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Dr Helen C Beh  
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Dear Dr Beh

**Re: Review of orthopaedic services at the Fraser Coast Health Service District**

Further to our discussions via telephone of 15 April 2005, I want to resolve any outstanding issues between the Australian Orthopaedic Association ("AOA") and Queensland Health ("QH") to enable the report to be provided.

### Background

I understand that the report has been finalised but has not been signed off by the investigators. The AOA is keen to provide the report, however there are a number of concerns that need to be addressed by QH principally the extent of our indemnity. The major concern of the AOA is the potentially defamatory content of the report.

### Indemnity to Dr North and Dr Giblin

The indemnity granted by QH to Doctors John North and Peter Giblin (the investigators), was as representatives of the AOA, to investigate matters relating to "the management, administration and delivery of public sector health service" in accordance with instruments of appointment made by the then Acting Director-General, Dr Steve Buckland. Enclosed are copies of those instruments for your information.

It appears from the correspondence I have reviewed that there is a misunderstanding concerning the tenure of the extension sought by the investigators - was the extension to provide their report or to extend the indemnity, or whether it was both?

The investigators were originally required to provide their report by 30 June 2004. They were not able to meet this deadline so QH granted an extension until 31 October 2004. The wording in the

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leaves to the investigators was a little unclear because it refers to extending the appointment when really it was the provision of the report that was in issue. I understand that QH refused a further request to extend the deadline for providing the report. This issue will obviously need to be re-considered and rectified (if necessary) by QH.

Under the conditions of appointment, the appointment ends when the report is delivered. More importantly, one of the other conditions of appointment is that both investigators are indemnified against any claims made against them arising out of their exercising their functions under the instrument of appointment. This indemnity is open-ended and is not contingent either on delivery of the report or the instrument of appointment ending. Naturally, this is required in order that, should any future claims arise out of matters raised in the report by the doctors, then that indemnity will continue to apply.

Therefore, QH considers that the indemnity under the instruments continues to apply to the investigators and the report.

### **AOA Indemnity**

On a number of occasions the AOA has corresponded with QH seeking an extension of the indemnity to the AOA. In our discussions you raised a number of specific concerns where you consider that the AOA could face legal exposure. I now have a copy of your e-mail to Terry Hanelt dated 22 June 2004 giving a general indication of your concerns and providing suggested wording for the indemnity. However would you precisely identify where the AOA considers it could face legal exposure (eg defamation). This will assist me to present your concerns to the Director-General, as well as helping to define the parameters of any indemnity that may be granted.

### **The report as a confidential and privileged document**

In discussions with Mr Brockett you suggested that an alternative proposal was that the AOA would be prepared to release the report if QH could give a written assurance that the report would be treated as confidential and a privileged document. I appreciate the endeavours by the AOA to reach a mutually suitable outcome. Regrettably, QH is not able to provide an assurance that the report will be protected from statutory access processes (such as under the *Freedom of Information Act*) as Queensland legal authority clearly indicates that privilege in this situation cannot be relied upon to exclude the report.

I await your reply.

Yours sincerely

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Peter Crofts  
Director  
Legal and Administrative Law Unit  
22/4/2005