

## Chapter Five – Townsville, Charters Towers, Rockhampton, and the Prince Charles

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*'The only reason I can think of for suppressing information is for short-term political advantage, and I don't aim that at anyone in particular but I think one of the roles of a Director – General is often seen to be to first protect your Minister. I think that's an unhealthy situation.'*

Dr Andrew Johnson, Townsville

### Limitations on the inquiry into other hospitals

- 5.1 As mentioned earlier, this Commission was limited in the inquiry which it could conduct, and the findings and recommendations it could make with respect to, or arising out of each, the Townsville Hospital, the Charters Towers Hospital, the Rockhampton Hospital, and the Prince Charles Hospital, to the matters in respect of which evidence had been given before Commission No.1 of 2005. They were, for that reason, limited as follows.
- 5.2 Part A: The Townsville Hospital
- The recruitment of an overseas neurosurgeon as a locum Senior Medical Officer.
  - The recruitment of an overseas trained ear, nose and throat surgeon.
  - The employment of a 'psychiatrist' who had obtained registration with forged documents.
  - The management structure of the Townsville Hospital.
  - The implementation of the credentialing and clinical privileging process in the Northern Zone.
- 5.3 Part B: The Charters Towers Hospital
- Matters arising from a Queensland Health report into a tragic death in that Hospital.
- 5.4 Part C: The Rockhampton Hospital
- The Emergency Department of the Hospital.
- 5.5 Part D: The Prince Charles Hospital
- The provision of cardiac services at that Hospital.

## Part A - The Townsville Hospital

### The City of Townsville

- 5.6 Townsville lies approximately 1375 kilometres north of Brisbane, a one and a half hour journey by air.<sup>1</sup> Townsville is the largest city in Northern Australia,<sup>2</sup> and has evolved into a government and business centre for North Queensland. In recent years the city's population has swelled to 155,000.<sup>3</sup>
- 5.7 Approximately 24.2% of the population is over 50 years old,<sup>4</sup> whilst 6.3% of the population is indigenous.<sup>5</sup>
- 5.8 Townsville is also home to the James Cook University, at which Queensland's second Medical School is located.<sup>6</sup> The city is also home to a large air force and army base.
- 5.9 Townsville traditionally has been an industrial port for a variety of products including minerals, beef, wool, sugar and timber.<sup>7</sup> The city also has manufacturing and processing industries, while tourism has been a growing industry in recent years.

### The Hospital

- 5.10 In 2002 the former Townsville General Hospital and the Kirwan Institute for Women were amalgamated and moved to a new, purpose built, state of the art, hospital sited in the Townsville suburb of Douglas. The Townsville Hospital is the tertiary referral hospital for the Northern Zone.<sup>8</sup> It has 452 beds and is the largest provincial hospital in Australia. It provides a comprehensive range of services comparable to a major Brisbane hospital such as the Royal Brisbane and the Princess Alexandra. It has a staff of 3000 including 72 full time specialist doctors and 48 Visiting Medical Officers, along with a number of more junior medical practitioners.<sup>9</sup> It is located adjacent to the James Cook University, has developed close links with the University's Medical School, and is the primary teaching hospital for that Medical School.
- 5.11 As the tertiary referral centre for the Northern Zone it services the region from as far north as Thursday Island, west to Mount Isa, and south to Sarina, a

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<sup>1</sup> <http://www.townsville.qld.gov.au/about/>

<sup>2</sup> <http://en.wikipedia.org/wiki/Townsville>

<sup>3</sup> <http://en.wikipedia.org/wiki/Townsville>

<sup>4</sup> compared to the state average of 28.8% source: <http://www.health.qld.gov.au/wwwprofiles/tville.asp>

<sup>5</sup> compared to the state average of 3.1% source: <http://www.health.qld.gov.au/wwwprofiles/tville.asp>

<sup>6</sup> <http://www.jcu.edu.au/school/medicine/about.html>

<sup>7</sup> <http://en.wikipedia.org/wiki/Townsville>

<sup>8</sup> [http://www.health.qld.gov.au/townsville/Facilities/tville\\_hosp.asp](http://www.health.qld.gov.au/townsville/Facilities/tville_hosp.asp)

<sup>9</sup> [http://www.health.qld.gov.au/townsville/Facilities/tville\\_hosp.asp](http://www.health.qld.gov.au/townsville/Facilities/tville_hosp.asp): Dr Johnson gave evidence that there were approximately 400 doctors employed at the Townsville Hospital, approximately half being overseas trained see T3374 line 39

geographical area one and half times the size of France.<sup>10</sup> As the tertiary referral centre for the Northern Zone it accepts emergency transfers from all other hospitals within the Northern Zone. On occasion it may also accept transfers from the more northern hospitals of the Central Zone. It services a population of more than 600,000. In the 2003/04 year there were 38,456 admissions to the Townsville Hospital.<sup>11</sup>

- 5.12 The Townsville Hospital is 1375 kilometres from the nearest major hospital, the Royal Brisbane Hospital.<sup>12</sup> Obviously this distance makes transferring patients to Brisbane difficult and impracticable. As one witness put it:

Brisbane is closer to Canberra than it is to Townsville, and is closer to Melbourne than it is to Cairns<sup>13</sup>

- 5.13 The remoteness of the Townsville Hospital means that it has little choice but to accept all emergency transfers within the Northern Zone and is generally not in the position of being able to refer a patient on to another tertiary referral hospital.

### **Clinical governance at the Townsville Hospital**

- 5.14 The Townsville Hospital has a different management structure from other public hospitals in Queensland.<sup>14</sup> While it retains the traditional executive of a District Manager, Mr Ken Whelan, an Executive Director of Medical Services, Dr Andrew Johnson, a District Director of Nursing, Ms Val Tuckett, and a Director of Operations, Mr Shaun Drummond, it is below that level that management of the Hospital, in a clinical sense, has been handed, to a large extent, to clinicians.

- 5.15 Unlike the other tertiary referral hospitals such as the Royal Brisbane Hospital, the Townsville Hospital operates what was described as a devolved management structure.<sup>15</sup> Under this structure the Townsville Hospital created 11 clinical institutes, each headed by a clinical director who is a doctor and an operations director who is a nurse.<sup>16</sup> Each director carries a clinical workload and an administrative workload.<sup>17</sup> For example Dr Reno Rossato is the clinical director of the Institute of Surgery and he has a clinical workload as the Staff Specialist Neurosurgeon at the Townsville Hospital. He also has an administrative workload.<sup>18</sup> His evidence was that his duties were roughly 50% administrative and 50 per cent clinical.

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<sup>10</sup> T3414 line 3

<sup>11</sup> [http://www.health.qld.gov.au/wwwprofiles/tville\\_tville\\_hosp.asp](http://www.health.qld.gov.au/wwwprofiles/tville_tville_hosp.asp)

<sup>12</sup> [http://www.health.qld.gov.au/wwwprofiles/tville\\_tville\\_hosp.asp](http://www.health.qld.gov.au/wwwprofiles/tville_tville_hosp.asp)

<sup>13</sup> T3334 line 2

<sup>14</sup> T3328 L51

<sup>15</sup> Exhibit 236 para 8

<sup>16</sup> Exhibit 237 para 8

<sup>17</sup> Exhibit 237 para 8

<sup>18</sup> Exhibit 243 para 11

- 5.16 The Townsville Executive has devolved the management and responsibility for each Institute's operational budget to the two directors of each Institute.<sup>19</sup> Therefore the directors of each Institute have greater control over the day to day running of the Institutes and have the authority to manage resources to meet the clinical needs of patients.<sup>20</sup> Each clinical director has a financial delegation to expend up to \$20,000.00 without any need to seek further approval from the Townsville Executive.<sup>21</sup>
- 5.17 The budget of each Institute is negotiated each year between the Townsville Executive and the directors of each Institute,<sup>22</sup> rather than determined by the Townsville Executive. This process enables the clinicians delivering the services to be involved in the allocation of resources.
- 5.18 An example of how this process operates is that, when Mr Drummond assumed the role of Executive Director or Operations in 2003, the Townsville Hospital was in financial crisis, and the Obstetrics and Gynaecology Department was \$2million over budget in that year. Historically, the Obstetrics and Gynaecology Institute had always been significantly over budget. Upon examination of the budget, in consultation with the directors of the Institute, Mr Drummond formed the view that the budget that had been historically allocated to the Institute was grossly insufficient to meet the clinical need.<sup>23</sup> Staff of the Obstetrics and Gynaecology Institute were frustrated by the fact the budget was inadequate. Understandably, they felt there was little point in attempting to run the Institute within budget as the task was effectively impossible. To address this, the Townsville Executive transferred \$2million from its operational budget to the Obstetrics and Gynaecology Institute.<sup>24</sup> More generally, in that year the Hospital Executive transferred a total of \$8 million from the administrative budget to the clinical institutes.<sup>25</sup> That sum was considerably more than the administrative budget for that year. However, the Executive took the view that through operational efficiencies those funds could be recovered.
- 5.19 The budget allocated to the clinical institutes each year is agreed between the Townsville Executive and the directors of the clinical institutes.<sup>26</sup> This structure gives clinicians significant say over the operation and budgets of their institutes. As much as possible clinicians are involved in decisions about budget allocation and expenditure of funds.<sup>27</sup> Budget negotiations between the Townsville Executive and the clinical institutes may even take place before the annual

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<sup>19</sup> Exhibit 237 para 10

<sup>20</sup> Exhibit 237 para 9

<sup>21</sup> Exhibit 251 para 14; T3573 line 56

<sup>22</sup> T3329 line 1

<sup>23</sup> Exhibit 251

<sup>24</sup> Exhibit 251

<sup>25</sup> T3572 line 8

<sup>26</sup> T3572 line 11

<sup>27</sup> T3536 line 45

budget of the hospital has been agreed by Queensland Health,<sup>28</sup> a process that Queensland Health has found difficult to understand:

I think the largest thing [Queensland Health] struggles to comes to terms with is actually how we set budgets with our clinical institutes when [Queensland Health] haven't given us a budget ... they don't understand how we have done that. If we didn't do that, we are now, in the second month of this financial year and we wouldn't have had resources allocated for the delivery of those clinical services.<sup>29</sup>

5.20 The role of the Townsville Executive has become one of supporting clinicians and advocating to Corporate Office. As described by Mr Whelan, the clinicians work in the business, while the Townsville Executive work on the business acting as an advocate for increased funding and resources for the Townsville Hospital.<sup>30</sup> Under this structure, over the past few years, the Townsville Executive has been able to employ an additional 100 medical and nursing staff within the Hospital's existing budget.<sup>31</sup>

5.21 This structure is unique to Queensland Health<sup>32</sup> and, according to Mr Drummond, from his interactions with Queensland Health, the model appears to be poorly understood by Queensland Health's Corporate Office. This lack of understanding is a source of frustration to the Townsville Hospital. An example of the frustration is that recently, the Townsville Executive sought Corporate Office approval to increase the financial delegations of the clinical directors from \$20,000.00 to \$50,000.00 thus allowing the clinical directors much greater autonomy in purchasing equipment and medical supplies for the hospital.<sup>33</sup> Mr Drummond stated that in his view the Institute directors ought to be permitted to expend up to \$100,000.00. Under the present financial delegations the clinical directors need to have Mr Drummond or Mr Whelan approve what are essentially routine purchases for the hospital, a situation that Mr Drummond considered inappropriate and a poor use of both his and the clinician's time. Mr Drummond gave the example of his being required to approve purchase orders for renal fluids:

Because they're fairly expensive [the Hospital] ... might .. order .. \$12,000 of renal fluids at one time, ... somebody from the Institute of Medicine has to come .. to me to actually get me to [authorise that ]..purchase.... It is an absolutely necessary clinical supply. I wouldn't know whether that was the right quantity or not. I'm not the clinician actually involved in the delivery of that service.... Now, they can't sign that, ..I [will] so [it] can be purchased, but it is a ridiculous exercise in bureaucracy.<sup>34</sup>

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<sup>28</sup> T3536 line 43

<sup>29</sup> T3538 line 59 – T3584 line 8

<sup>30</sup> Exhibit 237 para 10

<sup>31</sup> Exhibit 251 line 42

<sup>32</sup> Exhibit 251 para 18

<sup>33</sup> Exhibit 251 para 18

<sup>34</sup> T3575 line 3

- 5.22 The Corporate Office of Queensland Health rejected the application to increase the financial delegations of the directors of the clinical institutes.<sup>35</sup>
- 5.23 In the way described above, the Townsville Hospital seems to have gone some way towards achieving a balance between clinicians being involved in decision making with respect to clinical issues and fiscal responsibility being achieved by the Townsville Executive. Dr Johnson made the point in his evidence that there is a significant role for a full time medical administrator.<sup>36</sup> That person is responsible for balancing competing considerations across the entire health service district.<sup>37</sup>
- 5.24 In the opinion of Mr Drummond it would be possible to implement a similar model of clinical governance in a smaller hospital,<sup>38</sup> although with fewer institutes. The essential feature of this model is an expansion of the authority and responsibility of the clinicians delivering the clinical services, thus increasing their authority and accountability.
- 5.25 Even if this model is not appropriate to all other regional and rural hospitals it does illustrate the advantage of greater clinician involvement in the way in which a hospital's budget is allocated. This topic is taken up later in this report.<sup>39</sup>

### **The Townsville experience of central control**

- 5.26 Prior to joining the Townsville Hospital both Mr Whelan and Mr Drummond worked within the New Zealand public health system.<sup>40</sup> Both have drawn on their experiences in New Zealand, and the devolved management structure discussed above is a common structure within hospitals in other States of Australia and internationally.<sup>41</sup>
- 5.27 Both Mr Whelan and Mr Drummond were critical of the level of central control exerted by Queensland Health<sup>42</sup> complaining of frustration with the level of bureaucracy.<sup>43</sup> Mr Whelan gave evidence that the level of bureaucracy created frustration at the hospital level, and led to unnecessary conflict between clinicians and the executive.<sup>44</sup> Many decisions had to be referred to Corporate Office, and that led to inevitable delay.<sup>45</sup> Clinicians, frustrated by delay, take out that frustration on the local executive. However, the local executive may not be responsible for that delay.

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<sup>35</sup> Exhibit 251 para 15; T3574 line 25

<sup>36</sup> T3328 line 9

<sup>37</sup> T3329 lines 1-15

<sup>38</sup> Exhibit 251 para 16

<sup>39</sup> see Chapter 6

<sup>40</sup> Exhibit 237 para 1; Exhibit 251 para 2

<sup>41</sup> T3328 L58

<sup>42</sup> Exhibit 237 para 11

<sup>43</sup> Exhibit 236 paras 2 - 6

<sup>44</sup> Exhibit 236 para 4 - 5

<sup>45</sup> Exhibit 236 para 6

5.28 Examples of the frustrations experienced by Mr Whelan and Mr Drummond included:

- Services being provided are based on decisions at Corporate Office and the health agenda of the government of the day, which makes it difficult to provide a health service that is timely and responsive to the needs of the community;<sup>46</sup>
- Hospitals are required to carry any financial deficits from one year through to the next; however they are not permitted to carry through any surplus;<sup>47</sup>
- Inflexibility with respect to funding arrangements, financial delegations,<sup>48</sup> and salary packaging;<sup>49</sup>
- Lack of consultation regarding community needs;<sup>50</sup>
- Lack of consultation concerning directions from Corporate Office on procedures to be performed at Townsville;<sup>51</sup> and
- Excessive delay in decision making by Corporate Office.<sup>52</sup>

### Recruitment of overseas trained doctors in the Northern Zone

5.29 The Townsville Hospital operates as the first point of call for overseas trained doctors being employed in the Northern Zone.<sup>53</sup> In the Northern Zone, practitioners destined for rural and regional hospitals first spend some time working in the Townsville Hospital. The overseas trained doctor will work closely with practitioners from the Townsville Hospital who assess his or her skills and competencies. That assessment might also give consideration to the likely scope of practice that the doctor may have in a regional or rural hospital.<sup>54</sup> If, during that assessment, it becomes apparent that the doctor may not have the necessary skills and experience to perform the duties expected, then remedial action can be taken, for example, further training or changing the position to which the doctor may be appointed.<sup>55</sup>

5.30 The Townsville Hospital is ideally situated to perform an assessment of overseas trained doctors destined to work in rural hospitals because:

- It is a large tertiary referral hospital that provides a complete range of medical services and can assess competencies in a wide range of disciplines;

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<sup>46</sup> T3531 line 15

<sup>47</sup> T3337 line 55

<sup>48</sup> T3574 line 20

<sup>49</sup> T3584 line 10-40

<sup>50</sup> Exhibit 236 para 7

<sup>51</sup> T3549 line 56. This situation refers to a direction from corporate office regarding that only the Princess Alexandra Hospital and the Royal Brisbane Hospital were permitted to carry out oesophagectomies and Whipples procedures. Townsville, which had a competent surgeon who performed numerous such procedures were not consulted. The VMO concerned threatened resignation over this direction

<sup>52</sup> Exhibit 236 paras 5-6

<sup>53</sup> T3334 line 51

<sup>54</sup> T3334 line 5

<sup>55</sup> T3335 line 8

- It faces similar difficulties to those faced by rural and regional hospitals across Queensland, although perhaps to a lesser degree, including
  - remoteness;<sup>56</sup>
  - difficulties attracting suitable medical staff;<sup>57</sup>
  - onerous on-call duties;<sup>58</sup>
  - As a result it is well suited to assess a new doctors' capacity to cope in rural or regional setting.
- It is probable that the doctor will have an on-going relationship with the Townsville Hospital as it will be the tertiary referral centre he or she is most likely to contact for advice. Therefore, time spent in Townsville will assist that doctor in understanding the public health system in Queensland, and establishing appropriate professional support networks.

### **Clinical privileging and credentialing in the Northern Zone**

- 5.31 The Northern Zone has implemented a different model<sup>59</sup> of credentialing and clinical privileging. The deficiencies in the credentialing and clinical privileging process in the Northern Zone were revealed in a report commissioned by Mr Terry Mehan, the manager of the Northern Zone of Queensland Health, into the death of Ms Kathryn Sabadina at the Charters Towers Hospital in 2000 (discussed below).<sup>60</sup>
- 5.32 In the Northern Zone the credentialing and privileging process differs for specialists and rural generalists.
- 5.33 Within the Northern Zone, in addition to those hospitals that provide specialist services, there are a large number of hospitals where the medical staff are largely rural generalists. Before examining the different processes for credentialing and privileging specialists and rural generalists, it is first necessary to say something about the nature of a rural generalist medical practitioner. Presently, there is no recognised speciality for rural generalists. Rather the term is used as an umbrella term for those doctors who practise medicine in a rural or remote setting.<sup>61</sup> A large majority of rural generalists are general practitioners<sup>62</sup> who also perform procedures such as low risk obstetrics and gynaecology, anaesthetics, general surgery, and orthopaedics.<sup>63</sup>

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<sup>56</sup> T3334 line 2

<sup>57</sup> Exhibit 233 Paras 16 - 19

<sup>58</sup> Exhibit 243 paras 8 – 9

<sup>59</sup> that the southern or central zones of Queensland Health

<sup>60</sup> Exhibit 56 page 67

<sup>61</sup> Exhibit 297 para 15

<sup>62</sup> Exhibit 297 para 19

<sup>63</sup> Exhibit 297 para 15 and para 28

- 5.34 For doctors destined to work as rural generalists in the Northern Zone a Rural Credentialing and Privileging Committee<sup>64</sup> ('the Rural Committee') considers the credentials and clinical privileges, meeting every three months to do so. The process involves an assessment of the credentials of the applicant and then, once those credentials are examined, an award of clinical privileges.<sup>65</sup> The nature of the privileges granted will depend on a range of factors including the service capability framework, the qualifications of the applicant, the scope of practice of the hospital, the equipment available at the hospital, and the nature of procedures performed in that hospital.<sup>66</sup> Accordingly, the specific privileges granted to a practitioner will differ between facilities.<sup>67</sup>
- 5.35 It is often difficult to assess a particular practitioner's credentials 'purely on the papers'.<sup>68</sup> In the event that the Rural Committee is unable to adequately assess whether a particular doctor has the requisite skills for the clinical privileges sought, then the Committee may require the applicant to undergo a period of supervised practice with an appropriate specialist.<sup>69</sup> The specialist will then provide a written report to the Rural Committee who can award appropriate clinical privileges.
- 5.36 Another change in the procedures for clinical privileging that was implemented following the report into the death of Ms Sabadina is the process for the award of interim clinical privileges. Interim clinical privileges may be awarded subject to a formal assessment of the practitioner's skills by an appropriate person.<sup>70</sup> Interim clinical privileges for rural practitioners are restricted to general practitioner duties and not for specialty procedures such as obstetrics and anaesthetics.<sup>71</sup> Only after formal assessment by the Rural Committee are any specialist privileges awarded.<sup>72</sup>
- 5.37 For Senior Medical Officers, whether specialist or otherwise, in the Northern Zone, a different procedure for credentialing and privileging is used. Where a public hospital in the Northern Zone provides specialist services,<sup>73</sup> then if the hospital lacks sufficient staff to adequately perform credentialing and clinical privileging then that service may be provided by the another, larger, hospital's credentialing and privileging committee.<sup>74</sup> For example, at present, the Mount Isa Hospital uses the Townsville Hospital's credentialing and clinical privileging

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<sup>64</sup> Exhibit 297 para 32

<sup>65</sup> Exhibit 297 para 33

<sup>66</sup> Exhibit 297 para 33

<sup>67</sup> Exhibit 297 para 33

<sup>68</sup> Exhibit 297 para 36

<sup>69</sup> Exhibit 297 para 37

<sup>70</sup> Exhibit 56

<sup>71</sup> Exhibit 297 para 38

<sup>72</sup> Exhibit 297 para 38

<sup>73</sup> For example, the Mt Isa Hospital

<sup>74</sup> T3416 L1

committee to assess those of its staff that are providing specialist services,<sup>75</sup> whether Senior Medical Officer or specialist.

- 5.38 The Townsville Hospital has sufficient resources and a sufficient number of specialists to provide a broad credentialing and privileging service across the Northern Zone where appropriate. For example, it can call on a wide range of specialists,<sup>76</sup> and it can call on academic staff from the James Cook University Medical School,<sup>77</sup> thus ensuring an appropriately robust and independent credentialing and privileging committee.

### **The emergency department at the Townsville Hospital**

- 5.39 Like all tertiary referral hospitals, the Townsville Hospital has a busy emergency department. The remoteness of the Hospital, however, and the difficulties in transferring patients to Brisbane place significant pressures on the hospital. Evidence was given that, despite the hospital being built only three years ago, it has insufficient beds to meet demand.<sup>78</sup> Dr Andrew Johnson, gave evidence that the hospital needed another 40 beds immediately in order to cope with the demand placed on its services,<sup>79</sup> particularly during peak times of the year.
- 5.40 Dr David Symmons a Staff Specialist in emergency medicine gave evidence of the Townsville Hospital Emergency Department suffering what is described as 'access block'. Access block describes the situation where a patient attends the emergency department and requires admission to the Hospital, yet a bed cannot be found for that patient. Dr Symmons gave evidence that in the first two weeks of July this year, there were 337 patients admitted to the hospital through the Emergency Department. Of those, only 197 were admitted within eight hours, 140 patients waited longer than eight hours, and, of those, 28 patients waited in the Emergency Department for more than 24 hours for a bed to be found.<sup>80</sup> Dr Symmons stated that access block is a direct result of a lack of inpatient beds.<sup>81</sup>
- 5.41 Dr Symmons commented that, in his view, the current elective surgery funding regime is a disincentive to the Hospital cancelling elective surgery and freeing up hospital beds, even in times of extreme access block in the Emergency Department.<sup>82</sup> He considered that the Hospital would be financially punished for cancelling elective surgery even when faced with severe access block in the

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<sup>75</sup> T3416 L29

<sup>76</sup> T3335 line 40

<sup>77</sup> T3392 line 45

<sup>78</sup> T3344 line 16

<sup>79</sup> T3344 line 17

<sup>80</sup> Exhibit 249 para 12

<sup>81</sup> Exhibit 249 para 10

<sup>82</sup> Exhibit 249 para 16

Emergency Department.<sup>83</sup> Consequently elective surgery was given priority and elective surgery patients occupied beds needed for emergency patients.

5.42 Dr Symmons was not critical of the Townsville Hospital Executive regarding access block.<sup>84</sup> He acknowledged that the Hospital Executive had taken steps to address the problems of access block in the emergency department however the problem was ongoing.<sup>85</sup> Access block has caused numerous adverse effects on patients and staff including:<sup>86</sup>

- Increased adverse incidents;
- Increased length of patient stay; and
- Increase in absenteeism, sick leave and overtime for staff.

5.43 Dr Symmons also gave evidence that the Emergency Department at the Townsville Hospital was heavily reliant on overseas trained doctors to fill junior medical staff positions.<sup>87</sup>

### **Recruiting overseas trained doctors to the Townsville Hospital**

5.44 The recruitment of two overseas trained doctors was canvassed before the Commission; Dr Donald Myers, an American trained neurosurgeon who had most recently been practising in the Virgin Islands who was working as a locum Senior Medical Officer, and a Dr Kalavagunta, an ear nose and throat surgeon, who had applied for a position at the Townsville Hospital.

### **The recruitment of Dr Myers, a third neurosurgeon for Townsville**

5.45 At present there are two neurosurgeons practising in Townsville, Dr Reno Rossato, a staff specialist, and Dr Eric Guazzo, who conducts a private practice as well as being a Visiting Medical Officer. Dr Rossato and Dr Guazzo have been sharing a 1 in 2 on call since 1994.<sup>88</sup> Prior to that Dr Rossato was the only neurosurgeon in Townsville and had been since 1979.<sup>89</sup> The neurosurgery unit at the Townsville Hospital has been increasingly busy in recent years.<sup>90</sup> Due to the nature of neurosurgery there is a significant demand for after hours services particularly for head trauma. As a result being on call 1 in 2 is particularly onerous.<sup>91</sup> In recent years a neurosurgeon who practised in Rockhampton, Dr

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<sup>83</sup> Exhibit 249 para 16

<sup>84</sup> Exhibit 249 para 11

<sup>85</sup> Exhibit 249 para 11

<sup>86</sup> Exhibit 249 attachment 'DADS2'

<sup>87</sup> Exhibit 249 para 17 and 18

<sup>88</sup> Exhibit 243 para 7: this means that each doctor is 'on call' for emergencies after hours effectively every second day and every second weekend. In specialties such as neurosurgery, this is particularly onerous as the neurosurgeon is often called on to respond to trauma cases

<sup>89</sup> Exhibit 243 para 7,8

<sup>90</sup> Exhibit 243 para 20

<sup>91</sup> Exhibit 243 para 21 and 22

John Baker, closed his practice and moved to Brisbane.<sup>92</sup> Since that time the Townsville Hospital has taken all emergency transfers for neurosurgery in North Queensland including transfers from the more northern centres of the central zone.<sup>93</sup> Dr Guazzo had serious concerns about the onerous on-call duties and the fact that whilst one neurosurgeon was on leave, the other was on-call continuously for weeks at a time.<sup>94</sup> For some years, Dr Guazzo had also been advocating for a third neurosurgeon to be employed by the Townsville Hospital.<sup>95</sup> Dr Rossato, as the Director of Surgery at the Townsville Hospital, had been attempting to recruit a third neurosurgeon to Townsville for some time.<sup>96</sup>

- 5.46 In May 2004, Dr Guazzo resigned as a Visiting Medical Officer.<sup>97</sup> This led to a potential crisis in the provision of neurosurgery services in North Queensland. Dr Guazzo cited a number of reasons for his resignation including the onerous on-call duties, and that he felt that there had been a lack of consultation with him over the operations of the neurosurgery unit in the Townsville Hospital.<sup>98</sup> After negotiations with Dr Johnson, Dr Guazzo agreed to return to the Townsville Hospital as a Visiting Medical Officer although with reduced on-call responsibilities and a promise of greater consultation.<sup>99</sup>
- 5.47 In the intervening time, Dr Rossato had taken steps to recruit an additional neurosurgeon to the Townsville Hospital.
- 5.48 Dr Donald Louis Myers was referred to the Townsville Hospital by Wavelength Consulting Pty Ltd. Dr Myers resume<sup>100</sup> was provided to Dr Rossato in late December 2004. Dr Myers is an American trained neurosurgeon, who passed his American Medical Board Exams in 1980.<sup>101</sup> In 1984 he was certified as a neurosurgeon by the American Board of Neurological Surgery.<sup>102</sup> He practised as a neurosurgeon in various hospitals in Philadelphia until 2001.<sup>103</sup> Dr Myers gave evidence that in 2001 there was a medical indemnity crisis in Philadelphia, and he decided to retire from his practice.<sup>104</sup> Dr Myers moved to the US Virgin Islands where he took up a neurosurgery practice although, due to resource constraints, his practice was limited in some respects.<sup>105</sup>

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<sup>92</sup> Exhibit 243 para 21

<sup>93</sup> Exhibit 243 para 21

<sup>94</sup> Exhibit 242 para 12

<sup>95</sup> Exhibit 242 para 5

<sup>96</sup> Exhibit 243 para 23

<sup>97</sup> Exhibit 242 para 13

<sup>98</sup> Exhibit 242 para 14

<sup>99</sup> Exhibit 242 para 14

<sup>100</sup> Exhibit 243 attachment RGR-1

<sup>101</sup> Exhibit 241 para 3

<sup>102</sup> Exhibit 241 para 4

<sup>103</sup> Exhibit 241 para 7

<sup>104</sup> Exhibit 241 para 7 and 8

<sup>105</sup> Exhibit 241 para 9 and 10

- 5.49 Initially Dr Rossato reviewed Dr Myers' application and considered that his experience and training suited him for employment as a neurosurgeon at the Townsville Hospital.<sup>106</sup> Dr Rossato had some concerns about the recency of his practice.<sup>107</sup> However, following an interview<sup>108</sup> and contacting two referees,<sup>109</sup> he considered that Dr Myers was suitable for employment as a staff specialist neurosurgeon at the Townsville Hospital, and made him an offer in those terms.<sup>110</sup> Following a visit to Townsville during which he met both Dr Rossato and Dr Guazzo; Dr Myers, for various reasons, chose not to accept that offer.<sup>111</sup>
- 5.50 In an attempt to encourage Dr Myers to join the Hospital on a more permanent basis, Dr Rossato negotiated for Dr Myers to join the Townsville Hospital as a locum Senior Medical Officer for a period of three months from June to September 2005.<sup>112</sup>
- 5.51 Dr Myers was appointed as a locum Senior Medical Officer in neurosurgery.<sup>113</sup> However, this appointment was not without some controversy. Concerns were raised about the recency of Dr Myers' experience due to the nature of his practice in the Virgin Islands.<sup>114</sup> Dr Guazzo believed Dr Myers to be a well qualified and capable neurosurgeon. However, he had some concerns about the process of his appointment,<sup>115</sup> specifically:
- That he, as the second neurosurgeon at the Townsville Hospital,<sup>116</sup> was not consulted with respect to the recruitment;
  - Dr Myers' recency of practice, particularly his familiarity with some emergency neurosurgery procedures carried out in Townsville;<sup>117</sup>
  - The level of supervision of Dr Myers that may be required given his recency of practise;<sup>118</sup>
  - That Dr Myers had, at least initially, been placed on the 'on-call' roster, without supervision;<sup>119</sup> the lack of supervision was, on Dr Guazzo's view, inappropriate until some assessment of Dr Myers' skills had been made.
- 5.52 It also seems apparent that Dr Myers was to be employed under an area of need application as a Senior Medical Officer, yet would be effectively practising as a

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<sup>106</sup> Exhibit 243 para 28 - 30

<sup>107</sup> Exhibit 243 para 30

<sup>108</sup> Exhibit 243 para 32

<sup>109</sup> Exhibit 243 para 33 - 35

<sup>110</sup> Exhibit 243 para 36

<sup>111</sup> Exhibit 241 para

<sup>112</sup> Exhibit 243 para 43

<sup>113</sup> Exhibit 243

<sup>114</sup> Exhibit 234 para 43

<sup>115</sup> T3450 line 26

<sup>116</sup> Exhibit 234 para 45

<sup>117</sup> Exhibit 234 para 43

<sup>118</sup> T3454 L 26

<sup>119</sup> T3454 L17, although Dr Rossato stated that this was done in error.

neurosurgeon, without any review by the Royal Australasian College of Surgeons.

- 5.53 All of these concerns were, in my opinion, well founded. Dr Myers should not have been employed on this basis. He should have been employed only on a probationary basis in circumstances in which close supervision could have been provided at all times. His skill, judgement and general competence should have been appropriately assessed by a credentialing and privileging committee before he commenced employment.
- 5.54 Dr Johnson approved the area of need application for Dr Myers, although he had not been previously involved in the recruitment process.<sup>120</sup> Dr Johnson had believed that Dr Myers was to be subject to the supervision of Dr Rossato and Dr Guazzo at least until such a time as his level of competence could be confirmed. However, as it transpired, Dr Rossato was to be on leave during the first three weeks of Dr Myers' tenure,<sup>121</sup> and Dr Guazzo, was unwilling to formally supervise Dr Myers although he did offer collegiate support.<sup>122</sup>
- 5.55 Upon Dr Myers' arrival at the Townsville Hospital Dr Johnson spoke at length with him and during that conversation Dr Johnson formed the view that:
- Dr Myers had a great deal of insight into his limits and recent experience in neurosurgery;<sup>123</sup>
  - Dr Myers admitted that some of his skills were 'rusty' and he needed to refresh his skills in some areas;<sup>124</sup>
  - Dr Myers had not had access to the latest equipment in the Virgin Islands and would need to familiarise himself with the equipment at Townsville;<sup>125</sup>
  - Notwithstanding his lack of recent experience in some areas, Dr Myers was otherwise an impressive candidate, and his personal insight was impressive and, more importantly, the mark of a competent surgeon.<sup>126</sup>
- 5.56 In the event, Dr Johnson was not satisfied that the Townsville Hospital could allow Dr Myers to practise independently until such time as his skills had been appropriately assessed by Dr Rossato and Dr Guazzo.<sup>127</sup>

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<sup>120</sup> Exhibit 234 para 41

<sup>121</sup> Exhibit 234 para 45

<sup>122</sup> Exhibit 234 para 46 and T3452 L9

<sup>123</sup> Exhibit 234 para 51

<sup>124</sup> Exhibit 234 para 52

<sup>125</sup> Exhibit 234 para 52

<sup>126</sup> Exhibit 234 para 54

<sup>127</sup> Exhibit 234 para 53

### *Employment as a Senior Medical Officer*

- 5.57 The employment of Dr Myers as a locum Senior Medical Officer resulted in his being employed, at least initially, without the Royal Australasian College of Surgeons being involved in either assessing his qualifications<sup>128</sup> or granting him deemed specialist status. Dr Johnson gave evidence that, in the past, the Townsville Hospital has employed locums as Senior Medical Officers rather than as deemed specialists,<sup>129</sup> the reason being that often the assessment process for deemed specialist status may take longer than the period of the locum itself.<sup>130</sup> Dr Johnson's evidence was that, in his experience, it can take between three and six months for an assessment by the various colleges, and often the locum appointment was for a much shorter period.<sup>131</sup>
- 5.58 Therefore it was impractical to apply for a deemed specialist review for most locum appointments.<sup>132</sup> However, that can never be a reason to circumvent a necessary patient safeguard. Doctors should not be able to work as a specialist without first being assessed as competent to do so by the relevant specialist college. The alternative is to permit them to perform any specialist work under close supervision; and then only after an adequate process of credentialing and clinical privileging which should define the limits of their work.

### *Supervision of Dr Myers*

- 5.59 Dr Myers was subject to constant supervision whilst he worked at the Townsville Hospital. He was granted no independent clinical privileges.<sup>133</sup> During the first three weeks of his employment whilst Dr Rosatto was away, Dr Myers was not permitted to perform any clinical work.
- 5.60 He has since performed clinical work under the supervision of Dr Rossato or Dr Guazzo.<sup>134</sup> He has also performed neurosurgery under the supervision of both Dr Rossato and Dr Guazzo. Dr Myers has assisted Dr Guazzo perform surgery at a private hospital in Townsville in an effort to give him an appreciation of the nature of practising medicine in Townsville generally. Both Dr Guazzo<sup>135</sup> and Dr Rossato<sup>136</sup> have been impressed with Dr Myers and both support him seeking specialist accreditation with the Royal Australian College of Surgeons.

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<sup>128</sup> T3353 line 7

<sup>129</sup> T3353 line 9

<sup>130</sup> T3353 line 20

<sup>131</sup> T3353 line 25

<sup>132</sup> T3353 line 34

<sup>133</sup> Exhibit 243 para 49

<sup>134</sup> Exhibit 241 paras 22 - 25

<sup>135</sup> Exhibit 242 para 32 and T3542 line 25

<sup>136</sup> Exhibit 243 para 52

- 5.61 The Townsville Hospital has also forwarded to the Royal Australasian College of Surgeons the relevant paperwork for deemed specialist recognition of Dr Myers.<sup>137</sup>

*General comments on the recruitment of Dr Myers*

- 5.62 It is clear on the evidence that the staff of the Townsville Hospital hope that Dr Myers might be convinced to become a permanent neurosurgeon<sup>138</sup> at the Hospital. The Commission had the benefit of receiving evidence from Dr Myers.<sup>139</sup> Dr Myers thought that the arrangements in place were an excellent way for him to assess the type of practice offered at the Townsville Hospital and for the Townsville Hospital to assess his skills and experience.<sup>140</sup>
- 5.63 It seems that the experiment with Dr Myers has worked well for both the doctor and the Townsville Hospital. But it was not without serious risk. I shall discuss this problem further and suggest some solutions in Chapter 6.

### **Recruitment of Dr Kalavagunta**

- 5.64 Another issue that was raised before the Commission was the recruitment of an ear nose and throat surgeon named Dr Kalavagunta. Dr Kalavagunta was offered a position as a specialist ear nose and throat surgeon.<sup>141</sup> Dr Andrew Johnson and Dr Andrew Swanton, then the Director of ear nose and throat surgery at the Townsville Hospital, were on the selection panel.<sup>142</sup> The position was offered to Dr Kalavagunta subject to him being granted deemed specialist status by the Royal Australasian College of Surgeons.<sup>143</sup> Dr Lindsay Allen, a Visiting Medical Officer in ear nose and throat surgery, and the only ear nose and throat surgeon at the Hospital during this time had some concerns about the appointment and was not consulted by the Townsville Hospital during the recruitment process.<sup>144</sup>
- 5.65 Dr Allen had a significant workload as the sole provider of ear nose and throat surgery at the Townsville Hospital.<sup>145</sup> The Townsville Hospital was attempting to recruit an additional ear nose and throat surgeon as quickly as possible to reduce the demands placed on Dr Allen.<sup>146</sup> However, the Townsville Hospital made it clear, at least to Dr Kalavagunta, that any appointment was subject to

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<sup>137</sup> Exhibit 234 para 49

<sup>138</sup> Exhibit 234 para 54

<sup>139</sup> Exhibit 241 and T3428 to T3434

<sup>140</sup> Exhibit 241 para 26

<sup>141</sup> T3348 line 10

<sup>142</sup> T3348 line 8

<sup>143</sup> T3348 line 25

<sup>144</sup> Exhibit 235

<sup>145</sup> T3349 line 10

<sup>146</sup> T3349 line 12

him obtaining deemed specialist recognition from the Royal Australasian College of Surgeons.

5.66 Dr Kalavagunta was not granted deemed specialist recognition by the Royal Australasian College of Surgeons.<sup>147</sup> Consequently he was not appointed to the position. Dr Kalavagunta did not commence employment with the Hospital and, in fact, had never left his home country.<sup>148</sup>

5.67 Dr Lindsay Allen was critical of the delay in the recruiting process,<sup>149</sup> and concerned about the fact that the process took several months for the position to be advertised. Dr Johnson gave evidence that it may take up to nine months from the time a need is identified to the appointment of a medical officer, particularly if that doctor is an 'area of need' application. It may take even longer to have an applicant granted deemed specialist status. The delay in recruitment eventually led to the resignation of Dr Allen, the remaining ear nose and throat surgeon.<sup>150</sup> Until suitable staff can be recruited, the Townsville Hospital no longer offers ear nose and throat surgery.<sup>151</sup> As Dr Johnson put it:

We have no ENT services at the Townsville Hospital which is an absolute travesty. We're a tertiary hospital and can't provide one of the basics. Part of that is an issue of the recruitment processes, part of it's an issue of local shortage of specialists ENT practitioners, and certainly the new requirements for supervision and support through the Area of Need process complicate the issue even further.<sup>152</sup>

5.68 It is unfortunate that the Townsville Hospital can no longer provide ear nose and throat surgery. However, that seems preferable to having a service provided by a overseas trained doctor who has not been approved by the Royal Australasian College of Surgeons and cannot be fully supervised by a Fellow of that College.

5.69 While the delay taken to recruit a specialist to assist Dr Allen is unfortunate, the approach of the Townsville Hospital in this case is to be commended in ensuring that a proposed recruit would be either a fellow of the relevant Royal College or has been granted deemed specialist status by the appropriate College<sup>153</sup> before his appointment to an unsupervised position at the Hospital.

### **Vincent Victor Berg**

5.70 Vincent Victor Berg ('Berg') was employed as a Resident Medical Officer at the Townsville Mental Health Unit between January 2000 and January 2001. He

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<sup>147</sup> T3348 line 3

<sup>148</sup> T3848 line 38

<sup>149</sup> Exhibit 235

<sup>150</sup> T3350 line 45

<sup>151</sup> T3350 line 46

<sup>152</sup> T3350 line 47

<sup>153</sup> T3348 line 30

had previously worked as an 'observer' for a period of months at the Gold Coast Hospital Mental Health Unit.<sup>154</sup>

- 5.71 In his Curriculum Vitae Berg stated that under his previous name of Tchekaline Victor Vladimirovich, he had completed a combined medical degree and post-graduate qualification in psychiatry of the Voronezh State University in the former USSR<sup>155</sup>, now the Russian Federation. Berg claimed to have enrolled in this degree in September of 1969 and been awarded the degree of Doctor of Medicine in Psychiatry in May 1977.<sup>156</sup> He then claimed to have continued his post-graduate study in psychiatry between May 1977 and December 1978.<sup>157</sup>
- 5.72 Berg also claimed that he had been a staff member and lecturer at the Voronezh State University between January 1978 and April 1982.<sup>158</sup>
- 5.73 Berg claimed that in 1982, he was ordained as a priest in the Russian Orthodox Church and was subsequently ordained as a bishop in June 1986. As a result of his religious activities Berg claimed that in August 1986 he had been arrested and imprisoned by the KGB until released in 1988. He was then not permitted to practise officially as a psychiatrist or priest, although claims that he continued to do both secretly. He fled the USSR in 1992.<sup>159</sup> Berg was granted refugee status in Australia in August 1993.
- 5.74 Between August 1999 and November 1999 Berg worked as an unpaid clinical observer at the Gold Coast Hospital. Berg had no clinical duties while working at the Gold Coast Hospital. His work as an observer was a means by which Berg could have his skills assessed with a view to obtaining future employment as a psychiatrist.<sup>160</sup>
- 5.75 Berg then applied to join the rotational training scheme conducted by the Royal Australian and New Zealand College of Psychiatrists.<sup>161</sup> However he was not considered suitable for that scheme due to his lack of recent experience in psychiatry.<sup>162</sup> Nevertheless, Dr John Alexander Allan,<sup>163</sup> the Director of Integrated Mental Health Services at the Townsville Hospital, considered that Berg might be suitable for a vacancy that existed in the Townsville Mental Health Unit.<sup>164</sup> At the time, the Townsville Hospital was short staffed and Dr Allan was aware that those who had observed Berg at the Gold Coast Hospital had given

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<sup>154</sup> Exhibit 254 Statement of Dr John Allan

<sup>155</sup> Exhibit 234

<sup>156</sup> Exhibit 238, medical based file, Curriculum Vitae of Vincent Berg

<sup>157</sup> Curriculum Vitae of Dr Vincent V Berg dated which is annexure AJJ-1 to Exhibit 234, Statement of of Dr Andrew Johnson

<sup>158</sup> CV of Vincent Berg Exhibit 234 annexure AJJ-1

<sup>159</sup> Exhibit 235 annexure AJJ-1

<sup>160</sup> Exhibit 245

<sup>161</sup> This is a scheme where psychiatric registrars rotate through various mental health units as part of their training.

<sup>162</sup> Exhibit 245

<sup>163</sup> Dr Allan was on the board of the rotational training scheme

<sup>164</sup> Exhibit 245

him favourable references.<sup>165</sup> Dr Allan contacted two of his referees who advised that there were some adjustment and cultural issues that Berg needed to address but there was nothing that caused them particular concern.<sup>166</sup>

5.76 On 27 April 2000 Berg was granted conditional registration by the Medical Board of Queensland as a medical practitioner for twelve months, on a temporary basis, under s17C(1)(a) of the *Medical Act 1939 (Qld)*.<sup>167</sup> That registration was for the period 4 January 2000 until 3 January 2001. That registration was to enable him to undertake post graduate training at the Townsville Hospital. Berg was not granted registration under the 'area of need' program.

5.77 Section 17C(1)(a) was in the following terms:

**Graduates from non-accredited institutions – post graduate training:**

A person who is a graduate of medicine from an institution which is not accredited by the Australian Medical Council may be registered on a temporary basis to enable the person to undertake a period of postgraduate study in medicine approved by the board

5.78 By s17C(1)(a) the Medical Board was obliged to satisfy itself, before registering Berg, that he was a graduate of medicine from an institution not accredited by the Australian Medical Council. It now seems likely that Berg was not a graduate of the institution from which he claimed to have graduated. It is not clear what the Medical Board did to verify the genuineness of the certificates which he produced but it appears that it took them at their face value.

5.79 Berg then commenced a one year contract as a Resident Medical Officer in psychiatry at the Townsville General Hospital. He commenced in that role on 3 January 2000. Berg saw patients between January and October 2000 in his capacity as a Resident Medical Officer. It must be noted that Berg was supervised by several consultant psychiatrists during his practice at Townsville.<sup>168</sup>

5.80 Not long after Berg commenced duties, Dr Allan began to develop concerns about his clinical practice and performance.<sup>169</sup> Dr Allan considered that Berg was difficult to supervise and would also ignore directions given to him by his supervisor. Dr Allan also noticed that Berg had some psychiatric knowledge but that there were real concerns about his clinical judgment:

Berg felt that he already knew everything about psychiatry. He was difficult to supervise. He was unwilling to take direction. There were also situations where he would ignore directions given to him by his supervisor. I was also aware that

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<sup>165</sup> T3473 line 23 - 35

<sup>166</sup> Exhibit 245 para 20

<sup>167</sup> Exhibit 238, Medical Board of Queensland File of Vincent Berg

<sup>168</sup> Exhibit 245 Statement of Dr Allan, annexure 'JAA-2' confidential audit

<sup>169</sup> T3473 line 45 - 3475 line 14

there were concerns about him practising independently where he had less supervision, especially after hours when on call<sup>170</sup>

- 5.81 Berg was insistent that his Russian training should entitle him to specialist registration as a psychiatrist in Queensland<sup>171</sup> and maintained that he was a fully qualified psychiatrist.
- 5.82 By August of that year Dr Allan's concerns about Berg's performance were such that he, on behalf of the Townsville Hospital, issued a show cause notice asking him to respond to several allegations about his clinical practice.<sup>172</sup> Berg then took several months sick leave and did not return to work at the Townsville Hospital until late 2000. Berg performed no clinical work at the Townsville Hospital between October 2000 and January 2001.
- 5.83 Drs Allan and Johnson had by that time resolved not to extend Berg's contract and Berg ceased employment in Townsville at the end of his contract on 7 January 2001.<sup>173</sup> His conditional registration expired on 3 January 2001.<sup>174</sup>

#### *Berg attempts to gain specialist registration*

- 5.84 In July 2001, some months after he ceased employment at Townsville, Berg submitted his qualifications to the Australian Medical Council in an attempt to have his specialist qualifications recognised by the Australian Medical Council.<sup>175</sup> The Australian Medical Council referred Berg's application to the Royal Australian and New Zealand College of Psychiatrists ('the College of Psychiatrists') for assessment.
- 5.85 As part of that assessment process the College of Psychiatrists took steps to verify the authenticity of Berg's qualifications. The College of Psychiatrists had concerns because Berg's qualifications were in a different name: Tchekaline Victor Vladimirovich. Berg explained that he had changed his name on arriving in Australia. The College of Psychiatrists contacted the Voronezh State University in an effort to confirm his claimed qualifications.

#### *Doubts emerge about Berg's claimed qualifications*

- 5.86 An officer of the College of Psychiatrists contacted Sergey Zapryagaev, a professor and provost of the Voronezh State University.<sup>176</sup> Professor Zapryagaev advised that the Voronezh University had no record of a degree being awarded to Tchekaline Victor Vladimirovich, and no one by that name had ever worked as a staff member of the University. He also advised that the Voronezh State

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<sup>170</sup> Exhibit 245 para 24

<sup>171</sup> T3475 line 15 - 42

<sup>172</sup> Exhibit 245 Statement of of Dr Allan at annexure 'JAA-1'

<sup>173</sup> Exhibit 245 Statement of of Dr Allan and Exhibit 235 Statement of Dr Johnson

<sup>174</sup> Exhibit 238 Medical Board file on Berg

<sup>175</sup> Exhibit 238 Medical Board file, letter from Berg to the AMC dated 23 July 2001

<sup>176</sup> Exhibit 238 Medical Board File, email from Sharon Rayner to Professor Zapryagaev dated 7 September 2001

University had no such educational program in 1977 as the one that Berg claimed to have completed. The email from Professor Zapryagaev to the College of Psychiatrists read:

Voronezh State University did not produce the diploma 'Medical Degree in Psychiatry' number 723438. Moreover, [the] University had no such educational program in 1977.<sup>177</sup>

- 5.87 In that e-mail Voronezh University also asked the College of Psychiatrists to provide a copy of Berg's certificates so that it might determine their authenticity. The College of Psychiatrists then sent a copy of Berg's certificates directly to the Voronezh State University. In a further email from Mr Zapryagaev to the College of Psychiatrists, having examined the certificates he advised that both Berg's degrees were very rough forgeries.<sup>178</sup>
- 5.88 The College of Psychiatrists requested that the Voronezh University confirm by letter that the documents were forgeries and that the Voronezh University did not produce the degrees.<sup>179</sup> The Voronezh University provided that written confirmation.
- 5.89 This course of correspondence establishes that there is prima facie evidence of fraud by Berg.

#### *The College of Psychiatrists informs the Medical Board*

- 5.90 On 16 October 2001, the College of Psychiatrists wrote to the Australian Medical Council advising them of what it had discovered about Berg's claimed qualifications.<sup>180</sup> A copy of that letter was also sent to the Medical Board. However neither the Medical Board, the Australian Medical Council, nor the College of Psychiatrists contacted the Townsville Hospital to inform them of what it had discovered about Berg.
- 5.91 Berg did not give evidence before this Commission and, although invited to make submissions he has not yet done so. However, exhibit 238, the Medical Board's files contains a letter from Berg dated 30 October 2001. Berg wrote to the Mr Ian Frank of the College of Psychiatrists regarding the suggestion that his qualifications were forgeries. He claimed that the action by the College of Psychiatrists in contacting the Voronezh State University was in violation of international agreements concerning refugees. He also claimed that he had not given his permission for the Australian Medical Council or any other party to contact 'authorities' in the Russian Federation as that contact posed a serious risk to his safety.<sup>181</sup>

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<sup>177</sup> Exhibit 238

<sup>178</sup> Exhibit 238

<sup>179</sup> Exhibit 238 Medical Board File relating to Vincent Berg

<sup>180</sup> Exhibit 238 Medical Board File relating to Vincent Berg

<sup>181</sup> Exhibit 238 Medical Board File of Vincent Berg, letter to Ian Frank dated 30 October 2001

5.92 Berg also said in this letter that he considered that by contacting the Voronezh University without his permission the College of Psychiatrists and the Australian Medical Council had committed an unlawful act, although his letter does not identify the basis of that claim.

5.93 As to the course of study that he claimed to have undertaken he advised that:

[the course] I was selected to undertake [was] an exclusive course, which was designed to prepare highly qualified physician-psychiatrists for work in some special government departments, such as the Ministry of Foreign Affairs, Ministry of Defence, Ministry of Internal Affairs, and the KGB ... I am not in a position to tell you more about this course, but can only stress again that it was a special course, and no authority in the Russian Federation would ever disclose any information about this course and its students even within Russia, particularly to a foreign country.<sup>182</sup>

5.94 Berg claimed that the information from the Voronezh State University was false and that by providing it the Russian authorities were attempting to further persecute him.

5.95 In early December 2001, Berg contacted the Medical Board seeking a certificate of good standing from the board.<sup>183</sup> Following some further correspondence between the Medical Board and Berg, on 10 January 2002 the Medical Board issued, directly to Berg, a Certificate of Good Standing. That certificate was valid for three months and bore the notation:

The Board has not been able to verify the qualification on which Dr Berg's registration was granted.<sup>184</sup>

5.96 On 29 January 2002 Berg applied to the Medical Board of Western Australia for conditional registration under an area of need.<sup>185</sup> He was granted provisional registration. The Medical Board of Western Australia subsequently discovered, through the Royal Australian and New Zealand College of Psychiatrists, the doubts about the veracity of Berg's claimed qualifications.<sup>186</sup> Berg's conditional registration in Western Australia was then cancelled on 28 February 2002. The Medical Board of Western Australia then sent a facsimile to its counterparts in all other Australian jurisdictions setting out the above history and providing the following information:

Dr Berg has subsequently advised the Medical Board of Western Australia that he will be returning to Queensland (State in which he was previously registered). It is the Board's understanding Dr Berg will not be pursuing registration in Western Australia.

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<sup>182</sup> Exhibit 238 Medical Board File, letter Vincent Berg to Ian Frank dated 30 October 2001

<sup>183</sup> Exhibit 238 email from Vincent Berg to the Medical Board dated 23 December 2001

<sup>184</sup> Exhibit 250 Statement of Michael Demy-Geroe, attachment MDG-17

<sup>185</sup> Exhibit 238 Medical Board file on Vincent Berg, facsimile from Medical Board of Western Australia to the Medical Board of Queensland dated 13 March 2002

<sup>186</sup> Exhibit 238 Medical Board file on Vincent Berg, facsimile from Medical Board of Western Australia to the Medical Board of Queensland dated 13 March 2002

Should Dr Berg apply for registration within your jurisdiction, please contact me for further background concerning this matter<sup>187</sup>

*Dr Allan discovers the doubts about Berg's past*

- 5.97 The Townsville Hospital learned of the concerns about Berg's qualifications only when Dr Allan attended a function hosted by the College of Psychiatrists in Melbourne. That function was held in November 2002, some 13 months after the College of Psychiatrists had written to the Medical Board and the Australian Medical Council about Berg.<sup>188</sup> During that function, a colleague of Dr Allan's asked him 'whatever happened to that Doctor who was not a doctor?' After some discussion Dr Allan realised that his colleague was referring to Berg.
- 5.98 Upon his return to the Townsville Hospital Dr Allan then advised Dr Johnson, the Executive Director of Medical Services about what he had been told by his colleague in Melbourne. On 28 November 2002, Dr Johnson telephoned the Royal Australian and New Zealand College of Psychiatrists seeking confirmation from the college about Dr Berg's qualifications. On the same day Dr Johnson wrote to the College seeking written confirmation regarding the validity of Berg's qualification.<sup>189</sup>
- 5.99 The College of Psychiatrists replied to Dr Johnson in a letter dated 2 December 2002<sup>190</sup> advising that it had information that Berg's qualifications were forgeries. The College of Psychiatrists also advised that on 16 October 2001 it had written to the Australian Medical Council and the Medical Board of Queensland advising them of the discrepancies identified in Berg's qualifications. Dr Johnson then wrote an email to the then General Manager of Health Services, Dr Steve Buckland advising him of the problem.

*Concerns expressed by the Townsville Hospital*

- 5.100 Dr Buckland's recollection was that he was advised by his media advisor that Dr Johnson and Dr Allan intended to hold a public meeting about Berg. Dr Buckland telephoned Dr Johnson to discuss the proposed public meeting. Dr Buckland recalled that, at the time, he had real concerns about the proposed meeting as, in his view, giving information such as this to patients during a public meeting may have an adverse effect on them.<sup>191</sup> In his evidence Dr Buckland stated that, at the time, no decision could be made about communicating to patients until such time as all the affected patients had been identified.

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<sup>187</sup> Exhibit 238 Medical Board file on Vincent Berg, facsimile from Medical Board of Western Australia to the Medical Board of Queensland dated 13 March 2002

<sup>188</sup> Exhibit 245 Statement of Dr Allan, T3481 line 12 - 27

<sup>189</sup> Exhibit 234 annexure 'AJJ-2'

<sup>190</sup> Exhibit 234 annexure 'AJJ-3'

<sup>191</sup> Exhibit 336 at paras 208-210

- 5.101 On 4 December 2002 Dr Peggy Brown, the then Director of the Mental Health Unit in Queensland Health, who had been in Townsville on unrelated business at the Townsville Hospital, met with Dr Johnson.<sup>192</sup> Dr Brown's recollection is that Dr Johnson briefed her on the matter and that an audit of all patients was being performed, he also advised her that the Townsville Hospital intended to make a public disclosure. Dr Brown had some concerns about making a public disclosure as proposed by Dr Johnson.
- 5.102 On 5 December 2002 Dr Brown met with Dr Buckland when she apparently discussed her concerns about the potential risk to mental health patients against the public benefit of any such disclosure.<sup>193</sup> Dr Brown did not provide any written advice to Dr Buckland with respect to Berg.
- 5.103 On 6 December 2002, Mr Ken Whelan the District Manager of the Townsville Health Services District wrote to the Medical Board of Queensland as follows:

I write to express my significant concern at the Medical Board's handling of matters surrounding Vincent Victor Berg.

It has come to my attention that the Medical Board was made aware in January 2002 that Vincent Victor Berg allegedly did not hold the primary medical qualifications he claimed in order to obtain registration in Queensland.

I am advised that you noted this was the case and did not seek to notify the Townsville Health Service District, which had been his sole employer during the period of his registration. It needs to be noted that Queensland Health employed Mr Berg on the belief that his preliminary registration had been granted by the Medical Board.

We are now faced with the task of identifying all patients seen by Vincent Berg over the period of his tenure with the Townsville Health Service District to identify whether there has been any adverse outcomes for patients.

The time delay in finding out this information, which was only identified as an incidental remark in discussions with the College of Psychiatrists, has led to significantly increasing the difficulty for the District and has potentially left patients at risk over a much longer period than was necessary.

I seek your explanation for the failure to notify the Townsville Health Service District and your undertaking that procedures will change within the Medical Board to ensure that we are notified of any significant issues in the future in a timely manner.

Further I seek your assurance that the Medical Board will be reporting this matter to the Police for investigation as a criminal offence.<sup>194</sup>

- 5.104 The Medical Board, in a letter dated 28 January 2003, replied as follows:

It is regretted that Townsville Health Service District were not notified when the Board became aware that Mr Berg did not hold recognised qualifications to enable him to be registered to undertake postgraduate training in psychiatry.

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<sup>192</sup> Exhibit 376 part C para 15

<sup>193</sup> Exhibit 376 part 3 para 20

<sup>194</sup> Exhibit 248 Statement of Ken Whelan annexure KDW-2

As a result of your concerns, a process has been put in place to ensure that employing authorities are notified if it is subsequently found that a person, who has been registered, in fact did not hold recognised qualifications<sup>195</sup>

- 5.105 Missing from this reply is a response to Mr Whelan's request that the matter be referred by the Medical Board to the Queensland Police Service for investigation. The Medical Board did have further interaction with Berg in later months, a matter that is discussed below.
- 5.106 At some time in early December 2002, Mr Whelan contacted Dr Buckland to seek his advice on whether the matter should be reported to Queensland Health's Audit and Operational Review Branch. Dr Buckland advised Mr Whelan to contact Mr Michael Schaefer the Director of the Audit and Operational Review Branch.<sup>196</sup>
- 5.107 On 9 December 2002, Mr Whelan wrote an email to Mr Michael Schaefer in the following terms:

Steve Buckland suggested I contact you about the following.

Back in January 2000 to January 2001 this district employed a NON training registrar in Psychiatry named Victor Berg the story is a long one but the short version is that this chap was apparently a Russian who attained refugee status in Australia. He was given provisional registration from the Australian [sic] Medical Board and was employed in this district as a psych reg. Apparently when he left here he was even given references from existing specialists.

The down side is the district has now found out that apparently this chap is not and never has been a doctor. Dr Andrew Johnson my Med Super found this out accidentally when discussing another case with the college. Apparently this chap is still in Australia but not in Queensland.

I have some clinical staff reviewing all the patients he saw to try and establish the extent of the problem. I guess the good news is because he was a registrar his work was supervised but it does raise the question about how a non doctor could work with specialists for a year and not be sprung.

The question I guess is impersonating a doctor is no doubt a criminal offence but given the person is no longer in Queensland is this a matter for us? Queensland Police? Or the Medical Board to follow up. I am led to believe that as a public servant if we suspect criminality we have an obligation to report?

For obvious reasons we are keeping this strictly confidential at present we need total control of the facts before the media get involved.

Your advice would be appreciated<sup>197</sup>

- 5.108 On 10 December 2002, Mr Max Wise, who had been delegated the responsibility of replying to Mr Whelan's email advised:

Impersonating a doctor is in fact a criminal offence and therefore constitutes 'suspected official misconduct' under the Crime and Misconduct Act 2001. This also means that his actions should be reported to the Audit Branch...

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<sup>195</sup> Exhibit 238 Medical Board File on Berg

<sup>196</sup> Exhibit 336 para 217

<sup>197</sup> Exhibit 248 attachment KDW-1

We have an 'in-house' Queensland Police Detective working in Audit, so I will allocate the matter to him. I will also make the necessary inquiries with the Medical Board'.<sup>198</sup>

- 5.109 On 11 December 2002 Mr Whelan replied to Mr Wise advising him to contact Dr Johnson if any further information was required.<sup>199</sup>
- 5.110 On 17 December 2002 Mr Schaefer and Mr Wise wrote to the Crime and Misconduct Commission reporting the suspected official misconduct.<sup>200</sup>
- 5.111 Mr Whelan had no recollection of referring the matter to the Audit and Operational Review Branch.<sup>201</sup> At the time Mr Whelan had recently arrived in the country and suffered a serious illness in early January 2003. A copy of Mr Whelan's email to Mr Schaefer was not kept on file at the Townsville Hospital. Mr Whelan explained that he was not familiar with Queensland Health policies concerning the retention of documents such as emails in hard copy and therefore failed to keep a hard copy of this email.<sup>202</sup>

#### *Action taken by the Hospital*

- 5.112 Dr Johnson and Dr Allan had real concerns about the patients that had been treated by Berg during his time at the hospital. Dr Allan, a psychiatrist of 17 years experience, felt that there was a strong possibility that as Berg may have had no qualifications every clinical decision that he had made was potentially invalid.<sup>203</sup> Dr Allan then performed an audit of the charts of all patients that may have come into contact and been treated by Berg during his time at the Hospital.
- 5.113 Dr Allan completed his audit of patient charts in early January 2003. He identified 259 patients that Berg had come in contact with and possibly may have treated. Of those patients Dr Allan identified one patient who had died as a result of a fall at the Charters Towers Rehabilitation Unit. Dr Allan had concerns that Berg had changed this patient's medication which may have caused disziness in the patient resulting in the fall and subsequent death.
- 5.114 Dr Allan also identified 10 patients that were at the highest clinical risk who he thought required immediate follow up. He identified a further 40 patients who, in his opinion, required clinical follow up as a matter of urgency.<sup>204</sup> As a part of his audit Dr Allan prepared a communications plan and draft media release as he, along with Dr Johnson, felt that it was necessary to contact the patients to advise them what had occurred. Obviously this proposal resulted in the distinct possibility that the 'story' would find its way into the media. Dr Johnson and Dr

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<sup>198</sup> Exhibit 248 attachment KDW-2

<sup>199</sup> Exhibit 248 attachment LDW-3

<sup>200</sup> Exhibit 239 Queensland Health Investigation File T3563

<sup>201</sup> Exhibit 248 para 47

<sup>202</sup> Exhibit 245 Statement of Dr Allan

<sup>203</sup> Exhibit 245 Statement of Dr Allan, annexure JAA-2

Allan proposed to advise the media of what had occurred and what steps the Hospital was taking to address the concerns it had about the clinical treatment by Berg.<sup>205</sup>

- 5.115 The audit, the communications plan, and the draft media release were then annexed to a briefing note to the Minister dated 9 January 2003. That briefing note went up the chain of command and was received by Dr Buckland on 13 January 2003.

#### *Reaction by Dr Buckland*

- 5.116 Dr Buckland wrote on the brief:

This brief is incomplete – while the RANZCP opinion is provided, the Medical Board of Queensland position and view must be included as it significantly alters the slant of this issue<sup>206</sup>

- 5.117 Dr Buckland ordered that the brief be returned to the Townsville Hospital for review and completion.

- 5.118 The revised briefing note was received by Dr Buckland late January 2003.<sup>207</sup> That briefing note outlined the planned strategy for clinical follow up and also included the following comments:

#### Other Action Required

Many clinical staff maintain that there exists an ethical obligation on Queensland Health to inform patients that they have been receiving care from a person whose qualifications to provide that care have been found to be invalid. This raises serious concerns about the potential for adverse public comment. Direction is sought from GMHS as to whether any of the patients subject to this audit are to be informed of the validity of Vincent Berg's claimed qualifications.

- 5.119 On 31 January 2003, Dr Buckland noted his advice on the brief as follows:

...I have had this discussion on at least 4 separate occasions with medical and management staff including Drs Allan and Johnson. My instructions have been clear and have not altered. The process is appropriate, ethical and clinically sound, given that the client base have a mental illness. Any at risk patients have been identified and managed.<sup>208</sup>

#### *Rejection of the proposed Communications Strategy*

- 5.120 The communications strategy prepared by Dr Allan and Dr Johnson was never put into action following the direction from Dr Buckland.<sup>209</sup> Dr Buckland stated

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<sup>205</sup> Exhibit 245, 234, T3360 line 2 – 30, T3481 line 17 - 3483 line 5

<sup>206</sup> Exhibit 336 annexure SMB 62

<sup>207</sup> Exhibit 336 Statement of Steve Buckland, annexure SMB 63

<sup>208</sup> Exhibit 336 Statement of Steve Buckland, annexure SMB 63

<sup>209</sup> Dr Buckland admitted that it was likely that the Director-General and Minister for Health would accept his advice on this issue. T5526 line 25

that the decision not to go to the media was a difficult one. However his decision was, he said, based on the following considerations.<sup>210</sup>

- There was a risk posed to a large number of patients that they may be adversely affected by the media coverage of Berg. That risk included stopping medication, withdrawing from the therapeutic relationships and suicide.
- This risk was to all psychiatric patients not simply those treated by Berg.
- The vast majority of patients treated by Berg had been identified and reviewed.
- Informing those patients who had been treated by Berg would inevitably lead to media coverage and the inherent risks above.

5.121 While these considerations may be reasonable, I remain concerned about the decision for the following reasons:

- Dr Buckland appears to have made his decision soon after the matter arose, and perhaps based purely on Dr Brown's verbal advice given in the meeting of 5 December 2002;
- The decision ignored the opinion of Dr Allan, as provided in the briefing note of 13 January 2003. He was a psychiatrist of long experience and standing within the profession. Dr Allan was arguably the best person to assess the potential impact on patients in Townsville, as he had been the Director of Mental Health in Townsville since 1985;<sup>211</sup>
- In the context of other reports located by this Commission,<sup>212</sup> it is not unreasonable to draw an inference that the Berg matter was kept confidential to avoid adverse publicity rather than for legitimate clinical reasons;<sup>213</sup>
- Finally, the statement that, 'in exceptional circumstances, it is appropriate for a medical practitioner not to disclose information where it may cause greater harm to disclose that information,'<sup>214</sup> proceeds on the assumption that mental health patients are not entitled to the same rights of informed consent as other patients.

5.122 The decision was no doubt a difficult one. On the evidence there were a number of factors that would support a decision to release the information and there were some which justified maintaining confidentiality with respect to

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<sup>210</sup> Exhibit 336 paras 224-228

<sup>211</sup> Exhibit 245

<sup>212</sup> See the reports identified as the Lennox Report (Exhibit 55), The North-Giblin Report (Exhibit 38), The Johnson-Farlow Report (Exhibit 56), The Miller Report (Exhibit 126)

<sup>213</sup> T3365 line 21

<sup>214</sup> Exhibit 336 para 223

Berg. But it is difficult to avoid reaching a conclusion that one of the reasons which motivated Dr Buckland's view, from the very first, was a desire to avoid publicity.

#### *Police involvement*

- 5.123 At 9:37 am on 23 January 2003, Mr Whelan sent an email to a local police officer, Christopher Reeves.<sup>215</sup> In that email Mr Whelan asked for advice on a number of matters. Firstly, he sought some information on the whereabouts of Berg as Dr Allan had expressed some concern for his personal safety if the matter became public. Secondly, he enquired about any other assistance or advice that the Police might be able to provide.
- 5.124 At 12:50pm Mr Reeves sent an email to Mr Whelan that advised, among other things, that Berg appeared to have committed the offence of fraud, and that the Crime and Misconduct Commission should be advised as it would appear that Berg's conduct could amount to official misconduct. He also advised that the Queensland Police Service does require an official complaint to be made to it before the Police Service could investigate Berg's activities.<sup>216</sup>
- 5.125 On the same day at 2:19pm following an earlier telephone conversation between Mr Whelan and Mr Terry Mehan the Northern Zonal Manager, Mr Whelan sent an email to Mr Mehan summarising what he had discussed with the local police.

#### *Further reaction of Dr Buckland*

- 5.126 At 3:31pm the following day Mr Whelan sent an email to Mr Mehan seeking his advice and help on how he should handle the matter further. At 3:42pm Mr Mehan forwarded Mr Whelan's email to the General Manager Health Services, Dr Buckland.
- 5.127 At 3:51pm that day, some 20 minutes later, Dr Buckland replied to Mr Mehan in the following terms:

The fact that the Medical Board registered Dr Berg means that he has not misrepresented himself to Queensland Health. If he has misrepresented himself to the Medical Board, that is an issue for the Board and not QH.

There seems to be some inability for Dr Johnson et al to brief properly. QH does not register medical practitioners. We employ them. Dr Berg was registered by the Board when we employed him. Our issue is about the quality of his performance. In discussions with the Board they refuse to acknowledge that he was not registrable. Game set and match.

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<sup>215</sup> Exhibit 236 Statement of Mr Ken Whelan annexure KDW-4

<sup>216</sup> Exhibit 248 Statement of Ken Whelan, annexure KDW-4

Therefore there is no official misconduct and no need to report. The QPS should be given these facts<sup>217</sup>

- 5.128 The statement that, because the Medical Board refused to acknowledge that Berg was not registrable, there was no official misconduct by him was plainly wrong. There was, as Dr Buckland must have known, prima facie evidence that his so called qualifications were forgeries. This statement tends to support the suspicion expressed in paragraph 5.122 in this chapter above. It is also contrary to the advice that Dr Buckland apparently gave Mr Whelan in early December, a mere seven weeks earlier.
- 5.129 That email was then forwarded to Mr Whelan at 4:27pm that day. Mr Whelan took that email as an instruction that he was to take no further action to refer the matter to the CMC or the Queensland Police Service.<sup>218</sup> Dr Allan recalled that he was instructed by either Dr Johnson or Mr Whelan that he was not to contact the media; nor was he to advise any patient about the fact that Berg was not a qualified medical practitioner.<sup>219</sup>

#### *The Townsville Hospital contacts patients*

- 5.130 In any event, the Townsville District Health Service did contact the majority of those patients that had been identified as being 'high risk'.<sup>220</sup> Dr Allan had initially prepared a 'script' to be used when contacting patients. He was unable to use that script as he had been instructed that he was not to inform patients about Dr Berg's qualifications. However, in contacting those patients Dr Allan testified that he felt considerably constrained in what he could say:

When speaking to the ... patients I was very constrained in what I would tell those patients and the questions that I could ask those patients as I was unable to discuss all aspects of Mr Berg. That made it difficult for me to perform a meaningful analysis of their care and treatment.<sup>221</sup>

- 5.131 Nevertheless, while one may be reasonably confident that the vast majority of patients had been identified and reviewed there remained a risk that some patients were not assessed and reviewed especially when one has regard to Berg's apparent tendency to practise independently without supervision.

#### *Termination of investigations by the Police and CMC*

- 5.132 Notwithstanding Dr Buckland's email of 23 January 2003, the apparent fraud had been referred to the Crime and Misconduct Commission by Mr Michael

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<sup>217</sup> Exhibit 236

<sup>218</sup> Exhibit 236 para 45

<sup>219</sup> Exhibit 245 para 45, 46 Statement of Dr Allan

<sup>220</sup> Exhibit 245 para 50 Statement of Dr Allan

<sup>221</sup> Exhibit 245 para 50

Schaefer, the Director of the Audit and Operational Review Branch of Queensland Health.<sup>222</sup>

- 5.133 Several months later on 4 June 2003, Detective Sergeant Wayne Pennell of the Queensland Police Service contacted the Townsville Hospital to enquire whether the hospital wished to take any further action with respect to Berg. Dr Johnson advised that the hospital did not wish to proceed with any action against Berg.<sup>223</sup> The administration at the Townsville Hospital remained unaware that the matter had, in fact, been referred to the Crime and Misconduct Commission on 17 December 2002.
- 5.134 The Crime and Misconduct Commission had been advised by Audit and Operational Review that the matter had been referred to the Queensland Police Service, and in any event Berg was no longer residing in Queensland.<sup>224</sup> It is also apparent that the Crime and Misconduct Commission were advised that Berg was no longer a current employee of Queensland Health.<sup>225</sup> The Crime and Misconduct Commission, appropriately, referred the matter back to the Audit and Operational Review branch of Queensland Health for further investigation.
- 5.135 On 28 January 2003, Mr Max Wise, the manager of Audit and Operational Review Branch wrote an email to Mr Robert Walker of the Crime and Misconduct Commission in the following terms:
- The matter has been reviewed by QH's in-house QPS officer, who has not identified any Criminal Code breaches in relation to Mr Berg's application for registration – therefore no investigation is proposed.
- Following discussions with the medical registration board it has also been established that that agency does not intend initiating prosecution proceedings due to a lack of evidence to establish it was misled by Mr Berg. However, steps have been taken such that it is now 'practically impossible' for Mr Berg to obtain registration as a medical doctor in Australia.
- The Department intends taking no further action in relation to this matter and will now proceed to [close] the file.<sup>226</sup>
- 5.136 The Audit and Operational Review Branch of Queensland Health did not identify any criminal offences associated with Berg's registration. It reached this conclusion without contacting any staff member of the Townsville Hospital during the course of its investigation.<sup>227</sup> There are no witness statements or notes of interviews within the Queensland Health Investigation File. The only contact was with Mr O'Dempsey of the Medical Board.

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<sup>222</sup> Exhibit 239 Queensland Health Investigation File into Vincent Berg

<sup>223</sup> Exhibit 234 annexure AJJ-7 and T3366 line 12 - 23

<sup>224</sup> Exhibit 239 Queensland Health Investigation File into Vincent Berg letter from the CMC to Mr Schaefer dated 3 January 2003

<sup>225</sup> Exhibit 239 Queensland Health Investigation File into Vincent Berg, letter to Ms Couper

<sup>226</sup> Exhibit 239

<sup>227</sup> T3363 line 2 - 10

5.137 Upon completion of the investigation the investigator prepared a memorandum dated 20 January 2003 that concluded:

A perusal of the Queensland Criminal Code fails to find any criminal offence relation to ... Berg attempting to gain registration as a Doctor/Psychiatrist. There is also some doubt as to whether or not he actually committed an impersonation of a doctor, as during his employment in Queensland, he was a Clinical Observer at the Gold Coast Hospital and undertaking training at Townsville General Hospital. Even so, there is still no known offence of impersonating a doctor under the Queensland Criminal Code.<sup>228</sup>

5.138 In my opinion these conclusions are wrong for several reasons:

- First, there is prima facie evidence (though possibly inadmissible), evidence of offences that Berg may have committed that are discussed below;
- Secondly, the conclusion that there was doubt whether Berg 'committed an impersonation of a doctor due to the fact that he was undertaking training at the Townsville General Hospital' ignores the fact that Berg was registered and employed as a medical practitioner and was undertaking training in order to achieve specialist registration. Therefore, he was a doctor employed by Queensland Health.
- Thirdly, while there is no specific offence of impersonating a doctor under the *Criminal Code*, s502 creates the offence of attempting to procure unauthorised status which is discussed below.

5.139 The memorandum also concluded that Berg was no longer within Queensland and therefore it would not be in the public interest to continue investigations.

5.140 The file was submitted for closure on 30 January 2003. That closure was approved by the Crime and Misconduct Commission, and Queensland Health for the following reasons:<sup>229</sup>

The Matter was assessed by the Queensland Health – QPS Liaison Officer, who was not able to identify any breaches of the Criminal Code. However, providing misleading information in relation to an application for registration is a breach of the legislation as administered by the OHPRB.<sup>230</sup> Inquiries with the OHPRB indicate that no prosecution was contemplated by that agency due to an inability to establish that the qualifications were in fact forgeries. Mr Berg's present whereabouts are also unknown to the OHPRB<sup>231</sup>

5.141 The Medical Board's file reveals that as recently as 28 April 2003, some months after the file was submitted for closure, the Medical Board was corresponding by email with Berg. In that email correspondence, Berg provided a postal address at the Gold Coast.<sup>232</sup> There is also nothing on the

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<sup>228</sup> Exhibit 239 Queensland Health investigation file

<sup>229</sup> Exhibit 239 QH investigation file Memorandum to Director-General dated 30 January 2003

<sup>230</sup> Office of Health Practitioner Registration Boards

<sup>231</sup> Exhibit 239 QH investigation file

<sup>232</sup> Exhibit 238 email from Vincent Berg to the Australian Medical Council

Queensland Health Investigation file that shows that any attempts were made to locate Berg prior to closing the file.<sup>233</sup>

*Evidence of offences committed by Berg*

5.142 Whether or not there is sufficient evidence to justify a referral of Berg's conduct to the Commissioner of the Police Service depends on whether there is sufficient evidence that the qualifications he submitted to the Medical Board are forgeries. In my view, the correspondence from the Voronezh State University and the e-mail communications between the College of Psychiatrists and Professor Zapryagaev are sufficient evidence to establish, subject to that being proven in a satisfactory way, a prima facie case that they are forgeries for the following reasons:

- The Voronezh University has said that no one with the name of 'Tchekaline Victor Vladimirovich', Berg's alleged former name, had graduated as a Doctor of Medicine in Psychiatry;
- The Voronezh University had never employed anyone with the name of 'Tchekaline Victor Vladimirovich'; and
- Perhaps most compelling, that at the relevant time the Voronezh University did not offer the course that Berg claimed to have completed.

5.143 My concerns are sufficient to warrant a referral to the Commissioner of the Police Service for further investigation of Berg for the following criminal offences:

- Fraud – s408C Criminal Code;
- Forgery and uttering – s488 Criminal Code;
- Attempts to procure unauthorised status – s502 Criminal Code;
- Assault – s245 Criminal Code.

5.144 Section 408C of the *Criminal Code* provides for the offence of fraud:

**Fraud**

A person who dishonestly—

...

(d) gains a benefit or advantage, pecuniary or otherwise, for any person;

...

Commits the crime of fraud.

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<sup>233</sup> Exhibit 239

- 5.145 If Berg's qualifications were forgeries then his registration as a Medical Practitioner under the *Medical Act 1939* was achieved by fraud. It would be open to a jury to conclude that Berg dishonestly gained a benefit or advantage, pecuniary or otherwise, from another person.
- 5.146 In my view, achievement of registration by the Medical Board of Queensland gave Berg a benefit or advantage, which was both pecuniary and non-pecuniary. The pecuniary advantage was that he was entitled to employment by the Townsville Hospital as a Principal House Officer. At the time that allowed him to earn a salary of at least \$58,917.00.<sup>234</sup> Clearly that amounted to a significant pecuniary benefit. The other advantages that Berg gained by registration were associated with the fact that he could hold himself out as a doctor. That would, in my view, amount to a considerable advantage in his standing within the community.
- 5.147 I am satisfied that there is sufficient evidence to warrant further investigation by the Queensland Police Service with respect to the offence of fraud by Vincent Berg.
- 5.148 Section 488 of the Criminal Code creates the offence of forgery and uttering. That section provides (relevantly):
- Forgery and Uttering**  
A person, who, with intent to defraud –  
(a) forges a document; or  
(b) utters a forged document  
commits a crime.
- 5.149 The term 'forge' is defined in section 1 of the *Criminal Code* as follows:
- 'Forge' a document means make, alter or deal with the document so that the whole of it or a material part of it –  
(a) purports to be what, or of an effect that, in fact it is not: or  
(b) purports to be made, altered or dealt with by a person who did not make, alter or deal with it, or by or for some person who does not, in fact exist;  
(c) purports to be made, altered or dealt with by authority of a person who did not give that authority; or  
(d) otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.
- 5.150 If the certificates that Berg held himself out as holding were not issued by the Voronezh State University then clearly those documents fall within paragraph (a) of the above definition in that they purport to be certificates of the Voronezh State University, when in fact they are not.

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<sup>234</sup> Regional Health Authorities – Senior Medical Officers and Resident Medical Officers Award – State – 1995. s3.4

- 5.151 The other element of the offence that will need to be established is that Mr Berg forged the document with intent to defraud. The intention to defraud is interpreted as acting with deliberate dishonesty to the prejudice of another person's proprietary right.
- 5.152 I am satisfied that the evidence is sufficient to warrant a referral to the Queensland Police Service for further investigation of Vincent Berg for the offence of forgery and uttering under s488 of the *Criminal Code*.
- 5.153 Section 502 of the Criminal Code creates the offence of attempts to procure an unauthorised status. That section provides:
- Attempts to procure an authorised status**
- Any person who –
- ...
- (c) by any false representation procures himself, herself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to any right or privilege, or to enjoy any rank or status;
- .....
- is guilty of a misdemeanour, and is liable to imprisonment for 3 years.
- 5.154 This section has not been subject to judicial consideration to my knowledge. However, s502(c) would appear to apply specifically to the matter of Vincent Berg. He made a false representation in that he represented that he had medical degrees from the Voronezh State University. The information summarised above, subject to proof in a satisfactory form, is prima facie evidence that he held no such degrees. As a result of that false representation, he procured himself to be registered on the register kept by the Medical Board. As a result he was then entitled to enjoy the rights and privileges of being a medical practitioner within the State of Queensland. Accordingly, it would appear there is sufficient evidence to warrant a referral to the Commissioner of Police for further investigation of Berg for the offence of 'attempts to procure an authorised status'.
- 5.155 Finally, although there is little evidence before the Commission of the nature Berg's practice, it would seem likely that during the course of his treatment of patients whilst at the Townsville Hospital he may have administered medication and touched individuals during the course of their treatment in circumstances where the patients may have only consented to that touch on the assumption that Berg was in fact a doctor.
- 5.156 In my view that raises the question of whether or not Berg's conduct in any particular circumstance may have amounted to an assault as defined in s245 of the *Criminal Code*. That definition is as follows:

### Definition of Assault

(1) A person who strikes, touches, or moves or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if a consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called assault.

(2) In this section –

'applies force' includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such degree as to cause injury or personal discomfort.

5.157 During the course of his treatment of individuals at the Townsville Mental Health, Berg may have committed an assault in two ways:

- He may have applied force in the sense that he touched persons in circumstances where their consent was obtained by fraud; the fraud being that Berg represented himself as being a qualified psychiatrist when in fact he held no such qualification.
- He may have administered medication in such a way that it may amount to the extended definition of 'applies force' within s245(2) of the *Criminal Code*. It will need further investigation on behalf of the Queensland Police Service in order to establish whether or not Berg administered 'any other substance' that may have caused injury or personal discomfort to any particular patient. If there is evidence of that, then it may be that Berg has committed an assault.

### Recommendations with respect to Berg

5.158 Accordingly I recommend that the matters relating to Berg be referred to the Commissioner of the Police Service for investigation of the following possible offences committed by Berg:

- Fraud – s408C *Criminal Code*;
- Forgery and uttering – s 488 *Criminal Code*;
- Attempts to procure unauthorised status – s502 *Criminal Code*;
- Assault – s 245 *Criminal Code*.

## Part B: Charters Towers

### Charters Towers

5.159 Charters Towers, a town of approximately 10,000 people, lies 135 kilometres south west of Townsville and is 1350 kilometres distant from Brisbane. Once a major gold mining centre, Charters Towers had a population of over