

Part F - A culture of concealment and its consequences

The issue

- 6.513 The evidence before this Commission of Inquiry yielded, among other things, examples of persons in stewardship roles in Queensland Health engaging in conduct pertaining to clinical practice and procedure which diminished the prospect of facts being open to proper scrutiny. An occasional concomitant of concealment is reprisal; there was also some evidence of this.
- 6.514 It is one thing to identify isolated instances of concealment. It is quite another if the disposition to conceal existed at a high level throughout the relevant period and was pervasive, encouraging others in leadership positions within hospitals to themselves conceal facts.
- 6.515 Was concealment (and its occasional bedfellow reprisal) endemic within Queensland Health? If it was then that evidenced a culture of concealment within Queensland Health. What I propose to do is discuss this issue by reference to the various levels of Queensland Health management, commencing with the overarching stewardship of that government department by Cabinet. Only then can the practices at hospital level be seen in proper focus.

Cabinet

- 6.516 There are two spheres of relevant conduct to be addressed with reference to Cabinet. First, there is the issue of publication of elective surgery waiting lists. Secondly, there is the issue of the Measured Quality Reports. I will deal with them in turn.

Elective surgery waiting lists

- 6.517 From no later than 1996 there have existed two lists relating to elective surgery at Queensland public hospitals. First, a list of patients who have attended an appointment with a resident or Visiting Medical Officer specialist and placed on a list of persons awaiting surgery. I shall call that 'the surgery list'.
- 6.518 Secondly, there is a list of persons who have been referred by a general practitioner for specialist appointment at a cohort hospital but not yet seen and assessed. I shall call that 'the anterior list'.
- 6.519 The anterior list itself consists of two sub-categories. First, there are patients who have not yet been allocated such an appointment. Secondly, there are patients who have been allocated such an appointment but have not yet been seen.

- 6.520 From about November 1998 to about June 2003 Queensland Health collected and collated data from the 31 reporting hospitals in relation to their surgery and anterior lists.⁵⁴⁰ This data was provided monthly by the hospitals to the Surgical Access Team.⁵⁴¹ From April 1999, this data was in turn provided by the Surgical Access Team on a monthly basis to the General Manager Health Services, the Director-General and the Minister for Health⁵⁴² and on a quarterly basis to Cabinet.⁵⁴³ Unlike the collated surgery list which was published quarterly on its Internet site to the public,⁵⁴⁴ the collated anterior list was never published.⁵⁴⁵
- 6.521 In late 2000, the reporting of the anterior list data was scaled back to a summary on a zonal basis.⁵⁴⁶ In 2003, the Office of the General Manager Health Services instructed the Surgical Access Team to cease the monthly reporting of such data to the General Manager Health Services, the Director-General and the Minister for Health.⁵⁴⁷ Such information remained available and able to be provided if it had been requested. Until January 2005, the outpatients' waiting list data continued to be reported by the hospitals to the Team.⁵⁴⁸ In January 2005, the Team was disbanded. The management of such information devolved back to the zones.⁵⁴⁹
- 6.522 As to the number of patients on the anterior list, a table prepared from the specialist outpatients' waiting list data base⁵⁵⁰ shows, as at 1 July 2001, 1 July 2002, and 1 July 2003, it was 51,876, 54,725 and 55,684, respectively, of which 33,929, 35,945 and 36,165 had been offered an appointment.
- 6.523 An analysis of 1 July 2004 data⁵⁵¹ undertaken by the Commission staff,⁵⁵² solely with respect to surgical disciplines, computed 67,052 persons on the anterior list. Of whom 46,637 were without an appointment. I think this to be correct as at 1 July 2004. Clearly such anterior list was growing.
- 6.524 The Surgical Access Team, however, thought the anterior list data, collected over time, unreliable.⁵⁵³

⁵⁴⁰ Exhibit 326 paras 23-26 (Zanco)

⁵⁴¹ Exhibit 328 para 62 (Walker)

⁵⁴² Exhibit 328 para 70; Edmond T4998

⁵⁴³ Exhibit 326 para 22

⁵⁴⁴ Exhibit 326 para 44; Exhibit 328, para 29

⁵⁴⁵ Exhibit 317 (Scott) para 10.2

⁵⁴⁶ Exhibit 328 para 70

⁵⁴⁷ Exhibit 328 para 72, 74

⁵⁴⁸ Exhibit 328 para 76

⁵⁴⁹ Exhibit 328 para 8

⁵⁵⁰ Exhibit 326 attachment 'MCZ8'

⁵⁵¹ Exhibit 267

⁵⁵² Exhibit 318, T5251, 5252

⁵⁵³ Exhibit 326 para 24; T6183, 6203

6.525 As was rightly conceded by most witnesses;⁵⁵⁴ it would be much more meaningful for the public generally, and certainly patients, to know not just the total number of persons awaiting surgery but also how long it takes to receive appropriate treatment from the time of referral from their general practitioners. Not only would this statistic more accurately represent true waiting times of patients awaiting surgery, but it would allow patients and their general practitioners to better evaluate and plan their care, affairs and priorities. It may be that during earlier stages, the collection of anterior list data was not as standardised or accurate as the surgery list data.⁵⁵⁵ But, as Mr Walker conceded, some information is better than no information.⁵⁵⁶

6.526 The evidence of Dr Stable was instructive in this regard.⁵⁵⁷

You say in paragraph 74 of your statement that you have ... no difficulty '(w)ith transparency of outpatient lists broken down into specialty

which include surgical and non-surgical specialties.'... -- That's correct. I would have preferred it to be the case. It would have supported my

ongoing argument since January 1996 about the underfunding of health in Queensland. In March 1996 the Australian Institute of Health and Welfare reported 16 per cent underfunding in Queensland. To have actually had all that transparent would have been very good for the people of Queensland, but also for the Department.

Your opinion is that if outpatient specialist waiting lists had have been publicised as early as possible, that that would have enhanced the argument to obtain greater funding for Queensland Health?-- Absolutely. This has been an issue since the eighties, I might add, but absolutely.

...

Having regard to your comments earlier about the publication of outpatient specialist waiting lists and the enhancement to the argument for better funding that would ensue from their publication, why is it that the politicians of the day haven't disclosed them?-- In discussions I've had both at state level and nationally, as Chair of the Australian Health Ministers Advisory Council, I don't think politicians have wanted to admit - I'll call it political honesty. Either the funding has to be there or there's a limit on services, or maybe even both, and I think there needs to be quite a serious debate in this country to actually bring that to the fore about what actually can be afforded, or are governments going to put in the necessary funding. That's the issue.

The Queensland system presently, and throughout the entirety of your tenure, was contrasted with interstate analogues in terms of dealing with specialist outpatient patients. Is that not so?-- That's correct, yes.

Just explain to the Commission how that was different? Well, other states were limiting, or in fact stopping outpatient services. We in fact continue to increase them. In fact during the term that I was Director-General, according to the annual reports of Queensland Health, there was a 37 per cent increase in non-inpatient occasions of service, which includes outpatients, all those sort of things. But Queensland, when I discussed it with Ministers over the years, have

⁵⁵⁴ T4885 line50 T5307 line 20; T5254 line 20, 5255, 5257 line 40 T6183 line 30

⁵⁵⁵ T6181

⁵⁵⁶ T6183 line 20

⁵⁵⁷ T5720 line 50 -T5723 line 10

always said, 'We've got a free hospital system. We intend to keep it.' The Commonwealth Department of Health reported in June last year in its annual report of public hospitals that Queenslanders utilise outpatients 20 per cent above the national average, and that reflects the policy of consecutive governments. But I might add, at the same time we're significantly underfunded, but we have this extra demand on our hospitals.

...Quite apart from the funding - the important funding issue that you've raised, you would agree that there would be other advantages in the publication of specialist outpatient surgical waiting lists?-- Oh, I think there are clear indications. It means, doctors out there in practice can look and say, 'Well, there's a wait at this hospital. I'll refer you to another hospital', or can say to the patient, 'Look, there's a significant wait, a 12 month wait for this procedure in the public system. I can arrange for you to go privately, but of course you're going to have to pay.' But then there can be an informed decision, and of course the public, at each election, can decide whether they want to elect someone who is going to put more money into - and significant and honest more money, not this stuff where it's to cover the labour costs, which just enables us to stand still.

Perhaps if not put more money, perhaps even less money, but restructure the system, and say so?-- Or be honest about, 'We can't provide certain procedure in the public system because we can't afford it.'

What sort of pressure does the non-publication of lists place on the individual hospital?-- Well, because they have to continue to present the public face that they can do everything - and of course there's been periods where hospital superintendents have done a letter to say, 'We can't take this booking', it gets in the media and the politician of the day gets all upset about it. But that's the pressure that hospitals are under.

- 6.527 I accept this evidence.
- 6.528 Evidence as to the disposition of Cabinet to surgical waiting lists, in successive governments, was given by Mr Michael Clare.⁵⁵⁸ Mr Clare was an impressive witness and I have no hesitation in accepting his evidence (with one exception, concerning Dr Stable, to which I will come). He worked for Queensland Health for 27 years. From January 1997 to January 2002 he was the Manager, Parliamentary and Ministerial Services and Cabinet Legislation Liaison Officer.
- 6.529 Part of his duties included the preparation, scheduling and lodgement of Cabinet submissions generated within the department. In July 2002 he was appointed by the then Beattie Government as a member of the Medical Board of Queensland.
- 6.530 Mr Clare gave evidence that governments of both political persuasions in the period of his tenure from 1997 (initially the Borbidge Coalition Government and then the successive Beattie Labor Governments) abused the Cabinet process in order to avoid information deemed sensitive or politically embarrassing falling into the public arena. This was because s36 of the *Freedom of Information Act* 1992 provided for an exemption from Freedom of Information disclosure of documents which, in effect, were submitted to Cabinet.

⁵⁵⁸ Exhibit 387; T6075-T6088

- 6.531 Mr Clare gave evidence that, during the period of the Borbidge Coalition Government he procured a 'fridge trolley' in order to deliver and retrieve documents associated with Cabinet submissions which collected surgery waiting lists in Queensland public hospitals. In response to a Freedom of Information application which had been lodged seeking hospital waiting list documents.⁵⁵⁹ In this way that Government concealed from the public the surgery list.
- 6.532 Following the election of the Beattie Labor Government in 1998, Mr Clare said the remitting of such waiting lists to Cabinet was continued and formalised by the inclusion of the same on Queensland Health's 'Cabinet Forward Timetable'.
- 6.533 Mr Clare said that, on a number of occasions, his instructions were received, in relation to this issue, from Dr Stable. It was plain that Mr Clare inferred that Dr Stable was responsible for submitting waiting list information to Cabinet.
- 6.534 Dr Stable gave evidence that the decision was a political one made by the Minister and Cabinet of the day in a conscious endeavour to engage the Freedom of Information exemption.⁵⁶⁰ I accept Dr Stable's evidence in this regard.
- 6.535 Below when dealing separately with the conduct of former Minister Edmond, I again address this issue of waiting lists. Her conduct, consisting of a campaign by press release, was plainly undertaken with the full knowledge of Cabinet.
- 6.536 All this reflects poorly on the politicians involved in the stewardship of Queensland Health. There was a bipartisan (in the pejorative sense) approach to concealing from public gaze the full waiting list information. Only the (shorter) surgery list was published from 1998.

Measured quality reports

- 6.537 I turn to the issue of the 'measured quality reports' and Cabinet's disposition of the same. Mr Justin Collins gave evidence to the Commission.⁵⁶¹ I accept the evidence of Mr Collins. He was an impressive witness.
- 6.538 From September 2001 Mr Collins was manager of Measured Quality Service at Queensland Health. Although not involved with the development of Measured Quality Service from its inception he was very knowledgeable about it.
- 6.539 Measured Quality was (and is) a system which routinely measured the quality of services provided at selected Queensland Health hospitals. Data collected through the Measured Quality process was designed to be used to identify variation in performance between comparable hospitals across the State, and areas for potential improvement as well as areas of good practice in the

⁵⁵⁹ T6077

⁵⁶⁰ T5720 lines 40-50

⁵⁶¹ Exhibits 377, 378, Transcript for 26 and 28 September 2005

particular hospital. In turn this information was used by the hospitals to focus their attention on identified areas for detailed analysis.

6.540 It is plain from any fair reading of the medical literature referred to by Mr Collins⁵⁶² that concealment of medical and hospital data (excluding individual patient information) is inconsistent with maintenance of high medical standards. One of the articles, published in 2002 in the *Medical Journal of Australia*,⁵⁶³ said:

We believe that a negative response to public disclosure in Australia would be counterproductive. Greater openness in healthcare is inevitable. Information is freely available about most areas of modern life and many believe that healthcare is one of the last bastions of protectionism. When millions of dollars are spent on healthcare, those who pay have a right to know that the money is being spent effectively, and the publication of comparative data sends a strong message about the willingness of health professionals and organisations to be accountable.

In addition, public disclosure appears to be an effective way of improving quality. There is a growing body of evidence that the current level of quality of care is unacceptable and that quality-improvement initiatives using confidential data have been largely ineffective at changing the behaviour of health professionals. When comparative data are released to the public it appears to remind providers of the issues and refocuses them towards taking action.

Arguments in support of the status quo – that the data are inadequate, the public won't understand them and the media will misuse them – are not sustainable if public disclosure is introduced properly. There are lessons that can be learnt from other countries to guide the process of disclosure in Australia. The United States has nearly 15 years' experience at publishing data in the form of 'single report cards' or 'provider profiles'. The initiative was launched by the Federal Government and the momentum has been maintained by a variety of public, private, commercial and not-for-profit organisations. Consumers and purchasers of healthcare were expected to play a key role by selecting high-performing providers, but recent experience suggests that the providers themselves make greater use of the data than the service uses.

There are some notable examples of improvements in both processes and outcomes of care associated with the publication of performance data. Public reporting in Europe is less well established than in the United States, but hospital 'league tables' have been published in the Netherlands for several years, and the UK Government plans to introduce incentives linked to a range of publicly reported performance criteria.

What can we learn from the initiatives that have been introduced?

- First, a backlash from some doctors, professional groups and institutions (particularly those seen to be performing badly) is predictable. Some criticisms were justified in the early days of report cards but lessons are being learnt. For example, we know that forcing initiatives on reluctant professionals is not the most effective way of changing attitudes, and the introduction of report cards is more likely to be successful if doctors are encouraged to take a lead, particularly in selecting the performance measures. Bringing the media on board at an early stage to ensure fair and balanced coverage also helps. In addition, delaying publication for a short

⁵⁶² Exhibit 378, annexure 'JEC-27'

⁵⁶³ Marshall & Brook MJA 2005-2006 *Public Reporting of Comparative Information About Quality of Health Care*

period to allow providers time to look at and act upon the data is a useful strategy.

- Second, it is important that those who publish the data show a commitment to investing in the process and progressively improving the quality of the data and the validity of comparisons arising from the data. However, it makes little sense to 'wait for better data' – data will always be imperfect and, as one commentator stated, it is important not to let 'perfect be the enemy of good'. Experience suggests that the process of publication can in itself act as a catalyst for data improvement.
- Third, the utility of comparative data comes less from making absolute judgments about performance than from the discussion arising from using the data to benchmark performance. There is therefore a strong educational component to the effect of use of comparative data, and resources are required to facilitate this process.
- Finally, it is important to be cognisant of the risks of publishing comparative data. The danger of institutions refusing to treat certain disadvantaged groups in order to improve their apparent performance is well recognised, although probably overstated, and can be reduced by careful adjustment of risk and casemix. A tendency to focus on what is being measured at the expense of other areas of practice can be minimised by publishing a wide range of quality indicators. The risk of 'short-termism' – an inappropriate focus on annual reporting cycles – can be reduced by ensuring a balance between short-term targets and long-term strategic aims.

A greater degree of public reporting and information about healthcare quality is an inevitable and desirable way forward. Practitioners and policy makers in Australia have an opportunity to ensure that the policy is implemented in the manner that is most likely to produce positive change.

[footnotes omitted]

6.541 I accept this view.

6.542 The Measured Quality Service process was in two parts. First, there was a hospital report prepared for each hospital. I shall call these 'the hospital reports'. Secondly, there was an annual public report. Mr Collins gave evidence that the Measured Quality Service policy, in mid 2002, was never to 'hide' any document.⁵⁶⁴ He explained that the Measured Quality Service was concerned to contribute towards a 'blame free' environment within hospitals.⁵⁶⁵ There was concern⁵⁶⁶ that the hospital reports, if made public, could be 'misleading' because they were based on data collected before the hospitals had an opportunity to investigate the results and analyse them.

6.543 Mr Collins emphasised,⁵⁶⁷ however, that, in his view, clinicians and hospital managers needed to be provided with data which indicated the hospital's performance, together with information about successful strategies which had been adopted within other health service districts.

⁵⁶⁴ Exhibit 378 para 9

⁵⁶⁵ Exhibit 378 para 6

⁵⁶⁶ Exhibit 378 para 7

⁵⁶⁷ Exhibit 378 para 8

- 6.544 Engaging the hospital clinicians, Mr Collins said, was an important aim of the Measured Quality process. He also emphasised that the public needed to be provided with a thorough explanation of what the data meant. Achieving this balance was part of the process.
- 6.545 As Mr Collins explained,⁵⁶⁸ the public report provided ‘analysed data comparing the relative quality and safety performance between peer groups at a statewide level and also comparing Queensland Health with the rest of Australia’. The hospital reports identified problems and resources in individual hospitals. But in relation to publication ‘it would be left to the relevant Health Service District to determine whether or not to release the hospital reports for their Health Service District publicly’, it being ‘recognised ... that the hospital reports may have to be released to the media or to the general public through a Freedom of Information ... application and as a result it was decided to develop a strategy to assist Health Services Districts if that occurred’.
- 6.546 This process altered once the politicians’ hands came upon it. I canvass below, when dealing with former Minister Edmond, what occurred at and following the presentation by Mr Collins to Minister Edmond and Director-General Stable on 13 August 2002. Shortly prior to that meeting Dr Glenn Cuffe, the Manager of the Procurement Strategy Unit of Queensland Health, and Mr Collins’ superior, told Mr Collins⁵⁶⁹ that ‘Ms Edmond and/or Dr Stable may ask that the measured quality phase 1 public hospital reports be sent to Cabinet and this would restrict our ability to disseminate the reports to Health Services Districts and effectively kill the measured quality program’. Mr Collins said⁵⁷⁰ that he and Dr Cuffe agreed that ‘this was not desirable from the perspective of safety and quality as well as overall improvement within Queensland Health’. The concern was that open discussion of the hospital reports by clinicians and administrators would be prevented.
- 6.547 This comment by Dr Cuffe proved prophetic.
- 6.548 Neither Mr Collins nor any other Queensland Health employee advised nor suggested that the then phase one Measured Quality Service hospital reports (the hospital reports) be sent to Cabinet. He said that this course was raised by Minister Edmond at the 13 August 2002 presentation. I accept the evidence of Mr Collins as being accurate in this (and in all other) respects.
- 6.549 Mr Collins was involved in drafting the Cabinet submission. The submission was considered by Cabinet on 11 November 2002 and went under Minister Edmond’s hand. It is worth noting that the submission in question was for the ‘information’ of Cabinet accompanied by a large wad of documents consisting of

⁵⁶⁸ Exhibit 378, para 9

⁵⁶⁹ Exhibit 378, para 12

⁵⁷⁰ Exhibit 378 para 12

public and hospital reports.⁵⁷¹ This could not sensibly have been done to inform Cabinet but rather to engage the Freedom of Information Cabinet exemption.

6.550 The drafting of the Cabinet submission was a tortuous process. Mr Collins was obliged to consult with representatives of the office of the Department of Premier and Cabinet, Treasury and the Minister's office. By the time the Cabinet submission was drafted the communicated policy therein was that the hospital reports were no longer to be released publicly. Rather, there was to be⁵⁷² confidential distribution of each hospital report to the relevant District Manager and Zonal Manager.

6.551 When asked about when the original promulgated policy about hospital report disclosure (canvassed above) altered, Mr Collins could only say that this alteration occurred 'at some point between the presentation of the Minister and the Director-General and the actual Cabinet submission being finalised' and that 'more than likely' the change occurred at the behest of someone either within the office of the Premier, Cabinet or Treasury because they had 'the most input'.⁵⁷³

6.552 The influence of these other persons or bodies upon the content of the Cabinet submission is underscored by the email exchange between Mr Collins and Mr Smith, Queensland Health's Manager of Parliamentary and Ministerial Services,⁵⁷⁴ who was liaising with Cabinet on behalf of Queensland Health. When speaking of suggestions raised by officers of the Department of Premier and Cabinet Mr Smith observed:⁵⁷⁵

Please incorporate the issues raised This helps ensure that the Premier is happy when the matter is considered in Cabinet in relation to the concerns about retention rates, etc. ...

6.553 On 11 November 2002, Mr Collins received an email from Mr Smith indicating Cabinet's approach to the disposition of the Measured Quality Service reports⁵⁷⁶:

Cabinet will be approving a public release of the report 'Qld hospitals and the 21st century', accordingly the report will be a public document and the copies distributed will have no security attached to them.

The 60 individual hospital reports on the other hand should remain confidential and to help maintain any protection afforded by the FOI document to Cabinet material, any distribution of these reports to District Managers etc should be on a confidential/restricted basis.

6.554 On 12 November 2002, there was distributed, to each of Mr Collins, Director-General Stable, General Manager Health Services Buckland and Dr Cuffe, an

⁵⁷¹ Exhibit 377 attachment 'JEC9'

⁵⁷² Exhibit 377 attachment 'JEC9A' para 16 of submission

⁵⁷³ T5921 lines 10 to 30

⁵⁷⁴ T5949 line 40

⁵⁷⁵ Exhibit 378 attachment 'JEC35'

⁵⁷⁶ Exhibit 378 attachment 'JEC38'

email from Mr Smith communicating Cabinet's view of what was required of the Measured Quality Service in respect of the hospital reports and public reports⁵⁷⁷:

Further to my conversation with you on Monday, 12 November 2002, additional advice has been received from the Department of the Premier and Cabinet that the Premier has given the following directive this morning to the Director-General, Department of the Premier and Cabinet in relation to this matter,

neither the proposed public report which was attached to the Cabinet Submission nor any of the 60 individual Hospital Reports are to be distributed to *anyone*;

Senior Management can be briefed on the outcomes of the quality measurements and the contents of the documents, but they are *not* to be given copies of any of this material.

The Department of the Premier and Cabinet advised that the Premier has emphasised that Cabinet does not want this material released or circulated in any way....

- 6.555 Mr Collins gave evidence that this directive caused considerable delay and difficulty in the implementation of the Measured Quality Service process.⁵⁷⁸ It delayed publication of the public report. Most relevantly, it made it extremely difficult if not impossible to enable clinicians to discuss the hospital reports freely, or even to obtain access to them. I canvass that in more detail below, in particular by reference to the ministerial briefing of 10 March 2003, when dealing with former Minister Edmond.
- 6.556 Notwithstanding his explanation of these difficulties, Mr Collins was directed by Minister Edmond to submit the phase 2 reports (further hospital reports) to Cabinet. That occurred on 10 June 2003.⁵⁷⁹ The Cabinet submission,⁵⁸⁰ like that of 11 November 2002, was for the 'information' of Cabinet and had as attachments a vast wad of public and hospital material.
- 6.557 The result was the same secrecy and concealment as had occurred with the waiting list information canvassed above.
- 6.558 The Measured Quality Service process, fortunately, survived. I find that that was largely due to the involvement of Dr John Scott in his role as General Manager Health Service, in 2004.⁵⁸¹ Whilst I deal with Dr Scott elsewhere in this report concerning Dr Aroney and the North Giblin report, I think it remains correct to say that the termination of Dr Scott's employment by the present Beattie Government was a considerable loss to Queensland Health.

⁵⁷⁷ Exhibit 340

⁵⁷⁸ Exhibit 378, attachment 34; T5942, 5943; T6542 lines 1-10 (Cuffe)

⁵⁷⁹ Exhibit 377, attachment 'JEC15'

⁵⁸⁰ Exhibit 377, attachment 'JEC15'

⁵⁸¹ Exhibit 377 para 37; Exhibit 377; T5247, 5248; T5946 line 30

Conclusions with respect to Cabinet

6.559 The conduct of Cabinet, in successive governments, in the above respect, was inexcusable and an abuse of the *Freedom of Information Act*. It involved a blatant exercise of secreting information from public gaze for no reason other than that the disclosure of the information might be embarrassing to Government. In the case of the Measured Quality Service policy, Cabinet's decision was undertaken in the teeth of a contrary view expressed by Queensland Health and, had any one outside the ranks of Queensland Health bothered to enquire, contemporaneous literature.

6.560 On 28 September 2005⁵⁸² I gave an intimation in respect of findings in relation to elective surgery waiting lists and Measured Quality Service reports. On that occasion I indicated in open hearing the following:

I have given this intimation at this stage to give to any person the opportunity to consider whether to give or tender further evidence upon either of these issues and to permit that consideration to be given before the close of evidence which will possibility occur at the end of next week.

6.561 Apart from the submissions received from relevant participating parties, namely former Minister Nuttall and former Minister Edmond, no politician (past or present) took up this opportunity.

6.562 I received a letter from Premier Beattie on 30 September 2005.⁵⁸³ That spoke prospectively of the current Government's intentions in respect to waiting lists and Measured Quality reports. It said:

I am prepared to act to continue my Government's record of openness and accountability. Therefore, my Government now commits to legislating to ensure that all relevant data about waiting lists and all Measured Quality Reports about individual hospitals will be reported in an annual State of Health Report. That information will be available to be accessed by all Queenslanders.

6.563 The opening sentence of this extract is inconsistent with the facts as I have related them pertaining to elective surgery waiting lists and Measured Quality hospital reports.

Findings against Cabinet

6.564 I make the following findings with respect to elective surgery waiting lists:

- (a) In 1997 and 1998, Cabinet under a Coalition Government decided not to disclose to the public statistics which showed the number of persons on elective surgery waiting lists.
- (b) That decision was contrary to the public interest.

⁵⁸² T6088-6090

⁵⁸³ Exhibit 388

- (c) In 1998 and thereafter until 2005, Cabinet under an Australian Labor Party Government decided to disclose to the public the surgery lists but not the anterior lists and only that disclosure was made.
- (d) To disclose the surgery lists but not the anterior lists was misleading and was contrary to the public interest.

6.565 With respect to Measured Quality Reports I make the following findings:

- (a) These were of two kinds: the first, the public reports, were reports intended for publication to the public about the performance of Queensland hospitals. The second, the hospital reports, which were reports specific to each of the hospitals which were part of the measured quality program, were intended by Queensland Health for publication only to managers and clinicians at those hospitals.
- (b) In late 2002, Cabinet under an Australian Labor Party Government decided to limit publication of the hospital reports to an extent which was contrary to the public interest.
- (c) That decision was made contrary to the advice of officers of Queensland Health.

6.566 Any findings which I make below against current and former employees of Queensland Health, with respect to secrecy and concealment, must be seen in the light of what I have said and found above in this section of this Chapter of my report.

Former Minister Edmond

6.567 The Honourable Wendy Edmond was a member of successive Labor Governments from 1998. She was Minister for Health from June 1998 to February 2004. She retired from Parliament in early 2004.

6.568 In the case of Ms Edmond, there are two matters which I ought to canvass in the context of concealment as I introduced above in this portion of this Chapter. The first is elective surgery waiting lists. The second is the Measured Quality Service issue. Each of these matters I have treated in the preceding section concerning Cabinet.

6.569 A submission is made on behalf of Ms Edmond to the effect that treatment of these matters is outside my terms of reference. I disagree. Ms Edmond, when Minister, was at the pinnacle of leadership of Queensland Health. She undertook a stewardship role in respect of policy and conduct of staff at hospital level in their adoption of clinical practices and procedures. If the conduct of any member of staff of Queensland Health is to be the focus of criticism, then it must be considered in the light of the policy adopted by, and statements made by those in senior leadership positions, including Minister Edmond. It is therefore necessary to make findings about the conduct of Ms Edmond.

Waiting lists

6.570 I deal first with waiting lists. In this regard I adopt what appears in the preceding section of this chapter concerning Cabinet and those lists.

6.571 Ms Edmond's written statement⁵⁸⁴ deals with the issue of waiting lists. Upon assuming office, to her great credit, she immediately caused the publication of the elective surgery waiting lists. However she did not, then or at any time during her approximately six year stewardship as Minister, cause publication of the anterior lists. There can be no doubt, from her early press releases about the issue,⁵⁸⁵ that Minister Edmond knew of the anterior lists and, importantly, by making press releases, was publicly acknowledging her and the Government's knowledge of and intention to deal with them.

6.572 In her 30 July 1998 press release⁵⁸⁶ Minister Edmond expressed:

'However, Ms Edmond said her major concern was that the figures did not represent the whole picture.

'I believe there is an untold story out there about patients who have been given appointments to see out-patient specialists and therefore can't get on a waiting list ...', she said

'I have asked Queensland Health for standardised and improved procedures on this issue and on the collection of data.

'I expect a flurry of appointments and, as a result, the next quarterly elective surgery report may show some politically unattractive jumps in waiting times.

'I am prepared to wear this in the interests of honesty, openness and a better public health service.'

6.573 Apparently there was an investigation conducted within Queensland Health, at the request of Minister Edmond, between 30 July and 16 October 1998 because, on the latter date, a further press release was issued⁵⁸⁷ which contained the following:

'Health Minister Wendy Edmond's investigation into hospital waiting lists has revealed a massive 'unofficial' list of would-be patients who haven't even made the official list.

Ms Edmond said the investigation confirmed her long-held fears but represented a major step towards tackling the issue.

...Ms Edmond said in July that she was concerned about the untold story of the waiting list to get an appointment.

...Ms Edmond said Queensland Health had made some progress on her instruction to develop standardised and improved procedures for allocating appointments and collecting information.

'The downside is that I now know that the waiting list to get into the waiting list for surgery is almost as long as the waiting list for surgery', she said.

⁵⁸⁴ Exhibit 302

⁵⁸⁵ Exhibit 303; Exhibit 302 sole attachment

⁵⁸⁶ Exhibit 303

⁵⁸⁷ Exhibit 302; sole attachment

The upside is that we can now tackle the problem systematically.

Ms Edmond said Queensland Health was collecting appointment waiting list data manually because no computer systems currently were doing this....'

6.574 Just over 12 months later, on 11 November 1999,⁵⁸⁸ Minister Edmond issued a press release in response to Opposition criticism of waiting list data:-

Health Minister Wendy Edmond said today that the Opposition's campaign to discredit the waiting list data was desperate and dishonest.

...'There has been no manipulation of waiting list figures. Waiting list data is available to all. The level of transparency is unprecedented.

'The Opposition collected the same data in exactly the same way, the only difference is this Government publishes the data openly and honestly as part of its elective surgery strategy and as part of its commitment to open an accountable Government.

'The pathetic attempts of the Opposition to claim that specialist out-patient appointment waiting times would provide the 'real picture' of elective surgery waiting times shows a complete misunderstanding of the hospital system.

'People waiting for specialist out-patient appointments do not necessarily need surgery.

'Elective surgery coordinators from Queensland Health have developed processes to ensure that once a surgeon completes a surgery booking form for a patient, that patient's name is immediately placed on the Elective Surgery Waiting List.

That is the 'real picture', that is the truth.

'All hospitals have processes in place to ensure that there are no 'hidden' waiting lists at any stage of the process at any facility across the state', Ms Edmond said.

6.575 I am left in no doubt that this press release was misleading and, particularly in light of the press releases of approximately a year earlier, which are extracted above, knowingly so on the part of Minister Edmond. Earlier she referred to her investigation revealing a 'waiting list for the waiting list' but, in the last mentioned press release, she told the people of Queensland who might read the press release in the media, and staff, that the data has been published 'openly and honestly', 'waiting list data is available to all' and that 'there are no 'hidden' waiting lists at any stage of the process at any facility across the State.

6.576 This was clearly a significant issue for Minister Edmond. The publication of the surgery list, she clearly thought, was a major achievement of her Government. Having accurately identified the anterior list in October 1998, just over a year later she knowingly misrepresented that the published surgery list comprised all of the 'waiting list data'.

6.577 Ms Edmond's approach to the matter did not improve with the passage of time after the abovementioned press release of Remembrance Day 1999. From

⁵⁸⁸ Exhibit 304

September 1998 to January 2003 the Minister received monthly reports which dealt with, among other things, the (growing) anterior lists.⁵⁸⁹ It must also have been plain from those documents, as was the fact, that Queensland Health was encountering real difficulty in developing an electronic data base to marshall that anterior list data. Yet press releases were issued from 2000 to 2003 in her name, and one infers with her approval, speaking of the improving surgery lists without hint of a mention of the anterior lists or their growing size.⁵⁹⁰

6.578 As to the marshalling of this anterior list information, I accept that the Surgical Access Team was concerned about the reliability of the information about the anterior lists. Mr Walker of that Team was of the view that he had difficulty with the notion that the anterior list data ought be released, and that if it was to be released he 'would put a rider on it that we need to actually make sure that the data was actually accurate'.⁵⁹¹ Mr Walker also indicated that a lack of funding was stymieing the improvement of this data collection.

6.579 I reject the submission, that to publish the surgery waiting lists, without the anterior lists, was not a misleading course. Whilst general practitioners may have some ability to obtain some information about these matters, such general practitioners and the public, making decisions about personal health funding, ought at least have had the benefit of periodical (say quarterly) information about the state of anterior lists. For Minister Edmond to make statements, as she did, from 1999, which had the effect of misrepresenting the existence, nature and extent of anterior lists, was to mislead and, in my view, was against the public interest.

6.580 Moreover, it set a very poor example for Queensland Health staff in relation to the openness with which they should deal with matters which might be embarrassing to the Government or Queensland Health.

Measured quality reports

6.581 By mid 2003 Minister Edmond had five years experience in her portfolio. There could be no doubt that she knew of the provisions of the *Freedom of Information Act* 1992.

6.582 On 13 August 2002, Mr Justin Collins (to whom I referred earlier) and other Measured Quality Service staff made a presentation⁵⁹² to the Minister and the Director-General in relation to the Measured Quality process.⁵⁹³ One of the matters identified at the presentation (dealt with under a heading 'Communication Objectives', in one of the presentation documents) was

⁵⁸⁹ Exhibit 311

⁵⁹⁰ Exhibit 305

⁵⁹¹ T6181 to T6183

⁵⁹² T5916

⁵⁹³ Exhibit 377, attachment 'JEC8'; Exhibit 378, attachment 'JEC30'

Queensland Health's policy of 'delivering on its commitment to be open and transparent'. Another issue identified was about the likelihood, in relation to hospital reports, that 'journalists will request individual facility reports on local hospitals once they are aware of their existence' and that 'a decision needs to be made on whether access would be granted administratively or only through a Freedom of Information request'.

- 6.583 Mr Collins said that what he was identifying (and this would have been plain to any listener) was whether, in pursuit of Queensland Health policy developed to that point in relation to the Measured Quality process, an individual hospital report ought be the subject of provision by the District Manager of the Hospital upon request, or if not then provision to an applicant under a Freedom of Information application.
- 6.584 Mr Collins said it was Minister Edmond who raised the proposal to take the Measured Quality reports to Cabinet.⁵⁹⁴
- 6.585 Mr Collins sent an email to a former Queensland Health associate, Mr Filby, after the 13 August presentation, namely on 28 August 2002.⁵⁹⁵ Therein one sees a contemporaneous recollection by Mr Collins to the effect that a person or persons in attendance at the presentation expressed that he, she or they were 'very concerned about the media consequences' of the process and that 'as a result it has been decided that the reports should go to Cabinet'.
- 6.586 I accept that Minister Edmond, in part, was motivated to take the Measured Quality process documents to Cabinet with a view to properly informing Cabinet as to those matters. However, in my view, the clear import of the above evidence, and Minister Edmond's experience at that point, meant that she knew, and intended, that in doing so the Freedom of Information Cabinet exemption would be triggered. Nothing seems to have been done by her to address any disadvantages of that course.
- 6.587 Following the directive from Cabinet of 12 November 2002⁵⁹⁶ referred to in the last section of this Chapter, a dissemination strategy was developed within the Measured Quality Service. On 10 March 2003, from within Minister Edmond's office, a request was made for a briefing for the Minister as to the Measured Quality Phase 1 and Phase 2 Hospital reports. That briefing was drafted by Mr Collins.⁵⁹⁷ It described the dissemination strategy development, which essentially involved restricted dissemination to the District Manager, with elimination of all options for printing and distribution, and with documents marked 'Cabinet in Confidence'.

⁵⁹⁴ T5917 line 10

⁵⁹⁵ Exhibit 378, attachment 'JEC31'

⁵⁹⁶ Exhibit 340

⁵⁹⁷ Exhibit 377, attachment 'JEC13'

6.588 The briefing went on to recite, under a heading 'KEY ISSUES', the following:

Due to the restricted distribution of the Measured Quality Hospital reports (District Managers Only), difficulty may be encountered in the dissemination of the results within the Hospital environment. This may impact on the usefulness of the Hospital reports and limit the engagement of clinicians and managers to whom change is to be delivered.

The Phase 1 Hospital reports and Public report were considered by Cabinet on 11 November 2002. It is recommended that the Phase 2 Hospital reports also be considered by Cabinet, as an information submission, to afford it the same consideration for FOI exemption.

6.589 The evidence of Mr Collins was that, in the drafting the document, the second paragraph extracted above was added at the suggestion of Dr Cuffe.⁵⁹⁸ That followed what had transpired from the previous presentation and the eventual submission to Cabinet of the Phase one reports, together with the Cabinet directive extracted in the last section.

6.590 This, in my view, shows the understandable response of Mr Collins and Dr Cuffe to the directive which came from Cabinet and the Ministers, on 12 November 2002, that the hospital reports should be concealed. Employees of Queensland Health, in response, were likely to remind their political masters that Freedom of Information exemption and like practices for concealing documents ought be routinely adopted. Concealment practices of this kind, encouraged by politicians, filtered down to Queensland Health staff and, through them, to administrators in public hospitals.

6.591 Minister Edmond, reading this 10 March briefing at the time, could have been under no illusion, from the first of the paragraphs last extracted above, that Measured Quality Service staff were of the view that, due to the restricted distribution, difficulty would be encountered with the dissemination of the results in the hospital environment, detracting from the usefulness of the report and limiting discussion with and among clinicians.

6.592 In submissions on behalf of Ms Edmond it was contended that the use of the linguistic 'may' in this paragraph represented a softening of the likely impact which ought not have given concern to Minister Edmond. I do not accept that. An experienced Minister (as Minister Edmond was), having sought such a briefing, ought to have immediately seen that the Measured Quality process was being diminished by the restrictions on distribution, and attempted to ameliorate that outcome. Staff within Queensland Health, having made this 'cry for help' in relation to the Measured Quality process, it is plain, were ignored.

6.593 To the credit of Mr Collins, and his fellow staff, the identification of the difficulties presented by the dissemination strategy, particularly in the process caused by the implementation strategy, were the subject of reiteration. Mr Collins made a

⁵⁹⁸ T5934 line 50

further presentation to Minister Edmond and the Director-General, Dr Stable, on 6 May 2003.⁵⁹⁹ He made his presentation from notes in the form of a powerpoint display, which he exhibited to the first of his statements.⁶⁰⁰ From those he was able to say⁶⁰¹ he canvassed the following matters with those present at the presentation:

- In utilising the hospital reports, to obtain the serious attention of clinicians and managers without physically distributing the reports the Measured Quality Service personnel would need to undertake a presentation of approximately two hours.
- To ensure the security of the reports but to still engage clinicians and managers there had to be addressed the uncontrollable nature of the hard copy report.
- Negativity had been expressed, in the interviews undertaken thus far, about the restriction of distribution as staff had shown a great eagerness to discuss ways to improve or identify reasons for good performance.
- Importantly, hospital clinicians were reacting negatively to responding to Mr Collins because they couldn't see the individual hospital report and such clinicians were not satisfied with a response from Mr Collins to the effect that the reason that was done was because Queensland Health wanted to avoid misinterpretation.

6.594 Notwithstanding these matters, no instruction came from any person present to alter the dissemination strategy.⁶⁰² To the contrary, on 10 June 2003 the Phase two Hospital reports and Public Reports were submitted to Cabinet, as an information submission.⁶⁰³

6.595 In the Cabinet submission, which went under the hand of Minister Edmond, the sensitive nature of the hospital reports is identified, and the dissemination strategy outlined, but none of the abovementioned concerns about the disadvantages of that dissemination strategy upon the Measured Quality process is identified. The issue of necessary engagement of clinicians is identified⁶⁰⁴ but unembroidered by the negativity being experienced by Mr Collins in the field.

6.596 Minister Edmond would have known of the impact of the Freedom of Information exemption obtained by taking the Phase two Hospital reports to Cabinet. Indeed, in my view, the Phase two reports were taken to Cabinet for that purpose because that was part of the dissemination strategy developed

⁵⁹⁹ T5940

⁶⁰⁰ Exhibit 377, attachment 'JEC14'

⁶⁰¹ T5942-5944

⁶⁰² T5944 line 10

⁶⁰³ Exhibit 377, attachment 'JEC15'

⁶⁰⁴ Exhibit 377, attachment 'JEC15', paras 14 to 18 of 'Body of Submission'

following restriction imposed by Cabinet on 12 November 2002 (eg, documents marked 'Cabinet-in-confidence').

- 6.597 In my view this conduct was contrary to the public interest. Again, it was only due to the endeavours of Mr Collins and Dr John Scott, in 2004, that the measured quality process managed to survive in an effective way.

Findings against former Minister Edmond

- 6.598 It may be accepted that Minister Edmond was acting under the usual political constraints associated with Government. Nevertheless, the response of Minister Edmond to those matters constituted, at the very least, a poor example to staff of Queensland Health with respect to concealment of facts in dealing with matters at all levels, and principally at the level of hospitals.

- 6.599 I make the following findings in respect of the conduct of Minister Edmond:

- (a) During the period 19 June 1998 to February 2004 when the surgery lists were published at Ms Edmond's behest as Minister, Ms Edmond took no steps to publish the anterior lists, the outcome being misleading and not reflecting the true nature of surgical waiting time in Queensland public hospitals.
- (b) Ms Edmond's press release of 11 November 1999 headed 'Health Minister says Opposition campaign to discredit the waiting lists data is desperate and dishonest, in light of the previous press release of 3 July 1998 entitled 'Health Minister lifts the lid on waiting lists' and a further previous press release of 16 October 1998 entitled 'Labor Plan reveals hidden waiting lists' was misleading in not reflecting the true nature of surgical waiting time in Queensland Public Hospitals.
- (c) With respect to the Measured Quality Program developed by Queensland Health directed to improvement of patient safety and medical standards, following a presentation by Mr Justin Collins of Queensland Health on 13 August 2002, in which Minister Edmond was informed that use and dissemination of hospital reports was proposed to be left to District Managers, Ms Edmond directed that the measured quality program hospital reports be taken to Cabinet for noting;
- (d) Further, with respect to the Measured Quality program, following a ministerial briefing to Ms Edmond dated 10 March 2003, and a presentation to Ms Edmond by Mr Collins on 10 May 2003, in each of which Ms Edmond was informed of the deleterious effect which the Cabinet restriction of 12 November 2002 had on the use of the measured quality hospital reports, Ms Edmond directed the phase two reports be taken to Cabinet for noting and failed to include the aforesaid deleterious effect in the Cabinet Submission;

- (e) As a result of the directions or decisions in (c) and (d) above, Ms Edmond knew or believed that the Measured Quality Reports would not or may not be available to the public, and further that access by hospital staff thereto would be delayed, and use thereof restricted in a manner deleterious to the effective implementation of the policy;
- (f) The directions or decisions in each of paragraph (c) and (d) above and the outcome in paragraph (e) above, were contrary to the public interest.

Former Health Minister Nuttall MP

6.600 The Honourable Gordon Nuttall MP was Minister for Health in the Government from February 2004 to July 2005. The only matter I need canvass in this section concerning Minister Nuttall are those about his emerging knowledge of Dr Patel and the investigation of his conduct at Bundaberg Hospital. I have already canvassed these matters, in part, in Chapter Three.

6.601 On 22 March 2005, the Member for Burnett, Mr Messenger MP, raised issues about the clinical practices and procedures of Dr Patel at Bundaberg Hospital. This led to Minister Nuttall requesting a briefing from Dr FitzGerald, the Chief Health Officer for Queensland Health. Dr FitzGerald sent the Senior Departmental Liaison Officer in Minister Nuttall's office an email at 1.25pm, attaching a suggested response to Parliamentary questions,⁶⁰⁵ which included the following:

The significant issue regarding the competency of Dr Patel appears to relate to his preparedness to take on cases which are beyond the capacity of the Bundaberg Hospital and possibly beyond his personal capacity. There is no evidence that his general surgical skills are inappropriate or incompetent.

However, the fact that he has taken on those cases may reflect significantly poor judgment to a level which may be grounds for disciplinary action by the Medical Board. Thus, the Chief Health Officer has recommended that this matter be referred to the Medical Board for attention.

6.602 It seems that, later in the day, Dr FitzGerald met with the Minister and informed him, in substance, that:⁶⁰⁶

- Dr FitzGerald had conducted an investigation concerning allegations about Dr Patel.
- Such report of the investigation was near completion and would be finalised in the near future because he was awaiting benchmarking data from similar hospitals.
- Dr Patel had performed surgery outside his scope of practice.
- Dr FitzGerald had advised Bundaberg Hospital that Dr Patel was to cease performing surgery outside his scope of practice.

⁶⁰⁵ Exhibit 391

⁶⁰⁶ Exhibit 319 para 27; T5311.30-5312.12; T6134

- 6.603 Dr FitzGerald in fact finalised and produced his audit report on 24 March 2005. I accept the evidence of Mr Nuttall that a copy of that report was not given or shown to him (by any person, even his ministerial staff if they had received it) until some time after 9 April 2005. On this lastmentioned date Minister Nuttall appointed a full inquiry in respect of Bundaberg Hospital and in particular Dr Patel.
- 6.604 Minister Nuttall attended Bundaberg Hospital with Dr Buckland on 7 April 2005. He travelled there by plane via Springsure where he opened a Queensland Health facility. On arriving in Bundaberg, he participated with Dr Buckland in a meeting of staff.
- 6.605 The evidence is unclear as to precisely what Minister Nuttall and Dr Buckland discussed about Bundaberg Hospital issues, on or shortly prior to 7 April between themselves, or with others, prior to commencement of the staff meeting. But I accept that the existence of, and thereby content of, Dr FitzGerald's audit report of 24 March 2005 was not discussed.
- 6.606 I infer there must have been some discussion about the Patel issue because of what was said by Minister Nuttall to the Bundaberg meeting.
- 6.607 I find Minister Nuttall's recollection of the events of the meeting to be quite vague. That is perhaps understandable for a busy minister.
- 6.608 Evidence was given from witnesses Margaret Mears, and Karen Jenner Doherty⁶⁰⁷ of what was said by Minister Nuttall, and also Dr Buckland at the meeting. I have set out in Chapter three some pertinent parts of their recollections of the meeting and I accept that evidence.
- 6.609 An example of conflict between the evidence of these witnesses and Minister Nuttall is of what Ms Mears attributed to Minister Nuttall concerning Mr Messenger:⁶⁰⁸
- During the meeting, Mr Nuttall said that the only way we could stop the rubbish that was going on at Bundaberg Base and in Bundaberg was if we were to vote Mr Messenger out.
- 6.610 Mr Nuttall vehemently denied making such a statement.⁶⁰⁹ I do not accept his evidence in this respect.
- 6.611 Minister Nuttall also informed the meeting that the report contained (or more properly, given his state of knowledge, would contain) confidential patient information. That was untrue. It may be that Minister Nuttall was informed of this by Dr Buckland or a member of his staff. If that is so, I consider it was

⁶⁰⁷ Exhibits 507, 508 and 509, T7374-7404

⁶⁰⁸ T7375 line 35

⁶⁰⁹ T5321 line 40

reasonable for Minister Nuttall, given his state of knowledge, to accept and say that.

- 6.612 I accept that Minister Nuttall told the meeting that Dr FitzGerald's report was incomplete, and that was his true belief. That was also untrue. It is quite unacceptable, however, that he would not have taken the trouble to make a specific enquiry of Dr FitzGerald or Dr Buckland as to whether, in truth, it had been completed or what lead time was involved in such completion.
- 6.613 It will be remembered, in this regard, that Minister Nuttall had been told on 22 March, 15 days earlier, that the report was near completion. In expressing his belief as to report non-completion, Minister Nuttall was not corrected, either publicly or privately, by Dr Buckland. I return to this issue below when dealing with Dr Buckland.
- 6.614 Minister Nuttall also informed the meeting that Dr Patel could not give his version of events to the Chief Health Officer and thereby Dr Patel could not be afforded natural justice. In speaking of matters canvassed at the meeting Minister Nuttall said:⁶¹⁰
- I indicated to them that the report wouldn't be able to be released because Dr Patel wouldn't have a chance to respond to the report.
- 6.615 Minister Nuttall said that what was in his mind was that the audit report was a type of document which ordinarily would not be released, being a clinical audit.⁶¹¹ But that, in my view, was not what was communicated by Minister Nuttall at the meeting (nor by Dr Buckland).
- 6.616 From what was said by Dr Buckland at the meeting there could have been no doubt in Minister Nuttall's mind that Dr Patel had by then left Australia, probably never to return and most likely unco-operative at a distance.
- 6.617 Minister Nuttall's choice of language at the meeting was poor. I find it reprehensible that he was prepared to say at the meeting, in effect, that Dr FitzGerald report would remain incomplete because Dr Patel would not have a chance to put his side of the story. If that is what he was told by Dr Buckland, or his staff, then he was at best naive and at worst disingenuous in his asserted acceptance of that advice. To a politician of Minister Nuttall's obvious experience, any such advice would obviously be nonsense.
- 6.618 Minister Nuttall commissioned a wide ranging review on 9 April 2005. He did so on the advice of Dr Buckland. Minister Nuttall's evidence was to the effect that it was not until some days after 9 April that he came to know of reports of Dr Patel's adverse clinical history in the United States. Dr Buckland says that he

⁶¹⁰ T5319 line 55

⁶¹¹ T5319 line 50

informed Minister Nuttall to this effect on 8 April. I accept Dr Buckland's evidence in this respect.

6.619 The statements made by Minister Nuttall at the meeting show a disposition to conceal adverse information. Concealment of Dr FitzGerald's report was not in the public interest.

Findings against former Health Minister Nuttall

6.620 My findings in respect of Mr Nuttall are:

- (a) In circumstances where Mr Nuttall had no knowledge, nor made any inquiry whether Dr FitzGerald's investigation or report was complete or could be completed, and Mr Nuttall had not read any report by him in complete or incomplete form, Mr Nuttall attended a meeting at the Bundaberg Base Hospital on 7 April 2005 during which Mr Nuttall advised hospital staff present that:
 - (i) The report being prepared by the Chief Health Officer was incomplete, when Mr Nuttall had made no enquiry as to whether this was true;
 - (ii) Dr Patel had not given his version of events to the Chief Health Officer and, therefore, had not been afforded natural justice; the report, therefore, could not be completed or publicised in incomplete or completed form.
- (b) Such conduct was misleading, unreasonable and careless.

Dr Buckland

6.621 There are a number of matters to be canvassed with respect to Dr Buckland:-

- The events on or about and following 24 March 2003 with respect to Dr Patel.
- The meeting in Bundaberg attended by Dr Buckland, with Minister Nuttall, on 7 April 2005.
- The events concerning Mr Berg at Townsville Hospital in 2002.
- The events concerning the North-Giblin report in or about May 2005.
- Earlier events in 2003 concerning an alleged instruction to destroy Queensland Health documents.

6.622 As I have already canvassed the North-Giblin report and Berg issues in Chapters Four and Five respectively, I do not propose to repeat those here. I dealt with the 7 April 2005 meeting issues in Chapter Three and earlier in this Part. I need to expand upon that.

Dr Buckland's background

- 6.623 Dr Steve Buckland is a very experienced medical bureaucrat.⁶¹² He has a medical background, graduating from the University of Queensland with a Bachelor of Medicine and a Bachelor of Surgery in 1976. He was registered as a medical practitioner in 1977. He became a Fellow of the Australian College of Occupational Medicine (now the Australasian Faculty of Occupational Medicine of the Royal Australian College of Physicians) in 1985. He obtained specialist registration in the specialty of occupational medicine in 1991.
- 6.624 Dr Buckland obtained a Masters Degree in Health Administration from the University of New South Wales in 1990. He became an Associate Fellow of the College of Health Service Executives in 1990. He became a Member of the Royal Australian College of Medical Administrators in 1999.
- 6.625 Dr Buckland worked⁶¹³ as a medical professional from 1977 until 1999. He was Medical Superintendent of Redcliffe Hospital from December 1989 and District Manager and Medical Superintendent in the Redcliffe-Caboolture Health Service District from 1996.
- 6.626 From August 1999 to July 2002 Dr Buckland was Queensland Health's Southern Zone Manager. From 29 July 2002 to 1 November 2003 he was General Manager Health Services (having acted in that capacity at various times previously). He was Acting Director-General of Queensland Health from 1 November 2003 to 29 April 2004, being appointed permanently to that position on the latter date. He remained in that position until 26 July 2005 upon which date his employment was terminated by the Queensland Government.
- 6.627 From the above recitation of background, and the evidence given by Dr Buckland, it is clear that he is a man of experience and intelligence. He was also far from naïve in matters of medical administration. These comments, however, prove a double-edged sword for Dr Buckland in an endeavour to explain away his conduct by reason of, for example, deference to Minister Nuttall or delegation of responsibility to Chief Health Officer Dr FitzGerald.

Dr Patel

- 6.628 It is convenient to deal first with issues pertaining to Dr Patel. It was on 22 March 2005 that Dr Buckland was first informed of Dr Patel, together with the fact that Dr FitzGerald had been undertaking an investigation into general surgery services at the Bundaberg Hospital.⁶¹⁴ On that day Dr Buckland received an oral briefing from Dr FitzGerald. He was aware that Dr FitzGerald had briefed the Minister orally and in writing the same day. When briefing Dr

⁶¹² Exhibit 335 para 5

⁶¹³ Exhibit 335 para 6

⁶¹⁴ Exhibit 335 para 17

Buckland on 22 March, Dr FitzGerald did not advise Dr Buckland to suspend Dr Patel or to take any action against him, at least at that point.⁶¹⁵

- 6.629 Dr FitzGerald completed his audit report on 24 March 2005 and on that day supplied a copy to Dr Buckland.⁶¹⁶ The same day Dr FitzGerald provided to Dr Buckland what was in effect a covering memorandum to the audit report.⁶¹⁷ He also met with Dr Buckland.
- 6.630 The effect of the evidence of Dr Buckland was that by the conclusion of the briefing of 24 March 2005, he considered that no immediate action was required with respect to Dr Patel,⁶¹⁸ and there was no advice by Dr FitzGerald that any such action was required.⁶¹⁹ Dr Buckland said that he was not informed nor had any sense that there was any major issue with respect to Dr Patel's competence and was satisfied that the matter was being dealt with (adequately) by referral of Dr Patel to the Medical Board of Queensland.⁶²⁰
- 6.631 Dr FitzGerald had advised Dr Buckland that action had been taken to limit the scope of the surgery being performed by Dr Patel and to ensure that critically ill patients were being referred to higher level hospitals.
- 6.632 Dr Buckland gave evidence that Dr FitzGerald informed him, on 24 March 2005, that 'Dr Patel was fundamentally an average surgeon ... he's not as good as some but he's not as bad as others'.⁶²¹
- 6.633 Dr Buckland agreed with Mr Douglas SC, Counsel Assisting the Commission of Inquiry, that the reference of Dr Patel to the Medical Board of Queensland might entail investigation which could take 'possibly months' and that Dr Patel might continue to work at Bundaberg Hospital in the meantime.⁶²² Further, he knew that it was within his power to suspend Dr Patel forthwith from providing clinical (but not other) services at Bundaberg Hospital, and on full pay.⁶²³
- 6.634 Mr Douglas asked this of Dr Buckland in respect of his stewardship of surgeons within Queensland Health as Director-General:⁶²⁴

I am seeking to elicit from you...in the conduct of Queensland Health during your time as Director-General, how bad a surgeon has he to be, working within Queensland Health in order to move the Director-General to cross the Rubicon and suspend that person?-- I would have to be concerned to the point where I felt that the individual was dangerous, that patients were dying unnecessarily, or that there was some other major event in terms of a surgeon's either mental or surgical capacity.

⁶¹⁵ T6138

⁶¹⁶ Exhibit 230

⁶¹⁷ Exhibit 335 attachment SMB3

⁶¹⁸ T5490

⁶¹⁹ T5490 line 10

⁶²⁰ Exhibit 335 paras 20, 22 and 24

⁶²¹ T5489 line 15

⁶²² T5496 line 35

⁶²³ T5496 line 25

⁶²⁴ T5497 lines 40-55

COMMISSIONER: You would have to have proof that they were dying or being injured, would you?—Commissioner, you would need to have significantly more evidence than I had available to me at that time.

- 6.635 The audit report,⁶²⁵ even though (as I have discussed in Chapter Three and further below) it is more muted in its terms than properly reflects the facts, remains a disturbing document. Although it did not specifically refer to Dr Patel, in the mind of Dr Buckland, it was clearly referable, principally, to the conduct of Dr Patel. I refer to the ‘summary’ of the document. The judgment of Dr Patel was clearly placed in question. Moreover, reference is made to what appears to be a disturbingly high complication rate in respect of standard procedures (28 times the national average for one common procedure) in Dr Patel’s surgical sphere.
- 6.636 To the extent that the audit report may have been, to some extent muted, the accompanying memorandum certainly was not.⁶²⁶ It is addressed to Dr Buckland from Dr FitzGerald and the subject matter was ‘Clinical Audit – General Surgical Services at Bundaberg Hospital’. The document is dated 24 March 2005. The document provides:

In February this year I was asked to undertake a clinical audit of general surgical services at Bundaberg Hospital. As you are aware, the events which triggered this audit have now been the subject of questions in Parliament.

The report of the clinical audit is now complete and I have attached a copy of this memorandum. There are issues which I need to bring to your attention. There is evidence that the Director of Surgery at Bundaberg Hospital has a significantly higher surgical complication rate than the peer group rate (Appendix 1). In addition, he appears to have undertaken types of surgery which, in my view, are beyond the capability of Bundaberg Hospital and possibly beyond his own skills and experience, although his surgical competence has not been examined in detail. I believe his judgement, both in undertaking these procedures and also delaying the transfer of patients to a higher level facility, is below that which is expected by Queensland Health. I would recommend that these matters should be examined by the Medical Board and have written to the Executive Officer – Mr Jim O’Dempsey, bringing the matter to his attention.

The audit report also identifies that there has been a failure of systems at the hospital which has led to a delay in the resolution of these matters. The credentials and clinical privileges committee has not appropriately considered or credentialled the doctor concerned. The executive management team at the hospital does not appear to have responded in a timely or effective manner to the concerns raised by staff, some of which were raised over 12-months ago. While the report makes a number of recommendations for system improvements, I would recommend that some discussion should occur with the hospital management, reminding them of their responsibilities to put such systems in place and ensure they respond appropriately to reasonable clinical quality concerns.

- 6.637 A number of disturbing features, concerning the competence, judgment and character of Dr Patel, are identified in this document:-

⁶²⁵ Exhibit 230

⁶²⁶ Exhibit 335, Attachment SMB3

- He had undertaken (and thereby, implicitly had a penchant for undertaking) types of surgery which, in Dr FitzGerald's view were beyond the capability of the Bundaberg Hospital and possibly beyond his own skills and experience.
- He had delayed (and implicitly had a penchant for delaying) the transfer of patients to a higher level facility, at a standard below that expected by Queensland Health.
- The matters in question were sufficiently serious to be examined by the Medical Board of Queensland.
- Dr Patel (a surgeon operating on patients by then for almost two years at Bundaberg) had not been credentialed or privileged in accordance with Queensland Health policy.
- There had been a failure of systems at Bundaberg Hospital which led to a delay in investigating these matters, concerns about these matters first being raised 12 months earlier.

6.638 Dr Buckland agreed that the audit report and the 24 March memorandum, to some extent, contradicted each other,⁶²⁷ the latter being more critical of Dr Patel. He agreed that he did not attempt to elicit from Dr FitzGerald the reason for such contradiction.⁶²⁸

6.639 Dr Buckland agreed⁶²⁹ that, knowing what he then knew about Dr Patel, he would not have let that doctor perform elective surgery upon him (Dr Buckland), although Dr Buckland did indicate that he had not previously considered that as an issue.

6.640 Following the briefing on 24 March 2005, Dr Buckland had a telephone conversation and an email exchange with Mr Peter Leck, the District Manager of Bundaberg.⁶³⁰ Dr Buckland said in evidence that he did not take up with Mr Leck the issues upon which he had been briefed that day.⁶³¹ Rather he had a conversation with him in an attempt to arrange for Dr Patel to work over the Easter break which would conclude in early April 2005. By that exchange Dr Buckland's clear endeavour was an attempt to maintain the provision of Dr Patel's services at Bundaberg Hospital.

6.641 In my view, the conduct of Dr Buckland (and Dr FitzGerald, as I discuss below) in their disposition of the Dr Patel issue, at the latest by the end of 24 March 2005, was wholly unsatisfactory. On any fair or intelligent reading of it, the material canvassed in the audit report, as augmented by the memorandum of that date, was such as to move any person in a senior stewardship role, having

⁶²⁷ T5562 line 20

⁶²⁸ T5562 lines 22-60

⁶²⁹ T549p line 10

⁶³⁰ Exhibit 335 attachment SMB4

⁶³¹ T5500 line 20

regard to the safety and interests of patients, to suspend Dr Patel from providing any further surgical services. At the very least Dr Patel remained uncredentialed and unprivileged. As noted above, he could have been suspended on full pay, permitting him to provide other non-surgical services. Any decision other than suspension, in my view, was negligent. This is so even if, in truth, Dr Patel was soon to depart Bundaberg in any event.

- 6.642 Dr Buckland's attempt to sheet home responsibility to Dr FitzGerald by, in effect, delegating to him the need to advise Dr Buckland that Dr Patel ought to be prevented from providing surgical services until further notice, evidences lack of candour on his part. It may be accepted that Dr FitzGerald was closer to the issues, having undertaken the audit. However the information placed before Dr Buckland by Dr FitzGerald, including the memorandum of 24 March, ought to have left Dr Buckland in no doubt that he was obliged to suspend Dr Patel immediately. He was derelict in his duty in not doing that.
- 6.643 Moreover, when seen in the light of his conduct on 7 April, his conduct on this occasion, in my opinion, was affected, at least in part, by a desire to put an end to any inquiry into Dr Patel's conduct, thereby limiting further public discussion and criticism. The issue of Dr Patel had been raised at a political level, by Mr Messenger in Parliament. Dr Buckland knew that Dr Patel might soon leave Bundaberg.

The 7 April meeting

- 6.644 The events at the 7 April 2005 meeting are canvassed in Chapter Three of this report, and also in the above subsection of this section of the report concerning Minister Nuttall.
- 6.645 Dr Buckland and Minister Nuttall attended a staff meeting in Bundaberg on 7 April 2005. At no time between 24 March and 9 April 2005 did Dr Buckland ask Minister Nuttall whether he had received or read the audit report.⁶³² Nor did he at any time discuss the content of it with him. In evidence he said that:⁶³³

I made an assumption, and maybe that's an incorrect assumption, that because the Minister was dealing directly with Dr FitzGerald on this case and because of the nature of the case, that in fact a report may well have been made available to him or his staff.

- 6.646 Dr Buckland said that he did not even take a copy of the report with him to Bundaberg for the meeting.⁶³⁴ Some briefing of Minister Nuttall by Dr Buckland must have taken place but it is difficult to know precisely what that was. What was said by each at the meeting in the presence of the other was, in the above circumstances, surprising and inexplicable.

⁶³² T5503 line 5

⁶³³ T5503 line 20

⁶³⁴ T5503 line 55

6.647 Minister Nuttall told the meeting the FitzGerald Report was incomplete. Dr Buckland did not correct the Minister. Dr Buckland acknowledged that he told the staff meeting that:

As Dr Patel had left the country, the audit process being conducted by Dr FitzGerald in relation to Dr Patel would be difficult to finalise as natural justice had not been afforded to him (Dr Patel).⁶³⁵

6.648 Yet, as already mentioned, he had a copy of Dr FitzGerald's completed report.

6.649 Ms Mears, a staff member present at the 7 April meeting said Dr Buckland also said at the meeting (necessarily referring to Dr Patel and any replacement).⁶³⁶

How are we going to get him back from America now?

...

No decent doctor would want to come to Bundaberg to work in these circumstances.

6.650 Dr Buckland agreed it was 'probable' he made each of these remarks.⁶³⁷

6.651 Dr Buckland acknowledged that he had conducted matters at the meeting rather poorly in implying that the audit process had not been completed.⁶³⁸ To explain his abovementioned statement, he said that he intended to communicate the true position, namely that Dr FitzGerald's audit report was only the start of the process.⁶³⁹

The whole process is not a process of accusation, the process is a process of improvement, and trying to do that in a no-blame situation, so there may well have been, as I said earlier, plausible or understandable, or even clinically correct explanations for certain sets of outcomes. So, these sorts of things have to be fully investigated ... that was my belief at the time, that it would be very difficult because Dr Patel was not there to be able to inform the whole process. I mean, sure we have grabbed the data, we could have looked at that, and Dr FitzGerald had done some of that in relation to infection, but not to the whole patient cohort

6.652 I put the following to Dr Buckland:⁶⁴⁰

If Dr Patel had left the country and wasn't coming back, you would never be able to accord natural justice to him in the way you have described it? .. That's probably – that is probably true, Commissioner, yes.

You would have known that at the time and, therefore, you were going to close the whole inquiry down? -- No, that's not true. That wasn't the intention at all. We gave a very clear indication, both the Minister and myself, that Dr FitzGerald would be returning to Bundaberg to meet with staff to talk about his findings and to meet with the District Executive to be able to follow through with what he had.

⁶³⁵ T5505 line 30

⁶³⁶ Exhibit 507 para 15

⁶³⁷ T5567 line 5-25

⁶³⁸ T5507 line 5

⁶³⁹ T5505-5506

⁶⁴⁰ T5506 lines 40 to 60

- 6.653 This, in my view, comprised Dr Buckland's stance in respect of Dr Patel. That is, the audit report was the end of the investigation by Queensland Health of Dr Patel and the complaints made about him. It would not be released. Dr FitzGerald would return to Bundaberg only for the purposes of placating staff who had complained about Dr Patel and to follow through with the District Executive, presumably in terms of future management. Dr Patel was gone. That dispensed with the trouble of further investigation. Yet Dr Buckland must have known that Dr Patel's absence did not prevent, nor impede, a full investigation of his conduct, as subsequently occurred.
- 6.654 As is recorded in Chapter Three of this report, shortly following the 7 April meeting, Dr Keating took Dr Buckland aside and told him of the outcome of his (Keating's) 'Google' search in respect of Dr Patel's disturbing US history. Dr Buckland did not inform the Minister of that because he wished to undertake his own search that evening. He did so, and advised Minister Nuttall the following day. Only then did he recommend to the Minister the undertaking of a detailed inquiry.
- 6.655 What stymied Dr Buckland's intention was this 'Google' search. Once he found that information was on the net Dr Buckland must have known that it would be discovered by others. That is why, in my opinion, he recommended a detailed Queensland Health inquiry. This was announced on 9 April 2005.

The surgical access team's 30 July 2003 submission

- 6.656 The Surgical Access Team of Queensland Health made an unsolicited submission to Dr Buckland, who was then General Manager of Health Services, in a document dated 30 July 2003. The concern of the submission was that a number of hospitals were engaged in reclassification of patients from emergency patients to elective surgery patients and thereby illicitly gaining additional funding.
- 6.657 There was a clear disagreement about this issue between the Team and Health Service Districts which it is not necessary for me to resolve. I should indicate, however, that Dr Buckland's view is probably the preferred one, namely that whilst one or two hospitals may have been illicitly reclassifying patients, the then surgical funding rules were vague. In stating this I imply no criticism of Mr Walker and his fellow Team members. They were diligent staff members seeking to ensure proper expenditure of departmental funds.
- 6.658 Of greater importance, in the context of any culture of concealment within Queensland Health, is the evidence that there was a direction that the 30 July submission be destroyed.
- 6.659 Whilst, as noted below, there is no question that ultimately a direction was communicated to the Surgical Access Team that original and electronic copies of the document be destroyed, a hard copy of the document was retained within

the office of the General Manager Health Services, and, in addition, information technology analysis also revealed that an electronic copy had not been ultimately deleted from the Queensland Health network.⁶⁴¹

- 6.660 There is no direct evidence to the effect that Dr Buckland gave any person an instruction that the 30 July submission be destroyed.
- 6.661 Dr Glenn Cuffe was Manager, Procurement Strategy Unit, of Queensland Health, from 1999 to 2004. He is now the Director, Analysis & Evaluation Unit, Innovation Branch, Innovation and Workforce Reform Directorate in Queensland Health. Dr Cuffe was an impressive witness. I accept him as a truthful and reliable witness. However that acceptance does not necessarily resolve this issue against Dr Buckland.
- 6.662 Dr Cuffe gave evidence⁶⁴² that shortly after a meeting of 15 August 2003, attended by representatives of the Surgical Access Team, Dr Buckland, Dr Cuffe and Ms Deborah Miller, he received a telephone call from Ms Cheryl Brennan, the Executive Secretary to Dr Buckland.
- 6.663 Dr Cuffe knew Ms Brennan very well. He said that he did not recall exactly what Ms Brennan said; however 'she communicated a direction that hard copies of the 30 July 2003 submission held in the SAS were to be destroyed and that the copies on the network were to be deleted'.⁶⁴³
- 6.664 Dr Cuffe said⁶⁴⁴ that Ms Brennan, to his recollection, did not mention Dr Buckland or any other persons name as the person who gave the direction but he assumed it came with Dr Buckland's knowledge. Upon receiving the direction he spoke to Mr Walker and Mr Roberts of the Surgical Access Team and passed on the direction.
- 6.665 Dr Buckland⁶⁴⁵ and Ms Miller⁶⁴⁶ deny having given or knowing of any such instruction given to Ms Brennan. Ms Brennan has no recollection one way or the other of having received or given such direction.⁶⁴⁷ Ms Brennan was quite distressed and did not give oral evidence but gave a written statement to that effect.
- 6.666 In early 2004 Dr Buckland had a conversation with Dr Cuffe. One of the issues raised was to the effect that Dr Buckland had been informed by one of his staff members that such staff member had seen a copy of the 3 July submission in the Surgical Access Service work area team. It seems clear that Dr Cuffe could not recall the exact words used. He expanded upon this in examination.

⁶⁴¹ Exhibit 495 paras 21, 22; T6197, T6222

⁶⁴² Exhibit 426

⁶⁴³ Exhibit 426 para 11

⁶⁴⁴ T6554 line 55

⁶⁴⁵ Exhibit 459 para 20

⁶⁴⁶ Exhibit 416 para 31

⁶⁴⁷ Exhibit 425 paras 15 to 17

To Mr Douglas SC⁶⁴⁸ and to Mr Applegarth SC,⁶⁴⁹ Dr Cuffe related the following:-

How certain are you that in this conversation you had with Dr Buckland that he was in fact referring to the 30 July submission, ... as opposed to any other submission that may have preceded it or followed it? -- Well, he – his words were, if I can recall to the best of my ability, the document that was asked to be destroyed had been seen on the officer's desk, which was a 30 July submission.

...Dr Buckland wasn't specific about the document? -- No, he – my recollection is that he said that the document that he had asked – or that had asked to be destroyed was – had been seen on the desk in the Surgical Access Service.

- 6.667 Dr Cuffe, and the witnesses from the Surgical Access Team, say that they remember the events because it was the first time in the history of their long employment with Queensland Health that any had been asked to destroy a document. I accept that Dr Cuffe received such a direction. But the apparent uncertainty of Dr Cuffe's exact recollection of the conversation, the substance of which he relates in the previous paragraph, has caused me to have some doubt that the direction came from or was ratified by Dr Buckland. Whilst I reiterate that I found Dr Cuffe a thoroughly reliable, and indeed engaging witness, to make a finding of such seriousness against Dr Buckland on the basis of the above evidence, in my view, would be improper.
- 6.668 Before leaving this issue I should advert to the evidence of Ms Miller in respect of the discrete issue of the removal of the 30 July submission from RecFind, a document management system maintained by Queensland Health. RecFind is an index, not a data storage system, upon which the document itself is contained.⁶⁵⁰ The removal of the reference to the document on RecFind is not to delete the document from the computer server upon which it is stored.
- 6.669 Ms Miller⁶⁵¹ was a Principal Project Officer attached to Dr Buckland's office. She was, in effect a senior liaison officer. She possessed tertiary qualification in nursing and business administration. She had worked for Dr Buckland's predecessor, Dr Youngman, in the same capacity, for two years.
- 6.670 Ms Miller gave evidence to the effect that, as she had done on other occasions with different documents, she instructed that the 30 July submission be removed from RecFind because, in effect, her understanding was that until a submission to the General Manager Health Services was approved, it remained a draft.⁶⁵²
- 6.671 This approach to the disposition of documents, in my opinion, is fanciful. A submission, even if misconceived in content, remains just that. The approach

⁶⁴⁸ T6557 line 25

⁶⁴⁹ T6579 line 55

⁶⁵⁰ see T6548 (Cuffe); T6407 (Miller)

⁶⁵¹ Exhibit 416

⁶⁵² Exhibit 416 paras 20,21; T6413

certainly did not accord with the Executive Services Guidelines.⁶⁵³ Such a practice would involve a submission to the Minister or Senior Service being more difficult to locate, for example upon a *Freedom of Information Act* search in that if one was looking for a submission, then (as Dr Cuffe agreed)⁶⁵⁴ the first place one would go looking is in RecFind. To look elsewhere would only make the task harder.

6.672 Dr Buckland eschewed any knowledge of such practice being routinely adopted or the so-called 'draft' characterisation of submissions.⁶⁵⁵ I accept his evidence in this respect.

Findings against Dr Buckland

6.673 I make the following findings with respect to Dr Buckland in addition to those findings I have made in Chapter Four:

- (a) On and after 24 March 2005, being in possession of information that provided reasonable grounds for Dr Buckland to believe or suspect that:
 - (i) Dr Jayant Patel, the Director of Surgery at the Bundaberg Base Hospital ('the Hospital') had a significantly higher complication rate than his peers;
 - (ii) Dr Patel undertook surgery beyond the capacity of the Hospital and possibly beyond his own skill and experience;
 - (iii) Dr Patel had delayed the transfer of patients to tertiary hospitals in circumstances where those patients should have been so transferred;
 - (iv) The Chief Health Officer Dr FitzGerald had serious concerns about Dr Patel's clinical judgment;
 - (v) Dr Patel had never been credentialed or privileged by the Hospital, under Queensland Health's Policy requiring as much;
 - (vi) Staff complaints about Dr Patel had not been appropriately acted upon by the Hospital executive over a period of at least 12 months;
 - (vii) The data presented in the Chief Health Officer's audit report of 24 March 2005 showed that the complication rates for laparoscopic cholecystectomy procedures at the Hospital were 28 times the national average over the previous 18 months.

⁶⁵³ Exhibit 460

⁶⁵⁴ T6549-6550

⁶⁵⁵ T7109 line 10-20

- (viii) The Hospital had increased rates of wound infection and wound dehiscence probably associated with Dr Patel's surgery; and
- (ix) Issues with respect to Dr Patel had been raised in Parliament, and
- (x) Dr Patel would be continuing to perform procedures at the Hospital at least until 1 April 2005 and possibly until 31 July 2005

Dr Buckland (A) failed to take any, or any appropriate action, to suspend him from duty, or providing surgical services, or further restrict his scope of practice, and (B) failed to take any step to further investigate, or cause any further investigation of Dr Patel's conduct until 9 April 2005, after Dr Patel had left the country. Each failure, in the circumstances, was deliberate or careless and incompetent and unreasonable.

- (b) Being in possession of the information referred to in paragraph (a) above, Dr Buckland deliberately or carelessly and incompetently and unreasonably:
 - (i) Failed, at any time, to provide Minister Nuttall, but in particular prior to the meeting at the Bundaberg Hospital, a copy of the audit report;
 - (ii) Further, failed, at any time, to provide Minister Nuttall with a copy of the audit report or the memorandum of Dr FitzGerald to Dr Buckland dated 24 May 2005, which accompanied delivery of the report to Dr Buckland;
 - (iii) Failed to enquire of the Minister, at any time, but in particular prior to the meeting at Bundaberg Hospital on 7 April 2005, whether he had read or knew of the contents of the said audit report or the said memorandum;
 - (iv) Failed, at any time, but in particular prior to the meeting at Bundaberg Hospital on 7 April 2005, to inform and accurately brief the Minister on the content of the audit report or the memorandum;
 - (v) Advised the Minister, on or shortly prior to 7 April 2005, that the audit report could not be completed because of the absence of Dr Patel from Australia; and
 - (vi) Formed the view and determined, on or shortly prior to 7 April 2005 (and prior to Dr Buckland undertaking an internet search revealing the disciplinary record of Dr Patel in the United States) that any further investigation of Dr Patel's conduct at Bundaberg Hospital would not be pursued because of his absence from Australia, the lastmentioned fact being a convenient excuse for such view and determination because it

afforded a means of avoiding further embarrassment to Queensland Health arising from Parliamentary and media publicity.

- (c) On 7 April 2005 at Bundaberg, in circumstances where Dr Buckland knew that the Chief Health Officer's audit report had been completed on 24 March 2005:
- (i) Dr Buckland advised a meeting of staff that the report could not be completed because Dr Patel had left Australia, and
 - (ii) Dr Buckland advised Minister Nuttall to that effect.

Dr FitzGerald

Dr FitzGerald's background

- 6.674 Dr Gerrard Joseph FitzGerald, from the end of January 2003 until quite recently, held the position of Chief Health Officer in Queensland Health. That is a statutory position created in accordance with the *Health Act* 1937. It entails membership of a number of statutory bodies, including the Medical Board of Queensland. In addition the Chief Health Officer provides advice to the Minister and the Director-General on the quality and standards of health care.
- 6.675 Under Part 6 of the *Health Services Act* 1991, Dr FitzGerald was appointed, from 21 April 2001 as an investigator. This entailed him having standing approval to undertake investigations as may be required from time to time within Queensland Health.⁶⁵⁶
- 6.676 Dr FitzGerald possesses an impressive curriculum vitae.⁶⁵⁷ He obtained a Degree of Bachelor of Medicine and Bachelor of Surgery from the University of Queensland in 1976. In 1993 he became a Foundation Fellow of the Australasian College for Emergency Medicine. He obtained a Bachelor of Health Administration from the University of New South Wales in 1998. He became a Fellow of the Royal Australian College of Medical Administrators in 1990. Also in 1990 he obtained his Doctorate in Medicine from the University of Queensland.
- 6.677 Dr FitzGerald has held a number of statutory and teaching positions. He was Medical Director of the Queensland Ambulance Service from 1990 to 1993 and Commissioner of that service from January 1994 to January 2003, when he took up his present position.

⁶⁵⁶ Exhibit 225 paras 9, 10

⁶⁵⁷ Exhibit 225 attachment GF1

6.678 I might add that, from my impression of him in the witness box, and from the evidence of others, Dr FitzGerald seems to be, and to be regarded as an affable and decent person.

Clinical audit

6.679 The history of matters leading to the canvassing and pursuit of the clinical audit undertaken by Dr FitzGerald appear in Chapter Three of this report.

6.680 It was on 17 January 2005 that Dr FitzGerald first became involved in a prospective clinical audit concerning Dr Patel. It was then that Dr FitzGerald first became aware that the clinical standards of Dr Patel had been called into question. Dr FitzGerald was also advised by Mr Leck, in Mr Leck's memorandum of 19 January 2005⁶⁵⁸ that Dr Patel did not intend to renew his (Dr Patel's) contract when it expired on 31 March 2005.

6.681 Dr FitzGerald decided that further enquiries would be necessary before he could offer any opinion about standards. He advised Mr Leck that his review would take the form of a clinical audit and would not be an investigation into any individual.⁶⁵⁹ That was, to say the least, curious, given that the material forwarded by Mr Leck, which included the letter of Ms Toni Hoffman of 22 October 2004 and the interviews with the three practitioners undertaken by Mr Leck and Dr Keating in the fortnight following that, was focused upon Dr Patel and his practices.⁶⁶⁰

6.682 On 14 and 15 February 2005 Dr FitzGerald, and his assistant Ms Jenkins, attended the Bundaberg Hospital to interview staff and collect further information. He said in evidence that the nature of his audit process, while at Bundaberg, was expressed to be, and intended to be 'non-judgmental or non-threatening to ensure that people do participate in the clinical audit'.⁶⁶¹ Again, that was curious, given the nature of the material and the potential seriousness of the criticism of Dr Patel which it contained.

6.683 The principal issue of concern for Dr FitzGerald during his visit, it seems, was that Dr Patel was conducting surgical procedures beyond the scope of practice of the hospital and that there was delay in transfer to a larger hospital where appropriate.⁶⁶²

6.684 Prior to leaving Bundaberg Dr FitzGerald obtained assurances from Dr Patel and Dr Keating that these practices would cease.⁶⁶³ Unfortunately, and in my view inappropriately, he did not give any definition of this protocol to ensure Dr Patel's

⁶⁵⁸ Exhibit 225 attachment GF10

⁶⁵⁹ Exhibit 225 para GF61

⁶⁶⁰ Exhibit 225 attachment 10

⁶⁶¹ T3214 line 25

⁶⁶² Exhibit 225 para 65

⁶⁶³ T3210 line 25

evidently poor judgment prevented him from falling into his previous harmful habits.⁶⁶⁴

You would expect, in respect of either aspect of the undertaking, that Dr Patel was the person who would be obliged to exercise the principal judgment in respect of either matter?-- Yes, the principal judgment of whether the patient needed that procedure, and that was the procedure to be performed. The judgment of whether that procedure would be performed at Bundaberg could be determined by the Medical Superintendent, by a number of people.

In either case it would be left to his judgment, as a surgeon still undertaking work from the time the undertaking was given in February 2005 in the course of day-to-day practice at Bundaberg Hospital?-- Yes.

Was there any written protocol which was entered into in that respect?-- No.

Such as to particularise the types of matters - or exemplify the types of matters to assist Dr Keating and Dr Patel in exercising that judgment?-- Not to my - not that I was aware of, no.

Do you think it should have been, in retrospect?-- Probably. In retrospect I think the Medical Superintendent should have made it clear with the doctor concerned about what should or shouldn't be done.

I suggest you should have made it clear to Dr Patel that you, as the person eliciting the undertaking, required a very strict and exemplified adherence to what was required in that respect?-- Yes.

But it didn't happen?-- It didn't happen, no.

The fact that it didn't happen, I suggest, exemplifies a very poor approach to your undertaking of this audit. ... -- Well, I don't believe it was a poor approach. I believe, obviously in retrospect, there are things we could have done better.

- 6.685 Upon returning to Brisbane, Dr FitzGerald, on 16 February 2005, spoke to Mr O'Dempsey, from the Medical Board of Queensland, the result of which was that it was agreed that the Registration Advisory Committee of the Medical Board would defer consideration of Dr Patel's current application for renewal of registration until finalisation of his clinical report and further investigation.⁶⁶⁵ Thereafter Dr FitzGerald began to compile his report.
- 6.686 It was Dr FitzGerald's stance in evidence that there was insufficient evidence to take any particular action against any individual and to suspend anyone would be unjust and inappropriate.⁶⁶⁶
- 6.687 Dr FitzGerald's approach to conduct of the audit, and his interpretation of his results, in my view, were quite inexplicable.
- 6.688 Dr FitzGerald chose the clinical audit path as a means of responding to Mr Leck's request which concerned complaints about the competence and conduct of Dr Patel. But his position in respect of clinical audits, at the time, was.⁶⁶⁷

⁶⁶⁴ T6108 line 45, T6108 line 30 to T6109 line 10

⁶⁶⁵ Exhibit 225 para 27, T6146-T6417

⁶⁶⁶ T6138 line 40-50

⁶⁶⁷ T6121 lines 10-30

... the clinical audit should avoid adverse comments about individuals but it doesn't necessarily exclude positive comments ... the intent behind a clinical audit is to try and avoid adverse comments about individuals ... every bit of information that I have from experts in the field and from the literature regarding clinical audit, that a non-judgmental or non-adversarial approach is the way to exact systems improvements and improve the quality of health care.

- 6.689 After acknowledging that this was his approach he agreed in evidence that suspending a surgeon was something he could have done but he preferred referral to the Medical Board of Queensland. In response to a question from me in relation to the adequacy of mere reference to the Medical Board, the following answers were given by FitzGerald:⁶⁶⁸

Well, that's a grossly inadequate response though isn't it ...? -- Yes sir

You did a grossly inadequate response just to refer it to the Medical Board?--
Well, the Medical Board were in a position to take action.

So were you? -- Yes, or the administration of the hospital, yes.

- 6.690 Dr FitzGerald went on to describe his approach, and a critique thereof, in the following fashion in answer to Mr Allen, counsel for the Nurses' Union⁶⁶⁹:-

Doctor, if you follow that approach of only including positive comments about an individual and deliberately omitting any negative comments, that must necessarily present to any reader of the report a skewed picture of the individual, surely?—I'm sure you're correct, yes.

And that's what your report did?—yes.

By only including positive comments about Dr Patel and deliberately omitting any negative ones, it presented a false picture regarding Dr Patel to any reader of the report?-- I accept your point, that was not the intent, the intent was to identify the issues, the structural and organisation issues that needed to be improved to address the issue -- address the concerns.

You say that it was not your intent, but that is the obvious inevitable consequence of such an approach? -- I accept that.

- 6.691 Dr FitzGerald finalised his report on 24 March 2005 and provided a copy to Director-General Buckland under cover of a memorandum of the same date.⁶⁷⁰ Dr FitzGerald did not provide a copy of the audit report to any other person until 7 April 2005. The 24 March memorandum was not supplied to anyone else.

- 6.692 Dr FitzGerald wrote to the Medical Board of Queensland also by letter dated 24 March 2005. That letter provided (in part):

My investigations to date have not been able to determine if Dr Patel's surgical expertise is deficient, however, I am concerned that the judgment exercised by Dr Patel may have fallen significantly below the standard expected. This judgment may be reflective of his decision to undertake such complex procedures in a hospital that does not have the necessary support, and in his apparent preparedness to retain patients at the hospital when their clinical condition may warrant transfer to a higher level facility.

⁶⁶⁸ T6121 lines 40-60

⁶⁶⁹ T6121 line 50 – T6122 line 12

⁶⁷⁰ Exhibit 225 – Attachment 'GF14'

- 6.693 It is plain that Dr FitzGerald was leaving it to the Medical Board to undertake a thorough assessment or investigation of Dr Patel.
- 6.694 The audit report, to the extent that it adverts to the conduct of Dr Patel, and the memorandum of 24 March to Dr Buckland contrast in content and emphasis. Dr FitzGerald's evidence was that they 'were intended to be complementary and for a different purpose'.⁶⁷¹ He said that the memorandum was intended to raise issues 'about the standard and quality of medical services ... concerning Dr Patel'.⁶⁷²
- 6.695 The content of the memorandum, in my view, was self evidently alarming. I have already canvassed this above in respect of Dr Buckland. At its base lies a non-compliance in the credentialling and privileging policy required by Queensland Health particularly in circumstances in which, as in the case of Dr Patel, the employee was a foreign trained surgeon who had not previously worked in Australia prior to appointment to Bundaberg where he was Director of Surgery.
- 6.696 On any view of the content of the memorandum, Dr FitzGerald was satisfied that Dr Patel had poor clinical judgment. The undertaking given with respect to undertaking particular surgery, and effecting early transfers, undefined as it was, did not address these defects. He also expressed at least strong suspicions about the clinical competence of Dr Patel.
- 6.697 The statistics about Dr Patel's complication rate for a routine procedure, set out in the report, were equally alarming. This showed a complication rate that was 28 times the national average.
- 6.698 In evidence Dr FitzGerald said:⁶⁷³

As to the conduct of clinical audits, do you consider that Queensland Health have learnt any lessons from this particular audit procedure in respect of Bundaberg?-- Well, I'm sure I have in terms of process, but certainly what we've learnt, of course, is that we do need to be - to try and get experts in initially. I felt that at the time I was being called upon to

try and judge surgical procedures where I didn't have the expert - personal expertise. The subsequent establishment of the Mattiussi Review et cetera brought that expertise to bear.

There is some other evidence before this Commission to the effect that you remarked to Dr Buckland on or about the 24th of March 2005, if not two days earlier, the 22nd of March (t)hat Dr Patel was not the best of surgeons but he also wasn't the worst?-- Yes.

Do you recall saying something like?-- That - yes, I do because that was the information we obtained from people in Bundaberg at the time, comments to that effect were made to us.

⁶⁷¹ T6115 line 45

⁶⁷² T6132 line 25

⁶⁷³ T6118-6119

I suggest to you on the information that you knew on or about the 24th of March 2005, you couldn't bring to mind a worse surgeon, that is, a more incompetent surgeon apparently than Dr Patel working within Queensland Health?-- I wouldn't - there was certainly none that I was aware of but I would - could I just comment on the fact that comment that was – he wasn't the best, he wasn't the worst, that came from the people who knew him and observed his surgery, but it also came from the data which we retrieved which we commented on at some length because one of the things that did concern us then when we drew that data from various hospitals, various hospitals are up and down across the parameters and some of them were much more.

The patients (sh)ould have been given the benefit of the doubt in relation to Dr Patel pending an investigation, shouldn't they?-- Yes, I'd accept that.

And they weren't Dr FitzGerald? -- That's true.

- 6.699 In my view, any sensible administrator in Dr FitzGerald's position, having formed the views contained not just in the audit report but in the memorandum, would have moved to immediately suspend Dr Patel from providing clinical services (on full pay). To leave matters, as Dr FitzGerald did, for investigation by the Medical Board of Queensland, with whatever delay that may entail, and in the knowledge that Dr Patel probably wouldn't, but may seek interim registration in the meantime or may leave Australia, was a wholly unsatisfactory response.
- 6.700 The audit report was an inadequate document. I canvass this in Chapter Three of this report. Dr FitzGerald conceded that, in drafting the report, he believed that the persons to whom the report was disseminated, and in turn those to whom it might be passed for action, would be relying upon him candidly to express the opinions he held and evidence for them.⁶⁷⁴
- 6.701 As to the audit report:
- Dr FitzGerald knew that serious allegations had been made about Dr Patel's clinical practices.
 - he knew that serious allegations had been made as to Dr Patel having a high infection rate.
 - he accepted that he had discerned from his investigation that Dr Patel apparently had a high complication rate (in the case of the common procedure, cholecystectomies, 28 times the national average)⁶⁷⁵ and infection rate but he didn't identify this as a freestanding category of complaint in his summary.
- 6.702 On 22 March 2005 Dr FitzGerald provided to Minister Nuttall a document dealing with the Patel issues.⁶⁷⁶ Dr FitzGerald accepted that he should have been far more specific and direct in conveying the information he did in that document, particularly in relation to infection rate.⁶⁷⁷

⁶⁷⁴ T6098 line 45

⁶⁷⁵ T6109 line 30

⁶⁷⁶ Exhibit 391

⁶⁷⁷ T6162 line 50

6.703 In my view Dr FitzGerald:

- adopted a wholly inappropriate approach to the investigation in response to the request of Mr Leck. If a 'no blame' neutral clinical audit, of the type he described, was a generally acceptable method of investigation (which I do not accept) it was a wholly inappropriate response to the complaints about Dr Patel given the content of the allegations and the materials provided to Dr FitzGerald by Mr Leck.
- at the lowest, the approach of Dr FitzGerald in the views expressed and advice he gave in his audit report and the memorandum was inappropriate and incompetent. Any sensible person in his position ought to have immediately advised suspension of Dr Patel.
- permitting Dr Patel to continue to practise (including during the term of the audit once Dr FitzGerald had formed his views) and then leaving it to the Medical Board of Queensland to take whatever steps they thought necessary, was a course designed to minimise publicity and in effect conceal the truth.

6.704 In my view, Dr FitzGerald had it in his mind from the outset that it was likely that Dr Patel would not remain in practice in Australia beyond 31 March 2005. This was likely to put an end to the issue. He did this against the background of knowing that from 22 March 2005 the issue had become a political one, it being raised in Parliament by Mr Messenger MP, with the consequence of him having to provide information to the Minister that same day.

6.705 Importantly, Dr FitzGerald knew that Dr Patel, a foreign trained surgeon, who was not credentialled and privileged under longstanding Queensland Health policy, and was the subject of serious (albeit not yet wholly substantiated) complaints, had been undertaking surgery in Bundaberg on many patients for two years and would continue to do so, unless stopped, until he left, whenever that was. The interests of the patients were ignored.

Findings against Dr FitzGerald

6.706 My findings in respect of Dr FitzGerald are these in addition to those findings I have made in Chapter Four:

- (a) On 24 March 2005 Dr FitzGerald, believing that there were reasonable grounds to believe or suspect that, following completion of his audit investigation prior to 22 March 2005, and his audit report of the Bundaberg Base Hospital:
 - (i) Dr Patel had a significantly higher complication rate than his peer group;
 - (ii) Dr Patel undertook surgery beyond the capacity of the Hospital and possibly beyond his own skill and experience;

- (iii) Dr Patel delayed transferring patients who should have been transferred;
 - (iv) Dr Patel had not been appropriately credentialed or privileged;
 - (v) There was reason to hold serious concerns about Dr Patel's clinical judgment;
 - (vi) Staff complaints about Dr Patel had not been appropriately acted upon by the Bundaberg Base Hospital Executive
- (A) deliberately or carelessly and incompetently failed to include this information in his report of 24 March 2004; (B) deliberately or carelessly and incompetently failed to inform the Minister for Health of any of the above information when it would have been reasonable to inform the Minister because on 22 March 2004 he advised him that there was 'insufficient evidence to take action against any individual' as at the time he had no comparative data or complication rates; (C) in addition to the above matters knowing that the completion rate at Bunderburg for a common surgical procedure was 28 times the national average, deliberately or carelessly and incompetently failed to take steps to suspend Dr Patel, or advise the Director-General, Dr Buckland that Dr Patel be suspended from surgical practice until further notice.
- (b) Each omission, or at least some of them, were for the purpose of limiting the publication of these matters to the general public.
 - (c) Dr FitzGerald's response to the complaints and concerns raised by Mr Peter Leck, in light of his investigations leading to his audit report, was inadequate in the following respects:
 - (i) Dr FitzGerald failed to take any steps to review, or have reviewed, Dr Patel's credentials or clinical privileges;
 - (ii) Dr FitzGerald failed to take any step to restrict Dr Patel's surgical practices through suspension, limitation of practice, or restriction of duties at the Hospital, whether temporarily or otherwise, when such action was reasonably appropriate and warranted;
 - (iii) Dr FitzGerald failed to provide a copy of his report to the Minister for Health instead of relying on the Director-General to do so.
 - (iv) Dr FitzGerald failed to provide a copy of his report to the District Manager until 7 April 2005, some 2 weeks after the matter had entered the public domain notwithstanding that Mr Leck commissioned him to perform the audit;
 - (v) In circumstances where Dr FitzGerald had doubts about Dr Patel's clinical judgement, he failed to clearly identify with Dr Patel and the Director of Medical Services, Dr Darren Keating, the scope of practice with which Dr Patel was to comply;
 - (vi) Dr FitzGerald failed to obtain a specific undertaking from Dr Patel with respect to paragraph (v) above.

I recommend that the Director-General give consideration to taking disciplinary action against Dr FitzGerald pursuant to s87(1)(a) of the *Public Service Act* 1996 on the basis that he may have performed his duties carelessly and incompetently.

Dr Keating

- 6.707 I have canvassed in Chapter Three the conduct of Dr Keating at Bundaberg.
- 6.708 Dr Keating's conduct, in my view, evinces an intention to shield affairs in his domain from any real scrutiny. There was a very steady stream of complaints about Dr Patel, containing very serious allegations and emanating from well qualified people. Those complaints were not well received and, in my view, the circumstances (which are set out in detail in Chapter Three) demonstrated more than a mere failure to comply with the Queensland Health policy on complaints handling. They demonstrated a propensity to downplay or 'fob off' any attempts to scrutinise Dr Patel's conduct.
- 6.709 Specific instances were these:
- (a) When Ms Hoffman raised concerns about oesophagectomies in June 2003, Dr Keating told her that she should raise the matter with Dr Patel herself and that, on Ms Hoffman's version (which I accept), Dr Patel was a very experienced surgeon who should not be lost to the hospital.
 - (b) When Mr Fleming complained to the Base about Dr Patel in October 2003, he testified (and I accept) that the conversation with Dr Keating began with the latter saying that Dr Patel was 'a fine surgeon and we are lucky to have him';
 - (c) When Dr Cook raised concerns about the same issue in July 2003, Dr Keating told him that they would be considered by the Credentialing and Privileging Committee, even though there was never such a committee for surgeons. Dr Keating did not return to Dr Cook after he discussed the matter with Dr Patel, nor otherwise seek the advice of an independent surgeon.
 - (d) Whereas Dr Smalberger gave cogent evidence (which I accept) that he sought to make a formal complaint about two issues concerning the care given to P51, namely Dr Patel's poor clinical decisions and his unprofessional conduct, Dr Keating did not document the matter, and treated the approach simply as a request for advice in dealing with Dr Patel.
 - (e) When the Renal Unit nurses approached Dr Keating through their line manager about the 100% peritoneal catheter complications, Dr Keating told line manager that if the nurses 'want to play with the big boys, bring it on'. When Dr Miach raised the same issue, Dr Keating maintained that

he did not receive the report until October 2004, which I do not accept. Even then, he took the view that the report was ambiguous, but did not return to Dr Miach and, instead, informed Mr Leck that the report was based on 'poor data'.

- (f) When Dr Keating received the Hoffman letter of 22 October 2004, he took no steps to confirm or deny the extraordinary allegation that the Director of Medicine at his hospital refused to allow his patients to be treated by the Director of Surgery, or to ensure that, at the very least, a chart audit was performed by an independent surgeon.
- (g) Indeed, even after three doctors had provided some corroboration of Ms Hoffman's concerns, Dr Keating continued to advise Mr Leck that the complaint was largely personality-based.
- (h) Dr Berens said that when he and Dr Carter raised concerns about the Kemps' oesophagectomy (against the background of the earlier complaints), Dr Keating showed little interest in investigating and that it was a matter for them whether they reported it to the Coroner, which evidence I also accept.
- (i) When Dr Rashford raised serious 'sentinel' concerns about the care of P26, Dr Keating completed a report immediately, and without speaking to the treating surgeon in Bundaberg, i.e. Dr Patel, or Brisbane. The only conclusion was that transfers should happen more promptly but even this view was not articulated in any formal policy.
- (j) There was a general trend in the evidence of Dr Keating failing to inform staff whether their complaints were being progressed.
- (k) Dr Keating's assessments of Dr Patel's performance to the Medical Board were glowing and knowingly exaggerated, even as late as February 2005.
- (l) Dr Patel was not credentialed even on an ad hoc basis, when that would have been a simple matter to arrange.
- (m) Dr Keating did not seek 'deemed specialist' status for Dr Patel with the Medical Board, even though that was the obvious way to ensure that he complied with Australian surgical standards.
- (n) When Dr FitzGerald visited the Base on 14 February 2005, and notwithstanding the serious concerns raised in Dr Keating's briefing note of early January 2005, Dr Keating did not volunteer any significant information about the perceived shortcomings of Dr Patel.

6.710 These events occurred in circumstances where Dr Patel was giving significant assistance to the Base in reaching its elective surgery targets, where there would be real difficulties in recruiting a new staff surgeon and where any

disruption of surgical services at the Base was likely to attract the kind of media attention to which Queensland Health was so averse.

- 6.711 When the matters are considered together, they lead to the view that there was a strong element of orchestrated incompetence, or wilful blindness, in Dr Keating's response to complaints about his Director of Surgery.
- 6.712 I find that Dr Keating deliberately diminished or downplayed complaints about Dr Patel. He declined to initiate inquiries into Dr Patel where, at the very least, serious concerns had been raised, and he promoted or acquiesced in a perception amongst staff that Dr Patel was 'protected' by management because he was valuable. I make no separate recommendations in that regard.

Mr Leck

- 6.713 Like Dr Keating, Mr Leck's conduct, in my view, evinces, if not a policy of calculated concealment, an attitude that discouraged any frank discussion of clinical issues within the Base.

The circumstances are discussed in Chapter Three, but I note the following in this regard:

- (a) Dr Baker gave evidence (which I accept) that when he resigned in November 2001, Mr Leck told him that the Director-General was not happy with the media embarrassment and that 'we don't want to see your career affected'.
- (b) Dr Jeliffe gave evidence (which I accept) that, when he declined to provide anaesthetic services for certain surgery on the basis that his fatigue made it unsafe, he was asked to attend Mr Leck's office and the conversation commenced with what was clearly a veiled threat, namely Mr Leck asking Dr Jeliffe to remind him of his visa status.
- (c) Mr Leck was provided with the peritoneal catheter audit in the first half of 2004 but took no steps to talk with Dr Miach.
- (d) When Ms Hoffman personally set out her serious concerns about Dr Patel to Mr Leck in March 2004 and then in October 2004, Mr Leck did not approach any independent surgeon for a review. He took no steps to disabuse staff of the perception, of which he was informed, that Dr Patel was protected, and he did not approach Dr Miach despite the extraordinary allegation that Dr Miach would not let his patients be operated upon by Dr Patel.
- (e) When an external investigation was instigated on 17 December 2004, Mr Leck is recorded as telling the Audit and Operational Review Branch that the District 'needed to be handled carefully as Dr Partell (sic) was of great benefit ...and they would hate to lose his services'.

- (f) Mr Leck emailed Dr Keating on 21 December 2004, immediately after learning of the Kemps' oesophagectomy, to ask if 'any of these patients have survived' what was, of course, elective surgery, but he did not follow up the email.
 - (g) Mr Leck's address to certain nurses on 23 March 2005 appears to have been calculated to give all those present a sense of fear as to what could happen if they raised issues outside Queensland Health. That is rather confirmed by his subsequent suggestion to the zone manager that 'perhaps we have the Audit team come up and deliver some training sessions around the Code of Conduct and deliver some firm and scary messages'.
 - (h) Mr Leck's letter to the Bundaberg News-Mail of 23 March 2005, saying that he 'had received no advice... that the allegations had been substantiated' and that there was a 'range of systems in place to monitor patient safety', at best created a false impression.
 - (i) Mr Leck was present at, and acquiesced in, the comments made by Mr Nuttall and Dr Buckland which, I am satisfied, were generally critical of the disclosure of information. This occurred in circumstances where Mr Leck should have appreciated the frustration of staff that they had been raising concerns for a long period and no serious attempt had been made to test them.
 - (j) When Mr Leck received an email on 13 January 2005 from one of the nursing staff saying simply 'Dear All, Treacherous Day', he asked the Director of Nursing to find out what was meant and continued, 'I assume it relates to Jay – so we need to quieten this down'.
 - (k) Mr Leck's email to the Zonal Manager on 7 April 2005 said 'perhaps we have the Audit Team come up and deliver some training sessions around the Code of Conduct and deliver some firm and scary messages'.
- 6.714 One needs to bear in mind that the Bundaberg Base Hospital was only 140 beds. It was a relatively small institution.
- 6.715 It beggars belief that Mr Leck could have no knowledge of the personal and professional concerns about Dr Patel, and the many complications that were arising, unless he took some steps to quarantine himself.
- 6.716 As with Dr Keating, I am satisfied that, against a background of elective surgery targets, a dearth of doctors wishing to work under the poorly resourced conditions at the Base, and Queensland Health's sensitivity to media exposure, Mr Leck discouraged criticism and complaint within the hospital generally and of Dr Patel in particular. I make no separate recommendations in that regard.

Conclusion with regard to concealment

- 6.717 Successive governments followed a practice of concealment and suppression of relevant information with respect to elective surgery waiting lists and measured quality reports. This, in turn, encouraged a similar practice by Queensland Health staff.
- 6.718 Queensland Health itself, by its principal officers Dr Buckland and Dr FitzGerald, implemented a policy of concealment and suppression of events, the exposure of which were potentially harmful to the reputation of Queensland Health and the government.
- 6.719 The conduct of officers of Queensland Health, together with its strict approach to surgical budget targets enforced by penalties, led to similar practices in hospitals, especially with respect to complaints about quality of service and it also led to threats of reprisal in some cases. These caused suppression of complaints which ought to have been exposed earlier.
- 6.720 In my view it is an irresistible conclusion that there is a history of a culture of concealment within and pertaining to Queensland Health.