

Submissions

Dr Suzanne HUXLEY

RECEIVED
26 OCT 2005



Crown Law

Queensland Government

Your ref:
Our ref: CS5/HEA027/5744/DZP
Contact: Peter Dwyer
Direct ph: 3239 6169
Direct fax: 3224 7431

BY:

Department of
Justice and Attorney-General

26 October 2005

Mr David Groth
Secretary
Queensland Public Hospitals Commission of Inquiry
Level 9
Brisbane Magistrates Courts Building
363 George Street
BRISBANE Q 4000

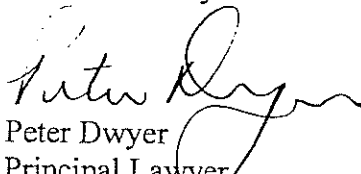
Dear Mr Groth

Submissions in response to Notices of Potential Adverse Findings

I enclose submissions on behalf of Drs Fitzgerald, Nydam, Krishna and Huxley, Ms Erwin-Jones, Mr Allsopp and Ms Miller in response to Notices of Potential Adverse Findings (or, as the case may be, Notices of Potential Adverse Findings and Recommendations) given to each of those individuals.

The submissions were drawn by Mr Farr of counsel and settled by Mr Boddice SC.

Yours faithfully


Peter Dwyer
Principal Lawyer
for Crown Solicitor

encl

State Law Building
50 Ann Street Brisbane
GPO Box 149 Brisbane
Queensland 4001 Australia
Dx 40121 Brisbane Uptown
CDE D38
Telephone 07 3239 6703
Facsimile 07 3239 0407
ABN 13 846 673 994

QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

SUBMISSIONS ON BEHALF OF DR SUZANNE HUXLEY

1. The evidence relevant to Dr Huxley appears at:
 - (a) Exhibit 58 – Statement of Dr Huxley;
 - (b) Transcript: T937/18 – 961/60.

Area of Need applications

2. Dr Huxley has held the position of Principal Medical Advisor since September 2003.¹
3. As Principal Medical Advisor, Dr Huxley held a Ministerial delegation under which it was her responsibility to manage the process of certification of area of need application forms.² Dr Huxley was one of three people afforded this Ministerial Delegation.³
4. On the assessment of areas of need, Dr Huxley gave evidence that:

“...for the public sector, the applications that we receive, are for junior and senior positions and each of those applications is assessed on its merit. The reality at the moment is that the workforce shortage is so great that in my time in the position which has been fulltime since October, 2003, we haven't rejected an area of need application for the public sector.”⁴
5. She later agreed:

So in summary, a short form explanation is that the whole of Queensland is potentially capable of being an area of need, that each application is a separate application considered on its merits..... Yes.”⁵

¹ Exhibit 58, Attachment SMH – 1

² Exhibit 58, para 3

³ T957/20

⁴ T938/57

⁵ T939/10

6. Dr Huxley stated:
- (a) When an application for area of need classification is made by a regional hospital, the delegates assume that the hospital administration has gone through the process of trying to recruit an Australian practitioner⁶;
 - (b) she applied her mind to the issues raised by s.135 (3) of the *Medical Practitioners Registration Act 2001* by taking into account the fact that the workforce shortages are so great that she can only assume that the medical superintendents are doing their job and advertising the position⁷.
7. In evidence, Dr Huxley identified a deficiency in the area of need process, that being the failure to request proof of an inability to fill a public sector vacancy before approving the application.⁸ She detailed the steps which had been undertaken to overcome that deficiency, resulting in the Health Service Districts now being required to document that an assessment of the overseas trained Doctor, including reference checks, has been undertaken.⁹
8. Against that background, it would be unreasonable and unfair to criticise Dr Huxley in the performance of her duties. She performed those duties conscientiously, and in good faith, having regard to the available resources. The fact that she performed her duties conscientiously is confirmed by her identification of pertinent deficiencies in the processes, and the instigation of appropriate changes to correct those deficiencies, prior to giving evidence before the Inquiry.
9. Further, it would be unreasonable and unfair to make any adverse findings against Dr Huxley in relation to the process adopted between her appointment to this position and the implementation of the aforementioned amended protocol. There was, at all relevant times, an acknowledged medical workforce shortage in Queensland. Dr Huxley was uniquely positioned to understand and appreciate its extent. She relied on that knowledge, in combination with a reasonable assumption that hospital administrators act honestly and with integrity when advising her of their inability to obtain an Australian trained Doctor to fill a position. This was a reasonable approach in the circumstances.

⁶ T957/58

⁷ T959/25-32; 959/51; 960/18 – 26.

⁸ Exhibit 58, para 14.

⁹ Exhibit 58, para 17; T939/55 – 940/10.

Use of Ministerial policy

10. Dr Huxley stated that the workload of her unit has been so great since she started in her position that she and her staff have been unable to devote the substantial period of time that would be required for the purposes of preparing a new policy.¹⁰ No evidence to the contrary was placed before the Commission.
11. Against that background, it would be unreasonable and unfair to make an adverse finding against Dr Huxley in relation to her use of the pre-existing policy. This is not an instance of an employee performing her duties in an ignorant or incompetent manner. It is an example of an employee undertaking her duties, with due recognition of statutory and/or policy requirements, to the best of her ability having regard to her onerous workload and the resources available to her.

Renewal of Area of Need certification

12. The above submissions are relevant to, and relied upon, in relation to this issue.
13. During Dr Huxley's evidence, the following exchange occurred:

“DEPUTY COMMISSIONER EDWARDS: Dr Huxley, is the area of need, once it is filled by, say, an overseas Doctor, the appointment is made in that position as an area of need for 6 months, 12 months and a review done as to how many applicant may be around at that time, or is it a permanent – they could stay there for five years in that hospital?...They would stay there, yes, we wouldn't put someone out of a job. If we have given an individual area of need status we would not say after a year, 'sorry, you have to move on'. If they leave that position then that would be reviewed if someone else came in, and the position should be advertised.

COMMISSIONER: I'm sorry, Dr Huxley. It seems to me that defeats the whole purpose of the legislation. When Parliament allowed for these areas of need, the whole idea was that it would be temporary for 12 months and every 12 months Queensland Health would ascertain afresh whether it still remains an area of need. What you seem to be telling us is that Queensland Health

¹⁰ T942/54 – 943/49.

totally ignores Parliament's intention and would allow something to go on as an area of need for 20 years if that's how long the Doctor wanted to stay there?...at the moment, yes, that's the case, and again, as I said, its likely through all this that it will be assessed. One of the issues that we have is that under the Medical Act, after four years someone should progress to either general or specialist registration. Up until recently that wasn't enforced. So it was very difficult – for example, you could give someone an area of need, renew it each year for four years, and at that time they should have progressed to general or specialist registration, and would not require area of need".¹¹

14. Later, Dr Huxley was asked:

"Dr Huxley, just taking you back to one point that you made there briefly, you said that if an area of need certification is approved for a 12 month period then the following year, assuming the area of certification is the same, it would be simply rubberstamped; that's correct?...We would check to make sure that the information was correct, but generally, yes.

You said you wouldn't pull up the first years to check it? ...No – we have a database. So we would check the information that we have on our database, but as I said, if we are approving an SMO we would not put any extra information in it. Its an SMO provision or a specialist or JHO position, for example.

So when you say you wouldn't pull up the information you wouldn't pull up the original application?...No.¹²"

15. The effect of Dr Huxley's evidence on this point is that if the administrator of an individual hospital which employs an area of need Doctor seeks to renew that certification, Dr Huxley would accept that the area of need requirements had not changed from the previous year, refer to the data that was gathered from the original application, and then renew the certification.

¹¹ T942/21 – 50.

¹² T951/50 – 952/10

16. Paragraph 2.5.16 of Exhibit 58 is also relevant. That paragraph suggests that it was Departmental policy to assume that rural and remote locations automatically qualify as area of need until the contrary is shown. Such an approach, by Queensland Health, involved common sense and a minimum amount of red tape. This is commendable, having regard to the medical workforce needs of rural and remote locations.

Conclusions

17. The evidence does not support a finding that Dr Huxley failed to perform her duties appropriately. Even if the Commission is of the view that the approach that has been adopted was lacking, such a finding should not involve any adverse comment about, or finding against, Dr Huxley. It should be an observation as to the system in which Dr Huxley was required to perform her duties.