Transcript of Proceedings

THE HONOURABLE G DAVIES AO, Commissioner

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

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 2) 2005

QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

BRISBANE

..DATE 07/10/2005

..DAY 20

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

THE COMMISSION RESUMED AT 9.30 A.M.

COMMISSIONER: I'll deal with your application first, Mr Ashton.

MR ASHTON: Thank you, Commissioner.

COMMISSIONER: This is an application on behalf of Peter Leck, who is District Manager of Bundaberg Health Service District. He was such manager when Dr Jayant Patel was first employed in Bundaberg Base Hospital, and has been at all times since. His evidence to the Inquiry as to the employment of Dr Patel, as to the appointment of Dr Patel as Director of Surgery, and as to the acts or omissions by him and others in relation to complaints made with respect to Dr Patel is of central importance to this Inquiry.

The application is that Mr Leck be excused from giving evidence before this Commission. It is made on two grounds. Both arise from Mr Leck's present psychiatric condition which is a major depressive episode and a generalised anxiety disorder.

The first ground is that his psychiatric condition will deteriorate in consequence of his giving evidence before this Commission, and the second is that that condition will cause any evidence which he gives to be less reliable than it would be if he did not have that condition.

The application is supported by submissions made on behalf of Dr Keating. It is opposed by submissions made on behalf of the Patient Support Group and by submissions made on behalf of the Queensland Nurses' Union.

The evidence which Mr Leck relies on in support of his application is the report of Dr Martin Nothling, psychiatrist, dated 22 September 2005, his evidence given before this Commission and the reports of his treating psychiatrist, Dr Butler, dated 8 June 2005, 20 June 2005, 17 August 2005 and 14 September 2005. All of these reports were admitted into evidence, with some deletions from the report of Dr Nothling made at the request of Mr Leck's counsel.

Deterioration of his existing condition:

I accept Dr Nothling's evidence generally. Mr Leck has the conditions contended for. They were, together, substantially increased, and his condition worsened by the way in which he was treated by Mr Morris QC when called, suddenly without warning, to give evidence before the terminated Commission of Inquiry. Mr Leck perceived that there were some who were out there to get him, and that his worst fears were confirmed by the way in which he was treated by Mr Morris.

His concern about the way in which he was treated was not unreasonable, as was shown when the Supreme Court found the existence of a reasonable apprehension of bias by Mr Morris against Mr Leck. Mr Leck is understandably concerned that there might be "more of the same" if he were to give evidence before this Inquiry.

In the opinion of Dr Nothling, if Mr Leck were required to give evidence before this Commission, in the way in which other witnesses have - in the face of both still and moving cameras, in a large and imposing courtroom in which I sit at an elevated bench above the witness stand, and which is likely to be crowded with spectators as well as counsel and solicitors for many parties, he would suffer a deterioration of his present condition which would be; (1) moderate to severe, and (2) temporary. By "temporary" Dr Nothling meant, in this context, from a few months to a year.

That deterioration does not appear to involve any real risk of suicide. Although Mr Leck, in answer to a specific question from Dr Nothling, said that he has had some suicidal ideation, it was not suggested by Dr Nothling that it was any more than that. Moreover, in the four comprehensive reports by his treating psychiatrist, Dr Butler, there is no mention of even suicidal ideation.

A possible alternative to Mr Leck being questioned in the environment which I have outlined was put to Dr Nothling. This was that Mr Leck might give evidence in a less daunting environment which would include prohibiting photographs being taken of Mr Leck in the precincts of this building, hearing his evidence in a smaller room where those wishing to question him and I sit around a smaller table, and excluding from that room all persons other than counsel assisting and representatives of parties who wished to question him. In that event what he said might still be broadcast orally to other parties and other persons interested outside the room.

If all of that were to occur, I would hope that Mr Leck would be reassured that I would not be treating him in a way in which Mr Morris QC did.

If Mr Leck were to give evidence in a less threatening environment such as that which I have just described, Dr Nothling was of the view that the deterioration of his condition in consequence of his giving evidence would be more likely to be mild to moderate, and of shorter duration, towards the lower end of his earlier estimate.

Of course, if Mr Leck were to give evidence even in such an environment, he could not be assured that he would not be asked searching questions, or that it would not be put to him that his conduct in relation to Dr Patel, particularly with respect to his handling of complaints with respect to Dr Patel, was a breach of duty, indeed a serious breach of duty with harmful consequences.

That is the nature of cross-examination, particularly in a situation such as this where evidence has been given by others which, on its face, appears to implicate Mr Leck in serious breaches of duty.

Having said that, I must emphasise that I am not forming any opinion about any such matters, and will not do so before the completion of evidence in this Inquiry.

I turn now to the second ground of the application, the reliability of Mr Leck's evidence.

Dr Nothling said that individuals suffering from a major depressive episode and generalised anxiety disorder such as Mr Leck has would be expected to have difficulties with concentration and memory. Cognitive processes, in his opinion, would be expected to be slowed, and the organisation of his thoughts would be expected to be impaired.

On that basis, Dr Nothling expressed the opinion that Mr Leck would probably not be capable in general of providing reliable evidence to the Commission with respect to the matters in question.

I note that Dr Nothling's opinion is based on his opinion about the likelihood of persons with this condition suffering this problem, and on what Mr Leck told him, rather than from any testing of Mr Leck's memory and concentration.

Dr Butler's opinions are expressed in a little more detail in this respect, but it is still unclear to me to what extent Mr Leck's memory is impaired or his concentration diminished in a way which will impair the reliability of the evidence which he would give.

I accept, of course, that there is some impairment in these respects, but the extent of it would not be obvious until after he had commenced to give evidence.

A perusal of the transcript of his interview with Mr Andrews SC and an officer of this Commission does not enlighten me on this question. In any event, as I pointed out to Mr Freeburn SC for Mr Leck during the course of argument, I do not see that the question of reliability of Mr Leck's evidence is of great importance in determining whether or not he should give evidence at all. It is, of course, of considerable importance in determining, after he has given evidence, the reliability of that evidence, but I cannot see why that is not a matter which, with the assistance of counsel, I could not determine at the end of this Commission.

The public interest:

Against the matters to which I've just referred, the likelihood of temporary deterioration of Mr Leck's condition and the possible unreliability of his evidence, is the public

interest in having him give evidence to explain what might otherwise appear to be a prima facie case of incompetence, even possibly serious dereliction of his duty in the engagement of Dr Patel in the way in which that occurred, his promotion of Dr Patel to Director of Surgery and the way in which that occurred, and perhaps even more importantly, his conduct in responding to complaints about Dr Patel.

How Dr Patel came to be permitted to do what he did, and how he was permitted to continue what he did notwithstanding complaints about his competence over what appears prima facie to be quite a long period, is a matter in which there has been great public interest. Prima facie, Dr Patel's continued conduct, and possibly permitting him to continue that conduct, have been a cause of serious injury to a substantial number of people. As mentioned earlier, these are matters central to the Terms of Reference of this Inquiry.

In my opinion that public interest outweighs the factors which might otherwise have led to my excusing Mr Leck from giving evidence before this Commission.

Though I have sympathy for Mr Leck and his current illness, I conclude, with some hesitation, that he has not satisfied me that he has a reasonable excuse for not giving evidence.

Having reached that conclusion, I'm also of the view that I should do everything within my control to ensure that the risk of impairment to Mr Leck's condition is minimised. To that end I have in mind that Mr Leck's evidence be heard in the environment of a room which is smaller and less intimidating than this, and I have in mind also that those present in that room would be only those counsel for parties who indicate that they wish to ask Mr Leck questions.

It is my proposal that counsel, Mr Leck and I would sit around a table whilst Mr Leck gives evidence, and that we would all remain seated whilst that occurred. He would, of course, have to be sworn in the usual way.

I do not intend to permit photographs, still or moving, to be taken of Mr Leck in the precincts of this building on the day on which he gives evidence, nor will I permit any video recording of his evidence, but require that it to be recorded on audiotape.

I'm also inclined to let Mr Leck have with him while giving evidence a copy of his statement and any other documents which may reasonably assist him. For example, a chronology of relevant events. It's also advisable that any party who proposed to cross-examine him about a document, provide to Mr Leck's solicitor a copy of that document at least a day before he is to give evidence.

I would be reluctant to exclude other parties, or even the public from hearing Mr Leck's evidence as it is given. Accordingly, I have in mind that an audio recording of his evidence be made and that the proceedings, whilst he is giving

evidence, be broadcast to an area outside the room to which I have referred where the other parties and members of the public may congregate.

I should add that I'm not implying by anything which I've said that cross-examination of Mr Leck should be restricted in any way. I shall, at least for the time being, leave it to counsel to have regard to Mr Leck's condition in considering how they cross-examine him.

The only order which I propose to make at this stage is one dismissing the application, which I now do. It may be necessary for me at a later time to make further orders, but I hope that most of the matters to which I have referred will be the subject of agreement between the parties.

Any submissions arising out of those reasons and order?

MR ASHTON: Nothing, thank you, Commissioner.

COMMISSIONER: All right. I now propose to give some directions about submissions. Those directions are as follows:

(1) Any party granted leave to appear in this Inquiry and any person to whom a Notice of Possible Adverse Findings or Recommendations has been given by 14 October 2005, may make submissions in writing to this Commission upon any findings or recommendations which it is contended by that party or person this Commission may make;

(2) Any such submissions must be delivered to the Commission on or before 21 October 2005;

(3) If (a) any party contends that any evidence not received by the Commission should have been or should be received by it, or (b) any party contends that they should be permitted, in addition to making submissions in writing, to make oral submissions, that contention, together with the grounds thereof, must be made in submissions in writing to the Commission on or before 14 October 2005;

(4) Any contention of the kind referred to in (3) hereof will be resolved by me before evidence in this Inquiry is closed.

Any submissions arising out of those directions?

MR DIEHM: Commissioner, just one matter that arises out of that. The directions that you've made would allow for a situation to occur whereby a party given leave to appear before the Commission might make submissions adverse to the interests of another party.

COMMISSIONER: Yes.

MR DIEHM: Now, those matters raised in such submissions might go beyond the matters, for instance, canvassed in a notice given by the Commission, if one is given, to that other party, or indeed there may be no notice given by the Commission, so the party affected by the subject of a submission made that it's not addressed because it didn't have notice of it, nor an opportunity to respond. That's the concern that I flag.

Ordinarily, in my submission, the parties before this Commission would have a right to make submissions, of course, about any matter upon which they might be adversely affected in terms of the findings of the Commission, but these directions, of course, allow parties to go beyond that.

COMMISSIONER: Yes.

MR DIEHM: And to make submissions of the kind that I've just indicated.

COMMISSIONER: Yes.

MR DIEHM: That's-----

COMMISSIONER: But that's necessarily, I think, a consequence of parties being in conflict. A says, "It's B fault, not mine", and B says, "It's A's fault, not mine."

MR DIEHM: Yes.

COMMISSIONER: It's part of A saying, "It's not my fault, that it's B's."

MR DIEHM: This in fact - that situation arises. Another one arises where A is not suggested by anybody to have been at fault-----

COMMISSIONER: Yes.

MR DIEHM: -----yet has the opportunity to say that B is at fault.

COMMISSIONER: Yes.

MR DIEHM: Now, under either of those scenarios - I accept, Commissioner, that you may receive submissions if that is the way you choose to proceed.

COMMISSIONER: Yes.

MR DIEHM: But the concern is that the parties affected by any such submission-----

COMMISSIONER: Should have a right of reply.

MR DIEHM: Yes.

COMMISSIONER: Well, I accept that. Can you draft me a form of direction which you show to other counsel and you think is

appropriate? It would have to be within a further seven days.

MR DIEHM: Yes.

COMMISSIONER: And limited to that question.

MR DIEHM: Yes.

COMMISSIONER: I want to make sure that any right of reply was not just some sort of general right of reply about life, the universe and everything, it was about the allegations which were made against, in this case, say, your client.

MR DIEHM: Thank you, Commissioner. I'll do that.

COMMISSIONER: Well, if you wouldn't mind giving me that within the next couple of days.

MR DIEHM: Oh, yes.

COMMISSIONER: And show it to the other parties, and if you can obtain agreement - it might be hard to do, but as best you can.

MR DIEHM: We're a relatively cooperative group, I think, Commissioner.

COMMISSIONER: Thank you.

MR DIEHM: Thank you.

COMMISSIONER: Mr Allen?

MR ALLEN: Commissioner, you had earlier indicated that submissions would be required within seven days of the close of evidence, a reasonably tight time-frame. It's not clear from the directions made this morning that even that time would be allowed.

COMMISSIONER: Oh, I was rather hoping that - no, that's true. I was rather hoping that evidence would be concluded by the 14th, which is the end of next week.

MR ALLEN: Yes, but that wouldn't seem certain given the sort of time that would be involved in examining both Dr Keating and Mr Leck, for example.

COMMISSIONER: That may be right, and it may be that I'll grant an extension of that time, but for the moment I'd like to stay with that, and I don't think you should assume that just because evidence might extend beyond the 14th, that I would extend the 22nd date.

MR ALLEN: Yes.

COMMISSIONER: Anything else?

MS DALTON: Commissioner, I have two matters to raise before the evidence resumes, if I may, but-----

COMMISSIONER: There's not going to be any evidence resumed now. You haven't been here for a while.

MS DALTON: No, I'm out of touch, Commissioner.

COMMISSIONER: What do you want to say?

MS DALTON: I wanted to tender a letter to you, if I could - I've got copies for Mr Boddice and counsel assisting.

COMMISSIONER: Dealing with?

MS DALTON: It deals with Drs Galbraith, McNeill and our submissions. I think it's probably consistent with - I think it is consistent with the directions you've just made.

COMMISSIONER: Well, I'll have a look at that, and if it's necessary to make a further ruling, I shall.

MS DALTON: Thanks, Commissioner. The other thing I wanted to raise is that my client has been - two weeks ago was awarded something called the Sydney Sax Medal for public health and, I wanted to tender, if I could, a copy of the nomination for that and some information about the organisation which awards it, and past winners.

COMMISSIONER: I didn't know that we were receiving references for parties.

MS DALTON: No, Commissioner, I understand that you might have concerns about the weight of it, but-----

COMMISSIONER: I'll admit it.

MS DALTON: Thank you.

COMMISSIONER: I'll make it Exhibit 436.

ADMITTED AND MARKED "EXHIBIT 436"

MS DALTON: Thank you, Commissioner.

COMMISSIONER: Do you have something?

MS McMILLAN: Yes, I do. I just didn't want to be left out in the back row, Mr Commissioner.

COMMISSIONER: I wouldn't do that to you.

MS McMILLAN: Thank you. It occurs to a number of us sitting here that, particularly if the time is going to be shorter in

terms of submissions, and maybe less than seven days as it transpires, it would be helpful if we could have counsel assisting's submissions first, because it might be, for instance, that we don't traverse - no, I take it.

COMMISSIONER: I'm not going to seek submissions from counsel assisting.

MS McMILLAN: I see.

COMMISSIONER: It's not my intention of doing that.

MS McMILLAN: I see. Thank you.

COMMISSIONER: We'll now adjourn.

THE COMMISSION ADJOURNED AT 9.52 A.M.

THE COMMISSION RESUMED AT 3.00 P.M

MR ATKINSON: Afternoon, Commissioner. If it pleases the Commission, I plan to call Dr Jelliffe.

CHRISTOPHER MARTIN JELLIFFE, SWORN AND EXAMINED:

MR ATKINSON: Witness, would you tell the Commission your full name and business address?-- Yes, Dr Christopher Martin Jelliffe, and I work at the Mackay Anaesthetic Group, Mackay Mater Base Hospital.

Doctor, you are an anaesthetist in Mackay?-- That's correct.

Could I show you this document? Dr Jelliffe, is that the original of a statement you provided to the Commission?-- Yes, it is.

Are the contents of that statement true and correct to the best of your knowledge?-- To the best of my knowledge, yes, they are.

Commissioner, I tender that statement.

COMMISSIONER: Thank you, that will be Exhibit 437.

ADMITTED AND MARKED "EXHIBIT 437"

MR ATKINSON: Doctor, if I can just walk you through your statement?-- Uh-huh.

You graduated - became a physician, sorry, and an anaesthetist in England in 1997?-- That's correct.

You formally became a Fellow of the College in February 1997?-- Yes.

And according to the system over there, I understand that you only finished your training in December 1998?-- Two years after the exam, yes, that's correct.

You had plans to travel to Australia once you finished your training?-- Yes, I did. I have had family over here in Coffs Harbour. I long had a desire to come out to Australia, just see what it was like working, living here, and decided to apply for a job in Townsville for a one year working holiday.

You approached Townsville General Hospital and you secured a

position there as a registrar in anaesthetics?-- That's correct.

You obtained registration through the Medical Board?-- Yes.

And was that subject to conditions?-- The condition was it was subject to the fact I could only work as a trainee senior registrar at the Townsville hospital Anaesthetic Department under the auspices of the Associate Professor Vic Callam, who was my supervisor.

You weren't recognised as a deemed specialist at that time?-- Not at that stage, no.

What arrangements were made between you and the Board about you becoming a recognised specialist in Australia?-- I had to approach the College of Anaesthetists in this country to determine what, if any, further training they would require me to do in order to get specialist qualification - specialist registration, I beg your pardon, and they determined that my one year as a senior registrar in Townsville, plus a successful pass at the Australian and New Zealand College of Anaesthetists exam would be sufficient. They thought my London teaching hospital training was adequate.

Now, you worked in Townsville for a year. What kind of visa did you have during that appointment?-- I had a temporary working visa and it is a subparagraph 422, I think. It was basically working as a medical trainee.

And it was for one year?-- For one year, yes.

What conditions applied to your visa?-- That I could only work at the Townsville Hospital and I could only work as a trainee anaesthetist.

Now, the position went for one year from January 1999 to January 2000?-- Correct.

After that you went to work in Hobart for a year?-- Yes.

And from there you applied for a job in Bundaberg?-- That's right.

Is it right that you applied for the job in about mid-2000?-- About that July time, yes.

Now, did you have your qualifications as a fellow by then?-- Not at that stage, no, but because I had completed the one year provisional fellowship, I was able to get registration as a senior medical officer at that stage - not as a deemed specialist but a senior medical officer in anaesthetics.

You went to Bundaberg pursuant to an Area of Need declaration?-- That's correct.

What arrangements were made in terms of the Area of Need application and registration with the Medical Board?-- That

was all taken care of by the administration at Bundaberg Hospital. Dr John Wakefield was the Director of Medical Services so he organised all that for me, basically.

What was your visa status by the time you came to work in Bundaberg?-- Still it was a temporary registration - temporary working visa but the subcategory had changed because I was no longer a trainee but I was working as a senior medical officer.

Right. Can I show you this document? Is your screen illuminated?-- Yes, it's fine. Very clear.

Now, that's a letter, of course, which is not addressed to you but to Dr Wakefield?-- Uh-huh.

But it talks about your visa status?-- Yep.

And talks about a subclass 422-----?-- Yes.

-----which is a medical practitioner's visa. Is that your recollection of what you had?-- Yes, it is.

All right. And can you - I wonder if you could scroll upwards, Mr Pulcinella. Can you remember what conditions attached to that visa?-- Specifically that it was job specific, in other words I could only use it if I retained that job at Bundaberg, and if I was either removed from the job or chose to leave, I had to let immigration know.

You worked, is this right, in Bundaberg from January 2001 to about November 2002?-- That's correct.

Can you describe the conditions when you first arrived?-- A very happy ship. It was a busy little hospital, it was well organised. The medical director at the time, Dr John Wakefield, was very supportive and morale was very high. We got - the workload was heavy but everyone was working in a very happy environment at that stage.

In what way was Dr Wakefield supportive?-- He was very empathic with the problems that you had with difficult on-call rosters, that sort of thing. He would turn up in theatre regularly. He would make his presence felt. You always felt you could approach him if you had any particular problems. He was just a very supportive administrator.

And how many anaesthetists were working at the hospital in that period, let's say from January 2001 until Dr Wakefield's departure?-- There were four in the department, as I recall, and we had a VMO, Dr Jon Joyner, who would come and do sessions, and nights on call, and that sort of thing for us as well.

You make the point, Dr Jelliffe, in your statement that after Dr Wakefield left, things weren't so good?-- No. Dr Kees Nydam or Kees Nydam took over as the acting medical director and it was extraordinary. The place just started to spiral

downhill. A lot of staff started leaving, there was discontent amongst many of the nursing staff. We started - we lost a couple of our anaesthetic colleagues.

Who are they?-- Martin Wakefield had, against all odds, got the Australian exam and had moved down to Brisbane.

And just to clarify that, two things there: there is two Dr Wakefields in the hospital at the same time?-- Dr Martin Wakefield was the head of the anaesthetic department and John Wakefield was the medical director.

When you say against all odds, that's because it is hard to do the training for the exam and work in a regional hospital?-- I would have said impossible because the workload is too great. You need too much time off to do a difficult exam like-----

That's a generic problem for overseas-trained doctors, trying to obtain Australian qualifications?-- Very much so. They tend to only get work in areas of need where the workload is high, where Australian graduates don't necessarily want to work, and you need a lot of support to do a tough exam.

What kind of support do you need?-- You need colleagues who can teach, you need time off to go on courses, you need time off to study and you need to be able to be alert. It is very hard to be alert if you have only had three hours' sleep.

And by that do you mean that doctors in regional hospitals tend to work longer hours?-- Because the departments tend to be smaller, they don't have training registrars, they don't have others to take the workload. Yes, very much so.

Now, sorry, you were telling us, doctor, about people who had left?-- Uh-huh.

This is after Dr John Wakefield's departure?-- Yes.

And that was towards the end of 2001?-- As I recall, it was about nine or 10 months into the job, yes.

So maybe about October 2001?-- October/November, yes.

And you mentioned that Martin Wakefield left?-- Yes. He left, I think, about the March in 2002. Dieter Berens left because he could foresee no possibility he would be able to pass the exam at that hospital and he moved further south and subsequently passed it, and it was then my self as an SMO, Dr Martin Carter, who had the fellowship exam, and we were helped out by Martin Carter's partner, who is now his wife, who was also an anaesthetist. She would come in and do VMO sessions. We also at that stage got a GP anaesthetic trainee, and we still had Dr Jon Joyner who was coming along and giving us help when he could.

You mentioned that Martin Wakefield didn't leave till about March 2002?-- Mmm.

All right. So up until that period you had three core anaesthetists, did you, in terms of fully employed staff?-- Yes.

Yourself, Martin Carter and Martin Wakefield?-- Yes.

And could you tell us then, in that period when there was three core staff supplemented, as you say, by Dr Joiner and Dr Carter, the female one?-- Yes.

Sorry, what was her name?-- Allison. I can't remember her surname.

Those two, anyway, were working as visiting medical officers?-- Yes.

You have these three core staff. What was the workload like at that time?-- Well, the workload seemed to be increasing, specially in the intensive care unit, and that was exacerbated by the fact that the nursing staff shortages were - seemed to be getting more acute, began to get the distinct feeling that, yes, things were hotting up, we had fewer people on deck and it was beginning to become really less fun to work there.

At that time, is this right, there were two surgeons at the hospital?-- Yep.

And they were Sam Baker and Charles Nankivell?-- Charles Nankivell, yes. Charles Nankivell left around Christmas time in 2001, and he was a beaten man. He had been broken on the wheel at the hospital. He looked grey and old. He was - when Sam was away and, of course, he was doing a one-in-one. He really had no choice. I think he had to leave for his health. You can't keep up that sort of punishing roster. Every time I went to the hospital, he would be there, nighttimes, weekends, bank holidays, Christmas, whenever, he would just always be there. He was a very committed surgeon, very committed to the public sector, and I felt they drove him out, he had no choice.

Can you recall what steps management took to relieve the workload on Dr Nankivell?-- None as far as I was aware.

And you could see, watching and working with him as an anaesthetist, that his condition was deteriorating?-- Very much so.

That was in the period in about December 2001?-- Towards the end of 2001, yes.

Now, after Christmas was the workload the same for you?-- I recall it getting heavier, which is not unusual. Health workload is going to increase, whatever.

There are cycles of work for anaesthetists, I imagine?-- Yes, you tend to get shutdowns around Christmas. They do less elective surgery but also it depends on the presence of

surgical colleagues and how big the department is and that sort of other issues like that.

All right. You mention in paragraph 11 of your statement, Dr Jelliffe, that there came a time when there were two of the anaesthetists left of the four?-- Yep.

And you say that because of the increase of the workload and the absence of a positive atmosphere, you suffered tiredness, low spirit?-- Mmm.

When was that, roughly?-- Oh, I think probably February/March time. No, it would have been just after that because at that stage Martin Wakefield was still with us. As soon as he'd left.

So about March/April?-- Yeah, about March/April, yes.

Then immediately after that in your statement you discuss or you talk about a conversation or a number of conversations with Peter Leck about waiting lists?-- They weren't specific but because Martin Carter, if he wasn't around I was the only other anaesthetist in the hospital. So if there were issues of waiting times or problems int he clinic, then Peter Leck and I would discuss them, but they weren't particularly formal and they tended to be in the intensive care unit or in the theatre complex.

Am I right to understand, from the sequence of the statement, that the conversations with Peter Leck occur at a time when you were suffering this tiredness and low spirit?-- Yeah, very much so.

Did you discuss your taxing workload with Mr Leck?-- No, I didn't.

And why was that?-- Pride. When I trained in the 80s, you didn't complain about workload. Retrospectively, I think that was pretty stupid, but I think probably pride. Professional pride. I didn't want to admit that I was being swamped.

Well, did you have any idea about the extent to which management might be responsive to those issues?-- I think there was a general feeling in the hospital that management was not. Events subsequent to that have shown that's probably the case and there was always a feeling that the main driving force behind management at the hospital was income, and anything that was likely to damage that income would be frowned upon, ie doing less work.

And which kind of less work?-- Elective surgery is the main - is a main source of income for a hospital, whereas emergency surgery and casualty work is not. So any attempt to cut back on the amount of elective work done is frowned upon quite seriously.

Well, doctor, you have worked at Townsville General Hospital. You have worked at Bundaberg Base?-- Mmm.

And even now in Mackay, you work from time to time at the Mackay Base?-- I am a VMO at Mackay, yes.

Can you say as to what extent there is some preference given to elective surgery over emergency surgery?-- There is a lot of preference given, for the financial reasons I have outlined, and therefore any attempt to cut back on the days routinely operating is resisted very strongly. The result of that is that if you are on call for that evening, you then have to start the emergency surgery list at some unspecified time late in the evening.

Do you mean to say the emergency surgery is often deferred so the elective surgery can be done first?-- Invariably deferred.

Just at Bundaberg or at all?-- At all of them.

All Queensland Health hospitals?-- Yep.

You work in the private sector?-- I do now, yes.

I guess the short thing is the private sector doesn't do emergency work?-- We do do emergency work but our time management is better and there seems to be a significantly different work ethic.

You explained that you had these discussions with Mr Leck but you don't raise the concerns about your fatigue?-- No, I don't.

You explain in paragraph 13 that you were working a one in two roster?-- Uh-huh.

And that was on call but that was in addition to the routine-----?-- Yes.

-----normal working hours?-- Yes.

Can you explain what kind of hours then you were expected to work at that time?-- A working day would be anywhere between eight and 10 hours, and if you were on call that night, you would then be expected to continue with whatever emergency surgery was required. Additionally, we had to cover the obstetric anaesthetic service, epidurals and emergency caesarian sections. We also ran the intensive care unit. We had to be on call for airway problems in the accident and emergency unit and for trauma calls.

And physically for you what did that involve in a normal day, in terms of-----?-- Normal day would be completely frantic. You would do what you could. You would dive out to ICU to check on ventilated patients between patients in the routine list. If an emergency procedure was required and it was a real emergency within the hour, you then had to stop the elective list to do that. Then if there was a trauma call, it could be very chaotic.

Can you say how many hours you might work each week at that time?-- I am not very good at maths but you would - if you were on call you would be very lucky to get three hours' sleep, and that was every other night and every other weekend.

Right. Now, in paragraph 14 you talk about the period leading up to Easter 2002?-- Mmm.

You say there that you were the only senior anaesthetist in the hospital-----?-- Yep.

-----for an eight day period?-- Yep. Dr Carter had gone off to a conference with his partner so that was two of the anaesthetists gone. I recall that Adam - I am afraid I can't remember his second name - the GP trainee - wasn't around and Jon Joyner was available for a couple of sessions only that week. I was the only in-house anaesthetist.

And Dr Carter had taken his wife?-- Yes.

So you were the only person in-house on the campus, if you like?-- Yes.

And tell me about that? What kind of hours were you working at that stage?-- Well, that was horrendous. It was quite busy in the intensive care unit at that time. We had three ventilated patients I remember very well. I can't recall the obstetric workload, but that tends to be something that just is ongoing, and I had decided it was just impossible with one of me - it is effectively four people's work to do any elective surgery. I think Jon said he would be able to do one elective list during that week but I was not prepared to expose myself to worsening fatigue, and I think it is dangerous for the patients having someone - if you are having an operation done on you that is not an emergency, to be done by somebody who is half dead on their feet I think is very suboptimal and it is poor care.

Let's take those things in turn, doctor. You spoke about the period prior to Easter when you were doing a one-in-two roster?-- Yep.

And you would often get, say, three hours of sleep a night if you were on call?-- Mmm.

That was every second night?-- Yeah.

When you were alone in the hospital is the workload higher than that?-- Well, you were there - you have to be available 24 hours a day.

And-----?-- That was an eight day stint.

Can you say whether or not you noticed that having an effect on you, on your body?-- Yes, very much so. I was very irritable, I was off my food, I couldn't sleep properly when I got to bed. I am sure my decision-making processes were

impaired. I felt unwell. It was a very unpleasant feeling.

Doctor, I imagine as an anaesthetist you are well capable of talking about the correlation between tiredness having symptoms similar to drunkenness?-- Very much so. It has been quite well shown that if you work for more than 10 hours at a stretch, it is equivalent to having a blood alcohol level of .05, the legal driving limit. So if it goes on, it is worse.

You worked well more than 10 hours?-- Absolutely, yeah.

Then the third thing I was going to take you to in what you mentioned was that your workload is spread across all these different wards; intensive care, obstetrics, accident and emergency?-- Uh-huh.

And general surgery?-- Yep.

You made a decision to drop your elective surgery list?-- Yes for that week.

How did you make that decision?-- I didn't feel I had any choice. I decided I was not going to do routine surgery. I thought it would be dangerous. I needed to, if there was a possibility of getting any sleep in the morning, I would take it. So I notified the theatre manager.

I guess my question was why not drop something else?-- Because everything else can't wait. If you get a helicopter bringing in a patient with a smashed pelvis, they can't wait, and if someone's going to have an emergency caesarian section, they can't wait. If someone is going to have bunions removed, they can wait.

So you are saying you spoke to your theatre nurse?-- Yes, the theatre manager, and I also passed a message on to Lyn, who is the medical superintendent's secretary, to pass on to Mr Leck.

All right. What happened subsequent to that?-- I received a call via - I think it was via Lyn, that Peter Leck wanted to see me in his office, which was quite a departure. It had never happened before.

You had never been called to his office before?-- No, no. I recall it was on a Tuesday late in the morning. I attended his office at the time requested and walked into his office. He was sitting at the other side of the desk. He had a manila human resources folder open in front of him and he was thumbing through it. I presumed that it was my human resources folder but I couldn't see whether it was or not, so I don't know, and he looked as though he wanted to discuss something serious, but before he started he said, "Chris, just by the way, remind me of your visa status." I found that a complete non sequitur. Also found it rather disturbing, because I implied from that that he was going to use my visa status and my continued residence in Australia being tied up with the job at Bundaberg Base Hospital, because I had clearly - I wasn't complying with what he wanted to do.

Had you ever discussed your visa status with him before?-- No.

Had you ever made small talk with him before?-- No, not really.

Was your visa status something that needed his cooperation in terms of managing on an ongoing basis?-- Only that when you get a contract for a year, you then get the visa on the basis of that contract, and the contract had been renewed in January, so I was already four months into the new visa, so I couldn't see why it was in any way relevant.

You got this call very soon after you had cancelled the elective surgery list?-- Yep.

Is there any normal correlation or relevance between your surgery lists and your visa status?-- Absolutely none whatsoever.

Well, as much as possible I want you to confine yourself to what you saw and heard, rather than what's going on in your mind. But you were asked this question by Mr Leck?-- Uh-huh.

How did you respond?-- I was a little taken aback, but I said that I had married my Australian girlfriend three months prior, which is not information that he knew, and therefore-----

You married her. You left Bundaberg, went to Hobart?-- Went down to Hobart.

And married her there-----?-- Yeah.

-----where she comes from and had come back?-- Yeah.

You hadn't discussed that previously with Mr Leck?-- And it wasn't information I needed to impart, because you only need to inform management and the HIC if your change is to permanent residence. A spouse visa is an interim visa allowing you to remain in Australia for two years and then you become a permanent resident, which I now am.

Under the subclass 422 visa, the hospital is your sponsor?-- Yes.

When you have a spouse visa, who is the sponsor?-- My wife.

So you told Mr Leck that you had married?-- Yes.

And that you had a spouse visa?-- Yep.

Right. Did he take the conversation about the visa any further?-- No, it was completely dropped. We moved on to the fact that I am looking rather tired, that it must be very difficult working on my own, that he quite understood that we couldn't do any elective surgery, would it be possible to get

back to doing elective surgery as soon as possible. Martin Carter was due back that weekend so I said elective surgery would resume the following week as normal.

And was there any change in your impression of how he conducted himself before and after you apprised him of the change in your visa status?-- Yes. Well, I walked in. Initially he looked - he didn't get up, he didn't look threatening but he looked focussed and his - just his demeanour, his body language changed. I think what I had said to him had surprised him. Yes, that's probably the best thing. I think I had surprised him.

You speak about body language, Doctor. Before you were an anaesthetist I understand you were a general practitioner?-- Yep, I was a GP for 11 years and then went back to square one and retrained.

Whether as a general practitioner or as an anaesthetist-----?-- Mmm.

-----do you get training on how to assess people in terms of their non-verbal communication?-- Very much so, and it's quite an important part of medicine.

What happened after that meeting? Was any change made in terms of your workload?-- No, but it improved slightly because Allison and Martin returned from the conference but I'd already decided at that stage that I had to move on and so I started making inquiries about getting another job.

When did you start making those inquiries?-- I think the Monday after that.

Right. Doctor, can I ask you a couple of general questions before I let other people ask you questions?-- Yep.

One is you mentioned Dr Martin Wakefield?-- Mmm-hmm.

Was it the case that when you came to Bundaberg Base, he was the Director of Anaesthetics?-- Yes, he was.

Was he a fellow of the college?-- Not at that stage, no.

He was an SMO?-- He was an SMO as well, yes.

Just like yourself?-- Yes.

He was English like yourself?-- South African.

Sorry?-- Yes.

Second of all, can I ask you this question: what do you say to the suggestion that Queensland Health seems to prefer employing overseas trained doctors rather than Australian fellows?-- I'm convinced of it and I have had personal experience of that myself not only at Bundaberg but at another hospital. I had been pursued for two years to run the department at another base hospital in Queensland and I said I was not prepared to do that and try to do the exam but I would look at the situation when I'd passed. When I passed the exam I contacted the manager at that base hospital and the trail went cold. That was the last I heard.

In the meantime, I understand you'd moved to that town?-- Yes. By that stage I had naively imagined I would be getting that job. My wife and I had bought a house there and I got contacted by the private group who heard I was moving down but had nowhere to go to and would I be interested in joining them. I have never previously entertained the idea of going privately but it's working out very well.

What reasons might there be to prefer overseas trained doctors to fellows of an Australian college?-- Well, the first thing is financial. As soon as you get the Australian exam you get a 45 per cent salary increase. So you can employ overseas doctors effectively to two Australian graduates and you don't get Australian graduates having any problems with basically overseas trained doctors because of the visa situation. Ultimately, they're manipulatable.

The conditions that attach to your subclass 422 visa, that it was specific to one employer and one position?-- Yep.

Is your understanding from speaking to other doctors that that's a common condition?-- Yes. Universal.

Universal?-- Yes.

Doctor, one other question. You mentioned working these long hours in Bundaberg?-- Mmm.

You would have worked long hours in other places like Townsville and Tasmania and presumably England?-- Mmm, yep.

Was this outside the range of what doctors tax themselves with?-- Hugely, yes. It was - it was a bigger workload than I had ever had previously.

Did the hospital take any measures to monitor the extent to which their doctors were working long hours?-- Not as far as I was aware, no.

There is nothing like the transport industry where they-----?-- No.

-----make sure you don't work too long?-- No. They brought in a system for the junior staff, the junior members of the staff, that if they were working more than so many hours, they had to have some time off for fatigue leave but that wasn't the case for seniors.

Commissioner, that's the evidence-in-chief.

COMMISSIONER: Thank you. Who is asking questions. You first, Mr Harper?

MR HARPER: I have no questions, Commissioner.

MR ALLEN: No questions, thank you.

COMMISSIONER: Mr Ashton.

MR ASHTON: Thanks, Commissioner.

CROSS-EXAMINATION:

MR ASHTON: Doctor, I wonder if you could just help us. What's the usual process for cancelling elective surgery?-- I hadn't done it before so I wasn't aware of the usual process. I did it through the theatre manager and through the manager of the hospital.

So you weren't aware whether there was something to sign or anyone else to inform or anything of that sort?-- No, I wasn't aware.

Have you cancelled elective surgery since then?-- No.

So that was the only occasion. So the only person you informed was the theatre manager; is that right?-- Theatre manager and the office.

You're not aware of any protocols that apply to the matter of the cancellation of surgery?-- Not that I was aware.

What period are we actually talking about now, you said Easter 2002?-- Mmm-hmm.

Was that surgery scheduled for that holiday period?-- It would have been for the four days between Easter Monday and the following weekend.

Yes. And the situation you were in, you said you were the only senior anaesthetist in your statement. I think you've clarified that now. You were the only anaesthetist of any kind?-- Pretty much, yes.

Except for the VMO-----?-- The VMO came in I think on the Thursday, yes.

Yes. Did you discuss this situation with Dr Carter before he left? He was your line manager I suppose, was he?-- I honestly can't recall. We had discussions about it and I said, "Martin, I'm going to see how this goes but if I'm not going okay, then I'm going to have cancel some elective stuff."

I see. So you in effect had his consent to that before he left, if necessary?-- I was feeling probably that stressed out at that stage I wasn't after anyone's consent or permission. I was going to unilaterally-----

No, I understand that?-- Yes.

But as it happened, because you'd canvassed the possibility with him before he even left and he acknowledged that that might happen, you in effect had an authority from him to do it if you needed to?-- No, not an authority. It's just something I discussed.

What surgery was actually scheduled?-- I can't remember.

What kind of surgery?-- The sort of things would be routine hysterectomies, oh, bunions, lumps, bumps, all manner of stuff. The sort of surgery you would not contemplate cancelling is anything that - to do with malignant disease, bowel resections, that sort of thing, or obviously anything that was urgent.

Yes. Elective surgery isn't necessarily routine surgery by definition, is it?-- No, elective surgery is surgery that's planned well in advance. It didn't make it routine.

No. In fact, it is almost anything but emergency surgery in a sense, isn't it?-- Mmm.

You see in your statement you say you cancelled all elective surgery?-- Mmm-hmm.

Do I deduce from that properly that that included surgery which was beyond bumps and lumps?-- I know where this is going. I cancelled anything that was not malignant or anything that could definitely wait safely.

So did you select from the list, did you, as distinct from cancelling all? You see, in your statement you say you cancelled all. I'm just trying to understand that?-- Okay. I should have made that clearer. We certainly did some work that week but it was - it was minimal because there wasn't - there wasn't a huge amount and I can't remember the cases I'm afraid.

I'm interested in your choice of the word "unilaterally" when you say you unilaterally elected. That implies that maybe - I guess you have already answered me. It implies that there is some other process normally but this time you did it unilaterally-----?-- There may be but there wasn't a process I was aware of.

And does that mean did you - what happened for the rest of the eight days then?-- We just didn't have elective lists. We still did quite a lot of work. We had three sick patients in the intensive care unit. I can't remember the specific workload in terms of trauma calls, accident/emergency and obstetrics but it was - it was pretty busy.

Yes. Did you have any time off?-- I snatched a few hours here and there if there was a free - I could have a sleep in an afternoon on a couple of occasions, yes.

In that eight-day period?-- Mmm.

And where would you do that? Were you able to leave the hospital or would you have to remain at the hospital?-- No, I was able to leave the hospital.

And what does the expression "stand down" mean? Is that when you - is that when you leave the hospital, is it, but you're

on-call?-- Stand down?

Yes?-- Sorry, I'm not familiar with that.

Well, the expression "on-call" means - you explain to me, would you, what does that mean?-- It means you're available. You had to be within the hospital - within reach of the hospital. You have to become-----

Sorry, within where?-- Reach of the hospital, within easy reach of the hospital. You have to be able to get there, you have to have transport, you have to have a pager, you have to be available.

But that might mean at home, if you live close enough to the hospital?-- Yep.

And so you're on-call for the whole of that Easter period?-- That's correct.

Now, in the actual cancellation process you spoke to the theatre manager. Nothing in writing, you didn't sign anything or issue any directives?-- No.

And did you personally contact Mr Leck's secretary?-- Lyn, yes, I phoned her up.

Did you. What did you tell her?-- I said that I was going to cancel the elective surgery this week because I was on my own, I wasn't coping and there was too much else going on, could she please pass it on.

Did you simply ask her that she tell Mr Leck that?-- Yes.

And did you mention your earlier discussion with Dr Carter?-- No, I didn't.

What did you do when you actually cancelled it? Did you go home or did you simply carry on with other things in the hospital?-- Well, there wasn't a huge amount of-----

I'm speaking of immediately after your decision?-- Immediately after the decision, no, there was just a lot going on. If you've got three ventilated patients, that alone will keep one clinician busy on a 24-hour basis.

I wonder if you could just have a look at this document for me, thanks, Doctor.

COMMISSIONER: Do you want to put that on the screen?

MR ASHTON: I have a spare. It might be a convenient thing, thanks, Commissioner?-- Mmm.

Now, that's an extract from your personnel file, isn't it?-- I have never seen it before so I'd have to take your word for that.

Perhaps if I put that to you. It came from the Commission as being an extract from your personnel file?-- Okay.

Do you see your name at the top?-- Yes.

Can I just pause to mention to you Good Friday in 2002 was the 29th of March?-- Mmm-hmm.

I have got 100 years of Easter Sundays here from one of the church websites?-- Mmm-hmm.

Would you accept my word that-----?-- Oh, yes.

-----Good Friday of that year was the 29th of March?-- Yes.

And so Easter Sunday was the 31st of March. Easter Monday, the 1st of April?-- Right.

Just have a look at that list. Do you notice the third entry from the top? I'm looking at - this is leave taken you see, at the very top you will see in the corner, leave taken?-- Yes.

And if you look at the third entry from the top, you will see the leave taken was stand down leave. You're not sure what that means?-- No, I'm not.

On Easter Monday of eight hours?-- Right.

Now, does that help you in your recollection about how you spent Easter?-- Not really. As I think I said in the statement, I couldn't remember precisely. I was - it's that fuddled, whether it was before or after the Easter weekend, I think that arose because Martin Carter came back, as I said, on the Sunday, so I would have had that Monday off. So, yes, I was incorrect in that. It was the other way round.

I'm sorry. You told us a little while ago-----?-- I thought - yes.

-----it was the four days at Easter?-- I was incorrect. It must have been, therefore, the week before that. So leading up to rather leaving from Easter.

And that explains, does it, the - is it two and a half hours on Good Friday, the 29th of March? You see that? That's the next entry. You see under the date from the 29th of March. That was the Good Friday?-- I have no idea. No recollection of that at all. Sorry.

You just can't help us on that. When did you marry, doctor?-- Boxing Day 2000 - no, 2001, sorry.

And this gave you a spouse visa?-- Yes.

Did you have to apply for that?-- Yes.

When did you do that?-- I can't remember. It was some time

after we got married. I really can't remember.

And I think you've told us you didn't tell the hospital?-- You only - as far as my understanding goes, you're only required to notify the HIC in hospital if your residence status changes from temporary to permanent.

I see. It is not relevant to the Area of Need declaration?-- The spouse visa?

Yes?-- No.

The fact that your status changes and you're the one satisfying that need?-- Not as far as I was aware, no.

And is it relevant to the extension arrangements, do you think?-- I'm sorry?

You see, in the period from October through to December, Dr Naidom and the hospital were involved in the arrangements with the foreign affairs department I suppose it is, foreign affairs and multicultural affairs?-- Mmm.

Immigration and multicultural affairs?-- Mmm.

In procuring for you an extension of your visa and that was to operate from the 5th of February?-- Okay.

Do you accept that?-- Yes, I'm sure. I have no idea of the dates but, yes, that would be about right.

I'm just wondering whether you thought the fact that you had now a completely different status was relevant to that arrangement and that representation to the department?-- I hadn't really given it much thought.

No, all right?-- My change in status would not have happened until I'd actually got the spouse visa I presume.

Oh, I imply no criticism. I'm just trying to understand the sequence in exactly what happened. At any rate you, didn't tell Mr Leck. I think you told us that much?-- No.

What were the arrangements for access to your personnel file?--

COMMISSIONER: Access by whom?

MR ASHTON: By you. By you, sorry, yes?-- I never particularly requested to access it.

You never had access to it?-- Well, I mean, I'd seen it when I believe Lyn was - yeah, I'd been to the office and we cleared a few things up when I first got there apropos visas and that sort of stuff but it wasn't a thing I ever required to access. I didn't think I had any need to.

Again, no criticism; I just want to know. Now, the meeting

with Mr Leck, when did you get the message? I think the meeting was late morning you told us?-- That's my recollection, yeah.

When did you get the message?-- That morning.

And were you asked to attend at a particular time or to arrange a time or how was it put together?-- I honestly cannot remember. I think I was asked to turn up at a certain time.

You now think it was before Easter rather than-----?-- Yeah, I think it was.

Had the period for which the surgery had been scheduled, had that past or was this-----?-- No, that was ongoing. That would have been that week.

It was some time in this week, was it?-- Yes.

Well, I think you said the Tuesday?-- Yes.

So would your decision have been made on the Monday and the contacts made on the Tuesday; does that sound right?-- Probably, yes. That would be reasonable.

And you got that message, did you say, from Mr Leck's secretary?-- Lyn, yeah.

By telephone?-- I can't remember whether it - yes, I mean, it would have been by phone, yep.

Well, apart from the fact that you hadn't previously visited Mr Leck in his office?-- Mmm-hmm.

Was there anything impolite or unusual about the manner in which the request was conveyed to you?-- Not impolite at all. It was just a bit of a surprise, never having been there-----

Yes?-- -----before so this was a completely new departure.

It wasn't a summons or anything like that. It was asking if you could come to a meeting?-- No, it was - it was perfectly polite. Yes, I was asked to attend the offices at a certain time. No doubt if I had not been able to, I could have phoned back and rebooked the appointment, so that wasn't a problem at all.

Yes. Am I right, I get the impression that apart from the times that Mr Leck talked to you about waiting times, is this the only occasion that you had sort of one-on-one contact with him?-- Pretty much, yeah.

Am I also right that limited though it was and until this occasion that you've told us about, the relationship was positive or at least not negative?-- It certainly wasn't negative, no.

No. In fact, I think you said in your statement that he was asking for some positive assistance from you, positive contribution to, "What can we do about waiting lists"?-- Oh, yes, yes.

Now, why do you say that the file that he had looked like your personnel file if you hadn't ever accessed it?-- I didn't. I said he lad a personnel file in front of him.

No, I think you say - well, you can say whatever you like now. I'm just - I'll just explain where that came from?-- Okay. Well, if it was in my statement, then I - there was a personnel file - they're quite distinctive - in front of him. I couldn't definitely say that it was mine. It seemed-----

Which one - which personnel file do you think it was?-- I sort of assumed it was probably mine since I was the-----

No, no, there are two for you, aren't there?-- Are there?

Mmm. You didn't know that. There is one from HR and there is one from DMS?-- Okay. I wasn't aware of that.

So you don't have a view, obviously, about which one it was?-- No.

All you know is it was a file?-- Yes.

How do you know it was a human resources file?-- It looked like one.

It was manila but what else distinguishes it as a human resources file?-- They just look - they have got the name on the front and they just look like the file I'd seen in the office. I couldn't be more specific than that.

But all files look like that, don't they?-- I couldn't comment.

All right. Now, setting aside for the moment the context of the meeting, we will come to that, you will agree, won't you, and I stress setting aside the context, you will agree that it's perfectly legitimate for the District Manager to inquire about cancellation of a surgery list?-- Absolutely.

Right. And again leaving that context aside, you will agree with me, won't you, that the words "just remind me of your current visa status" are not intrinsically threatening?-- They were just unusual given the circumstances.

Yes, setting aside the context for a moment, those words of themselves do not constitute a threat or they're not particularly threatening?-- Not at all.

Especially when, as you say, spoken casually and matter of factly. So was it really the body language that made the difference?-- Body language, gut feeling-----

COMMISSIONER: And the context?-- It felt very bizarre.

MR ASHTON: Pardon?

COMMISSIONER: He did say the context and you said the context.

MR ASHTON: Yes, I said setting aside the context and now I'm coming back - because you agree, without context, they're unremarkable. Now I'm trying to find out what the context is and one of the elements of context, and I'm asking you if this was the real one, is body language?-- It's a combination, I think, of the circumstance, never been asked to do that before. It was a very bizarre way to open a discussion about cancelling elective surgery.

COMMISSIONER: By circumstance, I take it you mean the time sequence that you had indicated that you were cancelling surgery and that came shortly afterwards?-- Yes, exactly.

MR ASHTON: You say he went from threatening to compliant?-- I think I probably wouldn't use the word "threatening". I think I would use the word "focus". If I used the word "threatening" in the statement-----

I think you did use the word "focus"-----?-- Okay.

-----in your evidence-in-chief as a matter of fact?-- Yes.

You think that's a better description of it?-- Yes, he wasn't overtly threatening.

All right?-- I found the situation threatening.

Yes. I just want to ask you about that. You say at one point in paragraph 19 of your statement, "I suspected I knew where this meeting was heading." This is before you had gone to the meeting?-- Mmm.

Have you your statement handy?-- I haven't but I remember that bit quite well.

I'm sure there is a copy there if you would like to-----?-- Thank you.

Paragraph 19, Doctor?-- Nineteen, yep. Mmm-hmm.

"I suspected I knew where this meeting was heading. I just had a gut feeling about it"?-- Yep.

Then when he spoke these words, you say, "This confirmed my gut feeling when I went to his office." That's in paragraph 21?-- Yes.

So you'll agree, won't you, that you went to the meeting with an anticipation as to what it was really about?-- Yes.

Now, I want to put something to you?-- Mmm-hmm.

And I want you to understand that it contains no criticism of you. I just want you to consider whether this anticipation about Mr Leck, about his playing the visa card if I can put it colloquially and your own private knowledge as it was that you could trump that card, because you knew that, didn't you?-- Mmm.

You actually had the complete answer?-- Mmm.

I just want to put to you that that anticipation about his playing that card, your own private knowledge that you could trump it because of your new marital situation might have predisposed you to find a threat where there was none. And now, before I invite you to comment on that, I want to say again there is no criticism of you implied in this. It is a very human phenomenon, I'm sure you will know-----?-- Yep.

-----from your years as a general practitioner. I just want you to be as fair to Mr Leck as you can in responding to that situation. Might it not have been because you were anticipating, you have told us that, and you already had your answer - you see, you've referred to eight spoken words. He said eight words matter of factly?-- My anticipation wasn't as he was going to, as you call it, pull the visa card. My anticipation very much was that there was going to be some trouble ahead because I'd cancelled the source of his income to the hospital.

I see?-- When the visa was mentioned, I suppose that shocked me but didn't surprise me.

Shocked but didn't surprise?-- Yep.

But how could you have found it threatening because I put to you, I mention to you of course that it was eight words spoken in your own description matter of factly and casually?-- Mmm-hmm.

But that aside, you knew it was completely empty, didn't you?-- An empty threat?

If it was a threat at all it was a completely empty one from your point of view?-- Yes, it wasn't going to affect me. In other words, my visa status no longer relied on his continuing to employ me.

COMMISSIONER: But did it indicate an attitude to you which was threatening?-- I'm sorry.

Did it indicate an attitude to you which threatened you?-- Yes.

MR ASHTON: Well, I ask the question this way: did you feel threatened?-- Yes, I did.

Why would you feel threatened when it was an empty threat?

COMMISSIONER: He has already answered that by answering my question. It was Leck's attitude, Mr Ashton.

MR ASHTON: With respect, I hadn't thought that was an answer to my question but as you please.

COMMISSIONER: All right.

MR ASHTON: Do you see the distinction I'm trying to draw? He can threaten all he likes; if it's a completely meaningless threat to you, why would you feel threatened? His attitude might indicate he's threatening you?-- Yes.

But it's meaningless?-- It isn't meaningless to be threatened. If you have got a way of countering that threat, then that's my good luck, but I still think it was an inappropriate way to approach a discussion with a colleague.

Well, that might be and we're not in agreement about - as well it might be but that's not my question. You see, my question is did you feel threatened?-- Yes.

I'm asking you to explain to me how that could be so when you knew there was nothing in the threat?-- Because it was quite - it was alarming that this was being brought up completely out of context in the situation of discussing cancellation of routine surgery.

The meeting proceeded in its discussion about the cancellation?-- Mmm-hmm.

And there was no complaint about that?-- No.

Just an explanation sought and given and accepted?-- Yes.

And the meeting was in your words a non-event?-- It just sort of fizzled out, yes.

Who did you tell about this meeting? Well, sorry, I should ask you first, you didn't remonstrate with Mr Leck about the perceived threat?-- No. Not at all.

Did you remonstrate with anyone, did you complain to anyone?-- Remonstrate, I certainly - no, I didn't.

Don't let me put words in your mouth. Complain, remonstrate you might-----?-- No, I had already decided at the end of that meeting that it was time to find another job, that the atmosphere was uncomfortable. I distinctly remember talking to Dr Sam Baker about it, one of our surgeons.

What did you tell him?-- I told him exactly what happened and I seem to recall he said something like, "Jesus Christ, that's a bit strong."

So you told him the full story that you've just told me?-- Mmm-hmm.

Did you talk to Dr Carter?-- Yes.

Did you tell him the full story?-- Yes.

What did he say about that?-- Similar surprise, but in the same conversation I told him I was looking for another job.

Did he do anything about it, that you know of?-- No, I didn't think there was much he could do.

It was a one-to-one. There was nobody else there. If you like, it was his word against mine. I didn't really see that there was going to be any percentage gained in complaining to anybody, and I did what most doctors do in the situation, I just decided to walk with my feet - vote with my feet.

You had a discussion with - so we've got Dr Carter, Dr Baker. Anybody else?-- Quite possibly.

Mr Thomas, the journalist, of course. You've given us-----?-- That was a lot later down the track.

That's it?-- It's something I've mentioned quite often.

Mr Thomas reports that you reminded Leck - "The reminder that I was a happily married - that I was happily married to an Australian changed the emphasis somewhat."?-- Mmm hmm.

But it wasn't a reminder?-- No, it was new information.

Yes, I see. So you didn't tell him that, or was it just a choice of words, I suppose?-- Choice of words, I think.

And you didn't tell him that you received a summons from the manager?-- I really can't remember.

Well, you wouldn't have, because you told me you didn't?-- Well, summons/request to attend - isn't that just playing with words a bit?

Or - do you think so?-- I do, but okay.

"Summons" is a bit pejorative, isn't it? Let's not worry about it. You're not sure what you said?-- I spoke to Mr Thomas on the phone, and I cannot remember my precise wording. The reason that came about was because I had been following his very interesting series of articles in The Courier-Mail about the State of Queensland Health, and I was - I agonised over phoning him for a long time. It's not a thing I've ever done before.

I'm not complaining at all, I'm just trying to-----?-- Okay.

I'm noting the differences in what you recorded and what you've said, and I'm just wondering, is there anything in them? How do they arise? Perhaps there's not. He refers to your cancelling some routine surgery?-- Mmm hmm.

Your statement refers to "all elective surgery", and I think we've got in our discussion to a hybrid version of that, a selection from the list. It was either of those-----?-- A safe selection of elective surgery. An appropriate selection, yes.

So it was neither one of those things, really?-- It was an appropriate selection.

Yes. I have nothing further. Thanks, Commissioner.

COMMISSIONER: Thank you. Mr Fitzpatrick?

MR FITZPATRICK: No questions, thank you.

MR ATKINSON: Two quick questions, Commissioner.

COMMISSIONER: Thank you.

RE-EXAMINATION:

MR ATKINSON: Dr Jelliffe, my learned friend Mr Ashton - he asked you a question about the use of the term, "I unilaterally elected to cancel all elective surgery", and he suggested to you that perhaps that meant that you were aware of some other means of cancelling surgery. Can you say whether or not you meant, by using the term "unilaterally", to mean you didn't engage in discussion?-- No, that's right. I decided that it had to be done. It wasn't safe to continue.

You were also asked by my learned friend questions about paragraph 19 where you mention that in advance of the meeting you had a gut feeling that you would be discussing the decision to cancel elective surgery-----?-- Yep.

-----because that was taking money away from the hospital?-- Mmm hmm.

Were you aware in advance of that meeting with Mr Leck of any other practitioners being reprimanded or chastised for cancelling elective surgery?-- No, I wasn't.

Nothing further, Commissioner.

COMMISSIONER: Thank you.

MR ATKINSON: May the witness be excused?

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

WITNESS EXCUSED

COMMISSIONER: Nothing else?

MR ATKINSON: Nothing else.

COMMISSIONER: We'll now adjourn until Monday at 10 a.m.

THE COMMISSION ADJOURNED AT 4.03 P.M. TILL 10 A.M. MONDAY, 10 OCTOBER 2005