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

**DATE:** 30 June 2004

**PREPARED BY:** Paul Long, Administration Officer,  
Fraser Coast HSD

**Contact No:** 4120 6869

**CLEARED BY:** Michael Allsopp, District Manager,  
Fraser Coast HSD

**Contact No:** 4123 8274

**SUBMITTED THROUGH:** Dan Bergin, Zonal Manager, Central  
Zone

**Contact No:** 3234 0825

*DB 2/7/04*

**DEADLINE:** 2 July 2004

**File Ref:** 400-0409-001

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

APPROVED/ NOT APPROVED

COMMENTS

*To proceed to PG.*

*(2) Extension granted*

*(1) I am prepared to underwrite the investigators*

*B  
26  
15/6/04*

*ie Dr North and Giblin  
Can't not the AOA as  
they were not appointed  
... ..*

*Dr John Scott  
A/General Manager Health Services  
131714*

## PURPOSE:

1. To seek the approval of the Director-General to extend the reporting time limit for Dr John North and Dr Peter Giblin from the Australian Orthopaedic Association, appointed on 6 May 2004 as investigators pursuant to Division 1, Part 6 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, to 30 September 2004.
2. To seek the approval of the Director-General to indemnify the Australian Orthopaedic Association (AOA) for any claims made against the AOA in respect to the performance by Doctors North and Giblin of their functions under their instruments of appointment dated 6 May 2004.

## BACKGROUND:

3. 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.
4. Based upon advice from the Legal and Administrative Law Unit (LALU), the District sought the Director-General's approval to appoint the two surgeons as investigators under the *Health Services Act 1991* as it was believed that this would be the best way of meeting the AOA's indemnity requirements.
5. On 6 May 2004, the Director General appointed AOA representatives, Dr John North and Dr Peter Giblin, pursuant to Division 1, Part 6 of the *Health Services Act 1991*, as investigators to investigate matters relating to the management, administration or delivery of public sector health services as set out in Terms of Reference, and to provide a written report to Dr Buckland by 30 June 2004 or such date as agreed by him. A condition of appointment listed in the Instrument of Appointment was that "The appointee will be indemnified against any claims made against the appointee arising out of the performance of the appointee of his functions under this Instrument".
6. Advice was received from the AOA on 9 June 2004 that the two doctors had been advised of their appointments and proposed to carry out an inspection on 2 July 2004. However, the AOA also stated that it still required a letter of indemnity for the AOA itself, aside from its two members. The AOA advised that they were prepared to allow the inspection to proceed as planned but will withhold the report pending receipt of the letter of indemnity.
7. The AOA's concern is that if someone wants to sue for the content of the report and find that they cannot sue the inspectors, then the avenue of litigation via the AOA needs to be blocked, as Drs North and Giblin are representing the AOA. They suggested the following wording "No liability extends to the Australian Orthopaedic Association for any actions of the appointees, or for any material or documentation prepared by them for the Department of Health, under the terms of the letter of appointment".
8. Urgent advice was sought from LALU which advised that the AOA's comments were valid. However, LALU felt that the proposed clause only recognised that Queensland Health (QH) would not hold the AOA accountable and that it didn't address the more

likely scenario of a third party suing the AOA. As the AOA wanted some assurance or guarantee from QH that it will be financially responsible for AOA's legal exposure to a third party, LALU suggested a letter worded "Queensland Health will indemnify the Australian Orthopaedic Association (AOA) for any claims made against the AOA in respect of the performance by Doctors North and Giblin of their functions under their instruments of appointment dated 6 May 2004." The AOA has since indicated that they would be happy with this proposed wording.

#### **ISSUES:**

9. LALU has advised that if QH implements the investigator's recommendations and it is later discovered that these, or any guidelines that result, were flawed so as to give rise to a negligence claim against a Senior Medical Officer, the issue of joining the AOA (because it gave negligent advice) may arise. Such a scenario will very much depend on the report/recommendations and any guidelines that are developed so it is a little hard to predict.
10. LALU has recommended that the Health Service should involve a panel law firm in the review process because duty of care issues will arise and the panel firm can advise the Health Service on whether the involvement of Senior Medical Officers, rather than an orthopaedic surgeon will discharge that duty. The review is designed to address the management and assessment processes which is linked to this issue.
11. The Health Service needs the AOA to be involved in the review process to lend authority to the findings of the review.
12. Due to the initial delay in identifying available options for indemnifying the Australian Orthopaedic Association representatives and then seeking their appointment as investigators, Drs North and Giblin will not visit the Health Service until 2 July 2004. It will therefore not be possible for the investigators to provide a report by 30 June 2004. It is considered that an extension of the reporting deadline to 30 September 2004 would allow the investigators sufficient time to carry out their investigations and provide the required report.

#### **BENEFITS AND COSTS:**

13. Obtaining assistance from the AOA in defining guidelines for the Senior Medical Officers will ensure that best practices are followed and will help allays any community concern about the Orthopaedic services the District provides.

#### **CONSULTATION:**

14. Advice on meeting the AOA's requirements were provided by Peter Brockett, Legal Officer, Legal and Administrative Law Unit. He provided the wording of the proposed clause for granting indemnity to the AOA.

**ATTACHMENTS:**

15. A proposed letter granting the AOA indemnity is attached for the Director-General's approval and signature.

**RECOMMENDATION(S):**

16. It is recommended that:

- a. The Director-General give an undertaking by way of letter that Queensland Health will indemnify the Australian Orthopaedic Association (AOA) for any claims made against the AOA in respect of the performance by Doctors North and Giblin of their functions under their instruments of appointment dated 6 May 2004.
- b. The Director-General grant an extension to Dr North and Dr Giblin to provide their report by 30 September 2004.

Prepared by:

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Document Name:

Document8



**Gordon Nuttall MP**  
Member for Sandgate



**Queensland  
Government**

**Minister for Health**

Enquiries to: Dr T Hanelt, Director of Medical Services, Fraser Coast HSD  
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File Ref:

Dr K Wilding  
President  
Australian Orthopaedic Association  
Ground Floor  
229 Macquarie Street  
SYDNEY NSW 2000

Dear Dr Wilding

I refer to your letter dated 3 June 2004 addressed to Dr T Hanelt, Director Of Medical Services, Fraser Coast Health Service District, requesting indemnity for the Australian Orthopaedic Association.

As you are aware, on 6 May 2004 I appointed Dr John North and Dr Peter Giblin, as representatives of the Australian Orthopaedic Association, pursuant to Division 1, Part 6 of the *Health Services Act 1991*, as investigators to investigate matters relating to the management, administration or delivery of public sector health services as set out in the Terms of Reference contained in Schedule 1, and to provide a written report to me by 30 June 2004 or such date as agreed by me.

I wish to advise that Queensland Health will indemnify the Australian Orthopaedic Association for any claims made against the Australian Orthopaedic Association in respect of the performance by Doctors North and Giblin of their functions under their instruments of appointment dated 6 May 2004.

Should you require further information Queensland Health's contact is Dr T Hanelt Director of Medical Services Fraser Coast Health service District, on telephone (07) 4120 6859.

Yours sincerely

Dr Steve Buckland  
Director-General  
/2004

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