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 12/10/2005

..DAY 23

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

THE COMMISSION RESUMED AT 10.00 A.M.

DARREN WILLIAM KEATING, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Yes, go ahead.

MR ALLEN: Excuse me, Commissioner, could I announce the appearance with me of Ms Lauren Coman Of counsel.

COMMISSIONER: Yes, Mr Allen, thank you. Before you start, I think I should make an order with respect to Mr Leck's evidence. I take it no-one has any objection to Mr Leck's appearance here and in the precincts of the building not being photographed? Very well. I order that Mr Leck not be photographed in or in the precincts of this building.

Yes, Mr Douglas.

MR DOUGLAS: Thank you. Dr Keating, yesterday you answered a number of questions to the effect that you had made inquiries or were kept informed as to the progress of the attempts by Mr Leck to instigate an audit review following Ms Hoffman's complaint. Do you recall broadly questions about that?-- Yes, I do.

And you said at one point that you believed that you were copied some e-mails or given some documents from Mr Leck which gave you some information about those matters?-- Yes, I remember saying that, yes.

Do you remember approximately - if you don't, please say so - when you received those documents? What period, perhaps, are we speaking of?-- I think it was in relation to the upcoming investigation of Dr FitzGerald, so I think it was in the January/February period in 2005.

Could I ask you to look at this document on the visualiser, please? It is not a document I have copied, yet, Commissioner, but those behind me and beside me can see it on the visualiser. Dr Keating, before you look at it I want to tell you I am showing you an exchange of e-mails that occurred in mid-January 2005 and the highlighting on the document is my highlighting. Could I ask you to take that on board? If I can invite you first just to look at the entire document on the visualiser - it is only a one and a half page document. It might be best to start at the end and work back, given the way these things work as e-mails. You have read that?-- Yes.

Yes, thanks. Have you read that exchange of e-mails before me showing it to you today?-- I remember - I think I remember them being shown in the Commission at one stage.

All right. Do you recall receiving any of those e-mails, or

copies of them, in or about January 2005?-- I don't recall receiving them.

Any advice you received of a documentary nature from Mr Leck about the progress of the appointment of an auditor, or the progress of an audit, must be in some other document, therefore?-- I would agree with that, yes.

I still want to ask you some questions about this, if I may, this exchange. Obviously Peter Leck is one of the personalities referred to in this exchange of emails?-- Yes.

And the other is Dr John Scott?-- Yes.

In January 2005 you knew Dr Scott to be the General Manager Health Services of Queensland Health?-- Yes, I did.

Thank you. Is it correct to say that on or around the 20th of January 2005 you knew at that point that it would be Dr FitzGerald who would be conducting the forthcoming audit?-- I think it would be some time after that, but, yes, I think.

You believe it might have been later in January or perhaps early February?-- I think it was later in - slightly later in January, or maybe early February, yes, but - when I found out, yes.

You would have received that information from Mr Leck?-- Yes.

Do you recall in that exchange of e-mails that Mr Leck seems to be referring to some correspondence from a member of the nursing staff outlining concerns?-- Yes.

Do you recall that? Your recollection is that as of January 2005, the only correspondence you knew of which had been received from a member of nursing staff outlining concerns was the 22nd October letter from Ms Hoffman?-- Sorry, that who had received?

The only correspondence you knew of in January 2005 that involved a member of the nursing staff expressing concerns about any issue was the 22nd October letter from Ms Hoffman?-- I was aware of that letter. I was also aware of another letter from a Michelle Hunter relating to the P26 situation.

That latter letter was not one which you believed was being referred off for audit, is that so?-- Sorry, I did not-----

The P26 correspondence?-- The P26 correspondence was not being?

Referred off for audit?-- No, I didn't believe that - I didn't believe that that was - no, I didn't believe that that was one of the ones being referred off, but that it in fact involved Dr Patel - I don't believe the letter was going to be passed on to Dr FitzGerald but I believed the matter would be brought to his attention.

Thank you. Could I ask the operator just to scroll down to the earlier email? Could I ask you to first, if you could, please, focus on the second highlighted portion of that email, which is 13th January 2005, from Mr Leck to Dr Scott. Do you see that Mr Leck expresses there a view he has about your beliefs?-- Yes.

Just read that and I will just ask you some questions about it, if I may. Is it in fact the case that from the 22nd of October 2004, up to the week prior to the 13th January 2005, in your opinion Ms Hoffman's complaints were not justified?-- No, that was not my opinion.

Did you believe, during that period, that they did have some justification?-- I did believe that there was some justification that required further review.

When did you first form that view?-- After I received the initial - after I received the initial letter.

So even as early as late October 2004, you, Dr Keating, were of the opinion that Ms Hoffman's complaints may well have some elements of justification?-- I was of the opinion that there were serious issues that had been raised and required further review and that there was two components to - I believe two major components to her letter, and that was related to the interpersonal relationships or personality conflict, and also the clinical issues that she had raised, and unfortunately the boundary between them was muddy or not clear.

You recall yesterday we were able to identify an approximate date, namely 4 January 2005, at which point in time you formed certain views which you expressed in your memoranda of or about that date?-- I don't think - yes, I did write that down but I don't believe it was a memorandum as such.

It was a document that you prepared for yourself to note your thoughts?-- Yes, that's right.

You know the document I am speaking of?-- Yes, yes.

Prior to the 4th of January 2005, did you express the view or opinion to Mr Leck that in your opinion Ms Hoffman's complaints, encapsulated in her letter of 22 October 2004, were not justified?-- No, I don't believe I ever said that to him.

Thank you. Prior to on or about 4th January 2005, were you of the opinion that Ms Hoffman's complaints, so encapsulated in that 22 October letter, were completely driven by personality conflict between Dr Patel and staff at the hospital?-- I did not believe that her letter was completely driven by that. I believed that there was personality conflict, particularly between Dr Patel and Toni Hoffman, which we had aimed to work - start processing, working through that, and that that had a flow-on effect to other staff, particularly in the ICU.

At any time prior to 13th January 2005, that is the date of this email, did you express a view to Mr Leck that in your opinion Ms Hoffman's complaints were completely driven by personality conflict between Dr Patel and staff at the hospital?-- I don't believe that I expressed an opinion where I said it was completely driven by that. What I believe I said was that there was, as I said previously, both personality or interpersonal conflict situation and there is clinical issues, and that the boundary between them was very unclear, and that one affected the other.

You would have had many discussions with Mr Leck about these issues arising out of Toni Hoffman's complaints - between 22 October 2004 and 13th January 2005?-- I believe I had a number of - I remember a number of discussions.

Can I ask you to descend further into that email? Do you see that I have highlighted a portion commencing with the words "My med super is not keen to have a professional boffin"?-- "Professorial".

I am sorry, you are quite right, "professorial boffin"?-- Yes, I see it.

Can I ask you some questions about that? Is it correct that as at 13th January 2005 it was your opinion that the person appointed to undertake the proposed audit ought not be a senior practitioner from a metropolitan hospital?-- My opinion was that it required a senior practitioner who had experience from working in a regional centre, and whether they came from a metropolitan or regional centre was secondary. It was the fact that they had previously been able to understand - have experience in working in a regional area and have experience in working in that situation.

Is the nomenclature "professorial boffin" from a tertiary hospital, or like terminology, something or words that you recall canvassing with Mr Leck prior to the 13th of January 2005?-- I can't remember using those words exactly.

Do you remember using words like that?-- I remember using words along the lines of, yeah - yeah, using someone - I think I probably used the word "professorial". I don't think I used the word "boffin" because I think boffin - I don't particularly like boffin, from a medical perspective. So I don't believe I used boffin, but, yes, I believe I used "professorial" and that it was related to experience, having worked in and understood working in a regional centre.

In your view at that time, someone who had worked in a regional centre would be better equipped to capture the nuances of the alleged concerns raised in Toni Hoffman's letter?-- That was my belief.

Irrespective of who was appointed, it was your view, as at 13 February 2005, that the person appointed should be equipped with as much information as possible in order to discern the substance or otherwise of the matters contended by Toni

Hoffman?-- My view was that they would require information. How they - how they started that and what information they wanted, and how they kind of progressed from that would be related to how they viewed the information, the information that was provided to them.

You told us yesterday you knew they would be looking - the person would be looking to you, probably, as a funnel for information?-- I expected to be providing, yeah, some form of information to them.

You would have seen yourself as a principal source of information, given the consideration and investigation you had undertaken since the 22nd October letter was furnished to Mr Leck?-- I hadn't done any - as we said yesterday, I hadn't done any investigation of those complaints as was presented in that letter of 22nd October. I could have provided some opinion about that and obviously some background information about what had gone on previously, but I hadn't done anything acutely related to that, apart from talk about what had happened as regards wound dehiscences and the earlier situations with the oesophagectomies.

Can I capture agreement with respect to a number of matters: you had carefully considered the complaint, had you not?-- Yes, I had.

You had participated in the corroborative interviews which you told us about yesterday?-- Yes.

You had liaised with Mr Leck in respect of the identity of the person to be appointed the auditor, had you not?-- I don't - yes - well, I was asked - sorry, I don't know if I used the word "collaborated". I think-----

I said liaised?-- Liaised. I was asked by Mr Leck in the first instance to find someone. I then spoke to the Director of Medical Services at Townsville Hospital, who offered a number of suggestions. I passed that information back to Mr Leck. Thereafter-----

I only asked you the question of whether you liaised with him?-- Yes, I liaised - well, he liaised with me, I would suggest, as opposed to me liaising with him.

You also contemplated the information in or about early January 2005 and formed a view, as Director of Medical Services, as to the appropriate option to be adopted by Bundaberg Health Service District in respect of the maintenance of Dr Patel's services, had you not?-- Yes, I had.

You had also considered, as part of that exercise, his strengths and weaknesses?-- Yes, I had.

You had also undertaken some assessment for the purposes of advising the Medical Board of Queensland in late January 2005 and early February 2005, or thereabouts, with respect to his -

that is Dr Patel's - continued registration in Queensland after 31 August - I should say 31 March 2005? Isn't that right?-- Yes, I had.

You were a person who had given, I suggest, some deep consideration to these issues concerning Dr Patel following 22nd October 2004?-- I had given consideration to the issues surrounding Dr Patel.

You told the Commissioner yesterday that on the occasion of attendance by Dr FitzGerald at Bundaberg Hospital on 14 February 2005, he asked you about Dr Patel. Do you recall that?-- Yes. Yes.

For the Commission's assistance, the transcript reference is page 6819, line 50, through to and including 6820 line 20. If I can just go on, Dr Keating. I suggest to you that when you were asked that question about Dr Patel, you believed that Dr FitzGerald, the Chief Health Officer of Queensland Health was seeking to elicit from you accurate information?-- The information - I was asked a number of questions which were very broad in their nature.

Those questions were all directed, as you understood them, to elicit from you your views about Dr Patel?-- They elicited - yes, they elicited my views, yes.

I am not asking you whether they elicited your views; I am asking you whether you believed that Dr FitzGerald was seeking to elicit from you your views about Dr Patel?-- Yes, I do.

You understood his questions that way?-- I understood that he was - I understood that he was aiming to get some background information and background information on Dr Patel.

You believed that Dr FitzGerald knew that Dr Patel had been working at Bundaberg Hospital for a period just under two years. He would have known that when he was speaking to you?-- I can only - I can only assume so.

And you knew, when you were speaking to Dr FitzGerald on the 14th of February, responding to this question he asked of you about Dr Patel, that you had worked there for the same period, or approximately the same period?-- I knew that I had worked there. I am not sure if Dr FitzGerald knew that.

You told the Commissioner yesterday, I suggest, that in response to that inquiry from Dr FitzGerald, you told him, in essence, two things: the first is you told him that Dr Patel, in effect, was a loud arrogant person and had upset many people?-- Yes.

Secondly, you told the Commissioner yesterday that you said to Dr FitzGerald - and I will quote from the transcript, Commissioner: "I said to him I believed he" - that is Dr Patel - "was a good - you know, a reasonably good surgeon, based on the information that was being provided to me. He also asked me about the local media politics. It was a

relatively short meeting with Dr FitzGerald." Do you recall saying that yesterday in evidence?-- Yes, I do. Can I make one correction? I meant to say medical politics, not media politics.

I may have mistranscribed it as well. You went on yesterday in your answers and told the Commissioner that you did not tell Dr FitzGerald anything of a deleterious nature about the competence or clinical judgment of Dr Patel. Do you recall that?-- Yes.

And you gave as a reason to the Commissioner yesterday for that that Dr FitzGerald was there to investigate matters and if Dr FitzGerald wanted to ask you for further information or answers to specific questions, then you would answer them?-- Yes.

I suggest to you that the approach you adopted with Dr FitzGerald was to be reactive rather than proactive in providing him with information?-- I aimed to be as responsive to Dr FitzGerald as possible. I was, until he arrived, unclear as to exactly how he was going to conduct his investigation or audit. Certainly he explained he was going to do an audit. He asked some very generalised questions. And I - I gained the impression that he was coming with an open mind to gather information from a large number of areas, and that he was going to the sources as opposed to - the sources of people would had provided concerns or complaints as opposed to someone who is getting feedback second and third hand.

You were one of the sources?-- As I said - well, I was one of the people, but I also - the information provided to me was very much provided in an informal, and/or a - various feedback mechanisms. They weren't necessarily - anyhow, I was potentially going to be a conduit of information.

You were a principal source of information, I suggest, because, as the Director of Medical Services at Bundaberg, you had formed a view by that date as to the strengths and weaknesses of this surgeon?-- I had - yes, I had formed an opinion. As regards - I had formed that opinion based on my experience, knowledge, but how definite I was, how sure about that I believe required further review by a specialist surgeon as well, and, yes - look, I wanted to also be fair and sure, and I suppose, yes, I had written it on paper but I was looking to be fair and sure.

You were sufficiently definite about your views anterior, that is prior to 14th February 2005, such that you had decided, and, indeed, advised Mr Leck that Dr Patel should not be offered an extension of his contract beyond 31 March 2005?-- What I had suggested was that we advertise for a Director of Surgery as soon as possible and that we get Dr Patel - only have him for a very short period of time, and I believe that that was as much related to the interpersonal conflict situation where I believe that he would be unable to change his behaviour.

You deliberately chose not to share any unfavourable attributes that you had identified about Dr Patel with Dr FitzGerald in order to assist him in undertaking the audit?-- No, I aimed to provide as much information, answer his questions to the best of my ability. I do remember he asked about his good and his bad points and I talked about - we talked about, you know, the oesophagectomy situation.

So he asked you about, that is Dr FitzGerald asked you about good points and bad points?-- Yes.

In a similar way to the manner in which the Medical Board of Queensland put matters in their form - assessment form that you spoke about yesterday?-- Uh-huh.

Is that so?-- He just asked about his good and his bad points.

You told Dr FitzGerald about Dr Patel's good points?-- I also believe I told him about his bad points.

You've already told the Commissioner that you didn't tell Dr FitzGerald anything deleterious as to Dr Patel's clinical judgment or procedures?-- I talked mainly about his personality and the effects of that personality situation.

I'll ask you the question again. When you were having discussions with Dr FitzGerald, did you say anything inimical or deleterious or bad about Dr Patel to the best of your recollection?-- To the best of my recollection I talked about his attitude, behaviour and the resulting personality conflicts and how that had affected other staff. I do not remember discussing anything beyond that.

You deliberately refrained from discussing anything beyond personality conflicts which Dr Patel apparently had with the staff?-- No, I did not deliberately refrain from doing that.

Well, you didn't do it, did you?-- I didn't do it because I - it was the way the questions were asked and I was not asked, I was asked very general questions.

If Dr FitzGerald didn't ask you the right questions so as to elicit these points about clinical skills and judgment that you'd identified in early January 2005, didn't you think it incumbent upon you to volunteer them, whether on the 14th of January or at sometime thereafter?-- I believe that he would A, speak to the sources of the information and B, he'd request to speak to me further about this information and that I was aware that he'd been given copies of the original interviews that we conducted and, in fact, you know, my summation did include, you know, information related to that as well, so I allowed him to form his own views on that information.

So you allowed him in your mind at that time to grope around with the data on the one day that he's in Bundaberg and grope through the data subsequently that you happen to send to him and if he happens to arrive at the same views that you've formed as to shortcomings in Dr Patel's clinical skills and judgment, well, good luck to him?-- I don't believe I was out to let him grope around, I believe there was a large amount of preparatory work undertaken to provide him the large amount of information prior to his visit and we also provided him information after that period of time. I also remember that in his debrief he said that he was also unsure about Dr Patel's competence based on this information and that he would have to go away and get further information before he would speak to the Medical Board as well, so I believe that he had come to the same - he'd be more sure than I did about - he'd - to me, be more sure than I was.

After he expressed that to you, that he was unsure, did you think that was the opportunity for you to say, "Look, Dr FitzGerald, I haven't formed an absolutely final view about this matter, but I have considered it and I think these are valid criticisms of Dr Patel?-- No, I didn't do that.

You would have had readily available to you the notes of early January 2005 that you prepared; correct?-- Yes, I had.

And they were really fresh in your mind because you'd prepared them about five weeks earlier?-- Yes.

I suggest to you that you refraining from telling Dr FitzGerald of your views was inexcusable conduct on your part as Director of Medical Services at Bundaberg Hospital?-- I do not believe it was inexcusable conduct.

COMMISSIONER: I still don't understand your explanation for not telling him. Just tell me in a sentence why did you not express your views about Dr Patel to Dr FitzGerald?-- I believe that I expressed some views to the initial-----

No, no, why didn't you express the views about Dr Patel which you held in that document in early January to Dr FitzGerald?

MR DIEHM: Commissioner, with respect, in fairness to the witness, it might be preferable if particular views are isolated and asked of him, because it may be that some of the things that he's identified after that date.

COMMISSIONER: Well, perhaps I'll ask him which of those views from that earlier document which were to Dr Patel's disadvantage did you tell Dr FitzGerald and which ones did you not tell him? Have you that document in front of you?-- Page?

MR DOUGLAS: Page 187.

COMMISSIONER: 187.

MR DOUGLAS: You will recall I read portions of it again late yesterday afternoon, Commissioner.

COMMISSIONER: Mmm?-- Yes. I explained to him about Dr Patel's manner.

Yes?-- I explained that he had multiple responsibilities.

Yes?-- And we did touch on the oesophagectomies and that he had performed a number of those which are outside the - which would appear to have been outside the scope of practice.

Yes.

MR DOUGLAS: I'm happy to go through it, Commissioner.

COMMISSIONER: Yes, please do.

MR DOUGLAS: Yes. I read some of these to you yesterday, if you look at page 187, I suggest to you that you did not tell Dr FitzGerald that Dr Patel over-extended himself performing a limited number of certain major sub-specialty operations, oesophagectomies, eristic cases and emergency vascular cases

when appropriate level of intensive clinical support isn't available for prolonged periods?-- I believe we discussed oesophagectomies.

COMMISSIONER: No, did you tell him that?-- Did I tell him those exact words?

No, did you express that view?-- That he over-extended himself?

Yes?-- I can't remember if I used the word "over-extended".

What did you talk about?-- We talked about that oesophagectomies had occurred and he had an opinion that they shouldn't occur and that they were others that did not believe that they should and it was related to the capacity of the ICU.

Yes.

MR DOUGLAS: Did you tell Dr FitzGerald that Dr Patel delays transfer of seriously ill patients to Brisbane?-- I can't remember saying that to him.

Do you say you didn't say it to him?-- I said I can't remember.

Thank you. Did you tell Dr FitzGerald that Dr Patel has multiple responsibilities, clinical, administrative, educational and supervisory with resultant potential in your view for fatigue and errors in judgment?-- I explained his responsibilities, I may - I don't remember, I can't remember if the fatigue and errors in judgment was explained - was that I used those words to him but I did assume that Dr Fitzgerald would understand what I was explaining, he had multiple responsibilities.

But you don't recall saying those words?-- I don't recall saying "fatigue and errors in judgment", no.

Did you say to Dr Patel - sorry, I'll start again. Did you say to Dr FitzGerald on this occasion that in your view Dr Patel is a good to very good surgeon technically who has not maintained currency in some major thoracic and abdominal procedures or all aspects of care of critically ill patients?-- I believe that I said the first component of that.

Which component is that?-- That he was good to very good technically.

But you didn't say anything about the issue of currency or pertaining to aspects of care of critically ill patients?-- No, not that I can remember.

Did you say to Dr FitzGerald that Dr Patel had a very positive attitude to work?-- Yes.

Did you say to Dr FitzGerald that that positive attitude to work combined with cumulative work stress and fatigue plus multiple responsibilities in your view contributed to a specialist surgeon who has more potential to make errors in judgment and clinical care, particularly in relation to seriously ill patients?-- I don't believe that I said those words to him, I allowed him to make up his own mind with the information I provided him.

Did you say to him, that is Dr FitzGerald, that Dr Patel was an unpopular person and potentially without support of many clinical staff and that possibly affected patient outcomes?-- I believe I said to him that he was unpopular.

Did you express your view as DMS that that possibly affected patient outcomes?-- I can't remember, I don't believe I did.

Did you say to Dr FitzGerald that you were uncertain that you were of the opinion that you were uncertain that Dr Patel will be able or would be willing to change or modify his behaviour to reduce associated tension that had developed over the period of his employment at Bundaberg Base Hospital?-- I can't recollect if I did.

All you would have needed to do was - is to say Dr FitzGerald, "Just wait for a moment, I'll just go and get my notes that I made five weeks ago and to assist you I'll tell you what my views are and you can make of those what you will. If they assist you, so be it, if they don't, so be it, but those are the views that I've formed as Director of Medical Services at Bundaberg Hospital."?-- I guess I could have done that, it certainly-----

Please go ahead?-- I could have done that. Certainly, he outlined that he was doing an audit and the audit was focussed on - it was not focussed on individual - the individual aspects as it came from a different approach. I do remember an e-mail from him, from Dr FitzGerald prior to the - saying something along these lines as well that he was aware of concerns about the individual, but he wanted to focus on the larger organisation and assistance perspective as well and I believe that did influence my thinking at that time.

When you were speaking to Dr FitzGerald on the 14th of February 2005, you knew at that point in time that the audit process that you had expected in November may possibly have been completed by late November or December had now been delayed for a number of months?-- Did I say that - mention anything that to me?

No, do you recall saying yesterday in evidence?-- Yes.

That in November of 2004?-- Yes.

You had some expectation that it might take weeks?-- Yes.

Rather than months to complete the audit?-- Yes, I remember that.

Come February, mid February 2002 - sorry, 2005, what you knew was that a period of months had elapsed and the audit was only just starting?-- Yes.

And in the meantime Dr Patel was continuing to provide surgical services?-- Yes.

And for all you knew, the audit process wouldn't then be completed for a matter of weeks or months after mid February 2005?-- Yes.

Didn't that heighten the need you felt to impart the views that you had formed after consideration about Dr Patel to Dr FitzGerald?-- I believe that Dr FitzGerald was as aware as I was of the timeframes associated with this situation. And that, yeah, that he was out to perform his - form of investigation to try and form an independent view.

You weren't giving him much assistance, were you?-- As I said previously, I believe I provided as much information as possible to the general questions he asked me.

Could I take you then please back to where we were yesterday in your statement? Page 209 of the annexures to that statement. Page 209, sir?-- Yes.

And that was the assessment form that you completed on 2nd February 2005 for forwarding to the Medical Board of Queensland?-- Yes.

Just look at the form of the document again in its pro forma format. Do you see, coming back to page 209, that the boxes at the top of the page in effect go from a low mark to a high mark, if I can put it that way? The lowest is, "Requires Substantial Assistance"?-- Yes.

The next one up is "Requires Further Development"?-- Yes.

And if I skip to the highest is "Performance Exceptional"?-- Yes.

There is another box, it says "Not Observed"?-- Yes.

And if you then go over the page, again, looking solely at the pro forma section, do you see three items down there's a heading "Comments on requiring substantial assistance and/or further development, give specific examples."; do you see that?-- Yes.

It's readily apparent from the form of the document that if an assessor ticks a box on page 209 under the first two lower headings, then he or she is obliged to, in effect, explain matters under that "Comments" box?-- Yes.

By rating Dr Patel as you did with markings on page 209 above those two lower categories, the lowest you marking him at being "Consistent with Level Experience"?-- Yes.

You avoided the necessity to complete that particular section of the document?-- I didn't aim to avoid anything, I, as I said yesterday, I produced this in haste and I have acknowledged that I overestimated Dr Patel in a number of areas. I did not set out to avoid putting anything down, I aimed to be fair and sure and in my mind there was some uncertainty.

COMMISSIONER: You didn't aim to be accurate though, doctor, did you? You said his work and communication was effective within a team and that was consistent with level of experience; you knew that to be wrong?-- I believe that he - there is different teams in the - Commissioner, there are different teams within the hospital.

Mmm?-- And certainly within the surgical team I believe that he was very effective as regards his teamwork and his colleagues.

I thought you told me he was universally disliked?-- I said that there was a number of - there was a number of staff who were unhappy with him, but certainly amongst the surgical team they were very happy with him.

Mmm?-- And as I said yesterday, I tried to provide an assessment over this total period of time. There were a number of and small number of instances which have been highlighted here and I acknowledge here that they've been highlighted, but I was also getting, you know, I was not getting other information which was - I got other information which was contrary to this. I wasn't getting the anaesthetists saying to me that, "This man is, you know, atrocious, we won't anaesthetise any type of patient".

No, no, we're just talking about his communications?-- Well, as I say, with teamwork with colleagues and he continued to work with the Director of Anaesthetics in ICU on a regular basis. He continued to work with the Elective Surgery Co-ordinator, so there were different, that was the problem, I was getting various reports here on the one side very positive and on the other side very negative.

MR DOUGLAS: You said in your note of January 2005, I'll repeat it, I read it earlier, "Dr Patel is unpopular and potentially without support of many clinical staff possibly affecting patient outcomes." That was your view in early January 2005, was it not?-- Yes, it was.

And you're completing this document at the end of January 2005 saying in response to the question, "Teamwork and Colleagues", "Works and communicates effectively with a team", he got a mark of "Consistent with Level of Experience"?-- Yes.

That's just nonsense, isn't it?-- No, it's not, I believe if you've had some experience with surgeons, you will find that they are very much individual, that they can work with teams and that they do at times put - put people off side, and as I

said, it possibly affecting them, that was a thought based on a lot, you know, what information I had, I said possibly, I don't, you know-----

It is a damming indictment, I suggest to you, in your long experience in 20 years, to describe a surgeon at a regional hospital as a person who is unpopular and potentially without support of many clinical staff possibly affecting patient outcomes?-- I don't believe that it's a damming indictment, I believe that I was talking about a number of staff. I may have overused - I was talking about a number of staff. I also said there were a number of staff that he was able to work with and continued to work with as well.

I want you to make a comparison for me if you would. If you can, I want you to keep open page 209 and then look back at page 16?-- Yes.

Now, at 209 we see the period of the assessment is December '03 to January '05, a period of just over 12 months; correct?-- Yes.

And at page 16, you'll see that there was the earlier period of assessment of - from April to November 2003?-- Yes.

What appears at page 16 is your earlier assessment in about December 2003 of Dr Patel?-- Yes.

That was to enable the first extension of his registration with the Medical Board of Queensland?-- Yes.

And your signature appears over on 17, doesn't it?-- Yes, it does.

Now, just comparing 16 with 209 to start with, just compare the ticks. The only area in which you've marked Dr Patel down in 209 compared with 16 is that whereas previously in the area of "Procedural Skills" "Performs procedures competently" he was better than expected, he went down to "Consistent with Level of Experience"?-- Yes.

In fact, in two other areas you've marked him up at 209; he's gone up in "Teaching"?-- Yes.

And he's also gone up in "Professional Responsibility", "Demonstrates punctuality, reliability, honesty and self care"; do you see that?-- Yes.

Did you think he deserved to be marked up, having regard to the information you'd canvassed since the 22nd of October 2004?-- As regards "Teaching", yes, I believe that he had for the period December '03 to January '05, done a very good job on teaching based on the information that I was provided.

What about "Professional Responsibility" about which I was asking you? Did he deserve to go up to "Performance Exceptional"? He deserved that mark, did he, on the information that you had?-- As I said yesterday, I've

overmarked him but I believe that he still showed punctuality, he still showed reliability.

How about honesty?-- In the dealings that I had with him, I found him, I believe that he was honest. I know that you talk about the one - the situation talked about by Dr Berens, but as I said yesterday, there are a number of practitioners who find it hard to admit that they've made a mistake, but-----

You suggest that it's honest for a person to put himself in a position where he turns himself away from alternative clinical options such as to make his judgment flawed; do you think that's honest?-- I don't know if it's honest but I believe that that's a behaviour pattern. I don't know if it's honest. I believe it's a behaviour pattern shown by a number of practitioners.

Do you think that criteria there of "Professional Responsibility", "Demonstrates punctuality, reliability honesty and self care" is fulfilled in respect of a person about whom you have formed the opinion that due to his multiple responsibilities, he has potential for fatigue and errors in judgment; what's your answer to my question?-- Yes, I believe the professional responsibility covers those areas.

But he wouldn't deserve that mark if you've got that opinion, would he?-- It comes down to the individual also being aware of this as well and some individuals are far more aware of over-extending themselves than others, and in this situation I don't believe that he realised that he over-extended himself.

I've already asked you some questions about that so I won't labour the point, but what I'm seeking to ask for your comment is this: that over a period of 12 months from late 2003 to early 2005, you overall, I suggest, have marked this fellow up rather than down, notwithstanding all of the information you'd garnered in the meantime?-- As I said yesterday, I did this in haste, I don't believe that I sat down and compared with what he'd previously done because I would not wish at that period of time and I did not want that to influence my thinking, but I believe that another one has gone down as well, but I believe there's two down and two up.

Look at the form again at 210? Do you see there's a box heading which is the penultimate item on the page, "Improving Performance, Action Plan"?-- Yes.

And it has in parentheses, "To be completed by a Registrar with Supervisor"?-- Yes.

There's a series of headings, "Issues", "Actions", "Tasks, including timeframes", "Review Date"?-- Yes.

Now, you told the Commissioner yesterday that come early to mid 2001, that you had formed a view that Dr Patel could continue to operate but within certain constraints?-- Yes.

One of the constraints was that he was to be precluded from

undertaking more complex surgery?-- Requiring ICU care.

Yes. You also said that he was to have his administrative burden alleviated somewhat?-- Yes.

Are there any others?-- I think those were the ones.

Those were matters of some significance, were they not?-- Significance within the organisation?

Yes, they were, weren't they?-- They were related to trying to identify, as I said yesterday, we had a problem and what's the causes of those problems, to try and alleviate those causes.

They were significant because they were each a matter which went to the essential core of the operation of the hospital, namely, patient safety?-- They had the potential to influence patient safety through the actions of the individual.

For that reason, once you instigated those restrictions, you would need to monitor them to ensure that Dr Patel was complying with those restrictions?-- Yes.

And in the case of the second one, you'd need to discern whether or not the alleviation of the administrative burden imposed upon Dr Patel did serve to mollify your concerns about his consequential errors?-- Yes.

Now, I suggest to you that this particular portion of the Medical Board document on page 210 is expressly directed towards that sort of alleviating program?-- My understanding, my understanding is that you fill that box in after - if you have - you fill that box in if you've talked about comments - if you've filled in the part requiring it as substantial assistance or further development.

And so the situation is in terms of your understanding of the document, you also avoided completing this portion of the document headed "Improving Performance, Action Plan" by over-rating Dr Patel on the previous page such that you didn't tick any of those inferior boxes?-- I acknowledge that I have over-rated him, I did not set out to mislead or to have any dishonest actions in this situation and to avoid filling in these types of things. I believe that the actions that we talked about or potential actions we talked about were internal restrictions and that they - I did not necessarily believe that they were appropriate to the Medical Board. Now, if I am proved wrong by that, I'm proved wrong by that, but at that stage I honestly did not believe that that was information required by the Medical Board.

All right. You didn't think that the Medical Board would not want to know about this gentleman, Dr Patel, an overseas-trained surgeon who'd worked at the Bundaberg Hospital for the previous two years, that you as the Director of Medical Services thought it fit to impose restrictions on him to avoid adverse consequences for patient safety?-- I

believe that those types of restrictions are really a change in privileges that you provide a practitioner. I do not believe that a practitioner's changes in privileges are always referred on to the Medical Board. My understanding is that those are used by the organisation and therefore it's an internal - they are an internal responsibility.

This man, Dr Patel, had never been privileged by Bundaberg Health District except on an interim basis?-- That's right.

And that was by you?-- On my advice, on my recommendation to the District Manager, but-----

Thank you. Yesterday, Dr Keating, you touched upon the fact that Dr Patel discussed with you him making an application for a four year Visa from the Commonwealth Government?-- Yes.

Thank you. Now, the documents concerning that commence at page 211 of the bundle to your statement. Could you turn that up please? Do you have that now?-- Yes, I do.

That is a letter with annexures, but at that page that is a letter dated 1st February 2005 addressed to the Department of Immigration and Multicultural Affairs in Brisbane?-- Yes.

It is signed by you-----?-- Yes.

-----as Director of Medical Services at the Bundaberg Hosptial?-- Yes, it is.

The subject matter is said to be, "Dr Jayant Patel. Extension of visa."?-- Yes.

Now, I will read only the opening paragraph into the record, but suffice it to say a number of attachments are identified in this document?-- Yes.

In the opening paragraph you say, "We would be pleased if you could process the enclosed application for a four year visa for the abovementioned" - "above named", I should say - "doctor. Dr Patel will be employed as a Senior Medical Officer."; correct?-- Yes.

And the last - I should say penultimate paragraph reads as follows, "Dr Patel has completed the necessary paperwork for registration with the Medical Board of Queensland."?-- Yes.

Now, you told us yesterday that you made an error when you wrote to the Medical Board at about the same time advising them that Dr Patel was to be employed until 2009?-- Yes.

Did you make some more errors in this document too, did you?-- I didn't complete this document.

You didn't complete it. You signed the letter, did you not?-- Yes, I did.

And you would have read the letter before you signed it?-- The actual letter itself?

Yes?-- I would have given it a cursory look. I sign many of these letters.

As at the 1st of February 2005 you knew that Dr Patel would only be offered at Bundaberg Hospital a position as locum, temporary Director of Surgery, for a period of three months from 1st April 2005?-- Yes.

That was the state of your mind?-- He - it was three full months.

It doesn't matter-----?-- Yes.

-----it's up until 31st of July?-- Mmm.

A short period?-- A possibility he may return.

Possibility he may return?-- Yes.

Did you say to him, "There's a possibility you may return"?-- No, he suggested - he suggested that.

The legal position as at 1st February 2005 was that the only thing that Bundaberg had offered to Dr Patel as at this date was that three or four months extension?-- Yes.

It wasn't a four year extension?-- It wasn't a four year extension, no.

When you saw in the document when you signed it that there was an application for a four year visa, did you think it might be a good idea to look through the document and see what it was that Dr Patel was, in fact, after?-- As I said yesterday - I did look through all the documents. As I said yesterday, he'd approached me in, I think, around about October requesting extension and he wished to access the four year visa because he was aware of the availability of the four year visa.

Why not agree to accede to a request for a one year visa since you are only employing him for three or four months?-- The possibility that he'd return to do further locum work was discussed and/or there was uncertainty about how long he would stay because of his daughter's wedding, and this visa, the paperwork associated with all this is extremely long, complex, and we were trying to take advantage of the changes that had been provided by the Department of Immigration to reduce the amount of paperwork associated with these types of applications.

You had already advised Mr Leck in early January 2005 that in your view the best option was for Bundaberg to obtain the services of a new surgeon to replace Dr Patel?-- As a Director of Surgery, yes.

What, did you think that he may be able to stay on in some other capacity?-- No. The Director of Surgery - if we needed a locum and/or if we were short, potentially - there was a potential we had someone who had worked there previously.

Notwithstanding all the views you formed about Dr Patel, in January 2005 you were still willing to countenance the prospect of Dr Patel coming back to work at Bundaberg Hospital at some point in time, even after the end of July 2005 in the capacity as a surgeon?-- It was a possibility. It was a possibility. It was not necessarily a high possibility. To recruit surgeons is hard. To recruit locums is even harder. To have a list of possible people that could be locums is always very useful and this allowed us to have that possibility. It did not to me mean he was a definite starter.

On what you knew, he may accept your offer of employment of three or four months that you then made to him?-- He'd approached me - he approached me in the initial instance and requested that.

He didn't accept that offer, in fact, until the 7th of February 2005, did he?-- He - I think that's the date he

signed it.

Just turn over into this document to one of the annexures. Go to page 216.

COMMISSIONER: Before you go to that, you said in that letter that Dr Patel would be employed as a Senior Medical Officer?-- That's been written in

That wasn't correct, was it?-- We - he was going to come back as a locum, general surgeon, so he was not going to be the Director of Surgery. He was not going to take on the administrative responsibility of that as a Director of Surgery.

MR DOUGLAS: Commissinoer, can I deal with it?

COMMISSIONER: Yes.

MR DOUGLAS: Because in fact it is germane to that which you have just raised.

COMMISSIONER: All right.

MR DOUGLAS: I was taking you to page 216, which is one of the annexures to this letter?-- Yes.

Do you see that?-- Yes.

Now, that's the form to be lodged with the relevant government department, DIMA?-- Yes.

And it traverses a number of pages. Do you see that?-- Yes.

And if you go to what seems to be the last page of the document, page 218, about halfway down the right-hand side, it says, "Continued on the next page." Do you see that?-- Yes.

You don't seem to have another page. Commissioner, we have looked for that as well and we just can't find it. I am told Queensland Health will be providing us with a page. I assume it's some sort of execution page, Commissioner. Can I come back to that when it's appropriate?

COMMISSIONER: Yes.

MR DOUGLAS: Coming back to section 216, you see there's a number of numbered boxes?-- Yes.

And you knew this to be a sponsorship form?-- Yes.

And the sponsor for Dr Patel was the Bundaberg Health Service District?-- Yes.

If you go down the various items over to item 7 in the second column on page 216, "Job Title," what's been written in is, "Director of Surgery"?-- Yes.

Look at item 10 - sorry, item 9, "Is the position full-time, part-time?" "Full-time" has been ticked?-- Yes.

And then item 10, "Proposed period of employment in Australia: Four years."?-- This form was completed on my behalf. I did not go through all the details of that. I accept that this person worked for me, therefore I accept responsibility for this. That there are errors. She was trying - I believe she was trying to do the best she could with the information she was being provided. It was continually changing and we were aiming to provide a four year visa for this gentleman. Unfortunately, there are descrepancies in the informations provided.

When you say descrepancies in the information provided, who was providing the information to the person who completed this document?-- I think there was both myself and - myself and I presume she was also talking to Dr Patel as well.

Was it principally you, though, because you're the person who signed the letter?-- I signed the letter but, yes, I would have been speaking - I would have been speaking to her, but I know Dr Patel was also speaking to her as well.

You were the person who had signed the letter of offer to Dr Patel, not just that which is almost contemporaneous with this for the three or four month locum period, but also the earlier one of late 2004 where you offered him a four year extension. It was you who signed it?-- Yes, I signed those.

It was within your role to make the offers?-- Yes.

Who completed this document?-- This document was completed by an administrative member of that - who worked for me.

Who was that?-- Sue Hutchins.

She was your personal assistant?-- She's an AO2 who works for me.

Surely she would have come to you and said, "Well, what's the position in relation to Dr Patel? What are we offering him?"?-- Well, that - that's why he got that letter, yes, and that's why he got that letter of offer as the locum general surgeon.

Just come back to that. The letter of offer is to be found at 192 and it's dated 2nd February 2005, two or three days later. You see that?-- Yes. Yes.

Would that have been typed by the same person-----?-- I believe.

-----as completed the sponsorship form?-- Yes.

Coming back to 216, sir, I suggest to you that looking at this document - sorry, I will start again. Did you read this document when you signed the letter?-- No, I did not.

I suggest to you that on any view of the matter, that document being completed in that fashion involved a misrepresentation to the Federal Government as to the proposed employment of Dr Patel at the Bundaberg Hospital for the period following this particular document?-- I did not - as I said previous, I did not read this. I made a cursory glance at this. I signed a number of these letters. I do not believe that the individual who prepared this in any way, shape or form set out to misrepresent the situation to the Federal Government. I believe that she tried to provide information in order that we could obtain a four year sponsorship for Dr Patel so he could potentially access a four year visa.

It's untrue, isn't it? It's untrue that the Bundaberg Health Service District as the sponsor of Dr Patel to obtain a four year visa was to employ him full-time for a proposed period of employment of four years?-- Yes, it is untrue.

COMMISSIONER: And the only way in which he could have got a four year visa was by your saying that, wasn't it?-- We understood that that's what you were required to say to get that four year visa.

Yes. You were prepared to say that to get him a four year visa?-- We understood that that-----

No, no. Listen to my question. You were prepared to say that to get him a four year visa, were you?-- We were - initially we were - I was not prepared to say that he was working for four years if he didn't have a contract for four years and that's why we made that first offer to him in December.

You did say that in this document. This is your document?-- I didn't say it but it's been put down there, yes. It was prepared on my behalf.

MR DOUGLAS: So, just to make this clear, what you do remember reading was the letter to DIMA, the covering letter of the 1st of February 2005 which appears at page 211 of the bundle?-- Yes.

And when you read this document and you saw a reference to a four year visa, which was prescribed therein, you believed that the recipient of this document within DIMA would think that corresponding with that proposed four year visa period there was a proposed period of employment with Bundaberg Hospital?-- I understood there would be a proposed period of employment. I believe that we realised that you didn't have to provide a full - four year contract, he had a four year visa.

You did or you didn't realise that?-- Initially we - we had realised that.

Forget about "we did". I want to know what you thought?-- I thought that - I signed these pieces of paper. The staff that worked for me dealt with this on a day-to-day basis. They'd

informed me that - and I formed the impression you needed to provide a four year contract to get a four year visa. That's why we provided that first contract. Thereafter, I was informed that that was not necessarily correct and that we were putting in for a four year visa and that we were only offering him the reduced period of employment.

Were told you that?-- Who told me?

Who gave you that information?-- I believe it was Miss Hutchins

When did she tell you that?-- I have - over this period of time. We were still coming to terms - we were coming to terms with the changes as regards to the Immigration Visa Act and if we have made - you know, if I have made a mistake, I apologise for making that mistake.

COMMISSIONER: It's not a question of whether you made a mistake, it's a question of whether you deliberately told the department that you were offering this man a four year sponsored position in order to get him a four year visa when that was not true?-- I did not believe that we were sending a piece of paper saying he had a four year contract. The piece of paper I believed - and I acknowledge I have not read this - so, therefore, if I found this error, I would have changed it, but I did not. I was only ever given in these situations - I handled a large amount of paperwork. I signed these forms as a matter of routine. I did not check these pieces of paper, because I was - you know, I felt it was - I did not need to. I had to place some trust in the staff that worked for me. I believed they were aiming to get a four year visa with a short contract. Now, the changes that occur with these packages on - they are changed - makes it consistently hard to keep up with employing these people on these types of visas.

MR DOUGLAS: What you were seeking to do when you sent this document to DIMA was to keep Dr Patel in reserve, so to speak, so that if the audit report did vindicate him you had him there to employ as a temporary locum, even beyond 31st July-----?-- That was-----

-----2005?-- Yes, that was a possibility.

Well, what do you mean that was a possibility? That was in your mind at the time?-- Sorry, it was - yes, it was a possibility, yes. It is what we were trying to do, to get the paperwork made available for him to have - you know, a four year visa, so, therefore, he'd come back and work for us if we required him to work as a locum but, as I said previously, it depends on availability, timing, other people on the list, et cetera, as well. It's very hard to always find locums.

I suggest to you that what you're doing's just, in effect, making this up as you are going along in respect of this document. What you're doing - you knew on the 1st of February 2005 when you wrote to DIMA that they would believe

that Bundaberg Hospital had offered this fellow, Patel, a job for four years?-- I did not set out to create that impression. I believe that we had - we were working on a contract of up to four months and that we were aiming to take advantage of the changes to the visa situation which would allow him to come back should we ever need for him to come back.

As a matter of expediencey, I suggest, you thought that it wouldn't hurt if DIMA believed that, in fact, you had offered him a four year contract?-- I reject that.

These are serious matters applying for visas, aren't that?-- They are a consistent matter - they are - they are a matter that always comes up in the matter of employing overseas trained doctors and, yes, there is large amount of paperwork associated with them, large amount of the rules and regulations associated with them.

Okay. Commissioner, I want to go on a different topic now, if I may.

COMMISSIONER: Yes. Well, I will take the ajournment now.

MR DOUGLAS: Sorry, Commissioner?

COMMISSIONER: I said I will take the adjournment now.

MR DOUGLAS: Thank you.

THE COURT ADJOURNED AT 11.18 A.M.

THE COMMISSION RESUMED AT 11.35 A.M.

DARREN WILLIAM KEATING, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: A question was referred to me over that short break by Mr Douglas, Counsel Assisting, as to what I meant by "precincts of the Court" so far as taking photographs or moving films of Mr Leck. By "the precincts of the Court", I meant within the curtilage of this building. That means where the footpath ends and the open forrum in front of the Court commences. The location is the location of Mr Leck, not the location of the cameras. So it does not matter for that purpose if the camera is situated over the road or 100 metres away. Once Mr Leck crosses that line, he is not to be filmed.

Yes, Mr Douglas?

MR DOUGLAS: Yes, thank you, Commissioner. Commissioner, although the witness didn't adopt it, it's appropriate that I tender at least for the purpose of which it was utilised in the examination the exchange of e-mails tht I took the witness to this morning.

COMMISSIONER: Yes.

MR DOUGLAS: And I do so.

COMMISSIONER: Yes.

MR DOUGLAS: I will have copies made for the parties.

COMMISSIONER: That can be Exhibit 449.

ADMITTED AND MARKED "EXHIBIT 449"

MR DOUGLAS: Mr Keating, I had dealt with this topic, I thought, but there's just some documents that I need to deal with. There was a number of sponsorships approved by DIMA in respect of Dr Patel?-- Mmm-hmm.

We know that, don't we?-- I - yes.

Would you look at this document, please. That's a letter addressed to you?-- Yes.

It's dated the 15th of December 2003?-- Yes.

It pertains to a visa being granted to Dr Patel under the aegis of the sponsorship of the Bundaberg Health Service District?-- My understanding - my understanding is that that just confirms that the sponsor - the sponsorship - our sponsorship was aproved. It doesn't mean his visa had been approved.

That letter was received by you nonetheless, was it not?-- Yes, it was.

I tender that document. There is no need to read them at the moment, Commissioner.

COMMISSIONER: All right. That will be Exhibit 450.

ADMITTED AND MARKED "EXHIBIT 450"

MR DOUGLAS: Thank you.

COMMISSIONER: Letter dated?

MR DOUGLAS: The letter is dated the 15th of December 2003 from the Department of Immigration and Multicultural and Indiginou Affairs, addressed to Dr Darren Keating, Director of Medical Services, Bundaberg Health Service District.

COMMISSIONER: Thank you.

MR DOUGLAS: Would you look at this document, please. That's a letter in the Department of Immigration and Multicultural and Indigenous Affairs, addressed to you, sent by facsimile, and it's dated the 14th of February 2005?-- Yes.

And it also pertains to the sponsorship by Bundaberg Health Service District of Dr Patel as a person seeking a visa for a period of stay of for years?-- Yes.

And in the opening paragraph, "The department advises you - I am writing to advise now that the sponsorship you lodged in relation to the above named visa applicant has been assessed and on the basis of the information provided, you are considered to meet the sponsorship requirements in relation to this visa applicant."?-- Yes.

Did you read this document when it was sent to you?-- It's got my - up the top there it's my signature. I didn't read it word for word. I'd seen a number of these.

You received this document, though, didn't you?-- Yes. As I said, it's got my signature block at the top.

I tender the document. Just hold on to it for a moment, please. I will put a copy in the hands of the Commissioner. Do you wish to give it an Exhibit number, Commissioner?

COMMISSIONER: Which is the document? I have got two sets of-----

MR DOUGLAS: 15th - sorry, 14 February 2005.

COMMISSIONER: I see. Thank you. Yes, I will make that

Exhibit 451.

ADMITTED AND MARKED "EXHIBIT 451"

MR DOUGLAS: Do you see what's written under the heading of, "If Something Changes"?-- Yes.

Do you recall reading that?-- I don't recall reading it on this piece - on this particular letter, but I have read it in the past.

COMMISSIONER: It's a standard form letter, isn't it?-- Yes, it is.

MR DOUGLAS: In fact, you'd read it on a number of occasions, perhaps involving others-----?-- Yes.

-----prior to 14th February 2005?-- Yes.

Indeed, prior to 2005?-- Most probably, yes.

And the subscriber to the letter from the department was clearly advising you, in effect, that should the applicant, in this case Dr Patel, cease to be employed by the sponsored employer, then approval to stay under the visa to the applicant would cease?-- Yes.

Isn't that so?-- Yes.

That's quite inconsistent with any belief by you that the period of the visa did not - period of the visa applied for did not coincide with the period of employment which is proposed.

COMMISSIONER: It depended on it, didn't it?-- Sorry.

It depended on it?-- It depended on, what, sorry, Commissioner?

The visa to be granted depended upon the period of the sponsorship, sponsored employment. That's what the letter syays?-- My understanding was that the length - my understanding is that - I have a very simplistic understanding of this - is that you require sponsorship of the applicant and with a position, and that the individual then applies for the visa and if the visa - if that individual no longer works, then that visa can change.

MR DOUGLAS: Look, you are a man of common sense. You would describe yourself that way, wouldn't You?-- Yes.

A person applies for a visa in early 2005 for a period of four years?-- Yes.

And applies for that position or that visa in the context of being appointed to a hosptial in a Queensland under an Area of Need basis?-- Yes.

You would believe that the Federal Government, when granting that visa, would want accurate information pertaining to the issue, would they not?-- Yes.

And they would, I suggest to you as a matter of common sense, only be wanting to grant a visa if they were satisfied that there was a proposed period of employment which coincided with the period the subject of the application for visa?-- That does make some sense but-----

Nothing else makes sense, does it?-- Well, my understanding was also that they were trying to engage as many overseas-trained doctors in Australia to maximise their chances to stay in Australia by offering them this four year visa, and by that they acknowledged for your visa cut down the amount of paperwork that was involved in the multiple applications. And we aimed to take advantage of that, to reduce the paperwork associated with that as well.

COMMISSIONER: And you did so by, in the application, saying that he was to be sponsored for four years?-- As I said, Commissioner, it is written down there and I can't deny that. As I said, I didn't read that piece of paper. I had a number of applications crossing my desk on a regular basis and that I usually only signed the covering letter, and if there is an error in the information that's been provided, I apologise for that.

But you didn't know that, in order to ensure that he'd get a visa for four years, you had to undertake that you were offering him sponsored employment for four years?-- I understood you could offer him less than four years.

Did you? Right?-- Now, if that information is wrong, as I said, these changes had occurred and, you know, I was Director of Medical Services, I was not HR manager or migration agent, and unfortunately this shows that this - this paperwork should have been handled by another department, and that's a lesson I have got to take on board.

MR DOUGLAS: You didn't seek to ask anyone from those other departments clarification of that information?-- We don't employ any migration agents and the HR department used to come and ask me for advice on the information. So I am - no, I didn't.

Didn't seek to contact Brisbane to get some assistance from them as to the issue?-- As I said, no, I didn't, and I signed these off. My staff - I had two administration officers, one of those has been mentioned, Ms Hutchins, dealt with this on a regular basis and they tried to make head and tail of the differing changes in these regulations that occurred, and they were on - I know they were in regular contact with the Department of Immigration over multiple aspects of this and they were far more aware of the intimate details associated with these processes than I was.

Can I go on to a different topic with you now; credentialing and privileging. When you commenced at Bundaberg Hospital in April 2003, you became aware almost immediately that Queensland Health had a policy, promulgated in its latest form in 2002, of credentialing and privileging?-- I was made aware of that, yes.

The concept of credentialing and privileging, I suggest, was not foreign to you prior to your appointment at Bundaberg?-- No, it wasn't.

Credentialing and privileging is a concept that has existed in health care practice in Australia for some years anterior to 2003?-- Yes.

You worked in Western Australia, Port Headland?-- Yes.

And you were the, in effect, Director of Medical Services at that hospital?-- Yes.

Was there a credentialing and privileging policy on foot at that hospital?-- During my period there there was one established which was part of the north-west region.

Thank you. You understood the process of credentialing and privileging, insofar as it consisted of credentialing, to involve the assessment of a prospective appointee to a hospital to undertake particular clinical tasks at that hospital?-- Yes.

You understood privileging to involve the matching of the credentialed practitioner to the hospital in question so as to ensure that the procedures to be undertaken by that practitioner coincided with the scope of that hospital, to provide the attendant treatment, and, in the case of operative care, postoperative care?-- I understand that's the intent of the privileges. However, what - in my experience I have not seen the procedures per se laid out for each individual. It has been far more general as regards the specific area of medicine.

Upon commencing at Bundaberg in 2003 in April, you formed the view that credentialing and privileging as a policy was not actively on foot within the hospital?-- I was made aware of that probably from the - originally made aware of it from an email from Terry Hanelt, which I then checked with Keys Nydam.

You instigated that process, credentialing and privileging, in effect, by adopting it as a policy within the Bundaberg district?-- Yeah, the policy was reviewed and completed and published, yes.

And, in fact, in May of 2003 in that policy adoption you declared that the policy had been on foot at Bundaberg since January of 2003?-- Sorry, had been on foot?

The Bundaberg policy document for credentialing and privileging states that the credentialing and privileging

process had been on foot at Bundaberg from January 2003?-- I have to look at the policy, if it says that.

I will take you to it if necessary. In any event, the process was adopted in conjunction with Fraser Coast Health Service?-- Yes, it was.

And what you did was you developed a protocol whereby there would be a joint privileging and credentialing process which would serve both health districts?-- Yes.

Can I take you to paragraph 355 of your statement? What you say there - when you are able to turn it up?-- Yes.

COMMISSIONER: Sorry, paragraph?

MR DOUGLAS: 355, Commissioner. 355, you say there that "a joint policy was developed by the respective districts to ensure a critical mass of practitioners was available to undertake the process."?-- Yes.

And to use scarce resources?-- Yes.

You go on to say there that "pending credentialing and privileging, interim clinical privileges for senior medical practitioners would be awarded based on the advice of the Director of Medical Services"?-- Yes.

Of course, at Bundaberg that was you, and in the case of Fraser Coast that was Dr Hanelt?-- Yes.

You have already told the Commission that you knew, when you arrived, that Dr Patel hadn't been credentialed and privileged?-- He was one of - he was one of the majority of practitioners who had not been credentialed and privileged.

And at page 279 of your statement, you speak of having granted Dr Patel interim privileges on the 13th of June 2003?-- Yes.

Okay. Just if we can look at that, please. Excuse me for a moment, Commissioner. If I could ask you to go to document number 82 in your bundle - I am sorry, if I could ask you to go to page 297 of the bundle - page 297?-- Yes.

You will see there the letter that you forwarded to Dr Patel awarding him interim privileges?-- It was sent by Peter Leck.

I am sorry, you are quite right. But you knew it had been so sent, didn't you?-- Yes, I did.

If you turn over the page to 298, one finds there a letter which you write to Dr Patel on the 26th of June 2003. Do you see that?-- Yes, I do.

And the opening paragraph of that letter you emphasise to Dr Patel the fact that the credentialing process is one which in your view - and I will quote you: "must be robust, non-biased and valid"?-- Yes.

You go on to say, "Queensland Health had endorsed and reinforced the need for such process."?-- Yes.

And the third paragraph of that letter you say the credentialing process needs to take place "in order to practise clinical governance in complying with Queensland Health directives"?-- Yes.

You did understand it to be a Queensland Health directive that credentialing and privileging take place?-- Yes.

In the last paragraph of that letter you requested Dr Patel to complete the formal application forms?-- Yes.

Thank you. What you were referring to there was the fact that there were documents which Dr Patel had to complete in order to, in effect, allow any credentialing and privileging committee which was promulgated to consider his application for credentialing and, in turn, privileging?-- Yes.

Look at page 299 now. That's another letter which you wrote to Dr Patel in late 2003, namely 6 November 2003?-- Yes.

Among other things, what you say there to Dr Patel is that the Bundaberg Hospital is in the process of finalising the necessary documentation for the process associated with the awarding of clinical privileges?-- Yes.

And you then go on to ask him for documentation, do you not?-- Yes.

You ask him for the following: "copy of your diplomas and board certificates"?-- Yes.

In the last paragraph you ask him to ensure that that requested documentation is returned to Ms Hutchins in your office?-- Yes.

Now, he didn't do that, did he?-- As I said, I would have to look at his file. This was part of a broader catch of all the senior medical personnel. We were asking the same question of all those after we had done an initial assessment of their paperwork that had been submitted.

Look at the next document, page 300. You are writing to him again on the 29th of July 2004, are you not?-- Yes, I am.

He still hadn't supplied you with the documents by this date?-- I can't recollect that.

COMMISSIONER: Could I just go back to the document? You said "copies of your diplomas and board certificates"?-- Yes.

Did you mean just board certificates in Queensland or did you mean any board certificates he had, including his overseas qualifications?-- His overseas qualifications primarily, Commissioner.

Right.

MR DOUGLAS: That was because he was an overseas-trained doctor whose only documents in Queensland would have been his Area of Need registration with the Medical Board of Queensland?-- We asked this for all overseas - or any overseas-trained doctors. Any evidence of their previous diplomas, and my understanding of the American medical system is that they complete a residency and then have to complete - they then - residency and have to complete an exam, and they are then deemed to be board certified in a specialty. So my understanding was they had a certificate which outlined that.

Your recollection is that Dr Patel, over the time he was at Bundaberg, seemed to be very slow in responding to your requests to provide documentation for the purposes of enabling him to be credentialed and privileged?-- As I said, I can't recollect if we received anything from him. I - I didn't see him as any slower or any faster than anyone else.

COMMISSIONER: Well, you can't recollect whether you received board certificates from him or not?-- No, I can't. I can't-----

Well, do you know now that if you had received the board certificate with respect to his registration in the - registrations in the United States, they would have shown his suspensions?-- I was not actually recording from the Medical Board perspective. My understanding is it is related to a completion of a residency period of training and that they then complete an exam, and they then get recertified in that. And in my understanding, that is separate to the Oregon Medical Board, or whatever Medical Board it is. It is more like a - it is like the equivalent of fellowship.

Perhaps you haven't answered the question I asked. When I referred to board certificates, did you - when you referred to boards certificates did you intend to include the certificates of the medical boards?-- No, I didn't.

Why not?-- That was not what we were intending to do. We were trying to show past training, not past registration. My - the registration component was something that was, I believe, dealt with by the Queensland Medical Board.

I see.

MR DOUGLAS: Dr Keating, I have secured, through my staff, a copy of what purports to be the personnel file for Dr Patel which has been obtained from Queensland Health. I don't have the original file, Commissioner. Can I ask you this - be precise about the files in question: would there be only one file within the Bundaberg district pertaining to Dr Patel?-- No, there wouldn't be.

Well, how many files would there be?-- I know that there was - in my office there was one. It was the personnel file for

him. There was also a clinical - clinical privileging file which was separate from that.

COMMISSIONER: That would have been empty, wouldn't it?-- I do not believe so, because if we've asked for a copy of his diplomas and boards certificates, he has provided the application forms in the first place, because what we did - what my staff and I did, we went through all the - after asking for the original information, we did an audit, or completed a spreadsheet to see what information they provided, and if he had not provided the application form or not completed the application form in the first place, that would have been put down, which we did do with a number of other doctors.

I see.

MR DOUGLAS: Commissioner, I could indicate there has been supplied by Queensland Health - and I will tender it, if necessary, in due course - not now - a copy of a file which is said to be personnel file for Dr Patel. I have not been supplied, I believe, with any separate file which purports to be either a file pertaining to credentialing and clinical privileges, whether specifically pertaining to Dr Patel or generally pertaining to all practitioners. Now, I am happy to be corrected on that by Queensland Health.

MR BODDICE: My understanding is that two files were provided to the previous Commission but I am trying to find precise details of what those files were but my understanding is that two files were provided.

COMMISSIONER: Thanks, Mr Boddice.

MR DOUGLAS: Mr Scott - if it assists Mr Boddice, Mr Scott tells me that the two files that were provided were a Director of Surgery file and the personnel file which I just identified.

MR BODDICE: I am checking from our end as to whether that's correct.

MR DOUGLAS: You heard - can I just proceed? It might speed things up.

COMMISSIONER: Yes.

MR DOUGLAS: Thank you. You heard the exchange that's just been had between Bench and bar. Do you recall that there was a file which might be described as Director of Surgery file which pertains to Dr Patel?-- I don't - I have - I don't recall that they would have said that. The way we ran the files in my office was that there was the name of the individual as opposed to the position. So the Director of Surgery, one may be the personnel file from HR department, but I certainly - the way we ran it on what the file was related to their name.

So if, indeed, one can locate the file with the name pertaining to Dr Patel, is it your evidence that there should be within that file any documents received from Dr Patel pertaining to credentialing and privileging, whether by way of application or any certificates or diplomas that he provided?-- There should be a third file.

Yes?-- Which would sit with - it should be thin. We had separate clinical privileging files separate from that personnel file.

For each practitioner?-- Yes.

We will see how we go with that, Commissioner.

COMMISSIONER: All right.

MR DOUGLAS: That can be tendered in due course, if necessary.

COMMISSIONER: I hope not all of it.

MR DOUGLAS: I beg your pardon?

COMMISSIONER: I hope not all of it.

MR DOUGLAS: I emphasise if necessary, Commissioner.

COMMISSIONER: Yes, good.

MR DOUGLAS: Now, it is correct to say that the Bundaberg Hospital did not actually commence the process of privileging per se, and also credentialing until the last quarter of 2004?-- The formal component as a follow on to the interim, correct, privileges granted.

And the reason for that, which you identify in your statement, was that Bundaberg and Fraser Coast were having difficulty harnessing the assistance of colleges to provide a nominee for the committee for the various disciplines?-- Yes.

You relate in your statement that you informed the Australian Council of Health Services audit representative in late 2003 that credentialing and privileging was on foot at the Bundaberg Hospital?-- Yes.

Did you tell that representative that, in fact, whilst the process had been adopted, it had not yet commenced because of the difficulties you were having garnering nominees from the various colleges?-- Yes, I believe I did say that.

You made that very clear, did you?-- Yes. I explained we had a policy, a process, interim privileges had been provided but we were waiting for college nominations to complete it, yes.

Do you recall who the representative was?-- I can't remember his name. There was three members of the team. I believe he was a medical practitioner - senior medical practitioner from South Australia.

Did you ever contact them subsequently saying, "Look, I know I told you this in December. We hope things might be right soon, but we haven't yet achieved the initiation of the process by actually credentialing and privileging."?-- No, I didn't.

Was there a subsequent audit undertaken by that body at Bundaberg in 2004?-- As part of the ACHS cycle, the four-year cycle. They have a large on-site visit in Year 1. You then do a self-assessment in Year 2. There is then a small site visit year 3, then there is a further self-assessment year 4. In 2004 it would have been a self-assessment and the self-assessment would have covered one of the functions that looked at that - four or five functions to look at and we would have done a self-assessment on one of those functions. I can't remember exactly which one it was.

That would have occurred at the end of 2004?-- Yeah. I think it is around about August, September, October period, yes.

You were, no doubt, frustrated at your inability to garner nominees from the colleges in order to bring to fruition the credentialing and privileging policy?-- I wasn't happy - well, as regards - wasn't happy about the College of Surgeons, but because we had so many of the specialists that hadn't by that stage all privileges that had been granted from previous times, Jon Wakefield, had completely run out, but we had made headway with the College of Physicians and College of Obstetricians. So at least we were moving forward and getting some of them done. Yeah, I was not excited - I was not happy the College of Surgeons was slow but we were at least making some progress in getting to some of the specialists done in the larger groupings.

That progress didn't occur until the credentialing and privileging committee first met in November 2004?-- That's correct, but if you have a look, there was a large amount of - if the College of Obstetricians representative - once we got a contact, we had to give him at least six to eight weeks' notice. His books were booked up for that. That's two months' notice. Then we had to make sure he was available, the directors were available, plus the Directors of Medical Services getting a suitable time and place. There was a lot of coordination to be done which was done by Dr Gopalan.

Dr Gopalan was the assistant Director of Medical Services at Fraser Coast?-- I think, yes.

Given the difficulties that you confronted in obtaining nominees from the colleges, did you give consideration to taking up that difficulty with either central zone management or with Charlotte Street in Brisbane?-- No, I didn't because it was one - by this stage we had had some colleges come on board, so we were starting to work and focus on those ones. Potentially, the way it was heading from the College of Surgeons is they would potentially - they would make some headway. They said they had concerns about the number of

requests in the indemnity but I also asked around some of the other DMSs informally and understood that the College of Surgeons had - some reasoning had been provided to them as well, so I didn't take it up with him, and we were making headways in the other areas.

It is correct to say that from the time that you wrote first to Dr Patel on 26 June 2003 - page 298 of your statement - up until, say, the occasion of the Toni Hoffman complaint of 22 October 2004, a period of well over 12 months has lapsed and Dr Patel hasn't been, as a surgeon, credentialed or privileged?-- That's correct, but he was also, as I said previously, one of many senior practitioners.

And the fact he was one of many, I suggest, is a good reason why you would be seeking to go up the line, so to speak, that is beyond Mr Leck, with a view to garnering assistance from the upper echelons of Queensland Health to assist you in implementing this policy which you understood you were obliged to implement?-- We were working on it slowly - we were working on it slowly but surely, and that there was also a hiccup with Dr Hanelt's previous Deputy Director of Medical Services who had resigned from that position. So therefore we had - the - the contacting the colleges had slowed down. So once Dr Gopalan came on board, it picked up again. But, yes, it was making slow headway. It wasn't as if it was completely stopped. I didn't - I didn't see or know anyone who - that would, you know, contact in central zone. As I said, I was aware that the College of Surgeons issue was known by others.

At paragraph 346 of your statement you say that Dr FitzGerald told you, when he was speaking to you in 2005 in February, that if the hospital could not gain the representative from, in this case, the College of Surgeons, then it should ask a local surgeon to undertake the task, notwithstanding that he or she might not be a nominee of the college?-- Yes.

That seems a fairly sensible course to adopt, does it not?-- It seems like a course to adopt.

Is that something you gave consideration to prior to Dr FitzGerald adverting to it?-- It had been - there had been some consideration of it.

When?-- Prior in 2004, but I was focussed on making sure that the process that we began was - is transparent and is accountable as possible, and I didn't wish to run into a situation where we would be accused of mates credentialing mates and we wanted to make sure that this was an open and transparent process for all the specialties as well. And I didn't want to have one specialty saying, "Oh, you look like you have cut the corners here as opposed to another specialty." And, you know, specialties - the specialist in those specialties can do that.

COMMISSIONER: This was taking a long time, wasn't it?-- It was taking a long time, Commissioner.

In the meantime you had nothing?-- We had interim privileges but we had nothing for a number of specialists.

Interim privileges granted by you without any supervision at all?-- Based on my recommendation, yes.

Well, without any supervision at all; isn't that correct?-- He was not being supervised as Director of Surgery, no.

Nor had he been before you granted him interim privileges?-- Correct.

Wasn't the system suggested to you by Mr Douglas better than having nothing at all whilst any other process was continuing?-- As I said, I did not wish to get into a position - situation, no, I did not believe that was a effective way to - I believe that it had - because it had been dormant for such a long period of time, that we needed to have an independent, a representative on an independent body being the College of Surgeons involved in this process right from the start to make sure that all the specialists that were employed at the hospital respected that and one of the ways to respect a process is for involvement of the College.

And in the meantime to do nothing?-- It was a slow process of gathering information.

But in the meantime, to do nothing?-- I don't believe we were doing nothing, Commissioner.

What were you doing?-- We were gathering the information that was required for the applications.

No, no, what were you doing to ensure in the meantime that surgeons were adequately credentialed and privileged?-- There was nothing else, there was nothing else as regards credentialing and privileging being done or for any specialists, including the surgeons.

MR DOUGLAS: I suggest to you that what lies at the heart of credentialing and privileging in the case of a surgeon is patient safety?-- I would say that was for all specialties, including surgery.

Patient safety lies at the heart of it because the policy aims to ensure within reason that a practitioner working at a Queensland Health cohort hospital has the necessary skills to undertake procedures on members of the public at a hospital which accommodates the practice of those skills?-- I think it's more than skills, it's the practice of medicine, which includes various skills, it's the practice of medicine in an individual specialty as opposed to just necessarily the skills themselves.

And if those matters aren't addressed in credentialing and privileging and those that go to make them up, then patient safety is placed at risk?-- It is one element of a patient safety system.

Patient safety is placed at risk if credentialing and privileging is not implemented as a policy?-- I believe that it is one element that affects patient safety but patient safety is more than just a credentialing and privileging process.

I agree with you, but I'm asking you a question nonetheless: I suggest to you that if credentialing and privileging is not implemented as a policy, then what is placed at risk is patient safety?-- Potentially places it at risk.

And you knew that to be the case from April 2003 up until late March 20505 when Dr Patel was working at the Bundaberg Hospital?-- Yes, I knew that the process was not complete.

You knew that an uncredentialed and unprivileged surgeon was undertaking work at your hospital?-- Yes, as a number of senior medical practitioners were.

And after 22 October 2004, you knew that this particular uncredentialed and unprivileged surgeon was a person against whom serious complaints had been made?-- Yes.

And you let him keep on working there, day by day, week by week undertaking surgical procedures on public patients coming into the Bundaberg Hospital?-- He was - he continued to work there, yes.

Commissioner, unless there's some matter you wish me to take the witness to, that's my examination.

COMMISSIONER: All right, thank you. Now, Mr Mullins.

MR MULLINS: Thank you.

MR DOUGLAS: I'm sorry, Commissioner, I should say we have located that second file. I will look at it and if some questions arise out of it, and can I emphasise favourably or unfavourably, I'll put it to the witness at a later point in time.

COMMISSIONER: Yes. Yes, Mr Mullins.

MR MULLINS: Thank you.

CROSS-EXAMINATION:

MR MULLINS: Dr Keating, my name is Mullins, I appear on behalf of the patients. On commencing employment with Queensland Health at Bundaberg, you say that you were given no formal or informal orientation?-- That's correct.

The process of handing over the hospital to your control as Director of Medical Services was simply a handover by Dr Nydam?-- I received a limited handover by Dr Nydam. I have to say that the hospital's not under my control, the control is under the District Manager and I worked with the District Manager.

Next to the District Manager you were the senior person with medical qualifications?-- I was the senior administrative person with medical qualifications, yes.

Did you receive any form of booklet or procedure manual from the hospital?-- No, I did not.

Did you familiarise yourself with the various procedures at the hospital?-- I familiarised myself with the procedures as I went along. I literally was thrown in to work straight away, I was learning as I went.

You commenced at the hospital on 14 April 2003. When did you arrive in Bundaberg?-- 14th of April 2003.

And you started the same day?-- I came on the 9 o'clock plane, was picked up by Mr Leck and was in a meeting at 9.30.

Did you acquaint yourself with the complaints procedures?-- I was - not the total procedure, I very quickly was given a number of Ministerials and I asked one of the secretaries what the expectation was and confirmed that with Peter Leck and started working on those outstanding Ministerials.

The Ministerials is a term defining what?-- It's a letter written by either a member of the public or an MP to the Minister of Health who then directs that letter down to the appropriate health service district to provide draft correspondence in reply.

Did you familiarise yourself with the - or any adverse events procedure?-- At that stage it - I was unaware there was any, I didn't, at that stage. I later became aware that there was no adverse event policy in the district.

Well now, can we deal with the complaints first and I just want to take you through the procedure as you understood it at the commencement or soon after your commencement on 14 April 2003. I'll show you - I'll put on the overhead a copy of Exhibit 292. While we're doing that, can I confirm with you your understanding, that the complaints procedure and the word "complaints" relates to complaints from outside the hospital?-- Yes, that's right.

So I think in this document, if we can just scroll down, a complaint is any expression of dissatisfaction or concern by or on behalf of a consumer group - sorry, consumer or group of consumers regarding the provision of a health service?-- Yes.

Now, very soon after commencing at the Bundaberg Hospital on 14 April 2003, you became aware of the policy?-- I was aware that Queensland Health had a number of policies which were available on the Intranet. I cannot remember when I looked at this policy per se.

Can I ask you to flick through to the third page? Under the heading, "Model for Complaint Handling". We can see that complaint handling is the responsibility of everybody in the organisation?-- Yes.

That includes the Director of Medical Services?-- Yes.

And we can see that there were a number of seriousness categories, "Negligible: No impact or risk to provision or

care or the organisation", the second, "Minor: Resolving at the point of service"?-- Yes.

The third, "Moderate: Issues that may require comprehensive assessment or investigation"?-- Yes.

The fourth, "Major: Significant issues or issues causing lasting detriment or require investigation", and then the fifth category, "Extreme: Issues about serious adverse events, sentinel events, long term damage or death that require investigation."?-- Yes.

Now, can we assume that you became aware of this document and that terminology within a month or two of you commencing employment?-- I'd have to say no. I probably used the local policy and, in fact, I was probably - I knew this policy was around, I was not aware of the seriousness categories until in fact it came up at a discussion at the management committee when Linda Mulligan begun employment and she was bringing up that and I remember arguing saying, "They don't have a seriousness category.", and she said, "Well, go away and check.", so it was after that, sometime after that.

Do you remember when Linda Mulligan commenced?-- Late 2003, I think, early 2004.

Can I show you a copy of a document LTR 2?

COMMISSIONER: Sorry, that first document, what exhibit number is that?

MR MULLINS: 292.

COMMISSIONER: Sorry.

MR MULLINS: LTR 2 is Annexure 2 to the affidavit of Ms Raven which is Exhibit 162?-- Mmm-hmm.

Is this the local policy you're speaking about?-- Yes.

And if I can just show the first page which is the - I'm sorry, "All complaints will be dealt with appropriately within 35 days of receipt to achieve resolution." That was the policy as you understood it soon after the time you commenced?-- Yes.

We can see under the heading "Purpose" the three final dot points, "Ensure complaints management processes is documented"?-- Yes.

And to "Thoroughly investigate the complaints"; that's correct?-- Yep.

If we can turn to the next complete page? I'm sorry, to the second page of the document. The document talks about procedure, again, defines the term "Complaint", and if I can ask you to turn to the second half of that page, the bottom of the page we notice that, "All the written complaints should be

advised to the relevant executive director."?-- Yes.

"Executive director will ensure that a registration form is sent to the complaints coordinator at the completion of the process."?-- Yes.

Who was the person responsible for the coordination of the complaints?-- Quality coordinator, Ms Leonie Raven.

Yes, and who was the executive person responsible?-- Sorry, responsible in what way?

Well, "All written complaints should be advised to the relevant executive director."?-- That could have been the Director of Medical Service, Director of Nursing, Director of Community and Allied Health Service or the Director of Corporate Services, so any of the executive directors and it also included the District Manager.

Any of the executive directors relevant to the particular complaint?-- Yes.

Just flick to the next page? And we see that there's a complaints management process. You're familiarised yourself with that again?-- Mmm-hmm.

And then could I show just the second page of the process?-- Yes.

Now, in summary, the process was this, wasn't it, the complaint's received by the coordinator, it's attempted to be dealt with, the first attempt is to deal with it at the point of service?-- I think - yeah, potentially the complaint could have been received at the point of service or it may have been directed to the complaints coordinator, or unfortunately it can also sometimes it got directed to me as Director of Executive Services, so whilst the complaints should go to the Complaints Coordinator, it didn't always happen that way.

If it went to the complaints coordinator and it was of some seriousness, it generally went to the Director of Medical Service?-- No, it didn't, it would depend on the category of the complaint, it wouldn't necessarily immediately come to me. It often what I found was that in fact almost all complaints were going to the District Manager and then he was - when they came to the Executive Services and potentially they were by-passing the Complaints Coordinator and that the District Manager was allocating them as he saw fit, and yes, I guess I received a number of them, I did get a number that came to me, but I also saw a number come from the District Manager.

The ones that came to you were to be investigated?-- Any complaint, yes.

Yes. And brought to a resolution one way or the other?-- Yes.

And then the information would go back to the Complaints

Coordinator; that's correct?-- Yes.

And the bi-monthly reports would be produced?-- Correct, yes.

In the time between 14 April 2003 and when you left in 2005?-- Yes.

Did the complaints procedure change?-- There was some discussion about the changing, the internal handling of them within the Executive Services area, yes, there was some which was being led by Linda Mulligan.

Can you describe any change that actually occurred beyond discussion?-- There was some changes in the forms, there was a notification form and then a completion form and they were joined together and there was an expectation that the person who handled the complaint should also mark down what they believe was the final - or how it had been resolved, there's some boxes to be filled in in certain areas and they had to fill it in as opposed to potentially leaving that for other staff.

Did the basic process remain the same?-- Yes, I understand that the basic process remained the same.

Now, the companion to the complaints process from the staff perspective was a form of incident reporting?-- Yes.

And you describe in your statement that during the course of 2004, both you and Leonie Raven introduced a new form of reporting which involved adverse events and sentinel events?-- Yes, the incident monitoring system was implemented which involved adverse events and sentinel events, yes.

And you are very familiar with that system?-- Yes.

In fact, you and I think Leonie Raven gave up to 20 presentations to other staff between April and August 2004 describing this new system?-- I don't know if it was that many presentations, it was actually with Jennifer Kirby.

Sorry, Jennifer Kirby?-- Yeah.

Now, can I take you to the period then between 15 April 2003 and April 2004 when the new system's progressively introduced?-- Yes.

There was a form of adverse event reporting, wasn't there?-- Sorry, between, in the first year?

Yeah?-- It was - it wasn't actual adverse events, it was just called incident, incident form - I think it was incident forms, I think.

Can I put on the overhead a copy of LTR 16, which is again Annexure 16 to Exhibit 162?-- Yes.

This was the form that was used?-- Yes, Accident and Incident

Report, yes.

And the same form was used for complaints by patients?-- Yes, I believe it was, yes.

This case was in fact P74 which we'll come to later in the piece, but if we scroll down, we can see that the incident is described by a particular staff member; that's correct?-- Yes.

Signed off by a witness?-- Yes.

And then sent off to a reporting person?-- Yes.

Now, the system that you designed with the help of others and implemented between April and August 2004 directed information to a repository?-- Yes.

Where it was collated?-- Yes.

Was any of this information in the system that existed before April 2004 collated anywhere?-- I don't believe it was in a ongoing consistent manner, I think some - this is one of the forms being used, I understand there were other forms reporting similar information and they were going to different people at different times at different places and that was part of the problem, so it wasn't being properly collated in one central repository.

So did you understand that if there had been complaints between 15 April 2003 and April 2004, that had been resolved by you, that it may be you were the only person who knew about it?-- Oh no, no, sorry, this is a - this is an incident form related to something happening in the hospital as opposed to the complaints. The vast majority of complaints that I got were from external, externally, so most often written, sometimes on phone and they were on a different form and all of those ones which were combined with the Ministerials that I said previously were all collated in one location in a series of file unless the Executive Services - so that's right, you're right - sorry, you've got one lot of complaints in one area, you've got these forms, you've got some other forms and that was part of the problem.

It's probably a mistake in my statement by using the word "complaint" in the question. It's the case, isn't it, that you knew that if you resolved an incident report or adverse event that was received to you from a staff member, and you were involved in the resolution of it, that the details of that may not be recorded in some central database?-- Yeah, that was most - that was possible, yes.

And in fact, you may be the only person who knew about it other than the reporting staff member?-- I think yes, although - no, my understanding was that there was a second page of this form, to - and that if it was received by a person who had a responsibility to fill something in, but it was a very limited space and my understanding was that a copy

of that would go back to the original form.

All right. If we have the second page of this particular complaint. That's the area supervisor investigation report?-- Yes.

Who would have been the area supervisor?-- Potentially the Nurse Unit Manager, it was most likely the Nurse Unit Manager.

And if you scroll further down the page please? And who would have been the department head?-- In this situation it looks like the signature of Carolyn Kennedy who was then the acting, who is - sorry, the Assistant Director of Nursing.

All right, in any case, we - you accept that there was no central repository for any of this information until after April 2004?-- There was not one centralised repository for that.

Now, after April 2004 you produced the new system?-- Yes.

Which had reference to sentinel event and adverse events and so on?-- Yes.

I'll just show you DWK 85 and 86. This is in fact the Bundaberg Hospital Policy and Procedure document?-- Yes, it is.

Not to be confused with the Queensland Health Policy and Procedure document?-- Correct.

You mention in your statement that you only received the Queensland Health equivalent of this document on 5 August 2004?-- That's correct.

Now, we're looking at 85. Can you just scroll down a little? There's reference to an, "Incident or an event or circumstance which could have or did lead to unintended and/or unnecessary harm to a person and/or complaint, loss or damage."; that's right?-- Yes.

And then on the next page toward the bottom of the page under the heading "Outcome"?-- Yes.

We can see that, "All adverse events are to be reported to the relevant Director, District Quality Decision And Support Unit and where indicated an investigation shall occur."?-- Yes.

That's right?-- Yes.

And if we flick through to DWK 86? This is the sentinel event documentation?-- Yes.

And if we just scroll down then to the definition of a sentinel event?-- Yes.

Turn to the second page is the procedure in respect to the sentinel events?-- Yes, there are - oh, yes, it also outlines

sentinel events, it outlines what is a sentinel event and then outlines the procedure for it.

Now, that's then the policy that operated effectively from 1 June 2004?-- Effectively from that, around about that time, yes.

Okay. Now, doctor, earlier in the piece in the Inquiry, some evidence was led from another Director of Medical Services from another hospital and had some comments to make about some complaints procedures, and can I just get your comments on some of these? This doctor stated that she as the Director of Medical Services would go out looking for complaints, asking for complaints because she believed it improved the quality of the health care service that that hospital was delivering; do you have a comment on that?-- My understanding - I understand what she's attempting to do and I think I know who gave that evidence, and yeah, I understand that she was probably in a position where she could do that. I can say that I had - I had more than enough coming to me, I didn't go and find more.

She said, "Slavish adherence to documentation was not part of the complaints procedure."?-- I believe that you have to - you have to have some adherence to some process and procedure to ensure that you can go back and show that you have received the complaint in the first place and investigated and provide some form of try to resolve it, but slavish - I agree that slavish adherence is not necessarily appropriate in all cases.

For example, she was asked if two specialists came to see you to report a series of facts that were obviously a sentinel event, that she would ensure that the processes were put in place to have that event investigated; that would be consistent with your understanding of how the complaints and adverse events procedure should operate?-- I would have - I would prefer and strongly prefer - my strong preference would be for a form to be completed.

Well, not just a form to be completed, but if two specialists came with a set of facts that were a sentinel event, you would get the processes going so that a sentinel event was adequately investigated, wouldn't you?-- Yes. Can I also add provided, of course, that the events that were described were truly a sentinel event.

Can you say that again, I'm sorry?-- I also add provided the events described were truly a sentinel event.

Now, what I'd like to do is take you through some of the complaints that were made by the patients over the period between 14 April 2003 and December 2004. Just so you understand, I don't necessarily want to debate the rights and the wrongs of each particular incident, but to determine the information or the flags that were coming up during the course of this process. Can I start with the first complaint, 14 May 2003 was from P74 , and you've dealt with that at paragraph 316 of your statement?-- Yes.

He was the fellow who - the wrong procedure was performed on?-- Yes, that's correct.

Is that correct? Dr Patel was certainly not entirely to blame for that event?-- Certainly not.

19 May 2003 was the event involving Dr James Phillips - sorry, Mr James Phillips, patient 334?-- Yes.

Now, have you had the opportunity to read the Woodruff Report?-- Yes, I have.

I will show you a copy of that report, referring to page 32. Can I ask you to push the page up so that the top line is the small A. Now, there is some dispute about the date that Ms Goodman came to see you. You suggest it was 30 May 2003?-- On or about, yes.

From your perspective, does anything significant turn on that?-- I think it was after - it was - what I remember is it was after the first patient had died, who had an oesophagectomy.

All right. Well, Mr Phillips was the first patient who had an oesophagectomy. Now, Ms Hoffman met with you and raised three issues, and I am going to suggest to you that in fact there's four here, but three that are identified in the Woodruff Report. The first was Dr Patel had allegedly written the patient was stable when, in fact, they were on maximum inotrope therapy and support?-- I recollect that she said that he described the patient as being stable when - and when, in fact, they were on inotrope - on inotrope support and ventilatory support.

So that was a complaint that Ms Hoffman made to you?-- Yes.

Second point, "Dr Patel was rude, loud, did not work collaborative with the ICU medical staff." Third point-----?-- Sorry, can I just say it was more focused on the nursing staff, her concerns.

Third point, "ICU in Bundaberg was level 1 and as such was not capable of providing level of care that was required to support such surgery." Now, they are the three issues that she raised with you. Do you agree with that?-- I definitely agree with the first one, the second one, and - yes, the third one, yes.

Okay. Now, the report then says you advised that you'd agree to speak to Dr Patel and Dr Carter. You raised the issue with Dr Carter who indicated ICU should have been able to cope with the surgery with appropriate patient choice?-- Mmm-hmm.

Now, the statement made by Dr Carter then appears to be qualified, that he indicated that the patient had not been a good candidate for surgery and had been refused surgery in Brisbane. Can you just push the page up a little. Now, again, there's some debate about whether the patient had been

refused surgery or not refused surgery. I don't want to go in to that. But in the course of your investigation into this, there were four matters that were raised. The first was Dr Patel's statement or Dr Patel's writing that the patient was stable when, in fact, on the face of it they weren't stable?-- As I said, the word "written" - I don't recollect the word "written" being used. I heard him describe the patient as stable.

Is that an issue of clinical judgment for you?-- No, it was more an issue of how - potentially trying to convey news to a relative who didn't understand medical terminology. It didn't necessarily to me - I understood potentially he was trying to speak to a patient - sorry, to a patient's relative to explain that they are on maximum inotrope support with ventilatory support, it's a bit like saying - you know, trying to speak martian. So, yeah, I understood what - what Tony Hoffman's complaint was in this situation, but I believe that as a clinician she was best placed to speak to Dr Patel who was the other clinician, try and understand why he'd said that.

Well, the second - we will leave the second point. The third point, "The ICU in Bundaberg was level 1 and as such was not capable of providing the level of care required to support this surgery." Now, was that a question of clinical judgment for Dr Patel?-- It was - as I said yesterday - related to - yes, it was related judgment in that if the operation went well and there was no complications the ICU could cope with this patient. If they did have complications, potentially on the other patient load, they may not be able to.

Now, your further investigation with Dr Carter revealed that he believed the ICU was capable, except only when there was an appropriate patient choice?-- I can't remember him talking about patient choice. I read this in this report and I couldn't understand what they were talking about patient choice.

MR DIEHM: Commissioner, I might interject to say I cross-examined Mr Wakefield about that very passage and his evidence was-----

COMMISSIONER: Yes.

MR DIEHM: Because it's ambiguous, the way it's worded, his evidence is that that particular sentence about, "Dr Carter had also indicated", et cetera, was information gained from Dr Carter, not information gained from Dr Keating.

COMMISSIONER: Right.

MR DIEHM: So, I'm just raising that in case that's a cause of confusion between - or for Mr Mullins in particular in asking Dr Keating about what something - that might appear as if it's being attributed to Dr Keating.

COMMISSIONER: Yes, thank you for that.

MR MULLINS: Thank you. Did you not understand at the time - I will withdraw that. Did you have any knowledge at the time that Dr Carter was suggesting in any way that the choice of surgery for this patient was an inappropriate?-- No, I did not.

Now, resolution to the matter was to have Dr Patel speak with Ms Hoffman?-- She asked - Ms Toni Hoffman asked to make an appointment with Dr Patel and I then spoke to Dr Patel as well.

What was Dr Patel's reaction?-- Dr Patel - I spoke to him about the capability component. He accepted what I said, appeared to take on board that. He did note that - certainly in one of the conversation I had with him he inferred they'd been done previously and that other complex surgery was also being done there, which I was aware of.

So what was the final resolution?-- Final resolution was that, yes, he - that oesophagectomies - the oesophagectomies would continue, based on the information I had from Dr Patel and Dr Carter.

Sorry, was this after the Phillips incident or after the subsequent Grave incident?-- Well, it was both.

Did you convey that to Ms Hoffman?-- No, I didn't.

Moving on to 1 June 2003, P151 . Now, can I take you to paragraph 318 of your statement?-- Yes.

This is patient P151. He complained about a procedure to his ear?-- Yes.

You investigated that complaint?-- Yes, I did.

You had a discussion with Dr Patel about that patient?-- Yes, I did.

What was Dr Patel's explanation?-- I didn't - he didn't have an explanation at that stage. He wished to see the patient to identify the area of concern.

Another letter of complaint was issued or received on 11 June 2003?-- Yes.

And it seems that the complaint then was subsequently resolved?-- Yes.

Can you help the Inquiry with any further information about how it was resolved, what Dr Patel's ultimate conclusions were?-- My understanding is that the patient - he - Dr Patel arranged to see the patient in outpatients or arrange an outpatient review. Unfortunately the patient wasn't seen by Dr Patel on that occasion, was seen by a junior resident.

Did the junior resident express the opinion or record the opinion that in fact the wrong area had been cut out?-- I

can't remember what the junior resident actually recorded. But I think - yeah, certainly P151 was not happy with the explanation provided and I believe he still had an area requiring further surgery, and that's why he wrote the second letter, and I then spoke - and then I was asked by Peter Leck to preview that and provide some information to him, which was included in Dr FitzGerald's exhibit, and in - I think in the meantime an appointment had been made for P151. He was happy with that and I understand he had the area of concern removed, so therefore he was happy that his original complaint had been resolved.

Well, now, the appointment where he had the area removed, is that with Dr Patel?-- I believe it was. I can't be 100 per cent sure. I would have to look at the file to confirm that.

Did you yourself arrive at any conclusion as to whether there was any incompetence on the part of Dr Patel from that incident?-- No, I did - I did not believe that this showed any form of incompetence. What I remember is in the notes that part of his lesion had been removed and - it's my experience - I understand sometimes these lesions are often hard to discern at the time of surgery and there is often a long period of time between when a patient is seen and when they then have the surgery. What I picked up was Dr Patel was very keen to make sure this patient's complaint was resolved.

On the 6th of June 2003 James Grave - I am about to start another patient. Is that a convenient time?

COMMISSIONER: Yes, it is. We will now adjourn.

THE COMMISSION ADJOURNED AT 12.58 P.M. TILL 2.00 P.M.

THE COMMISSION RESUMED AT 2.00 P.M.

DARREN WILLIAM KEATING, CONTINUING CROSS-EXAMINATION:

MR DOUGLAS: Can I just mention something before the examination proceeds? I have made arrangements for Dr Buckland to reappear to give evidence. I anticipate his evidence will be brief, probably not longer than about half an hour, and those arrangements have been made for this coming Monday at 9.30 a.m., so if any party is interested in that. There has been a statement - a further statement of Dr Buckland which I believe has been sent over by the Commission staff. If it hasn't been, it will be disseminated in the next day or so.

COMMISSIONER: All right. Thank you.

MR MULLINS: Dr Keating, before I go to patient ID, can I just run one further matter by you in respect of James Phillips, patient P34. You said before lunch that you understood the complaint was that Dr Patel had been advising or had advised the family that P34 was on maximum inotrope therapy and support. Is that what you understood the complaint to be?-- I understood that he was describing - he was describing the patient is stable when they were on inotrope support and requiring ventilatory support, and I could understand - a situation. I didn't get the details of what that was, but I can understand that he might use that in talking to a patient's relative. I didn't get those details, but I could understand that was one possibility where he could use it. I could understand Toni Hoffman's concern, but I could also understand how it could be used as well.

It was actually written in the notes, wasn't it?-- It was never told to me it was written in the notes.

Did you check?-- No, I didn't.

If that had been written in the notes, that would demonstrate a question mark over Patel's competence, wouldn't it?-- I would have to - I would have to look at the totality of what was written.

If Dr Patel had described in the notes that patient P34 was stable when in fact he was on maximum inotrope therapy and support, that would have been misleading to the ICU staff, wouldn't it?-- I can't determine what he - his thoughts were. As I said, I could understand-----

COMMISSIONER: No, no, you were not asked what his thoughts were. You were asked about whether that statement was misleading?-- As I said previous, Commissioner, I have looked at the total of that. If he was described as haemodynamically stable whilst requiring support, that would suggest to me that the blood pressure and associated indicias remain stable. Whether the - the patient was critically ill because they were in ICU, the indicias were stable and they hadn't varied, and he was requiring support. So, the "stable" to me reflects the trend of the parameters that were being measured and if he was haemodynamically stable, that to me would make sense.

MR MULLINS: Did you investigate this at the time?-- No, I didn't.

This was in today's - by today's standards was a sentinal event?-- The death of this patient?

He died after the surgery, didn't he?-- Yes, he did.

Was it a death reportable to the Coroner?-- I'd have to look at the - I believe that - at that stage the patient died after surgery, not during - not during surgery, not as a result of the perioperative anaesthesia. The reasons for that patient's

death were - they were aware of it. I don't believe it would necessarily have complied with that Coroners Act at that stage.

You took responsibility for resolving Toni Hoffman's complaint in respect of this case, didn't you?-- I was asked - I was asked for advice in a meeting between her and Glennis Goodman. I provided that advice, which at that time I believed that Toni Hoffman was happy with that, as was Glennis Goodman.

It's not just a question of providing advice. We have a man who's died soon after surgery. There's allegations of incompetence on the part of Dr Patel and it wasn't investigated?-- I do not believe there were questions related to competence. I believe they related to the capacity of the ICU to be undertaking this operation.

Isn't that still worth investigating in the context of this man's death?-- At that time I did not believe so. As I said, I sought information from the clinicians, and that's the problem with this situation. Clinicians have differing views and at that time I took on board what was being said to me by the directors.

Moving on to patient P18, I will show you again an extract from the Woodruff Report as the starting point. This was the second oesophagectomy performed by Dr Patel?-- Yes, it was.

Performed very soon after the surgery on P34?-- Yes, it was.

Now, at this time Dr Joyner comes to you and raises some concerns about this patient and asks you whether these cases should be done at the Bundaberg Hospital; that's correct?-- Yes, he did.

Additionally, Dr Joyner had suggested the transfer of the patient to Brisbane but Dr Patel had refused. That was your recollection of the event?-- He was - yeah, I understood that's right. Dr Joyner recommended it and Dr Patel was reluctant to do that, yes.

Well, now, that is clinical judgment on the part of Dr Patel, isn't it?-- It's also clinical judgment on the behalf of Dr Joyner.

So we have competing clinical judgment between an anaesthetist-----?-- Yes.

-----and the surgeon?-- Yes.

Were you in any position to resolve that competing clinical judgment?-- Not from - not from a - I was not a specialist in either of those disciplines, nor in critical care, so I asked for another anaesthetist to review the situation.

The other anaesthetist was Dr Carter?-- No, it was Dr Younis.

Sorry, Dr Younis. Dr Younis indicated the patient could stay

for a short period?-- Yes. He said that the patient did not need to be immediately transferred and could be - wait another 24, 48 hours, yes.

Subsequently, in fact, the patient was transferred to Brisbane?-- That's right.

Well, now, this raised some similar issues to the case of P34, Mr Phillips, didn't it?-- I believe it raised the issue as regards the capability of the ICU to undertake this level of surgery, yes.

And it was a very significant issue for patient safety at the hospital?-- It was - it was relevant to patient safety, as was a large number of other concerns of patient safety, yes.

On the one hand you had Dr Joyner and Ms Hoffman questioning whether this surgery can be carried out at the Bundaberg Hospital?-- I - yeah. As I said, I got the feeling - it was more so - more the post-operative care after the surgery, not the fact of the actual surgery being done. It was post-operative care, which is part of that overall surgery.

COMMISSIONER: If the post-operative care can't be provided at Bundaberg Hospital, the operation should not be performed there, should it?-- No, it shouldn't, Commissioner, but I was also getting conflicting advice about that, Commissioner-----

MR MULLINS: All right?-- -----from the clinicians who were - responsibile for that as well.

The advice you got from Dr Carter - or can you tell us the advices you got from Dr Carter in respect of that?-- It was some time after this because Dr Carter was away during this time. I did speak to Dr Carter and he certainly said to me that oesophagectomies could be performed then and that he was - he was not rigid in this 24 hour rule or 48 hour rule as regards patient ventilation, and he felt that he took no account in a number of criteria before transferring - before deciding to transfer that patient, and he accepted that these types of patients could fall into that - into that time window criteria that he looked at.

One of the issues or the issue that you say that you were resolving there was whether this surgery could be performed at the hospital or not?-- Yes.

That goes to the heart of credentialing and privileging, doesn't it?-- It is one aspect of credentialing and privileging. It's a procedure which is looked at and obviously taken into account with the service capability and the role of delineation of the hospital. You have got to have the facility, the equipment, the staff, the surgeon, post - you know, the post-operative care and the credentials and privileges. The credentials has got the surgeon saying he can do it, and you are showing evidence of that combined with the provisions provided, taking into account the service

capability of that facility, and I was getting advice that it could be done in that situation.

When you say the surgeon was demonstrating he had the capability of doing that, what do you mean by that?-- I was talking generically, but you are talking about a surgeon being able to do the procedure.

Didn't this situation or this problem cry out for a credentialing and privileging assessment in respect of this issue at least?-- I - at that stage I was not being asked about Dr Patel doing that. I was being asked, I believe, from a service capability or role delineation perspective and the advice I was getting from experienced clinicians was that it - it fitted within - it would fit within the role delineation service capability of the organisation - of the hospital at that time.

COMMISSIONER: But that is a privileging question, isn't it?-- It's two ways, I would say, Commissioner.

It is a privileging question whether, in fact, that operation ought to be performed at that hospital?-- It does impinge on their privileges, yes.

It was one of the questions that has to be determined in a privileging procedure?-- It is, Commissioner. What I would say, though, is at the moment the credentialing and privileging process, as I understand it, is not mature enough whereby it goes through process - sorry, procedure by procedure by procedure. Whatever-----

You didn't think that you could determine by setting up a committee for that purpose whether, in fact, this operation should be performed at your hospital?-- No, I didn't at that stage, no.

Right.

MR MULLINS: The next complaint that you receive was on 28 October 2003 from Mr Fleming?-- Yes.

Do you recall the conversation with Mr Fleming on 30 October 2003?-- I rely on my notes. I rely on my notes that was made of that conversation.

Would you like to turn them up?-- I am not sure if I have got. Have I got them in this?

They are not part of your statement?-- I don't think so. I would have to check. They may not have been previously. No, I don't. I don't have them in my statement.

I think-----

MR DIEHM: 114.

WITNESS: 114.

MR MULLINS: I have a transcribed copy. I will give you the original?-- Sorry, they are not my notes. My notes are on the bottom of that Notification of Complaint form, I think.

Is that a copy of your notes?-- Yes, it is.

Now, it is the case, isn't it, that you had a discussion with Mr Fleming for about 20 to 30 minutes?-- I can't remember the exact time but it was a period of time.

And you opened the conversation by saying to him, "I hear you have lodged a complaint against Dr Patel.", and you said, "I must tell you that he is a fine surgeon with impeccable credentials and we are lucky to have him in Bundaberg."?-- No, I did not say that.

You said, "I understand you are bleeding internally since the operation but this can be caused by many factors."?-- I asked - I would have - I asked him what was - what was going on and I understood he had some postoperative bleeding, but then I asked him to explain what had gone on.

You had a short history of the complaint from one of your employees?-- Yes.

And Mr Fleming had placed the complaint orally or over the telephone on about 28 October?-- Yes.

Had you spoken to Dr Patel about the complaint?-- I spoke to Dr Patel - I think my notes say I spoke to him on the 29th. The 29th.

What did Dr Patel tell you?-- That he was prepared to see Mr Fleming as an outpatient appointment and he would review - review Mr Fleming in the outpatient's department with a view to a colonoscopy if it was required.

I suggest to you that Mr Fleming complained to you of four things. Firstly, that Dr Patel failed to diagnose a wound infection when the staples were removed?-- I rely on my notes here, and if he talked long and hard - if he talked about the failure to diagnose, I would have written that down. I didn't make a note of that.

He complained to you that on the following evening, the infection blew a hole through his surgical incision. He was rushed to emergency and admitted to the wards and the nurses tried for two days to get permission from Dr Patel to use a suction pump to drain the infection. And Dr Patel refused to allow the nurses to use the suction pump?-- Again, that was not included in my notes here. If that was a major issue - if it was a major issue I would have included it in my notes.

He also complained about the wound being re-opened by a junior doctor. Any recollection of that?-- No recollection based on my notes.

And he also complained that since then he had been bleeding internally and that nothing had been done about it?-- Certainly the notes - the brief notes here talk about the postoperative bleeding and the fact he had attended the

emergency department on a number of occasions.

It is the case, isn't it, that you were intimidating, belittling and condescending to Mr Fleming?-- I do not believe I was condescending, belittling or intimidating in any way to Mr Fleming.

You basically treated him as a whinger?-- No, I did not treat him as a whinger.

Do you accept that if the complaints of Mr Fleming were true, that they reflected poor practice on the part of Dr Patel?-- They reflected that Dr Patel had a postoperative complication, if those complaints were true. But, as I said, I have written down the points that I outlined to Mr Fleming and they were not included in those points.

The next complaint was of a P198 , P198, and that's in your statement at paragraph 330?-- Yes.

We can see this fellow complained on 21 November 2003 about swelling and bruising of his scrotum following repair of his inguinal hernia?-- Yes.

You say that you provided an explanation, reassurance and offered him three options?-- Yes.

Did you speak to Dr Patel?-- No.

Did you think there was a need to speak to Dr Patel?-- No.

The repair of the hernia is a relatively straightforward procedure?-- It is, with an amount of complication of bruising and swelling often quite affects the scrotum area, requiring time off work, bed rest, ice, analgesia.

Dr Patel had no knowledge of this complaint?-- I think he did because this patient came back to Dr Patel's outpatient clinic, and I think I may have mentioned it after the event. I didn't speak to Dr Patel prior to this but I think I spoke to him afterwards and I think this patient came back to the outpatient clinic for further review.

Now, about the same time, about 27 November 2003, Gail Aylmer and Nurse Pollock approached you about some issues with the renal patients; that's right?-- Yes.

And they were concerned that the surgery being conducted by Dr Patel was or had an inordinate number of complications?-- No, I don't recollect that. They came to speak to me about his personal infection control measures in the renal dialysis unit.

There was no discussion at that time about problems with the catheters?-- No, there wasn't.

You say it was solely in respect of the infection control practices?-- Yes, that's right.

Now, in February of 2004, you first heard the complaints, on your version, from Patty Martin about the problems with Dr Patel and the insertion of catheters in the renal unit?-- He was not actually doing those catheter - he was doing those in theatre. So yes, I understand - you are talking about the peritoneal dialysis catheters?

Yes?-- Yes.

Now, do you accept that by February 2004 you were aware that Dr Patel had a 100 per cent complication rate in respect of those catheters?-- No, I do not accept that.

What was the extent of your knowledge of the complaint at the time?-- My knowledge was that there was some concerns raised about peritoneal dialysis and the complications of that, and that I asked for further information, further data about that. I was not given any information as regards 100 per cent complication rates for the total numbers or anything along those lines.

Did you take it up with Dr Patel in February 2004?-- I don't think I did at that time, no.

Wasn't he the obvious person to raise the issue with?-- I think, yes, he was, provided I had something in which to talk to him about. I believed that I needed some data, some appropriate quality of data which to at least kind of talk to him about this issue.

Did you believe that you needed proof before you could go to speak to Dr Patel about this sort of problem?-- I believed that I needed data to show - to show if there was a problem, yes.

Well, you needed to demonstrate through data that there was a problem?-- Yes.

You couldn't just speak to him and ask him whether he had a problem?-- I - no, I believe it was - the best way to go about this was to have the data to speak to him about that in the first instance.

Did you ever have any circumstance, in your discussions with Dr Patel, where you had conflict?-- Where we had conflict? Yes.

Where you had arguments?-- I don't believe we had arguments but we certainly had conflict, yes.

Did you like those occasions?-- No, I didn't like those occasions.

Did he yell at you?-- As I said yesterday, I don't believe that he ever yelled at me. I understood he had yelled at other people but I do not recollect him yelling at me.

COMMISSIONER: Were you frightened of Dr Patel?-- No, I wasn't.

MR MULLINS: Did he ever say to you that he is going to quit?-- No, he didn't.

Did he ever intimate to you that he might quit if he didn't get things his way?-- No, he didn't.

Were you ever concerned that if you approached him about a particular topic, without some evidence to support it, that the situation would dissolve into conflict?-- I took the same attitude towards him as I did with other senior medical professionals, in that they required information data in which to back up these concerns, allegations or accusations. We work in a situation whereby, unfortunately, you can't just use gut feel alone.

Look, if we review Dr Patel's first year up until March of 2004, you had had the problems with the oesophagectomies and Mr Phillips and Mr Graves?-- Yes.

You had had some complaints about postoperative complications in fairly standard surgery, as described by P15, Mr Fleming and P198 ?-- Yes.

You had had the complaints from Nurse Aylmer and Pollock in respect to the infection problems?-- I believe it was - the infection control problems, yes.

Yes. And you had finally heard in February 2004 about this problem inserting these catheters for peritoneal dialysis?-- Yes.

Now, did you think, as at February 2004, "Maybe we should work out exactly what Dr Patel can and can't do."?-- No, I didn't.

You were about to renew his contract, weren't you?-- Yes.

You were about to offer him another 12 months?-- Yes.

Wasn't that the opportune time to implement the credentialing and privileging process, to define what he can do and what he couldn't do at the Bundaberg Hospital?-- It was - it was one time. As we'd also previously outlined, there had been a slowdown in that process and procedure, but I saw these situations as one-offs consistent with a person who was doing surgery. We were also getting complaints about other surgeons and other specialists. I couldn't see a definitive trend at that time.

One thing could be discerned from the history, and particularly from the renal unit complaints, that is the insertion of catheters, and the oesophagectomies, was that if those complaints were correct, Dr Patel had problems in defining his own capacity, didn't he?-- There was the potential for that but there was also - as I said, also the potential - well, I also had other clinicians saying that as

regards oesophagectomies they had no concerns. So I understand - yes, I understand what you are saying, but, yes, there was and that's part of the thing for medical specialists or medical practitioners of any persuasion, is for their ability to understand the limits of their skills, knowledge, experience.

Move on to 2004. On 27 February 2004, Geoffrey Smith made a complaint?-- Yes.

That's at paragraph 331 of your statement?-- Yes. Yes, he did.

He complained about the treatment of Dr Patel in the administration of anaesthetic?-- Yes, as regards local anaesthetic, yes.

And the treatment of Dr Patel in the conduct of the entire surgical episode?-- Yes.

Now, you say that you counselled Dr Patel about his manner in such situations?-- Yes.

What did you say to Dr Patel and what was his response?-- I can't remember word for word but I certainly talked to him and explained to him that this patient's complaint appeared very legitimate and that the attitude he'd displayed to Mr Smith seemed inappropriate and that he needed to take on board the concerns of Mr Smith or similar patients when they express these concerns.

Did he take you seriously, Dr Patel?-- I believe he did.

On the 4th of March of 2004 Vicki Lester complained-----?-- Yes.

-----about Dr Patel. You deal with that at paragraph 334. Can I ask you to go to DWK77? The first two pages of that document are her request for travel expenses to go to Rockhampton for further surgery, is that right?-- Yes, they are.

The third page is a note of the conversation with one of your staff in respect of this matter?-- Yes.

And you have read that note?-- Yes, I have.

And the concern that Ms Lester had was that she'd had some surgery?-- Yes.

She'd been to see Dr Patel?-- Yes.

And she was concerned that there was still some packing in the wound?-- Yes.

He said there was nothing there. She had then been to see her GP who had another X-ray who told her that the packing was still there?-- Yes.

Now, the GP had recommended, so Ms Lester said, that she should go to Rockhampton?-- Yes.

Now, the response from your office was, "Well we're not going to pay you or give you any money to travel to Rockhampton because there is another surgeon at Bundaberg who can treat you."?-- That's right.

What did Dr Patel have to say about this?-- I don't believe I told Dr Patel about that.

We have an allegation that Dr Patel had conducted an investigation and said there was no packing in the wound?-- Yes.

We have a statement from a patient saying she had been to see her GP and had an X-ray which revealed there was packing there?-- Yes.

We have an allegation that the GP was now sending this patient off to another hospital?-- Yes. Unfortunately, under the Patient Travel Subsidy Scheme, it did not allow me - did not allow me to send her there when a similar service was available within Bundaberg, and whilst, as a public patient, she may not wish to have seen Dr Patel, there was another surgeon who was available to review her, and basically moving to a specialist or going to a specialist of your own choice under the Patient Travel Subsidy Scheme is not allowed under the Patient Travel Subsidy Scheme.

But, Dr Keating, that's not the point I am asking you about. We have an X-ray by a GP who says that the assessment by Dr Patel was wrong? Did you think that needed to be investigated?-- No, I didn't.

Did you think that was of any significance?-- I have read this piece of paper. I cannot remember - this was notes made by my secretary. I can't remember exactly what she said to me. I assume she has used this for me but, no, I didn't see that there was anything untoward here.

Nothing untoward that Dr Patel might have conducted an assessment of this patient and advised her that there was no packing left in her wound when in fact there was?-- That's, you know, his opinion, and as her GP was saying from another X-ray. In this situation there are times where there is sometimes hard to find a diagnosis in this situation, the GP can speak to the specialist and say, "Well, look, I have performed this other investigation, I have got this other evidence. What do you say?" But that wasn't being asked about in this case. This was purely a travel application.

COMMISSIONER: It seemed pretty clear from that that Dr Patel had got it wrong and there was packing in the wound, doesn't it?-- I don't believe it necessarily - that is one - that is one option, Commissioner, but I don't believe it is the only one.

You didn't get to the bottom of it and find out whether in fact there had been packing in the wound which was later removed?-- No, I didn't. As I said, this was a patient travel application. I was-----

I understand that. But this was a potentially serious complaint against Dr Patel of what appears to be gross carelessness, leaving packing in a wound, isn't it?-- It is an allegation along those lines but I would also have to say is I know, having reviewed this patient's file since this time, that, in fact, it wasn't Dr Patel who actually initially treated her.

No, no, no, that's not the point. The point is whether Dr Patel told her that there was no packing in the wound when there plainly was?-- Well, as I said, this is a difference between the specialist and what the GP has found. It is a difference of opinion.

You didn't think it worthwhile following up to see if in fact Dr Patel had got it wrong, as seemed to be the case?-- No, I didn't.

MR MULLINS: And this complaint was received less than 10 days after you had counselled him about Geoffrey Smith?-- Counselled him about his attitude to patients, yes.

2 July 2004, patient P131 is at paragraph 338 of your statement?-- Yes.

This is a circumstance involving a misdiagnosis?-- Yes.

And you took this up with Dr Patel?-- Yes, I did.

He gave you an explanation for the misdiagnosis?-- Yes, he did.

And you didn't take the matter any further?-- No, because at that stage this patient had been there and had further follow up with other practitioners at the hospital and had definitive treatment. I did - I did speak to Dr Patel at that stage and - look, I accepted that and I think - that was an alternative diagnosis, and that is a thing I have to say about the practice of medicine, it is both an art and a science.

2nd of July 2004 was also the date of an ASPIC meeting?-- Sorry, which date?

2nd of July 2004. I will show you the Woodruff report. Page 34?-- I guess the report says that.

Do you remember that meeting?-- I don't remember that meeting.

Do you remember that around that time wound dehiscence rates were high?-- I remember during that period of time - I can't remember which exact meeting - I have to refer to my notes -

that this issue was brought up at the ASPIC by Di Jenkin, who was the nurse unit manager of the surgical ward.

Now, 28 July 2004 was the issue involving Mr Bramich. Can I ask you to turn to the next page? Sorry, the previous page. Now, on 2 August 2004 you accept that Ms Hoffman had reported the death of Mr Bramich as a sentinel event?-- Yes, she did.

Can I ask you to turn to the next page? She specifically raised in her allegations against Dr Patel that he had delayed the transfer of Mr Bramich?-- Yes.

There had been verbal abuse of Mrs Bramich in the ICU?-- That's what it says here, yes. I would have to refer to the original complaint, really, to confirm that.

Is it your recollection that she alleged that there had been grossly inappropriate attempts of pericardial drainage?-- I remember there was concern expressed about the number of attempts of pericardiocentesis.

Now, the issue of delayed transfer was a matter that had been raised previously with James Grave, hadn't it?-- Sorry, James Grave was the-----

Second oesophagectomy?-- Second oesophagectomy. There was a difference - difference of professional opinions about whether he should or shouldn't be transferred.

There is obviously a mountain of evidence about what actually happened in the Bramich case, and I don't want to go into the detail of it, but the issues that were raised which you hadn't got to the bottom of for some considerable period of time afterwards, were significant issues relating to the clinical judgment of Dr Patel?-- I was concerned about his multiple attempts at pericardiocentesis. I was concerned about his communication with the patient's relatives, and I was concerned about the lack of command and control of the whole situation. They were my major concerns related to this situation. There was a large number of people from many professions and bodies out side the hospital involved in this situation. My concern relating to Dr Patel related to those.

Well, it raised this issue again of Dr Patel's clinical judgment about certain matters?-- I believe that pericardiocentesis related to skills. I believe communication related to communication skills and I believe that command and control situation related to his interpersonal skills.

20 August 2004, patient 127, is at paragraph 339. That complaint was in respect of wound dehiscence?-- Yes, it was.

You sent that off to be assessed by the surgical ERROMED meeting?-- Yes, I did.

Can you tell us what the result of that was?-- I can't say what the result of that was.

On 8th October 2004, Linda Parsons had a meeting with Dr Kees Nydam. Did you have any knowledge of that?-- No, I didn't have any knowledge of that, except I know that Dr Nydam saw a patient around about that time. I have now since found out, since the Commission has occurred, who that was and what that was about.

That related to surgery conducted by Dr Patel and subsequent wound treatment by others?-- I only found out that during this Commission.

On 11 October 2004, the inquiry has heard a patient described as Mr B underwent some surgery performed by Dr Patel and his vas was accidentally severed. Did you know anything about that?-- Only since what I have learnt in the Commission or the former Commission.

You're unaware of any complaint about that?-- I was unaware of any complaint in relation to that.

Now, that brings us to 20 October 2004 which was the letter from Ms Hoffman?-- Yes.

And I think you've told the Commission, correct me if I am wrong, that you found out about that soon after the letter was received by Mr Leck?-- Yes.

Now, prior to that time, had Ms Hoffman generally brought her complaints to you?-- About?

Issues with Dr Patel?-- No, apart from the specific incidence we've outlined here with regards to the oesophagectomy, no, I didn't, I didn't have complaints - I have no recollection of any complaints from Toni Hoffman relating to that situation.

Were you her direct line manager?-- No, I was not.

Did she have a direct line to Mr Leck?-- No, her direct line manager when she was the Nurse Unit Manager of ICU was the Director of Nursing.

And-----?-- Unless she filled in at times as either the Acting Deputy Director of Nursing or Acting Director of Nursing at that time she then had a-----

Did the Director of Nursing generally go to you before going to Mr Leck?-- About?

Issues relating to clinical practice?-- Yes, she would speak to me on different issues.

Well, in respect of Dr Patel, Toni Hoffman came to you in respect of James Phillips?-- Yes.

Toni Hoffman came to you in respect of James Graves?-- No.

Who did she speak to first?-- James Graves, I don't recollect me receiving any complaint from her about that - back from her about James Grave.

All right. Did she come to you in respect of Mr Bramich?-- She didn't come to me directly about Mr Bramich, I received that form from the DQDSU.

Was it the first time that Ms Hoffman had complained to your knowledge directly to Mr Leck about Dr Patel on the 20th of October 2004?-- That's the first of my knowledge at that time. I since understand that she did speak to him at some time prior to that, I think in February but I only found that out at the Commission.

The letter from Ms Hoffman was, to some extent, a poor reflection on you, wasn't it?-- I didn't read it that way.

Isn't it the case that when she complained in writing directly

to Mr Leck, you got your nose out of joint to some extent?-- No, I did not get my nose out of joint.

The history that she had outlined in that letter did not reflect well on you, did it?-- I don't believe that it caused me to get my nose out of joint. I understood that she'd put her concerns in writing and that she was not focussed on me, that she was trying to provide information about her concerns about Dr Patel.

See, she's said there was a whole series of complaints or concerns that had not been adequately dealt with?-- The only time, as we've said before, is I spoke to her after the first oesophagectomy and I spoke - and I received information about Mr Bramich, other than any of those other times, I was never provided with any other information that as she outlined in that letter from her about.

If the matters that she outlined were true and supported by data and other witnesses, it was embarrassing for you, wasn't it?-- I don't believe it was embarrassing, I believe that I'd handled the situations that I was aware of according to the information at that time using the information from the medical - senior medical personnel.

That letter was received by you soon or after 20 October 2004. On 29 October 2004, another complaint was received from patient P15 and it's at your statement at paragraph 340, the patient's name was P15. Could you just turn up that paragraph?-- Yes.

Were you aware of the complaint of P15?-- Yes, I was.

I'll show you the adverse event form that was filled out by Di Jenkin. Di Jenkin was an experienced medical professional, wasn't she?-- Yes, she was an experienced nurse unit manager of the surgical ward and an experienced nurse.

And she filled out this adverse event report form on 29 October 2004 in respect of some surgery conducted by Dr Patel, she put the risk rating at high; do you see that?-- That risk, I know that the risk rating was done by the DQDSU, by the co-ordinator, but yes, she's rated it as high, yes.

Okay, further down the page do you see Di Jenkin's signed off on it?-- Yes.

And do you see that it's a patient injury, bottom of the page? Can you read the line that commences, "Lap choly"?-- No, I can't read the part that goes through the shaded area.

Well, go to the next page. "Patient underwent lap choly 25/10 and became tachycardic, sweaty, abdo distended, painful abdomen."?-- Yes.

That's right. "Transferred back to operating theatre, ICU for one day, multiple tests, X-rays."?-- Yes.

"Stayed in ICU then back to"-----

COMMISSIONER: What's that bit there after "evacuation of"?-- It says "haematoma".

Yes.

MR MULLINS: So, "Transferred back to OT for evacuation of haematoma, ICU for one day, multiple tests, X-rays." Next line, "Stay in ICU, then back to surgical for three days." Next line, "Nurses-----

COMMISSIONER: "Close observation".

MR MULLINS: "Close observation when condition deteriorated." Question mark "Surgical technique"?-- Yes.

You're aware - I should say the question mark for surgical technique refers to Dr Patel's surgical technique, doesn't it?-- Yes, it does.

The lap choly, she's described, is a very straightforward procedure, isn't it?-- It's a procedure which is commonly done, it's like any procedure, it has its possible complications.

Nine days after the complaint from Ms Hoffman had been received, we have a complaint or an adverse event form from an experienced nurse saying there's a question mark over Dr Patel's surgical technique?-- That was her belief that related to that situation.

Given what you'd seen and your experience of Dr Patel over the preceding 12 months or so, and what was in Toni Hoffman's report, this was like almost evidence to support her report after it had been put forward, wasn't it?-- It was - it was something that was required for review, we were using this system to try and identify major trends. A post-operative complication of an operation occurs, including a laparoscopic cholecystectomy to occur, this system was using trends related to numbers to try and identify the major trends, the major problems, the major concerns in the hospital or in the health service district. One report of a complication of a post-operative laparoscopic cholecystectomy might - did not in my mind require me to investigate it initially.

COMMISSIONER: But it was the ninth complaint against Dr Patel in eight months?-- I couldn't remember at that time how many had been made.

But you knew there'd been a lot, you must have known there'd been a lot?-- I believe that there'd been a number of them which were of variable numbers, kind of variable context. I could not remember any related to a laparoscopic cholecystectomy.

Well, they covered a pretty wide spectrum really, did they?-- They've covered an area, yes, but-----

Yes.

MR MULLINS: When you say - do you say it wasn't required to be investigated?-- It did not require to be investigated by me in the first instance.

Who did you appoint to investigate it?-- I didn't appoint anyone, I asked for it to go back to the surgical ERROMED to be discussed there. The idea was to try and feed the information back to them for them to review their own performance and identify was this a major trend? Was it occurring? Was this a major trend? Why was it occurring and what they do about it.

If she was right and it truly was surgical technique that was the problem, was it the case that Dr Patel sat on the surgical ERROMED Committee?-- Yes, he did.

So he was going to make a decision about whether his surgery was or his surgery technique was good or bad?-- The idea would be to identify a trend to see if there was a number of these occurring to try and identify - there were multiple reasons why this occurred - could occur and yes, one of these problems could be surgical technique, and the expectation is that the clinicians need to review their performance and identify what's going on, they understand all of the parts of the - certainly of the care process and can identify what the problems are.

Given the complaint that had been made in the adverse event form, this could have meant - I'm not saying it did - it could have meant incompetence on Dr Patel's part in the conduct of this surgery?-- It could have from the slightest - from - a very small could have.

COMMISSIONER: And who was going to judge that at the ERROMED Meeting?-- Sorry?

Who was going to judge that at the ERROMED Meeting?-- The incompetence or?

Mmm?-- The, as I said, Commissioner, the idea was for them to review what they were doing as the totality of this situation as the care of their patients.

No-one was concerned about what appeared to be a cumulative number of complaints against Dr Patel questioning his competence?-- It certainly - no, and that's a let down of the system that we've been running, running as regards complaints and adverse events and incidents as well. We were not - we were trying to progress to one conglomeration of that and we weren't getting - we were obviously producing the information that could make that quite clear to people.

But you knew of all of these complaints?-- I knew of a large number of complaints.

No, no, all the complaints we've just been talking about, the nine that have been made in the last eight months, it appears from what you - from your answers to Mr Mullins, that you knew about all of these?-- Yes, I did.

Mmm?-- And I dealt with them on an individual basis.

You didn't think it relevant to look at them on a cumulative basis?-- Sitting here now, yes. At that time, I - that was the hope and expectation, to get a system that could produce that but at that time we didn't - we weren't able to do that.

But you didn't need a system if you knew about them all?-- I had to remember and work through a large number of issues and I had to work through and remember a large number of issues related to all manner as Director of Medical Services at the hospital and this is one of many of those aspects, Commissioner.

Yes.

MR MULLINS: Let me take you back to the letter from Toni Hoffman. You believed that her complaints were, to some extent, motivated by a clash of personalities?-- Yes.

And you believe that the clash of personality between her and Dr Patel was manifesting itself in some of these complaints; that's right?-- I believe, I believe that she wrote down her concerns and the personality situation and she also wrote down the clinical pictures or the clinical conditions as regards that.

But she hadn't been pushing Nurses Aylmer and Pollock coming to see you 12 months prior in respect of the infection control; had she?-- No, she hadn't.

She hadn't been pushing Dr Miach and the people in the Renal Unit to come and complain about Dr Patel and the catheters; had she?-- I don't really know, I can't-----

She wasn't behind the patients making these complaints; was she?-- She wasn't behind the patients, not that I'm aware of.

The only person that had the cumulative knowledge of these complaints was you?-- I had knowledge of these, yes, I had knowledge of these and which I've outlined in this statement and I believed that they were small isolated incidences which had been resolved at the lowest level and they had not progressed to a significant medicolegal perspective which had started proceedings apart from the situation related to Mr Bramich, and I had - I was dealing with a number of those from a number of other surgeons and both sub-specialties and general surgery. I was getting a number of complaints across the board about a number of practitioners and, in fact, you know, I was having to focus on one or two of them quite significantly. I believed taking into account the proportion and surgery and that work that Dr Patel was doing, that this was not out of the ordinary.

On about 8 November - I should point out that document was Exhibit 136.

COMMISSIONER: What was?

MR MULLINS: Sorry, the one that was just on the overhead.

COMMISSIONER: Yes.

MR MULLINS: I apologise, the complaint in respect of P15 was Exhibit 162, Annexure LTR 10. This is Exhibit 17 and this is a letter that was handed to you by Dr Miach on about 8 November 2005 in respect of Marilyn Daisy?-- Yes.

About 10 days after you discovered the P15 problem. Again, Marilyn Daisy we'll accept for these purposes is a complicated case, it's fair, and responsibilities, but these comments from a Brisbane vascular surgeon as highlighted in yellow; you can read those?-- Yes.

That is a very serious criticism of Dr Patel, isn't it?-- Yes, it is.

Did you take that issue up with Dr Patel?-- Yes, I did.

His response was effectively to say, "It's Dr Miach's responsibility, not mine."?-- No, it wasn't, he acknowledged that, that he had done the operation and that the patient's care had - there had been some discussion about who was looking after this patient and that he didn't believe that it was this long period of time, but he'd go and find more information, he agreed that it was not acceptable.

On the 21st of December 2004, we have the surgery in respect of Mr Kemps. Can we put up page 38 of the Woodruff report? Now, without going into the detail of the Kemps event, again, it was a case of a serious allegation of both incompetence, clinical incompetence and lack of clinical judgment on Dr Patel's part, wasn't it?-- The evidence I had presented to me suggested that the oesophagectomy had not gone as - had not gone to plan, there had been a complication after that plan and that related to the skills of Dr Patel at that time. And in so doing, I elected to make sure that Dr Patel no longer did anymore oesophagectomies.

Well, you knew very soon after the surgery that Mr Kemps had died?-- I knew sometime afterwards, yes.

Well, you knew, at page 288 of your statement, that after receiving an e-mail report forwarded by Mr Leck, that he was not expected to survive?-- Yes.

Can I just put up DWK 75?

COMMISSIONER: Mmm-hmm.

MR MULLINS: That's the e-mail that you received on 21

December from Mr Leck?-- Yes.

Referring to the oesophagectomy performed by Dr Patel on Gerard Kemps?-- Yes.

Dr Carter and Dr Berens approached you several days after this event?-- Yes.

And they asked you about whether the death should be reported to the Coroner?-- Yes.

Why had you not reported it to the Coroner by this time?-- Because I don't report the deaths to the Coroner, that's done by the clinician who looks after the patient.

You don't see it as your responsibility to report these matters to the Coroner?-- Not in the first instance, no.

You don't see it as your responsibility to ensure that the clinician who is concerned about these matters reports them to the Coroner?-- I certainly, yeah, aim to support the clinicians to report to the Coroner the deaths that are required to be reported to the Coroner.

Your statement to Dr Carter and Dr Berens was if they considered that the death should be reported, they should do so?-- Yes.

Aren't you really pushing the responsibility about reporting the death on to them?-- I was asking them - yes, I was asking them to be involved in the decision-making process, yes, they were the ones who had the major concerns, they would be best able to outline those concerns to the Coroner.

COMMISSIONER: You didn't have any?-- I had been provided with some - I had been provided with information that didn't suggest - I didn't - that didn't suggest any at that time, no, it was the clinicians that had been looking after that to in particular to provide that and I had been getting conflicting information about that and I was provided with information and I said please speak to the Coroner if you wish to speak to the Coroner.

MR MULLINS: When you say you were receiving conflicting information, who were you receiving conflicting information from?-- I received information from Dr Patel and I received some information from Dr Carter.

Well, you'd also received information from Gail Doherty, the Nursing Unit Manager?-- Not immediately at that time, no, it was some time after that.

Well, you were so concerned at the time that you resolved to tell Dr Patel not to perform anymore oesophagectomies?-- Yes.

And why was that?-- Because initially I thought we'd only done three, but then confirmed that we'd done four oesophagectomies and two had survived and two hadn't and

whilst I knew that this operation did not have a very high success rate, certainly we were - that the rate, the success rate in this situation for us was not good enough and I - the concerns - and these concerns were backed up by the fact that Dr Carter and Dr Berens did not - felt that - he felt that the oesophagectomies should not be performed at the hospital.

This was no longer about ICU support, was it?-- It was about Dr - it was about Dr Patel doing oesophagectomies.

Yes, Dr Berens and Dr Carter said that the performance of the surgery was the problem?-- I don't believe they actually said it was the performance of the surgery, they just did not believe that it was appropriate surgery to be done at the hospital based on the success rate and combined with they'd now changed their mind about the ICU. They didn't come out to me and outright say, "Dr Patel is incompetent and should not be doing these operations.", it was more, "We don't believe the operation should be performed at the hospital".

Well now, within a week or two of that, we have the incident involving P 26, the 15 year old boy?-- Yes.

Again, without going into the detail, they're serious allegations again made by staff in respect of Dr Patel?-- The report - my understanding was that Dr Rashford sent an e-mail requesting that the care of this patient be reviewed. He was suggesting it be reviewed to look into what had happened for the totality of the care of this patient. I don't believe that he actually raised allegations per se.

Well, the staff were concerned, weren't they? Members of staff were concerned about the treatment of P 26?-- I remember that a letter was received from one of the nurses, yes.

You see, between 20 October 2004, when you received Ms Hoffman's letter and early January 2005, you'd had P15 with another adverse event complained about Dr Patel; you'd had Marilyn Daisy with another complaint with a surgeon from another hospital about Dr Patel; you'd had Gerard Kemps where you had to tell him to stop doing oesophagectomies, and now you had P26 - sorry, P 26. It was as if the evidence was stacking up to prove Ms Hoffman's point?-- Certainly the oesophagectomy situation is the one we talked about. As I said, the first event in relation to P15 was one of a number of incident reports across my desk. As I said, we were running from a trend perspective, not as purely focussed on the individual. As regards P26 , my review of that indicated a number of practitioners involved in that care.

After Ms Hoffman's complaints, there had been four serious allegations against Dr Patel?-- Well, I believe that, as I said, there was a number of instances reported about Dr Patel of seriousness of them varied, I believe.

In any case, by February 2005, this matter had really been

taken out of your hands, hadn't it?-- Yes, it had.

And Dr FitzGerald came up?-- Yes, he did.

To investigate the matter?-- Yes, he did.

And you spoke to him on 14 or 15 February; around that time?-- 14 February, yes.

Now, you say, this is at page - paragraph 349 and 350 of your statement, "During one of the meetings on 14 February 2005, Dr FitzGerald requested that he be supplied with any claims made against the hospital by patients arising out of Dr Patel's practice. I informed Dr FitzGerald that the only claims, apart from the Bramich claim made against the hospital concerned Dr Gaffield, but that there had been some minor patient complaints regarding Dr Patel which had been resolved." Now, do we understand that the reference in there to the word "claims" is to mean legal claims?-- Yes, that's right.

COMMISSIONER: Mmm.

MR MULLINS: Well now, do you interpret that as a claim under the Personal Injuries Proceedings Act?-- Yes.

Or a statement of claim served or as a Court proceeding?-- Under the Personal Injuries Proceedings Act.

Dr FitzGerald was a medical practitioner attending at Bundaberg Hospital to conduct a clinical audit; that's correct?-- Yes.

He wasn't an accountant addressing the financial liability of the hospital, was he?-- No, he wasn't.

He wasn't a lawyer looking at prospective liability from legal claims from the hospital, was he?-- No, he wasn't.

He was a doctor doing a clinical audit?-- Yes.

He asked you were there any patient complaints and you told him there were none?-- No. I recollect that he talked about patient claims, medicolegal claims, major medicolegal claims, so the PIPA process and any claims that had progressed to that stage of the claims that progressed to PIPA.

You worked closely with him during the course of his visits to Bundaberg?-- No, I didn't.

Have you any recollection of him asking, "What did the patients feel?"?-- No, I don't.

"What's the level of the patient satisfaction?"?-- No, I don't.

"Have there been any complaints against Dr Patel by patients?"?-- I only recollect that he asked about major

medicolegal or medicolegal claims, what I considered major claims being medicolegal claims.

Wouldn't the complaints by the patients be relevant to a clinical audit?-- They may be, yes.

I mean, there were only really three sources of information: one was the medical - I suppose there's four: one was the medical records; that's correct?-- Yes.

One was the patients; that's correct?-- Yes.

One was the staff?-- Yes.

And one was Dr Patel, if we don't include him in the staff?-- Mmm.

Is there any other sources that you can think of?-- No, I can't.

Why would a doctor conducting a clinical audit not be interested in one of the major sources of complaint?-- As I said, I recollect he talked about major medico-legal claims. He did not ask about those, but if he had asked about them, we would have had to spend a period of time pulling them in together from a number of sources.

COMMISSIONER: You don't say that in your statement. You don't mention medico-legal claims?-- What I talk about is major claims. I talk about claims made against the hospital which I take to mean medico-legal claims. Claims have-----

You don't say "major claims" either?-- That is the intention of my statement, Commissioner.

I see. You recall him saying medico-legal claims, do you?-- Yes, I do.

Right.

MR MULLINS: See, Dr Keating, whether he asked for them or not, you were the person in the best position to provide the information about the patient complaints, weren't you?-- I did not have a cumulative record in front of me to produce this statement. I have had to ask for these records from a number of sources at the Bundaberg Base Hospital. I didn't have any cumulative record in front of me and I would have had to have - also go and do that as well. I was asked offhand about this. I provided the information I was able to at that stage. I was not asked to go and find and say, "Well, can you go back and confirm this? Can you produce this in any shape, way or form?"

COMMISSIONER: I just don't quite understand this. The clinical audit was provoked because of Dr Patel?-- Yes.

You agree. You knew that Dr FitzGerald was coming up to investigate specifically Dr Patel?-- Yes.

You knew that he'd ask about complaints against Dr Patel, because that's what it was all about?-- That's only an assumption, Commissioner. He asked for - his office asked for a significant amount of information prior to coming up to his visit.

Sorry, keep going?-- That was not one of the - that was not one of the requests at that time.

But you knew when he came, if he was coming to investigate Dr Patel, he would be asking you what complaints had been made against him?-- Commissioner, I don't know what he was wanting, was - it was a possibility that he would want that, but no - and I didn't - I was - I didn't go out of my way beforehand to get them together.

That's the point - that's the question I was going to ask you. You must surely have known that he was going to ask you, "Have there been any complaints against Dr Patel and if so what are they?"?-- Commissioner, that was one possibility. I wasn't sure what he was going to ask me, and I acknowledge I didn't beforehand prepare - prepare for that information, but if he believed that he wanted the information, we would have pulled together, as we did, for other information that he asked and requested. You know, there was a large amount of other information which was asked and requested and which we did produce.

MR MULLINS: But it was an obvious source of information that you could produce to assist the investigation, wasn't it?-- Yes, I could have - yes.

Why didn't you just volunteer it?-- I didn't think about it. I didn't wish - I did not know exactly what Dr FitzGerald was going to do and how he was going to do it and what he was going to go about. We were providing other information that he was requesting and we would be on top of that. No, I didn't do that. I wasn't proactive. I was waiting to be - to be asked about that to produce that information, even after the event.

You had personal knowledge of a whole series of complaints over the past 12 months that you may not have been able to particularise but you could have said to Dr FitzGerald, "Well, I do know of a whole swag of these and I can get you details if you want." Did you think to say that?-- No, I didn't think to say that. I was responding to major claims and I also said there were ones of minor patient complaints which had been resolved at a local issue. That's how I categorised them. They had been resolved at the local level.

Isn't it the case you didn't tell Dr Patel - didn't tell Dr FitzGerald about these patient complaints because you knew that if you put together a chronology of the complaints that have been made to you, the sentinal and adverse events that had occurred and the ongoing complaints after Toni Hoffman's complaint in October 2004, that looked awful for you?-- No. No.

You were concerned that if Dr FitzGerald had the full chronology, it looked like you had done nothing about Dr Patel, despite ongoing complaints over a period of 18 months; isn't that right?-- No, it's not correct.

To use your own analogy, by this time you realised that not only was there smoke, there was a raging fire, wasn't there?-- I don't know whether it was a raging fire. As I - as - the information provided to Dr FitzGerald included the concerns about the oesophagectomies.

When you look back now, do you agree there was a raging fire of Dr Patel's incompetence?-- I don't believe that it - I don't believe so. I believe that they - treated them as isolated instances. I could not see a major trend, taking

into account the number of complications and concerns in each of these different areas.

COMMISSIONER: Why on the earth would you treat them as isolated incidents?-- That's how I treated - that's how we were treating them, as isolated incidents.

You just keep saying that. I just don't understand why. You had an accumulation of 10 or a dozen complaints over less than a year by this time. That's not a series of isolated incidents, that's a cumulative list of complaints against one surgeon, isn't it?-- Looking back now, yes, Commissioner. At the time I was - did not run - did not have a running list of cumulative - a cumulative running list of complaints.

You knew there'd been a lot?-- I knew there had been a number of complaints which I have outlined here and which I categorised into the - the minor - the minor situation.

Right?-- Now, that was based also on a number of other complaints we were getting of a similar nature from other people about other practitioners. I was using that as a comparison.

MR MULLINS: I suggest to you you knew the raging fire was happening and you realised that the fire had occurred on your watch and you were concerned about that, weren't you?-- No, I wasn't.

And the reason why you didn't tell Dr FitzGerald about the history of complaints is that you were trying to stamp it out?-- No, I wasn't.

Thank you. Nothing further.

COMMISSIONER: Thank you. Mr Allen, are you next?

CROSS-EXAMINATION:

MR ALLEN: Thank you, Commissioner. Dr Keating, can I just ask you to go to the last paragraph of your statement and the second sentence of that paragraph 408?-- Yes.

For the record, would you like to amend or qualify that part of your evidence?-- No, I wouldn't.

You are serious? You'd like that to stay on the record?-- Yes, I would.

All right. The sentence reads, "However, at no time while Dr Patel was operating at Bundaberg Hospital would I have refused to allow him to perform on me the procedures which he was carrying out on patients at the Bundaberg Hospital if I had required that surgery." You stand by that?-- Yes, I do.

So, if, heaven forbid, in December 2004 you had required an oesophagectomy, you would have been quite comfortable for Dr Patel to carry out such an elective procedure upon yourself? Is that your evidence?-- It is my evidence if - if I had to have that done, if I could not access that operation through other - through other means, yes. If I had to go - go to that hospital and have it performed by Dr Patel, yes, at that time, yes.

COMMISSIONER: Who-----

MR ALLEN: You-----

COMMISSIONER: Sorry.

MR ALLEN: You would have moved heaven and earth to access it by other means rather than have it at the hands of Dr Patel surely?-- As I said, if I - as my statement says, if I'd ended up there, I would have been prepared to have that - that operation by Dr Patel.

That's not what it says. It says that, "At no time while he was operating at the hospital", and that was till the 31st of March this year?-- That was when he left the employment.

So, at no time up until the 31st of March this year would you have refused Dr Patel to perform on you an elective oesophagectomy-----?-- That's right.

-----if you had required such?-- That's right.

You don't really maintain that, do you-----?-- Yes, I do.

-----in light of the matters that you'd been cross-examined about so far?-- Yes.

The death of Mr Phillips undergoing an oesophagectomy on the 21st of May 2003?-- Yes.

The concerns then raised by Toni Hoffman and Dr Joyner as to oesophagectomies being undertaken by Dr Patel at Bundaberg Base Hospital?-- The concerns were related to the ability to provide the operation after the - provide the post-operative care at that stage. I do believe they were talking about the actual technical performance of the operation, but, yes, I was prepared to have it done.

Well, your statement isn't limited to Dr Patel, but it's even more confined, "Dr Patel undertaking such a procedure at Bundaberg Hospital"?-- Yes.

You'd have no problem, despite those concerns that were raised in May 2003?-- No, I would - I have - no, I would no have problem.

Despite the fact that in June 2003 Mr Graves after undergoing an oesophagectomy had three returns to theatre with

complications following surgery by Dr Patel?-- No, I would not change my mind.

Dr Joyner raised concerns about such procedures being undertaken at Bundaberg Base Hospital?-- Again, it will not change my opinion.

The fact that Dr Cook from the Mater Private Hospital contacted you and advised you that he had concerns about whether it was appropriate for such a procedure to be undertaken at the Bundaberg Base Hospital?-- I did not change my opinion by that stage or thereafter. I spoke to Dr Carter who confirmed that he was happy to have that operation performed there as well.

The fact that Dr Cook raised concerns with you in a telephone conversation about the accreditation of Dr Patel to carry out such procedures?-- I don't believe he actually talked about the accreditation of him.

I suggest that Dr Cook during his telephone conversation with you raised questions as to the surgical qualification or accreditation of the surgeon to undertake such complicated procedures?-- I do not recollect he said that.

Did he raise with you the histology reports that had been obtained in relation to Mr Grave after the surgery?-- No, he did not.

Indicating that there were metastasised nodes at the junction of the oesophagus where the operation had occurred?-- No, he did not.

Questioning the judgment of the surgeon as to whether such surgery should have been performed at all?-- No, he did not.

Are you swearing that he did not or you simply don't recall?-- I - based on my notes and my recollection - based on my notes and my recollection of the telephone call.

So, you say that his concerns were confined to whether procedures of that type should occur at Bundaberg Base Hospital given the lack of appropriate post-operative support?-- He was - he was questioning the robustness of the post-operative support, yes.

But even so that wouldn't have dissuaded you from undergoing such a procedure at the hands of Dr Patel in 2004?-- No, it would not have dissuaded me.

Would you have taken into account the fact that Phillip Deacon, who underwent a oesophagectomy by Dr Patel on the 1st of December 2003, ended up in the Intensive Care Unit for 18 days following that?-- Yeah, yes, it happened for that patient, yes, but it didn't - wouldn't have changed my mind. I acknowledge it is a major - major and complex procedure, increased risk of complications.

Did you have any concept in your mind as to how many days a patient would usually spend in the intensive care unit after such a procedure?-- The information was provided to me. Providing there was no complications it was 48, 72 hours.

That's right. So within the policy of the ICU, 24 to 48 hours generally?-- That was - that was - timeframe that was talked about.

Did you know that Mr Deacon after his oesophagectomy had spent 18 days in the Intensive Care Unit?-- No, I was not aware of that until I am looking at a piece of paper that was presented to the Commissioner.

Not aware of it at all?-- No. It was never brought to my attention. As I said previously, initially when Mr Kemps' case was brought to my attention, I thought we'd only done three oesophagectomies, the first - two in 2003. Mr Kemps - only on further investigation I found that we'd done four.

Okay. So, as far as you knew, prior to Mr Kemps, Dr Patel had a 50 per cent fatality rate in relation to oesophagectomies?-- Prior to Mr Kemps?

Prior to Mr Kemps?-- Yes, that's right.

If you didn't know about Mr Deacon-----?-- That's right.

-----you understood he'd only done two?-- Yes.

One patient had died and the condition of the other patient was such that a specialist from Brisbane took the steps to contact you and express concerns?-- Yes.

So, as far as you knew, there was one patient who died in relation to whom concerns were expressed by the Nurse Unit Manager of the ICU and the anaesthetist?-- One of the anaesthetists, yes.

In relation to the second patient, he had a very stormy post-operative course in ICU with three returns to theatre for complications, eventually transferred to Brisbane, and a specialist had voiced concerns in relation to that patient?-- Yes.

And you're saying that knowing those facts you wouldn't have had any concerns about Dr Patel undertaking an oesophagectomy on yourself?-- No, I would not.

That's not an honest answer, is it?-- Yes, it is.

You are serious?-- Yes, I am.

And notwithstanding all the other information that came to you during the following year by way of concerns raised about complications, the detailed complaint by Toni Hoffman, and all the other complaints that Mr Mullins has taken you through, you still would have allowed him to perform an oesophagectomy

on you at Bundaberg Base Hospital?-- Yes, I would have.

Can we qualify your paragraph of that statement at least to this extent, that you certainly wouldn't have allowed him to undertake an oesophagectomy upon you after the 21st of December 2004?-- No, I would not qualify that.

So, what, even after the death of Mr Kemps you would still have allowed him to undertake an oesophagectomy on you? Is that what you are saying?-- That's what I said in my statement, yes.

And that's why I'm giving you the opportunity to qualify it?-- And I'm not changing my opinion.

And you are not going to change it?-- No, I'm not.

But it's not honest, is it?-- It is honest.

It's not the truth?-- It is the truth.

You won't change it?-- I will not change it.

All right. If I can just go to some matters in your statement. You speak at paragraphs 22 to 23 of a process whereby there was an accountable officer of the operating theatres appointed?-- Yes.

There are a number of candidates, including the Nurse Unit Manager of the operating theatre, Ms Jenny White?-- Yes.

You claim that all persons who are candidates, including Ms White, were in agreement with Dr Patel being offered that position?-- Yes.

You don't know, though, yourself whether or not Ms White was actually told about that process?-- I only - I only assumed that that was - I remember that Glennis Goodman was to speak her and Glennis Goodman came back and said that she was happy with Dr Patel to be appointed as the accountable officer.

So you don't have any personal knowledge as to whether, in fact, that conversation occurred?-- No, I do not.

As to whether, in fact, Jenny White in fact had any knowledge about that process?-- No, I don't. I suppose the only thing I can add, Mr Allen, is that thereafter when Dr Patel was appointed, I don't recollect Jenny White providing any form of complaint about that.

Now, at page - not 13, paragraph 48, you deal with the meeting you had with Toni Hoffman and Glennis Goodman in relation to the concerns following upon the treatment of Mr James Phillips?-- Yes.

The person who died after an oesophagectomy?-- Yes.

Now, you say that you don't recall the issue being raised as to whether or not oesophagectomies should be performed at Bundaberg Hospital?-- That's right.

What do they come and speak to you about after this patient had died following an oesophagectomy?-- Came to speak to me about the statement - of Dr Patel talking about a patient being stable whilst requiring inotropic support and ventilation, and also his relationship with the nurses, him providing care of patients in that area and about the capacity of - the capability of the - of that unit.

Yes. So, Ms Hoffman expressed concerns about oesophagectomies being performed at the hospital when it lacked the appropriate intensive care facilities and post-operative care for such patients?-- She's talking about the capability of the unit. She wasn't necessarily talking about the performance of the oesophagectomy by the surgeon. She was talking about the post-operative care.

She expressed concerns about whether oesophagectomies should be carried out at all at Bundaberg Base Hospital, given the level of intensive care facilities available?-- I recollect talking to her about the level of - the level of the organisation - the level of capability of the ICU, and obviously we are talking about this patient, so an oesophagectomy was an example of the type of - the level of care that she was talking about.

She expressed concern about complex surgery, such as oesophagectomies, being undertaken at Bundaberg when the intensive care facilities were not to the standard required for post-operative care of such patients?-- She was expressing concern about that, yes.

Yes. And did she tell you that Dr Patel appeared to be very old-fashioned in his treatments?-- No, I do not recollect that she said that.

That he would write things in his chart like, "Patient stable", when the patient was extremely unstable?-- As I said previously, she was talking about that. I do not recollect that it was talking about being written or - she was talking about - he described a patient as stable or - when he was requiring inotropic support and ventilatory support.

Did you tell her that you had - she had to allow that Dr Patel was from another country?-- I can't - I suggest - I said obviously he comes from the United States of America and they may do things differently.

Did she say words to the effect that it seemed more like they were coming from two different planets?-- I have some recollection she may have said that, yes. But she also said that with a laugh, as if to make it a bit more lighthearted and try and-----

Can we just look at Ms Hoffman's account of that conversation

with you, which is at TH37. I will ask you to look at the first page of that on the screen. Now, this is the document which you saw soon after the 22nd of October 2004?-- Yes.

And you will see that at about 12 lines down in the second paragraph Ms Hoffman writes, "Dr John Joyner and I went to see Dr Keating to voice our concerns."?-- Yes.

"We both believed we could not offer adequate post-operative care for oesophagectomies."?-- Yes.

"The literature stated a hospital should be doing at least 30 per year to maximise outcomes."?-- Yes.

You remember that being mentioned?-- I do not recollect any meeting with Toni Hoffman and Dr Joyner. I remember a meet - only meeting Dr Joyner.

So you remember Dr Joyner mentioning that the literature indicated that a hospital should be doing at least 30 per year?-- I remember him talking about a literature and currency, yes.

That's because if a surgeon is only doing them occasionally, such as two a year, the literature indicates that they don't have sufficient currency so as to maximise patient outcomes?-- Yes.

It's a specialised complex procedure which should be undertaken only in hospitals where there's a certain volume of them occurring during a year?-- That's what I understand when you talk about - as regards currency, yes.

You didn't have any concern with the fact that Dr Patel might do two a year?-- I didn't know how many we would be doing. I certainly then sought to get information from both him and Dr Carter - Dr Carter after he returned and, yeah, that - yes, that was what the literature was saying or that was reported to me from the literature - that the literature was saying.

By the way, you never sought to contradict any of that part of the letter after you received it in October 2004, did you?-- I believe I spoke to Mr Leck at one stage and said that I'd only had a meeting with Dr Joyner.

You never put anything in writing to suggest that anything Toni Hoffman had said about that was incorrect?-- I didn't put anything in writing, no.

You didn't contact her and say, "Look, you have got this wrong. You didn't have a meeting with me and Dr Joyner."?-- No, I didn't.

That material was part of the - that which had gone to Dr FitzGerald?-- Yes.

To your knowledge?-- Yes.

Did you indicate to Dr FitzGerald, "Oh, look, by the way, when you are considering that, there are some inaccuracies in it."?-- No, because he was doing an audit and my understanding from the audit perspective was he was not looking at the individual cases upfront, he was looking at a number of different aspects, and he then would take away - I presume he would ask me about that as he would ask Toni Hoffman when he interviewed her as well, and Dr Joyner.

See, I suggest to you that, in fact, there were two meetings between yourself and Toni Hoffman on this topic, one with Glennis Goodman on about the 30th of May 2003, and one with Dr Joyner on or about the 17th of June 2003?-- As I said, I do not have any recollection of a second meeting with Toni Hoffman. I only recollect Dr Joyner.

Excuse me, I will withdraw that, 17th of June. One in early June 2003 with Dr Joyner?-- No. I do not have any recollection of a joint meeting with Dr Joyner and Toni Hoffman.

Despite the literature-based, evidence-based contention provided to you by Dr Joyner and the concerns raised by Toni Hoffman, you took no further steps than discussing with Dr Carter whether or not these procedures should continue?-- I did speak to Dr Carter.

Apart from that?-- I also spoke to Dr Patel, and as the two senior clinicians in the hospital, at that stage I had no reason to doubt Dr Patel, and I also had no reason to doubt Dr Carter, who was a very experienced, very qualified individual.

But there were certain limitations on an anaesthetist judging the surgical capabilities of a surgeon, especially one they've only just met, aren't there?-- Yes, there are.

Why didn't you at that stage seek the advice of a more experienced surgeon?-- Because we were talking about the post-operative care and the capacity of the ICU, the capability - sorry, the capability - capacity of the ICU. As the Director of Anaesthetists and ICU, I believe that Dr Carter was very well placed to provide that opinion.

What did you do to address the concerns raised by Toni Hoffman in relation to these matters?-- As my statement says, I asked her to make a meeting with Dr Patel to discuss her concerns and she accepted that, and thereafter I remember asking Glennis Goodman how it went and she reported it was no problems. I also spoke to Dr Patel afterwards as well.

You suggested that she meet with Dr Patel to discuss her concerns, including the ICU capability to care for oesophagectomy patients?-- To explain to him, yes, her thoughts on the capability of the unit, yes.

But you are the Director of Medical Services. You are a doctor?-- I also spoke to him about it as well.

Why did you send a nurse off to address the Director of Surgery about those matters?-- Because I considered that anyone filling the position of the Nurse Unit Manager, particularly the Nurse Unit Manager in ICU, is more than cable of explaining the capability and capacity of a unit, particularly a specialised unit to a medical staff. I believe that health care professionals should treat each other in an appropriate - appropriate way, they can talk to each other in appropriate way. I didn't consider nurses were somehow inferior to doctors.

No, but Dr Patel did, didn't he?-- He made some disparaging comments about some of the nurses in the ICU.

Yes. See, the evidence from Toni Hoffman is that any comments she made basically fell on deaf ears. She was ignored?-- As I-----

That wouldn't have been a reasonable possibility of the process you suggested, given Dr Patel's personality, would it?-- At that time - sorry. At that time, I believe that it was an appropriate way to go, as an experienced - as an experienced Nurse Unit Manager with some concerns about clinical issues, that she speak to the other clinician who happened to be a member of the medical staff. I believe that it was appropriate that he hear from her face to face what her concerns were so he could understand them.

After you get the telephone conversation from Dr Cook in relation to the second oesophagectomy patient, you say in your statement, at paragraph 52, that you told him you would discuss his concerns with the Directors of Surgery and Anaesthetics and with the credentials and privileging committee at the hospital?-- Yes.

Did you discuss Dr Cook's concerns with the Director of Surgery, Dr Patel?-- Yes.

When did that occur?-- Some time after - some time after the conversation with Dr Cook.

And tell us about that discussion?-- He - he - he convinced me that the oesophagectomies could be done at the Bundaberg Base Hospital.

How did he convince you? What did he say to contradict. Dr Cook?-- He explained that the procedure - the procedure he'd used reduced the likelihood of complications and requiring long-term ventilatory support, and that he perceived that the ICU had the capability to do that. I therefore then checked with Dr Carter about that aspect and he confirmed that, yes, it did.

Did you have the charts for Mr Graves?-- No, I didn't.

Did you seek to obtain them?-- No, I didn't.

So that you could make some type of educated approach to Dr Patel in relation to Dr Cook's concerns?-- I didn't do that, no.

You just went in and told him, "Look, this doctor from Brisbane has voiced these concerns. What do you reckon?"?-- I have asked him his opinion, yes.

And so then you had one opinion from a specialist in Brisbane, Dr Cook. What did you know about his qualifications?-- I knew that he was the Director of ICU of Mater.

The Mater Private Hospital?-- I think in fact it was the Mater complex in Brisbane.

The Mater complex. So Director of the Intensive Care unit at a major tertiary hospital?-- Yes.

And then you had the opinion of Dr Patel?-- Yes.

Who was really the one who was being subject, at least in a tangential way, by Dr Cook?-- I don't believe that Dr Cook was - he was asking about the hospital as an organisation, and as to whether people who are working there should be undertaking this procedure in ICU. I don't believe he was referring to Dr Patel per se or Dr Carter per se. He was asking about the organisation and that's the way I took his question.

But the subject of his concerns at least had an implicit criticism of the clinical judgment of a surgeon in undertaking such procedures at Bundaberg?-- I don't believe there was the implicit criticism. He was inquiring as regards whether they believed it was appropriate to do that. He was asking, you know, were the clinicians accepting of his situation.

So you have got Dr Cook and Dr Patel?-- Yes.

And that was good enough for you?-- As I said, I then spoke to Dr Carter as a Director of Anaesthetics in ICU. He was in the ideal place because he both worked in anaesthetics and he was the Director of ICU. He was also a very experienced, well qualified anaesthetist.

And you say that Dr Carter, for a second time, said that he didn't have any concerns about such procedures being undertaken at that hospital?-- That's right.

And you told Dr Cook that you'd also take it up with the credentials and privileging committee at the hospital?-- Yes.

How did you go about doing that?-- Obviously I didn't because it wasn't - it wasn't working at that time.

Well, why did you tell Dr Cook you were going to do it?-- Because I had - at that time I had the expectation that it would be up and going.

You didn't have any reasonable expectation it was going to be up and running in the near future, did you?-- I did have an expectation at that stage.

At the time you spoke to Dr Cook you thought that that committee would be operational, what, within a week?-- I expected it within a period - a period of weeks to months.

Weeks to months?-- Yes.

And so that was going to be some additional avenue you would take it to?-- Yes.

Did you see it important that there should be some type of independent specialist surgical input into such a decision?-- I expected that both - yeah, both surgical and anaesthetic input into that situation, yes.

Who did you think would be on a credentials and privileges committee that would provide that extra opinion on this issue raised by Dr Cook?-- The College of Surgeons and the College of Anaesthetics.

And then when the committee system didn't come into fruition in the next weeks or months, did you consider seeking out such specialist opinion outside a committee process?-- No, I didn't.

Why not?-- Because I'd received very strong indications from both Dr Patel and Dr Carter that they were happy with the situation and, as they were senior clinicians, Dr Carter had been there for a longer period of time, and I was relatively junior or relatively new at this time and I was seeking to respect their experience and decision making capability in the situation.

But you at least indicated to Dr Cook, who was raising the concerns, that you'd be seeking that independent, specialist opinion?-- I was hoping to, yes.

And yet you didn't consider it of such importance that you ultimately did?-- Later on, no, I didn't, no.

You mentioned in your evidence this afternoon that, in answer to a question from my learned friend Mr Mullins, that prior to the letter of Toni Hoffman of the 22nd October 2004, she hadn't previously brought any complaints to yourself?-- Major complaints, I suppose. Major complaints related to Dr Patel. I think she probably did bring to my notice the one about Dr Qureshi.

But in relation to Dr Patel, you said you don't recall anything from Toni Hoffman regarding Mr Graves, the second oesophagectomy patient?-- That's right, I don't recall anything from her about the second oesophagectomy patient.

I will ask you to have a look at copy of TH3, the attachment to Ms Hoffman's statement. That's an email from Toni Hoffman to yourself, isn't it?-- Yes, it is.

And it is in relation to Mr Graves?-- Yes, it is.

And she's bringing to your attention most significant and serious matters regarding his situation after he's undergone an oesophagectomy?-- Yes.

And you knew that that operation had been performed by Dr Patel, of course?-- Yes.

She tells you that he's returned to theatre twice for wound dehiscence?-- Yes.

And then again for a leaking - is it J tube, the alternative term for something I can't pronounce - jejunostomy?-- Jejunostomy, yes.

Continuing concern over lack of sufficient ICU backup?-- Yes.

The Royal Brisbane Hospital and the Princess Alexandra Hospital expressing concern about the surgery being done in the Bundaberg Hospital?-- Yes.

Unresolved issues with the behaviour of the surgeon, which is confusing for nursing staff?-- Uh-huh.

Concerns that the patient's care has been compromised by not

transferring him earlier?-- Yes.

"I believe we are working outside of our scope of practice"-----?-- Yes.

-----"for a Level 1 intensive care unit"?-- Yes.

And towards the end, "The behaviour of the surgeon in the ICU needs also to be discussed"-----?-- Yes.

-----"as certain very disturbing scenarios have occurred"?-- Yes.

She was referring to Dr Patel, wasn't she?-- One can assume so.

Well, you would have to assume so. And you would have when you received it, wouldn't you?-- I presume - I assumed it was Dr Patel, yes.

That's a clinical matter, isn't it, wound dehiscence?-- Yes.

Requiring returns to theatre?-- Yes.

Repairs of the jejunostomy, that's a clinical matter?-- Yes.

And this is all following an oesophagectomy?-- Yes.

These are serious matters, aren't they?-- I believe that they were serious for the patient, yes.

Well, that's what you are in the business of providing, isn't it, patient care?-- Yes.

Did you even reply to Toni Hoffman?-- I do not - I can't remember if I provided a reply to her about this. I believe that this was after - or this is around about the same time I had the meeting with, or after the meeting I had with Dr Joiner and Dr Younis. I was aware of the situation. I remember I asked for follow - I was following up how this patient was going, but, no, I didn't. But I used that as a reminder to speak to Dr Patel - correction, with Dr Patel and Dr Carter at a later stage.

I put it to you that you never replied either by email or any other means?-- I can't remember - I can't remember if I did or I didn't.

You didn't even contact her to ask her what the unresolved issues with the behaviour of Dr Patel were or the very disturbing scenarios were?-- I assumed she was talking about his behaviour from previous times and that, yes, I would continue to speak to him and find out how his relationships with the ICU staff were going.

You didn't speak to her to seek clarification of what she was raising so you can address it with Dr Patel, did you?-- No, I didn't.

You basically just ignored it?-- I don't - I understand that she could get that perception but I did not set out to create that situation. I was concerned about the scope and, as I said, that was the major concern that I thought she was talking about, the scope of practice and the capability of the unit. I therefore spoke to the director. I expected that the director would have been speaking to the nurse unit manager on a regular basis to discuss such situations and would be aware of her concerns, and obviously he would be able to provide his input as well.

She'd raised it with you?-- Yes, she did.

Not through the unit director?-- Yes, but I, in my practice and expectations, go to speak to the director as well, and they - you know, they are the two important people in a unit, particularly a specialised unit, in how that unit is managed and run on a daily basis.

You just didn't place any importance on a complaint coming from a nurse?-- I would reject that statement.

You didn't even inquire as to the details of what she was wanting to speak to you about, did you?-- I did not speak to her.

Mmm. You say at paragraph 63 of your statement that you weren't concerned about or informed of any concerns amongst nursing staff about increasing rates of wound dehiscence until it was raised at a meeting of 7 July 2003?-- That's right.

But it didn't come as a surprise to you that there was an issue about wound dehiscence and Dr Patel at that time, did it?-- Yes, it did.

Well, look at this document I have taken you to?-- Yes.

This patient has undergone an oesophagectomy, has returned to theatre twice for wound dehiscence?-- Unfortunately, wound dehiscences is a well-known complication of a patient who undergoes an oesophagectomy.

Did you make any inquiries after getting that email as to the circumstances surrounding those wound dehiscences?-- I did not make any inquiries. As I said, I am aware that postoperative complications of a patient who undergoes oesophagectomy can sustain a wound dehiscence and it can be, on occasions, more than one.

And you didn't have any concerns about the fact that that patient had two, another complication requiring a third return to theatre and was in the ICU for many days - 18 days?-- I remember that he was in ICU but I was also told that this patient had been in ICU but had not been on ventilation for the vast majority of period of that time and had only gone on ventilation for a period of time. I acknowledged there was complications, there were some complications but they were

being handled by the treating staff.

Did you take some steps at least to refer that matter to a mortality and morbidity committee?-- No, I didn't.

So they could examine the file of the patients?-- No, I didn't.

Why not?-- There wasn't a true morbidity and mortality meeting that covered the ICU, really, at that time. Ideally, the ASPIC committee would have been useful - would have done that. Unfortunately, the ASPIC committee at that time was not necessarily focussed on this type of work.

Did you refer it to the ASPIC committee?-- No, I didn't.

Why not?-- As I said, I at the time relied on the information that was provided to me by the senior clinicians and I did not believe that it needed to go to a mortality and morbidity committee or an ASPIC meeting.

Well, the information from the senior clinicians, you have some information in writing from Toni Hoffman. That's so?-- Yes.

What other information did you obtain from senior clinicians about this patient and his postoperative complications?-- I got - as I said, I got a limited amount of information provided to me by Dr Joiner, Dr Patel, Dr Younis.

Well, they were discussions about whether the patient should be transferred at a particular time?-- But-----

Weren't they?-- Obviously in the process you need to get some information about why they want to do that.

Did you discuss with them the possible causes of the postoperative complications?-- I can't remember discussing that subject.

So it wasn't referred to any type of committee that would look at it, and you didn't even address those particular matters with any of the doctors concerned?-- No, I didn't, no. As I said, I was aware that this is a common - this is a more common complication of this operation.

In relation to wound dehiscence, you have given some evidence about that in your statement, and I am not going to go through it in any detail. It is the fact, isn't it, that at various times nurses raised concerns about wound dehiscence, both in 2003 and 2004?-- There was the report from Gail Aylmer in 2003 and then there was the discussion started at ASPIC in 2004 by Jenny White.

In relation to Gail Aylmer, she was the infection control nurse?-- Yes.

She certainly didn't have any surgical qualifications?-- As

in - you mean as medical surgical qualifications?

Yes?-- No.

Or any particular type of surgical endorsements in nursing?-- I am not aware. I am not sure what her qualifications are.

Look, the approach you took in relation to that was basically she had to go and speak to Dr Patel about it?-- Um-----

And work out if there was a problem?-- No. She brought that issue to the leadership and management meeting. I asked it should go to ASPIC and that she also discussed it with Dr Patel in the first instance, because she was concerned that there was a number of cases related to him, and I believe that as a senior clinician, again, she was a senior clinician and she should speak to the other senior clinician involved and at that time Gail Aylmer appeared happy to do that.

But she wasn't in a position where she would be able to really question a surgeon about surgical technique, or challenge any view put by him as to the origins of the wound dehiscence?-- I was - I was expecting her to ask about - provide some information about the patients she had identified and could he provide an explanation for that.

But-----?-- And-----

We have got this - I think you have described him as brash, confident, at times overbearing, American surgeon and you are sending the nurse off to basically check out his explanations for wound dehiscence?-- Yeah, I believe that she was a senior clinician - she was a senior clinician in a place in a very important position who should be able to go and speak to another senior clinician and seek his views about the information she'd found. And she had gone out to find this information, and I believe it was important that she carry through on that analysis and evaluation of that information.

She wasn't a surgeon?

COMMISSIONER: I think you have made your point.

MR ALLEN: Yes. You say at paragraph 76 of your statement that you weren't aware of any shouting matches between Dr Patel and other practitioners-----?-- No.

-----in the intensive care unit?-- No, I wasn't.

How often were you in the intensive care unit?-- Oh, on an intermittent basis.

Sorry?-- On an intermittent basis.

You weren't someone who made it a practice to walk the wards, were you?-- I didn't walk the wards as regards medical or surgical wards, no. I went to other areas.

Could I ask you to just look at exhibit TH6, which you refer to at paragraph 82 of your statement now, that's an email to yourself from Toni Hoffman, isn't it?-- It is CC'd to me, yes.

CC'd to you. It is addressed, "Dear Glennis and Darren"?-- Yes.

We won't go through the details, but it is expressing concern and significant clinical concerns about a patient who is then in the intensive care unit?-- Yes.

Did you respond at all to Toni Hoffman in relation to that?-- I don't recollect that I did. I believe I spoke to Glennis Goodman about that.

I put it to you you never responded, either by email or any other way, to Toni Hoffman herself?-- As I said, I have no recollection - I have no recollection of speaking to Toni Hoffman about this but I believe I did speak to Glennis Goodman about this.

Paragraph 98 of your statement you refer to an email from Ms Hoffman dated 6 November 2003?-- Yes.

Complaining of inappropriate behaviour by Dr Qureshi with nursing staff?-- Yes.

Did you ever respond to Ms Hoffman about her concerns about Dr Qureshi sexually molesting nursing staff?-- Yes. I did speak to her after that email and said-----

When? The email was dated 6 November. When did you speak to her?-- Some time after that. I remember speaking to her and saying thank you very much for that. I noted that she said she wasn't sure about it, she just wanted to bring it to my attention. I explained that it helped contribute to the picture in dealing with Dr Qureshi.

I suggest that you didn't speak to her at all on that subject?-- I suggest that I did speak to her on that subject.

At paragraphs 121 and following of your statement you deal with the topic of concerns being raised by Ms Hoffman as to the number of patients requiring long-term ventilation in the intensive care unit?-- Yes.

And that's because of the capability of the intensive care unit to care for ventilated patients is limited?-- Yes.

And, generally speaking, the optimum is that there is only one patient with another ventilator being available for emergencies?-- That's the optimum, yes.

Once you have got two ventilated patients, things start becoming difficult?-- Particularly taking into account your other patient load and the length of time the patients are there, yes.

At paragraph 128 you refer to Exhibit 94, which is - includes an email dated the 1st of November 2004 from Toni Hoffman, including statistics about ventilated patients?-- Yes.

And you say that you do an analysis of that and in paragraph 130 your conclusion was that the demand for ventilation in ICU from all specialties had increased?-- Yes.

And that demand was not confined to surgical patients?-- Yes.

But it was quite clear to you at that time, was it not, that there was a significant number of patients following surgical procedures by Dr Patel who had been requiring long-term ventilation?-- The information provided to me then did not include who was caring for those patients. It was related to other demographic information and clinical information about them.

But even on the information you were given, you say that you examined the statistics and were able to work out who were surgical patients and who were non-surgical?-- Yes, based on the diagnosis provided to me by Toni.

And at paragraph 131 you refer to some statistics you have obtained more recently?-- Yes.

And they're exhibited at DWK38A?-- Yes.

And that was a search done how?-- I think it used the Transition 2 database.

Was that a database which was available to you whilst Dr Patel was at the hospital?-- Yes, it was.

From what time had that been available?-- It was available when I started there.

Okay. So the sort of statistics that you obtained, it seems, in June this year could have been obtained by yourself at any time during the period that Dr Patel was Director of Surgery?-- Yes.

Why didn't you undertake such a search at that relevant time when these matters were being raised as an issue of concern rather than leaving it till June this year?-- I recollect that this - that it was not focussed on Dr Patel, it was focussed on the totality of hours and patients within the unit. We were trying to get some idea of the trends and what had changed, when it had changed and - so I was looking at the kind of break up between medical and surgical.

But at the time that you receive this information referred to in paragraph 128 of your statement, is shortly subsequent to the detailed written complaint of Toni Hoffman of 22nd October 2004, which includes reference to patients suffering postoperative complications and requiring long-term ventilation support in the ICU, is it not?-- It does include

reference to patients in ICU, yes.

So why would you not at that time undertake this exercise of pulling the statistics in relation to Dr Patel's patients to see if there is any basis for those concerns being expressed by Ms Hoffman to the district manager?-- Because that complaint of 22 October was being handled by the district manager and he was handling it a certain way. I was doing this from as much a financial perspective, and some of this was done in conjunction with Ms Mulligan. So I was looking at some trends as regards hours and the types of patients. I did not take - put one with the other.

But you were speaking to doctors about the concerns raised by Ms Hoffman for their input?-- Yes.

And you were doing that in November of 2004?-- Yes.

You were at the same time receiving this information requested by yourself in relation to patients requiring long-term ventilation?-- Yes, it was-----

Are you seriously saying that at that stage, even in late October/early November 2004 that you were only looking at that issue in the context of finances?-- Yes, I was. I looked at it in the context of finances. It wasn't just long-term ventilation, it was any ventilatory hours, because they were being done on a monthly basis. So, yes, it was only being done on initially a financial perspective to try and identify what had caused the major changes in the hours of over time. It all related to nursing overtime.

You didn't see it as being relevant to concerns being raised about patients suffering complications after Dr Patel's surgery?-- No, I did not do that. As I said previously, the investigation of that complaint was very much - was very much handled and controlled and managed by Mr Leck.

Paragraph 131, you refer to these statistics that you've obtained in June this year and which you could have obtained at an earlier stage?-- Yes.

And you say that approximately two thirds of the patients were admissions from the emergency department or emergency transfers from other hospitals?-- Yes.

So by that do we mean that the fact that such a patient from the emergency department has undergone long term ventilation after being operated on by Dr Patel should be disregarded as being somehow not significant?-- No.

Okay. The remaining patients were elective surgery patients?-- Yes.

And then over the page there is nothing in those statistics to indicate that Dr Patel had a significant number of lengthy ICU admissions?-- That's what I've written, yes.

So that's your opinion of it, is it?-- Yes.

Do you have the document with you?-- Yes.

DWK 38A?-- Yes.

The pages are numbered?-- Yes.

Go to page 3?-- Yes.

The patient at the top of that page, that's P16, isn't it?-- I'm unsure who it is, the name is.

Well, he's the patient who underwent an oesophagectomy in December 2003 and stayed in the ICU for 18 days?-- As I said, I'm unaware of the patient's name.

And we can see that one of the diagnoses includes "Unintentional cut, puncture, perforation or haemorrhage during surgical operation"?-- Sorry, it says, "External puncture or laceration during procedure".

Y60 on the right column, second from the bottom?-- Yes.

But you say you weren't aware of that patient undergoing an oesophagectomy and a long ICU stay after complications during that surgery at that time?-- No, I wasn't.

That's a significant length of time though, isn't it? You wouldn't just disregard that or call it insignificant?-- No, that's the total time that the patient was in hospital.

The next page we've got a patient who's undergone a splenectomy?-- Yes.

So another type of procedure that Dr Patel had been prohibited from performing in the United States? Now, that patient has spent five days in the intensive care-----

MR DIEHM: I don't know that the witness answered the question, Commissioner.

COMMISSIONER: Did you answer that question?-- Sorry, the question being?

I think the question was that was another type of procedure which Dr Patel had been prohibited from performing in the United States?-- I'm unaware that he was prohibited from performing splenectomies.

Is that a removal of the spleen?-- Yes.

MR ALLEN: I'll withdraw that.

COMMISSIONER: Mmm.

MR ALLEN: But we see that the diagnoses there include, "Accidental puncture and laceration during a procedure."?-- Yes.

"Foreign object accidently left in body during surgical operation."?-- Yes.

"Foreign body accidently left in body cavity or operation wound following a procedure."?-- Mmm-hmm.

These are statistics that would have been available to you in late October 2004 should you have chosen to bring them up; that's so?-- I could have requested these, yes.

Well, it would have shed a bit more light upon the concerns being raised by Ms Hoffman and others, would it not, if you'd gone through that process then?-- Yes, it was one of the options available, yes.

Would have been useful information to give to Dr FitzGerald for the purposes of his audit?-- As I said previously, I was unsure about what - how Dr FitzGerald was going to conduct his audit. Certainly we provided him information and I believe some of this information was provided to him and I also understand that he then sought some of this information from the Health Information Centre. I would have to say these are diagnosis based on the information that was in there and a foreign body being left there may be related to the operation, it may be very appropriate but you have to look at each case on each situation and I would say almost that they would need a surgical opinion.

If we go to page 5 of 15. The second patient there. You can identify who that patient is, can't you, because the patient was admitted for a oesophagectomy on the 19th of May 2003 and stayed on until the 21st of May 2003?-- Yes.

So that's Mr Phillips?-- Yes.

Go to the next page, 6 of 15. We've got a patient whose

undergone a, I think the abbreviated term is lap choly?-- Yes.

And we've heard evidence about that as being a - usually not a particularly complicated procedure?-- It is, as I said, a common procedure, but unfortunately, like any procedure, it can have complications, yes.

Well, this is a patient who is in the ICU for six days after being operated on by Dr Patel?-- Yes.

It's clear, if you look in the left column, that they've required continuous ventilatory support for 96 hours or more, so that's well beyond the 48 hour ceiling, isn't it?-- It's beyond the 48 hour terminology they used. As I said previously, there was - I was given information provided by Dr Carter which he used to change that according to the situation at hand.

And the diagnoses include sepsis following a procedure and wound infection following a procedure?-- Yes.

Would have been useful information for Dr Fitzgerald that if you were wanting to assist his audit?-- He was doing, as I said, he provided - he went to look at - I understand that he got this information from another source and did start to look at these types of things among the numbers of large, the criteria which he used in his audit and which he used these diagnostic codes.

These are the statistics you referred to in your statement as showing that Dr Patel didn't have a significant number of patients who required extended ICU stays?-- Yes.

If you go over to the next page, page 7 of 15. The second page, there is someone who's been in the Intensive Care Unit for 10 days?-- Yes.

After a, it seems, because of a post-operative re-opening of the laparotomy site?-- Yes.

A disruption of operation wound?-- Yes.

10 days; that would be a fairly significant time in the ICU, would it?-- It is long, yes.

It would also, the care of this patient would have been conducted with other practitioners apart from Dr Patel.

Page 8 of 15. We've got two patients there who have been operated on by Dr Patel, both have diagnoses which include accidental puncture and laceration during a procedure and the second patient also unintentional cut, puncture, perforation or haemorrhage during surgical operation?-- Yes.

And that person was in the Intensive Care Unit for nine days?-- Yes.

Requiring ventilatory support of 96 hours or more?-- Yes.

Do you still maintain that these statistics that you obtained didn't provide any significant support or concerns being raised about Dr Patel's patients requiring long term ICU support or ventilation support?-- What I found was that there was 24 patients over a period of 24 months which averaging one patient per month. I believe that as a - one of the primary surgeons, full-time surgeons in this area, I believed that that was reasonable.

How did you assess that? Did you have some benchmarks to look at?-- I didn't have any benchmarks, I certainly assumed that - I thought about it and felt that one patient per month did not seem out of the ordinary.

COMMISSIONER: How do you decide that without some comparative basis?-- Sorry?

How do you decide that without some comparative basis?-- I agree that I needed further comparative basis, yes.

Did you have one?-- No, it was not available to me.

MR ALLEN: But you were very big on that? For instance, when the concerns were raised by Patrick Martin on behalf of the renal unit nurses about complications following upon peritoneal catheter placements, you said to Mr Martin, "Well, if they want to play with the big boys, bring it on", meaning if the nurses want to take on the doctors, I think you're saying they better have evidence to back it up?-- I believe I was asking for evidence, yes.

And you then sent Mr Martin away to tell the nurses - well, that you required statistical data with benchmark comparisons and comparing renal procedures to non-renal and different types of renal procedures?-- I don't believe that I went into the detail that was required, I just asked for the details and get some comparative information that was available, I didn't ask them to - I certainly asked to use what available resources were available in the hospital that - and potentially go to the DQDSU.

But you see, yourself, in the purposes of preparing this statement and in expressing an opinion on that topic, that there's no need for benchmarking, you can just make an assumption that one a month is not too many?-- I have said that and I acknowledge that to confirm that, I would need further comparative data.

Page 12 of 15, you'd be able to identify that patient, surely, because that patient was in the ICU for 12 days before being transferred to the Mater Hospital?-- Yes.

After an elective oesophagectomy by Dr Patel on 8th of June 2003?-- Yes.

That's Mr Grave?-- Yes.

Over the page, page 13, we've got one of Dr Patel's patients after an elective procedure being in ICU for eight days and the first diagnosis listed, "Accidental puncture and laceration during a procedure not elsewhere classified."?-- Yes.

This is information which was available to you in relation to these patients once it was entered into the system; is that right?-- Yes.

That one at least was only available to you from March 2005?-- Yes.

So perhaps a little late for Dr FitzGerald's purposes?-- Yes.

But the other ones, you could have brought up that information to assist him if you'd wished to?-- As I said previously, we provided an amount of information to him prior to he and his assistant coming to the Bundaberg Base Hospital. There was a significant number of requests, we provided that as much information as possible, he certainly said to - he asked for further information after he left and he also said that he was also going to get further information the Health Information Centre which I think use some of these codes as well. As I said, he was doing an audit, I think he was looking for trends and major trends across the board.

You weren't looking for anything in particular about Dr Patel though, were you?-- We certainly the - the information that we were getting was not focussed on individual surgeons or even individual practitioners and that would have - would have to be one of the shortcomings of the measurement that we were doing.

No, hold on. It was available because you say the same search system you used to produce this document was available throughout your time as Director of Medical Services?-- Yes.

And you were able to produce a document which had certain criteria which I expect were patients treated by Dr Patel 2003 to present who were ventilated for more than 24 hours?-- Yes.

And that's what was produced then?-- Yes.

So it's not correct to say that you weren't able to produce statistics that were focussed on a particular doctor?-- I didn't say that we weren't able, I didn't say - I don't believe I said that we weren't able to, I said we weren't doing that, we weren't doing that as a routine basis of measuring the performance of all of these, the practitioners.

Forget about a routine basis, you didn't do it after the concerns were raised about Dr Patel from 2003 onwards?-- I did not ask for this report at that time, no.

Just the last one, page 14 of 15, you've got a patient there who's undergone an elective procedure by Dr Patel on the 23rd

of February 2004. Do you know how long one would expect to stay in hospital after a limited excision of large intestine with an anastomosis?-- I would expect a number of days.

This person has spent 11 days in the Intensive Care Unit and not been discharged from hospital until 14th of March 2004?-- Yes.

And it's pretty clear why, isn't it, because during that procedure there's been an injury of the small intestine, there's been sepsis due to ecoli following the procedure, sepsis due to streptococci and acute peritonitis?-- Yes, the patient was very sick.

And it seems that there's a post-operative re-opening of the laparotomy site?-- Potentially that doesn't - my understanding that can occur after a patient appears with acute peritonitis and that the acute peritonitis may require further operations.

It's one of the type of procedures about which concerns were raised during Dr Patel's tenure of Director of Surgery as to the extent of complications suffered by him, I suggest?-- That was - yes, that was mentioned yesterday.

And yet when those concerns were raised, you didn't go through a similar exercise as you did in June this year and obtain such data?-- No, we were, we were getting, we were getting some clinical indicators and/or reports on a regular monthly basis at the Executive Council meetings and/or in the clinical indicator capture and that was not showing up this information. As I said previously, I believe that we need to change how we measure these types of information.

What was the data you were getting monthly which you say wasn't showing this type of picture?-- We were getting readmissions, wound infections, notes on the wards and that was being put in a combined report which was presented to the Directors and Nurse Unit Managers on a monthly basis.

Was there a system whereby the Intensive Care Unit would produce monthly costs centre summary reports?-- They were asked to produce that, yes.

And where would they go to?-- They went to the line manager and then went to DQDSU.

And would you see them?-- No, I wouldn't.

You wouldn't see that?-- No, I wouldn't because-----

What was the purpose of those reports then?-- They are costs centre reports, they're a financial report and as such the financial manager reports to the line manager.

And you're saying they weren't considered at Leadership and Management Meetings?-- What I was saying is that those reports were summarised on a monthly basis.

Those reports throughout the period from at least May 2003 onwards were showing huge increases over the normal of ventilated hours for patients in the Intensive Care Unit?-- I'd have to go back and look, I haven't seen those, so I'd have to go back and look at the statistics that I have.

So you never saw the reports themselves?-- No, I did not.

COMMISSIONER: How much longer have you got to go, Mr Allen?

MR ALLEN: I expect that I will be at least another half an hour to an hour.

MR DOUGLAS: Commissioner, I've already raised this with Mr Diehm.

COMMISSIONER: Yes.

MR DOUGLAS: You will remember that we have Mr Allsop by telephone from Bande Aceh at a fixed time at 11 o'clock.

COMMISSIONER: Mmm.

MR DOUGLAS: I had suggested to Mr Diehm since he principally would have to deal with matters as well that we perhaps start at 9 o'clock tomorrow morning with a view to finishing by 11 o'clock. I say that because I hope that two hours will cover it. Hope. I think it probably will. But also I think it's, to be fair to Dr Keating, Mr Diehm may well have a number of matters to cover and it may be fair to the witness to have him fresher to cover those matters.

COMMISSIONER: Well, I might think about that in a moment. How long did you say, Mr Allen?

MR ALLEN: Half an hour to an hour, Commissioner.

COMMISSIONER: All right, we'll say an hour. Ms McMillan, have you got any questions?

MS McMILLAN: I think at most half an hour, Mr Commissioner.

COMMISSIONER: Mr Freeburn?

MR FREEBURN: I think only 10 minutes.

COMMISSIONER: Half an hour for you.

MR FREEBURN: Sorry, Commissioner?

COMMISSIONER: Never mind. How long for you, Mr Diehm?

MR DIEHM: I'm sorry, Commissioner.

COMMISSIONER: Mr Boddice?

MR BODDICE: No more than 15 minutes at the present time.

COMMISSIONER: All right. And how about you, Mr Diehm? Approximately. I don't want you to be exact?

MR DIEHM: An hour is my best estimate.

MR DOUGLAS: We'll probably go beyond the estimate that I made then.

COMMISSIONER: That's nearly three hours and what, you'll have some questions?

MR DOUGLAS: I do.

COMMISSIONER: How long?

MR DOUGLAS: Not longer than about five, 10 minutes.

COMMISSIONER: Dr Keating, we could go - I wouldn't go past 5 o'clock, but it's your choice, if you'd rather adjourn now if you've had enough now, we can start again tomorrow early tomorrow morning, is that your preference?-- It is, yes, Mr Commissioner.

MR DOUGLAS: Mr Allsop, allowing for the communications via satellite phone, he still shouldn't be a long time, Commissioner, so we should finish Dr Keating either side of Mr Allsop tomorrow.

MR DIEHM: Commissioner, I would ask - I appreciate the difficulties that we've encountered with all of this, but I would ask if it at all possible to re-arrange Mr Allsop until later in the day, that that be done to allow Dr Keating to finish his evidence.

MR DOUGLAS: Commissioner, yes, that's a bit difficult with Bande Aceh.

MR DIEHM: I appreciate that.

COMMISSIONER: We will see what we can do.

MR DIEHM: Thank you, that's all I ask.

COMMISSIONER: All right. We will adjourn until 9 a.m.

THE COMMISSION ADJOURNED AT 4.35 P.M. TILL 9.00 A.M. THE FOLLOWING DAY