?-- That's correct, yes.

10

Thank you?-- And may I further say - because this was raised in one of the transcripts - that we documented the audits on paper. That's because we had no computer software to put the audits on, and so actually doing the audits was quite onerous.

Doctor, would you look at the second page of the exhibit on the monitor? The issue of availability of a consultant at all times was discussed. Is it right that Dr Mullen said that there should be a consultant to supervise the two SMOs all the time?-- That's correct.

20

Which just simply couldn't be done at this hospital, could it, because you'd have been obliged to work impossible hours?-- That's correct, yes.

It's obvious that Dr Hanelt and you were prepared to continue with the status quo?-- That's correct, yes.

30

You say at your statement at paragraph 6.1 that when you were on leave, usually Dr Khursandi would cover both hospitals. We've read from the statement of Dr Krishna at paragraph 24 that he met Dr Khursandi once in three years and spoke with him twice?-- That's correct.

Well, it seems that when you were away on leave, Dr Khursandi was not providing very intensive supervision?-- That's correct, and that was based on the fact that Dr Khursandi did not want to work at Hervey Bay Hospital and preferred to do all his work at Maryborough Hospital.

40

Does it mean he was providing no real supervision when you were taking your extensive leave periods?-- He did provide supervision, but patients had to be transferred to Maryborough Hospital for treatment.

At paragraph 6.5 you say emergency patients that couldn't be managed by the SMOs where you were unavailable, were transferred. Well, the only ones the SMOs wouldn't handle were the spinal patients, isn't that the case?-- No. It was certainly all spinal patients, patients with complex compound fractures, patients with severe hand injuries, patients with major pelvic fractures. So this is the decision the SMOs had to make.

50

COMMISSIONER: I see it's 4.30, Mr Andrews. What do you propose to do with this witness? He's obviously got a way to

go.

1

MR ANDREWS: Commissioner-----

COMMISSIONER: How long will you be? Just give some estimates of time.

MR ANDREWS: Ten minutes.

COMMISSIONER: Apart from Mr McDougall and Mr Perry, who else wants to ask questions?

10

MS McMILLAN: I do, Commissioner.

COMMISSIONER: You both do?

MR ALLEN: Yes.

COMMISSIONER: How long do you think you two will be between you?

20

MR ALLEN: I would have thought 20 minutes.

COMMISSIONER: Twenty minutes.

MS McMILLAN: About the same.

COMMISSIONER: Forty minutes, 10-----

MR FARR: I might have a couple of questions, but I'll be very brief.

30

COMMISSIONER: That's about an hour. How long between you two?

MR PERRY: I'll have to get some instructions about some of the matters that were raised the day-----

COMMISSIONER: Just give me an estimate.

40

MR McDOUGALL: As will I.

MR PERRY: I'm sorry?

COMMISSIONER: Just give me an estimate, not a long story.

MR PERRY: I would think probably no more than half an hour at the outside, depending upon instructions I get.

COMMISSIONER: We're up to an hour and a half.

50

MR McDOUGALL: An hour-----

COMMISSIONER: Two hours.

MR PERRY: Effectively half a day.

COMMISSIONER: Do we have a problem on Monday?

MR ANDREWS: Dr Hanelt is due to give evidence Monday, but I'm sure he would be content to begin at 2.30 on Monday.

1

MR McDOUGALL: No doubt Dr Hanelt would take at least a day as well.

MR ANDREWS: And I want to - I've promised Mr McDougall that he wouldn't be required for Friday.

10

COMMISSIONER: Tomorrow, you mean?

MR ANDREWS: Yes, that Mr McDougall wouldn't be required.

MR McDOUGALL: That's changed. I've managed to resolve my matter for tomorrow.

COMMISSIONER: It will have to be Monday. We'll have Dr Naidoo on Monday morning and Dr Hanelt starting not before 2.30 in the afternoon.

20

MR ANDREWS: Thank you, Commissioner.

COMMISSIONER: Tomorrow I'm giving some directions and a judgment in the matter of Mr Leck, and we've also got one witness who is an anaesthetist. I suppose the parties know about that.

MR ANDREWS: Dr Jelliffe.

COMMISSIONER: I think his statement has been circulated. All right. Adjourn until tomorrow at 9.30.

30

THE COMMISSION ADJOURNED AT 4.33 P.M. TILL 9.30 A.M. THE FOLLOWING DAY

40

50

60