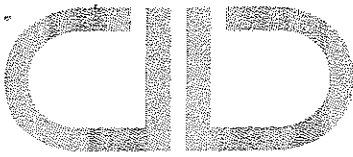


EX (C)



• CLEWETT • CORSER •  
• AND DRUMMOND •  
• LAWYERS •

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your ref

9 September 2005

Incorporating Mark Orchard & Associates

The Commissioner  
Qld Public Hospitals Commission of Inquiry  
**by hand delivery**

Dear Sir

**Dr John Scott**

You will be aware of a conversation Ms Dalton had with Mr Douglas this morning. We also refer to your directions made yesterday in relation to:

- (a) parts of the evidence received by the Morris Commission and;
- (b) whether waiting lists are within paragraph 2(c) of your terms of reference.

Please treat this letter as our client's application and submissions on those two points and submissions as to how best to move forward. Please note that our position is not taken to be combative but out of genuine concerns as to all three of these matters.

**A. Waiting Lists**

1. Waiting lists are not within the scope of the terms of reference of this Commission. The natural meaning of paragraph 2(c) of the current terms is an enquiry as to complaints about clinical procedures conducted by medical practitioners. It is directed to complaints about substantive incompetence such as is alleged against Drs Patel and Berg. Compare paragraph 2(b)(i) and note the use of the word "other" in 2(c).
2. QH has practices and procedures about waiting lists. They are not clinical practices and procedures. They are not practices and procedures which are "conducted" within the ordinary meaning of that word. They are not practices and procedures conducted by medical practitioners. They are administrative practices and procedures performed by bureaucrats at the direction of the government. They are a result of underfunding of the health system as a whole. They are a product of systemic and funding issues.
3. It is not for our client to be making submissions as to what the terms of this enquiry should or should not include. Our client will co-operate in providing information whether the terms remain as they are or are made wider. It is important however

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Please reply to Brisbane Office

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that the terms of the Commission are clear and that a strained meaning is not given to words inapt to include certain matters. If term 2(c) is given a strained meaning so as to include waiting list issues, our client must inevitably wonder what else might be included in the terms of reference and should be addressed by him in his statement and evidence. Further, to make a full response about waiting lists means our client needs to address systemic issues, particularly underfunding and prioritisation of funding.

4. These are not academic concerns. There are three matters that trouble us in particular.
5. First, some of the information which our client carries around in his head was learned from documents which are cabinet or other confidential documents dealing with current and controversial topics. Our client is concerned to act responsibly in dealing with this information. If he is required to put it before the Commission he will, but it is unfair to ask him, and us, to make choices in respect of unclear terms of reference leaving him open to allegations that he gave information which was not within the terms, tendentiously.
6. Second, there is a complaint made to the CMC in respect of Ex-Minister Nuttall and the estimates hearings of 8 July, 2005. Our client has been contacted by the CMC in relation to that. Again, our client will respond as this enquiry directs, but he should in fairness be able to do so in a framework defined by clear words.
7. Third, as we revisit the statement our client prepared in response to the 20 questions delivered to us by the Morris Commission, we need some clarity to enable us to know which of these topics fall within the current terms. If it is considered that waiting lists do, maybe other systemic issues are also considered to be within the terms. We do not want to make decisions to cut parts of the statement and then have our client accused of being unhelpful because the terms of reference are construed in some wider sense than we apprehend from their natural meaning.
8. Our client has prepared a detailed response to the questions delivered by the Morris Enquiry (email memo from Mr Atkinson dated 26 August 2005) and will make whatever part of that available as he is directed. Most of the twenty questions were as to systemic and funding issues. We do not apprehend that the natural meaning of the terms of reference of this Commission includes systemic and funding issues and that is what has been reported in the press as being the understanding of the Premier and the Commissioner. If the words used in the terms of reference are not fairly wide enough to encompass the intent of this enquiry they should be changed, the existing words should not be strained.

**B. Evidence from the Morris Commission**

9. Generally, as noted at the directions hearing on 8 September 2005, many of the questions asked, particularly by Commissioner Morris, were improper and unfair both in form and substance. They were multi-barrelled, or worse, sometimes in the form of a speech. At the end of such questions witnesses were invited to assent if the witness was one whom Morris apparently favoured, or were ridiculed in relation to the subject matter of the speech, if the witness was one the Commissioner did not favour.

10. A separate but related point of direct concern to our client is that the substance of questions was to invite certain witnesses to lay the blame for various matters with senior bureaucrats. The questions were not based on assumptions made fairly on the evidence but seem based upon an agenda held by the Commissioner.
11. Sometimes these questions were made even more tempting to the witness because they invited the witness to exculpate themselves by blaming the senior bureaucrats. Ex-Minister Edmond was invited to do so time and time again and steadfastly refused to do so.
12. Not so Dr Aroney. The most flagrant example is found at t 3947 ll 20-35.
13. Dr Aroney in his statement attacks both senior bureaucrats, mainly Dr Scott, and Ex-Minister Nuttall, for what he calls media bullying. At t 3947 he is in effect invited to exculpate Ex-Minister Nuttall and blame the bureaucrats. He does so.
14. It is no doubt easier for a witness to blame a nameless group of people in a general way than make a specific allegation against a specific person.
15. All we ask for in this respect is that in reviewing the evidence before the Morris Enquiry you are very alert to the fact that answers in general terms to improper questions should be accorded only the weight they deserve.

**C. The Evidence of Dr Aroney and Dr Kane**

Dr Aroney

16. The evidence of Dr Aroney was not within the terms of reference of the Morris enquiry. It relates to Dr Aroney's concerns that particular types of cardiac procedures were not well funded (in his view) at The Prince Charles Hospital (TPCH). This is clearly not within the terms of reference 1-6, where first appearing, of the Morris Enquiry. While it might fall within the terms of paragraphs 3 and 4 of the second set of numbered paragraphs in those terms of reference, they are not freestanding, being introduced by the words, "*AND, as a result of any findings in respect of the above matters, to recommendations in relation to:*"
17. No objection was taken in relation to this point by counsel who nominally acted for Dr Scott at the time Dr Aroney gave his evidence. There were always real issues with the adequacy of this representation because it was not clear who or what Queensland Health was, and from whom instructions were taken. This was the subject of argument from time to time. By the time Dr Aroney gave evidence, Dr Scott and Ex-Minister Nuttall had given conflicting answers to the Estimates Committee hearing of 8 July 2005 and Dr Scott's employment had been terminated on 28 days' notice with no reason being given. At the time Dr Aroney was called, the issues had become so acute that Ms Kelly, counsel acting for Dr Aroney, raised the matter with the Commissioner, was fobbed off, and had the courage to raise the issue again particularly in relation to Dr Scott – t 3953-4. See t 4794 for the times when Dr Scott was able to obtain independent advice.
18. The evidence of Dr Aroney is outside the terms of this enquiry. The natural meaning of paragraph 2(c) of the current terms is an enquiry as to complaints about clinical procedures performed by medical practitioners. It is directed to complaints about

substantive incompetence such as is alleged against Drs Patel and Berg. Compare paragraph 2(b)(i). No one complains that Dr Aroney was incompetent or makes complaint about the way he conducted his procedures. He complains he was not funded to do enough of them to satisfy the demands of patients waiting. This is a complaint about administrative practice or procedure, and systemic issues, viz., underfunding.

#### Dr Kane

19. Dr Kane's statement was distributed to parties appearing before the Morris Commission. There may have been a private arrangement made between Commission staff and some parties about it being tendered as a submission not as evidence with the resultant effect that Dr Kane need not be a witness. We do not know if the statement was an exhibit in the last Commission. We had written to the staff of the last Commission saying initially that we wished to cross examine Dr Kane. We then wrote saying that we thought his evidence was outside the terms of reference, and even if they disagreed, that it was peripheral. As a solution we proposed that Dr Scott address the allegations made in his statement and that on that basis it was unnecessary to have Dr Kane attend from Rockhampton. No reply was received.
20. If Dr Kane's statement was an exhibit in the Morris Commission, it deals with matters outside the terms of reference of that commission for the same reason as Dr Aroney's evidence was.
21. Likewise, it should not be allowed to remain in evidence in this Commission for the same reasons as Dr Aroney's evidence (above).

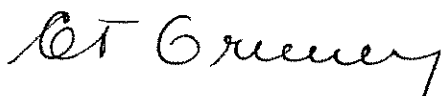
#### **D. Future Conduct**

22. We submit that the terms of reference of this commission are properly construed as argued above. The proper course is to alter them if they do not properly reflect what was intended.
23. If you are against us, we will comply with your directions as to that. If you consider that waiting lists are within your terms of reference it seems that Dr Scott should also address the other systemic matters he was asked to address by the Morris Enquiry and his statement should go in in its entirety, because waiting lists are integral to issues of underfunding and systems management.
24. If you take the view that the evidence of Drs Aroney and Kane is properly within your terms of reference we ask that:
  - (a) you consider whether it would serve any useful purpose to have either or both of those gentlemen cross-examined in light of the evidence provided by Dr Scott in his statement;
  - (b) you give us leave to file further statements from other witnesses as to the allegations of bullying and threats Dr Aroney makes.

25. If the evidence of Dr Aroney is determined by you to be within your terms of reference Dr Scott's statement about systems and underfunding is necessary background to properly understand his detailed refutation of Dr Aroney's allegations.
26. Dr Scott is unemployed and this is a matter of serious concern to him. He has obtained a position as a locum GP in Ingham beginning 19 September 2005 for one month. He is most anxious not to disrupt this plan. He is available to attend the Commission any time next week, the sooner the better from his point of view.

We have provided two copies of his complete statement (i.e., answering the 20 questions posed by the Morris Commission) to Mr Douglas on the basis that until we receive clarification from you it will be distributed no more widely than to you and counsel assisting.

Yours faithfully,



Clare Creevey  
**Partner**

This letter was drawn and settled by Ms Dalton