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**SUBMISSION TO THE
A/GENERAL MANAGER HEALTH SERVICES**

DATE: 6 April 2004

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DEADLINE: 30 April 2004

File Ref: 400-0409-001

SUBJECT: Legal indemnity for Australian Orthopaedic Association doctors carrying out a
review of Orthopaedic Services in the Fraser Coast Health Service District

APPROVED/ ~~NOT APPROVED~~

COMMENTS

→ *IG* for your consideration: - I support the approach

Approved B
06/05/04

[Signature]

Dr John Scott
A/General Manager Health Services
2/5/04

PURPOSE:

1. To seek the approval of the Acting Director General for the appointment of Dr John North and Dr Peter Giblin from the Australian Orthopaedic Association as "investigators" pursuant to Section 52 of the Health Services Act 1991 for the purposes of conducting a review of the provision of Orthopaedic services in the public sector in the Fraser Coast Health Service District and for these doctors to be granted indemnity in relation to carrying out that review.

BACKGROUND:

2. The Fraser Coast Health Service District approached the Australian Orthopaedic Association (AOA) seeking their assistance in undertaking an independent assessment of orthopaedic services within the District. The AOA indicated that it was prepared to provide two Orthopaedic Surgeons to carry out an inspection and provide a comprehensive report but only provided they were given written confirmation that the Association and the inspectors would be fully indemnified for the contents of the report.
3. The decision to approach the AOA was made in response to articles in the Courier Mail Newspaper (3 November 2003 edition) which raised the issue of the employment of Senior Medical Officers rather than specialists by Queensland Health, and in particular Hervey Bay Hospital, to provide orthopaedic services. The issues of qualifications, training, supervision and adverse outcomes were raised in the article. The story was also reported that night on local and state television news programs. The media reports at that time undermined public confidence in the services being provided. Due to difficulty in attracting Orthopaedic Specialists, the District has little alternative but to employ suitably trained Senior Medical Officers.
4. Advice was sought from LALU regarding options for meeting the AOA request for indemnity. Three options were investigated and the preferred and simplest option was that the AOA inspectors be appointed by the Director General as investigators under Section 52 of the *Health Services Act 1991* (the Act).
5. Advice has been received from the AOA that the appointment of the doctors as investigators to enable the granting of indemnity would be acceptable to them.
6. The key matters that the Director-General would wish to be satisfied of in making a decision to appoint a person as an investigator include:
 - Does the proposed investigation relate to the management, administration or delivery of public sector health services? (Section 55 of the Act)
 - Will the proposed investigation result in a report to the chief executive? (Section 55 of the Act)
 - Does the person(s) proposed have, in the Director-General's opinion, the necessary expertise or experience to be an investigator? (Section 52 of the Act)
 - Are the terms of appointment of the investigator appropriate given the nature of the investigation? (Section 53 of the Act).

ISSUES:

7. The appointees are to undertake a review of, and report on, the provision of Orthopaedic service in the public sector in the Fraser Coast Health Service District. The review is to include advice to assist the District to define some guidelines for the Senior Medical Officers in relation to:
 - Treatment plans.
 - Assessment process for determining level of competency to perform procedures.
 - Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.
 - Level of direct and indirect supervision required from Consultants.
 - Clinical Audit / Quality Assurance recommendations.
 - Requirements for registrar training accreditation.
 - Any other matters that the Australian Orthopaedic Association feels relevant that have been omitted.
8. The review clearly relates to the management, delivery or administration of public sector health services and, therefore, is within the scope of section 55 of the Act.
9. The review may involve access to individual patient charts in relation to the Clinical Audit component of the review. This information is subject to section 63 of the Act. Section 63(1) of the Act prohibits officers and employees of the Department from giving, to any person, any information that identifies a person who is or has received a public sector health service. Section 63(2)(f) allows for the giving of information to an official that is relevant to the performance of the official's functions stated in the official's instrument of appointment. Investigators have powers, under section 56 of the Act, to compel "documents" from officers and employees of the Department.
10. Dr John North is a senior orthopaedic surgeon and Chief Examiner for the final Fellowship of the Royal Australian College of Surgeons in Orthopaedic Surgery. Dr Peter Giblin is a senior orthopaedic surgeon and is currently a member of the Management Committee of the Australian Orthopaedic Association Board. Both clearly have the necessary expertise to be "investigators" for the purpose of this review.
11. The investigators will provide a report to the Director-General as envisaged by section 55 of the Act. There is nothing to stop the Director General from passing that report on to the District.
12. As the investigators will cease to hold office at the end of the term of appointment stipulated on the instrument, the appointment dates have been designed to allow for unforeseen complications or delays.
13. The indemnity is open-ended in that it will remain in place for an indeterminate period beyond when the appointment ends. This is appropriate as a claim could arise in the future, for example defamatory comments in the report. In relation to the breath or parameters of the indemnity, it also seems reasonable to cover situations where the investigators are injured in carrying out the appointment (eg injury on the way to the hospitals or injury while they are preparing the report but at their normal work address). While the investigators are prepared to provide their services pro bono, they should still be covered for any loss of income resulting from carrying out this work. LALU advice is that the current broad wording of the indemnity clause in the instrument of appointment will cover these situations.

BENEFITS AND COSTS:

14. Obtaining assistance from the AOA in defining guidelines for the Senior Medical Officers will ensure that best practices are followed and will help allay any community concern about the Orthopaedic services the District provides.
15. Under the AOA proposal, the inspectors will provide their services pro bono, although travel and accommodation costs would be met by the Health Service, together with any costs relating to the preparation of the report (report preparation costs estimated not to exceed \$600).

CONSULTATION:

16. Advice on the available options for meeting the AOA's requirements were provided by Peter Brockett, Legal Officer, Legal and Administrative Law Unit. He was also consulted in relation to the drafting of the instrument of appointment.
17. Dr Terry Hanek, Director of Medical Services for the Fraser Coast Health Service District, was consulted in relation to the Terms of Reference for the review.

ATTACHMENTS:

- Letters of request from the AOA
- Advice from Peter Brockett, LALU
- Instruments of Appointment

RECOMMENDATION(S):

18. It is recommended that you forward this Submission to the Director-General for approval of the appointments.