Transcript of Proceedings

MR A J MORRIS QC, Commissioner

SIR LLEW EDWARDS, Deputy Commissioner

MS MARGARET VIDER, Deputy Commissioner

MR D C ANDREWS SC, Counsel Assisting
MR E MORZONE, Counsel Assisting
MR D ATKINSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

BUNDABERG HOSPITAL COMMISSION OF INQUIRY

COMMISSIONS OF INQUIRY (No. 1) 2005

BRISBANE

..DATE 25/05/2005

..DAY 3

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

THE COMMISSION RESUMED AT 9.30 A.M.

COMMISSIONER: Mr Boddice, yesterday afternoon I raised with Mr Farr a couple of matters he was going to get instructions about. Are you in a position to deal with those?

MR BODDICE: I am. Could I deal perhaps with the last first, which was an issue raised by Mr Allen in respect of issues of confidentiality?

COMMISSIONER: Yes.

MR BODDICE: Mr Allen was referring to some correspondence that he had heard between his instructing solicitors and my client, the Director-General. The issue was one, of course, of patient confidentiality.

COMMISSIONER: Let's forget about that for the moment. Is the Director-General willing to permit staff of Queensland Health to speak with the legal representatives of other parties, specifically the Nurses' Union and the AMA?

MR BODDICE: Yes.

COMMISSIONER: Yes, okay, thank you.

MR BODDICE: But, please, Mr Commissioner-----

COMMISSIONER: Is there a qualification, or is that a fact?

MR BODDICE: No, there isn't, but I wish to place on record one thing-----

COMMISSIONER: No, your client can place things on record when he gives evidence. I said to you on Monday, and I will say it again, this is not a venue for propaganda statements from the Bar table. You have confirmed the Director-General allows all Queensland Health staff to communicate with the legal representatives for both the Nurses' Union and the AMA. Unless there is some qualification of that, we can move on to the next point.

MR BODDICE: The qualification is this-----

COMMISSIONER: There is a qualification? What's the qualification?

MR BODDICE: The qualification is something I understand Mr Harper raised, which is that-----

COMMISSIONER: Is there a qualification?

MR BODDICE: Patient confidentiality, if perhaps the code system could be used that Ms Hoffman developed if there is a

concern about protecting patients. There is no qualification about speaking to anybody but there is an issue about patient confidentiality. And in our respectful submission what was adopted with Ms Hoffman is an excellent way in order to overcome that difficulty, by having a code system.

COMMISSIONER: I covered that yesterday afternoon when you weren't here. Now, can we move on to the next point?

MR BODDICE: Yes, we can. Mr Commissioner, the next point was - if we deal with them now in order of when they started in the day - at transcript page 110, Mr Commissioner, you requested information in relation to patient 1.

COMMISSIONER: P1, yes.

MR BODDICE: I am able to produce copies of the cause of death certificate, a clinical summary, patient consent form, inpatient progress notes, surgeon's report, perioperative record, perioperative nursing, and the anaesthetic record, which comes from the patient chart.

COMMISSIONER: And adverse event report is what I asked for.

MR BODDICE: I can indicate the inquiries reveal no adverse incident report was filed.

COMMISSIONER: Yes.

MR BODDICE: The inquiries or the records reveal that Dr Patel was not the surgeon.

COMMISSIONER: Yes.

MR BODDICE: And Dr Patel was not the person who executed - that signed the death certificate.

COMMISSIONER: Yes.

MR BODDICE: But I have copies of those.

COMMISSIONER: Well, you provide those to the Secretary.

MR BODDICE: The second matter was at page 171 of the transcript, and this was the issue in relation to a seminar that was provided by the Ethical Standards branch in relation to the confidentiality provisions under the Act.

COMMISSIONER: Well, actually, before we got to that, there was also the death certificate for patient 22. I don't have the transcript reference but do you have that death certificate available?

MR BODDICE: I don't. I wasn't informed of that one, but I will arrange for that to be obtained.

COMMISSIONER: No doubt someone will deal with that. Yes, all right. Well, with the seminar?

MR BODDICE: The next one was the Ethical Standards branch. We have been able to identify the officers concerned and copies of the relevant documents, and a letter will be provided to the Commission today giving the names of those officers and copies of the relevant documents that they used in the course of that seminar.

COMMISSIONER: Yes.

MR BODDICE: The next matter was the question of leave for Queensland Health staff when giving evidence or providing information.

COMMISSIONER: Yes.

MR BODDICE: I understand that there is no doubt the Director-General makes it clear that all Queensland Health staff, when doing so, will be entitled to leave with pay that's not chargeable to any account.

COMMISSIONER: Thank you.

MR BODDICE: I understand that there is going to be something stated today throughout the hospitals by the Director-General to make that clear to staff in relation to those things.

COMMISSIONER: Excellent.

MR BODDICE: I understand in respect of the counselling issue, that counselling had been provided. It will again be reoffered but this time we will ensure that if there are any issues about a staff member not being able to go because of difficulties with rosters, that that will be overcome so the staff member is able to go.

COMMISSIONER: Right. The next item, according to my notes, was the death certificate for patient 21.

MR BODDICE: Again, I was not informed in respect of that one, but we will arrange for the death certificates to be obtained.

COMMISSIONER: All right. And - yes, well, that covers all of the matters from yesterday, according to my notes.
Mr Andrews, was there anything else outstanding, to your recollection?

MR ANDREWS: No, Commissioner.

COMMISSIONER: All right. Yesterday the Commission received correspondence from the Premier of Queensland, the Honourable Peter Beattie, enclosing a copy of a speech, which at that time he proposed to make in the Legislative Assembly. I understand that he has since made that speech. It sets out the government's recommendations for various changes to the health system.

It is, for our purposes, an extremely useful document and we're very grateful to the Premier for making available to us

his and his government's suggestions, and particularly for emphasising the point where he said that no change is not an option, a view which at this stage of the proceedings those at this Honourable bench here are inclined to agree with.

I will ask the secretary to mark the letter from the Premier and the speech as an exhibit. I think that will be Exhibit 10. Yes, that will be Exhibit 10.

ADMITTED AND MARKED "EXHIBIT 10"

COMMISSIONER: Mr Boddice, am I to assume to the extent that the Premier has indicated a position which differs from that contained in the Queensland Health submission, that the Premier's indications supercede those of Queensland Health?

MR BODDICE: Well, I don't have formal instructions but I would have thought that if - the Premier, after all, is the Premier of the State - if he has indicated a position, then that is the position of the government, but I obviously will obtain instructions.

COMMISSIONER: I will ask you to get those instructions, thank you. Mr Atkinson?

MR ATKINSON: Good morning, Commissioner. Commissioner, I propose to call Robert Desmond Messenger as a witness.

COMMISSIONER: Yes.

MR ATKINSON: I haven't provided my learned friends with a formal statement because in the time available Mr Messenger hasn't formally adopted one, but if it is required I can, of course, provide an opening.

COMMISSIONER: I wonder if any of the representatives from any of the other interested parties wish to hear an opening of Mr Messenger's evidence, or would you simply be happy to hear it?

MR TAIT: I would like to hear a brief opening, please, Commissioner.

MS KELLY: Mr Commissioner, before you move on to the evidence, might I be heard in relation to the indication given by Mr Boddice to you just now? I had forwarded to the Commission late yesterday a submission in relation to the need for better witness protection for persons from Queensland Health who might give evidence. I don't know if that's been received, but in view of-----

COMMISSIONER: I am sure it has, but I haven't seen it yet. If you have a copy handy?

MS KELLY: I do have copies and I am happy to hand them up. Now, in view of the indication given just now by Mr Boddice, there is a couple - there are a couple of matters arising which remain to be addressed, in my submission.

COMMISSIONER: Can you identify in a nutshell what the remaining concerns are?

MS KELLY: In a nutshell, the witness protections available under the Commissions of Inquiry Act and the Criminal Code are inadequate to protect persons who are providing, upon a contract basis rather than an employment basis, services to Queensland Health.

Section 23 of the Commissions of Inquiry Act protects persons who give evidence before the inquiry from any prejudice in their employment. There is no definition of "employment" and the common law test would suggest that VMOs are not included in the ambit of that section.

One then looks to the general provisions under the Commissions of Inquiry Act and section 119B of the Criminal Code, and, with respect, section 119B of the Criminal Code is imprecise in its extension-----

COMMISSIONER: Yes.

MS KELLY: -----because of the High Court's current considerations in the Fingleton appeal.

COMMISSIONER: Yes.

MS KELLY: It was submitted on behalf of Ms Fingleton before the Court of Appeal that administrative arrangements or necessities might be reasonable cause for a person being prejudiced under section 119B such that the sanction of that section won't apply to any persons prejudicing a witness.

COMMISSIONER: And that argument, of course, was rejected by the Court of Appeal.

MS KELLY: It was rejected.

COMMISSIONER: But it has been reasserted in the High Court and the matter is now reserved.

MS KELLY: So there is a jeopardy for the members of my client who might have already made the disclosures in the understanding that section 119B will protect them.

COMMISSIONER: Yes.

MS KELLY: The High Court might then decide to uphold the Fingleton appeal, possibly on the basis of a reasonable cause argument, at which point there will be no protection under section 119B for those persons who have already made the disclosures.

COMMISSIONER: Ms Kelly, you have raised a tremendously important point and I would prefer not to deal with it on the run, as it were.

MS KELLY: Yes.

COMMISSIONER: Or to hold up the proceedings today. I will take your submission, as our American colleagues say, under advisement. I will consider the matter. I am presently inclined to the view that the people whom you speak about, contract employees, are adequately protected. My reading of the argument in the High Court in the Fingleton case suggests that if the High Court is going to overturn the decision of the Court of Appeal, it will be on the basis that Chief Magistrate Fingleton was acting within the scope of her authority as a Magistrate and, therefore, protected from civil or criminal liability. There did not, in the transcript, appear to be any indication that the High Court was likely to differ with the view of the Court of Appeal otherwise in relation to the interpretation of the section, but it is nonetheless a valid point that your clients or those whom you speak about are in jeopardy.

I wonder if I could ask Mr Devlin, who is probably the most experienced criminal lawyer in the room, whether you have any views about this or anything that you can say to assist?

MR DEVLIN: I can't assist, except to observe, as you have observed already, that the likelihood of the High Court taking a contrary view to the view of the Court of Appeal is not that high at this point, on all the indications.

COMMISSIONER: Yes, not on that issue, perhaps on the other issue former Chief Magistrate Fingleton's appeal may succeed, but not on the issue that is of concern to us here.

MR DEVLIN: That appears to be the central issue facing the High Court in the matter.

COMMISSIONER: Thank you, Mr Devlin.

MR DEVLIN: With respect, I agree with that observation.

COMMISSIONER: I appreciate your help, Mr Devlin. I will consider the matter further. I am also inclined to the view that the general provisions of the Commissions of Inquiry Act with respect to contempt have the effect that anyone at any level of government, from the Minister or the Director-General down, who were to vilify or punish any witness as a result of their evidence, whether the witness is an employee, or a patient, or a contract officer, would be in contempt of the Commission and liable to punishment by imprisonment for that contempt. But, as I say, I will consider the matter and give a more careful and reasoned ruling on your application-----

MS KELLY: While you are-----

COMMISSIONER: -----as soon as possible.

MS KELLY: While you are considering that, would you take into account three further matters arising from what Mr Boddice has just said? Firstly, the indication given by Mr Boddice was limited, as I understand it, to QNU and AMA members.

COMMISSIONER: Well, no, I understood it to be quite clear that it was all staff of Queensland Health, that they could speak with QNU and AMA legal representatives, but that it extends to all staff. Is that the case?

MR BODDICE: That's so, yes.

COMMISSIONER: Yes.

MS KELLY: And my organisation - my client would be seeking similar reprieve.

COMMISSIONER: I don't know, Mr Boddice, whether you have got specific instructions?

MR BODDICE: No, I don't.

COMMISSIONER: I imagine it would fall within the same reasoning.

MS KELLY: The second matter arising is that pursuant to section 62(f) of the Health Services Act, the Chief Executive's authorisation needs to be in writing.

COMMISSIONER: Yes.

MS KELLY: And so, again, it would be - I am seeking to have the indication given orally by Mr Boddice provided in written form.

COMMISSIONER: Yes. Mr Boddice, can you get instructions on that?

MR BODDICE: I certainly will.

COMMISSIONER: Thank you.

MR BODDICE: I know some public disclosure, written ones, have already been provided, for example in respect of the Commission staff, so I will take instructions in respect of that.

MS KELLY: Thank you. I have raised-----

COMMISSIONER: I thought you said three points?

MS KELLY: I did, but I raised the third one in my earlier-----

COMMISSIONER: Thank you. Just again, before we go into evidence, may I mention that Deputy Commissioner Sir Llew Edwards, received a note from a member of the public

expressing concern about the acoustics in this room and the fact that what is said in this part of the room can't be heard at the back. I have asked the Secretary to make inquiries as to whether the microphones or the loud speakers can be turned up, or something can be done about the air conditioning noise. I am sorry, that's the best we can do. They are the facilities we have and we have got to work with them, but we will do everything possible to address that problem if we can.

Also, I see Mr Perrett in the courtroom. Mr Perrett has raised a concern regarding his attendance here, because obviously his interest is limited only to some of the witnesses and not all of them, and he has asked whether we can give an indication of forthcoming witnesses and when they are likely to be called. I wonder, Mr Andrews, whether you can outline the situation as best we know it at the moment?

MR ANDREWS: As best we know it, the schedule is for this week to call Mr Messenger, Dr Miach, Dr Anderson and Dr Neville, and I expect that that will take us at least until the close of proceedings on Thursday afternoon.

COMMISSIONER: Yes. I imagine that Mr Perrett would have a particular interest in Dr Neville's evidence, if not the evidence of the others you have mentioned. Would that be a fair guess?

MR ANDREWS: Yes.

COMMISSIONER: I am not sure whether that helps, Mr Perrett.

MR PERRETT: That's of assistance, Mr Commissioner, thank you. The supplementary issue I raised was the provision of statements in respect of forthcoming witnesses and whether they can be anticipated in advance of the witness getting in the box.

COMMISSIONER: Can I say in response to that, Mr Perrett, given the matters under the investigation by this inquiry really affect the health and well-being of all people in Queensland, we have tried to proceed as quickly as we can. Those of us old enough to remember the Fitzgerald Inquiry, for example, may recall that it was something like two or three months before that inquiry started its public sittings. We're sitting within three weeks after the inquiry was announced.

For that reason, there have been obviously teething troubles in getting a system moving so that statements can be provided in advance. There is a further complication in that a lot of the initial fieldwork, if I can describe it as that, was done by the CMC. They have very helpfully made available to us copies of transcripts of interviews and other material that they have obtained in the field. But we're not at liberty to disclose that to anyone else without their authority.

Having said that, we're conscious of the concern you raise and, as the inquiry moves on, I am sure we will find we slip into a system much more effectively and efficiently and

everyone at the Bar table will be given advance notice of the names of witnesses and, wherever possible, copies of proofs of evidence or statements from the witnesses. But thank you for raising the point.

MR PERRETT: Thank you, Commissioner. For my client's part, it certainly understands those logistical difficulties. As you quite properly identify, the efficiency of dealing with the witnesses would be facilitated where practicable to have some understanding of the issues to be addressed.

COMMISSIONER: Indeed so. Mr Perrett, while you are there, may I raise with you one other matter? In correspondence from your firm to the inquiry, a concern has been raised about the disclosure of information by your client, the Queensland Health Rights Commission, because there is no regulation authorising disclosure of that information. Can you tell me what if any steps have been put in train to overcome that difficulty?

MR PERRETT: There has been no steps put in train by my client to facilitate the provision of a regulation. It seemed to my client, and ourselves as advisors, that it is better put in train perhaps by the Commission through the power reserved to the Commission. I think it is section 5 of the Commissions of Inquiry Act. We're certainly happy to work with Commission staff to facilitate that because my client's concern relates not to the provision of that confidential information, but rather its power to do so until such time as the impediment in its own Act has been overcome.

COMMISSIONER: Well, can I suggest, Mr Perrett, that the most efficient way forward would be if you inform us of the form of regulation that you feel would accommodate your client's situation, and we will then forward that to the Premier with our recommendation that such a regulation be promulgated so as to enable your client to provide whatever information is considered appropriate to this inquiry.

MR PERRETT: We're happy to proceed on the basis of that suggestion.

COMMISSIONER: Thank you, Mr Perrett. That's much appreciated. Sorry, Mr Atkinson.

MR ATKINSON: Thank you, Commissioner.

COMMISSIONER: You are going to provide us with a brief overview of the evidence of Mr Messenger?

MR ATKINSON: I am, Commissioner. That's right, I intend to call Robert Desmond Messenger. He will say that he is the Member for Burnett, having been elected on the 7th of February, 2004. He will say that there are two electorates which comprise the catchment area for Bundaberg Hospital, one is Burnett and one is Bundaberg.

He will say that prior to being elected he worked on the ABC

radio in Wide Bay. He worked as a radio announcer on a show that went from 9 till 11 and covered public issues and invited talk-back.

He will say that through that job, through his mother being a patient at the Bundaberg Base Hospital whilst she had bowel cancer, through callers to his radio station, through covering the nurses' strike in Bundaberg, and through his membership of the Queensland Cancer Fund, even before his election he was very well apprised of health issues in the Burnett area generally, and through that understood that there was a concern in the community about waiting lists for dental care and also in particular about bullying within the Bundaberg Hospital.

He will say that he also understood from visiting his mother in hospital that there was some pressure to free up beds as quickly as possible, even when in some cases it might be that the patient wasn't ready to leave.

Mr Messenger will say that between September 2003 and January 2004, he conducted an election campaign, and in the course of that campaign he door-knocked hundreds of houses in the Burnett area. As a result of that process, he became keenly aware that by far the biggest issue in the Burnett area was dissatisfaction with health.

He will say that that understanding was heightened by a visit in January 2004, the first of many visits, he will say, from a mental health nurse complaining about very serious problems in the mental health unit at the Bundaberg Base Hospital. Mr Messenger will say that the nurse who visited him said, "I am concerned that at the moment the two sitting members both comprise part of the government, and that if I was to take my complaints to them, the complaints would sit like a dead mullet on their floor.", and that's why he was coming to Mr Messenger.

He will say that as a result of those concerns that he understood within the electorate, he ran a campaign based on three issues, and only three. One was "we need more doctors, nurses and specialists, not more excuses". The second was "I will be there for people to speak up for the people who have been bullied, forgotten or ignored", and the third will be "a concern about taxes and government sneakiness". He will say that when he ran those three themes through three television ads, it was clear to him, and it was made clear in the ads, that the only issue about bullying which had arisen in discussions with constituents was this issue in relation to Queensland Health.

Mr Messenger will say that soon after he was elected, he was visited by Peter Leck of the Bundaberg Base Hospital. He will say that the meeting wasn't out of the ordinary, in his experience. It was a meeting by a middle-level bureaucrat, if you like, who approached him to say effectively, "If you have complaints with the hospital, could you raise them with me prior to going to the Minister?" He will say that

notwithstanding that approach, his view subsequently was that he will take up complaints with the Minister directly, but with Mr Leck more or less contemporaneously.

Mr Messenger has helpfully provided a chronology that he calls a timeline, and I will provide that to my learned friends in due course.

He will say that on 18 February 2004, he was visited by a mental health nurse from the Bundaberg Base Hospital who was very concerned about very big problems in the mental health unit. Subsequently, he met with three nurses from that unit on the 5th of March 2004. He will say that the nurses were very senior - they refer to themselves as the mental health grannies - and he will say they raised concerns about issues such as the layout of the mental health unit, the fact that people were being admitted by the police in circumstances where the police would bring them to the front desk but the patient had left before the police had left because they weren't properly admitted, that there wasn't proper security for violent offenders, and that against what the nurses understood to be regulations they were being required to destroy or flush drugs rather than reporting illicit drugs to the police.

He will say that he conducted interviews with those nurses and that transcripts appear in his submissions, and that their evidence was to the effect of in some cases their senior manager didn't take any interest in their complaints, and in one particular instance the nurse was transferred because it was said to her that if she couldn't handle the environment, she must be incompetent.

Mr Messenger will say that he was something of a lightning rod. After he was elected there was a very steady stream of complaints from patients and staff about the conditions at the hospital. One man complained about his wife's treatment, and he is somebody that the Commission may hear from in due course in any case. That complaint was relayed. The nurse who had made the dead mullet metaphor visited his office again to express his concerns, a doctor from the same unit visited to express concerns, and an administrative nurse - and all the details of these people appear in the submissions - administrative nurse called, approached him to say that she had made complaints and she had subsequently been victimised by management. A theatre dresser approached him about management and hygiene problems. A Major from the Salvation Army approached him to say that it was really critical that there be some form of inquiry as soon as possible. And another doctor approached him in June of the same year, of 2004, to complain about bullying and management problems. As I say, the details of those complaints are set out in extraordinary detail through transcripts in his submissions.

MR ALLEN: Excuse me, Commissioner. The submissions that are being referred to, are they available to the parties?

COMMISSIONER: What's the position.

MR ATKINSON: The position is there are three copies that I provided to the members of the Commission. There is a copy that obviously Mr Messenger has. I have one spare copy that my friends could share. I am sorry I haven't. It is a voluminous document. There is one other thing, of course, Commissioner, I have the overhead projector facilities ready. To the extent the documents are referred to, they might be used through the overhead projector.

COMMISSIONER: I think at this stage it's more important that counsel rather than the Commissioner and Deputy Commissioners be able to follow the evidence clearly. Presumably you'll be putting up on the projection monitors anything that we need to see as the evidence continues. So perhaps if I make these three volumes available and that should be not perfectly adequate but at least sufficient to spread amongst the people at the Bar table

MR ATKINSON: If I can add a fourth then, Commissioner. If I can continue then, Commissioner?

COMMISSIONER: Yes, certainly.

MR ATKINSON: Mr Messenger will say that it was almost invariably the case that when he was approached by employees of Queensland Health, they would say to him that they had a very real concern that if their complaints were agitated publicly, there would be repercussions.

On 18 March 2004, Mr Messenger gave a speech in parliament. It was his maiden speech, as you could imagine, and the speech - the central issue in the speech was-----

COMMISSIONER: I prefer you not go into that at the moment. I'll be saying something about that shortly.

MR ATKINSON: He gave that speech and I can at least say this, that it concerned the hospital, and he gave another speech on the 21st of April 2004 which again was addressed squarely about issues at the hospital. He will say that despite those speeches, it was never the case that either the Director-General, the Minister or the management of the hospital approached him to find out more detail about the complaints or to find out if there was any way where the perceived problems might be addressed.

He will say that the only response he really received from Health or administration in relation to that maiden speech was that a member of the local hospital board, a man called Viv Chase, called him to say that his concerns about health and his public agitation of the issue was contributing to a deterioration in morale. Indeed, he will say that that same man in - when Mr Messenger gave a further speech on 11 May 2004, again Mr Chase rang him to remonstrate with him and when he did so, Mr Messenger said, "Rather than pulling back from this issue, I intend to turn up the blow torch." Mr Messenger will say that subsequently he was reported by the Minister to the Speaker in parliament for physically threatening an administrative person with death by a blow torch and he then had to make submissions to explain why he should be exonerated from that charge.

As I say, he will say that he received no substantive response. On 30 April 2004 one of the ladies who I respectfully call the mental health grannies had a bit of a demise in that she had a personal setback which perhaps I don't need to go into but as a result of that setback, she

said to Mr Messenger, "I have nothing to lose. I want you to go public with these issues about the Mental Health Unit. I don't care what Queensland Health can do to me."

As a result of that, something quite extraordinary happened, which is this: he will say that on 11 May 2004 Mr Messenger made a speech about the Mental Health Unit in parliament. When he did that, the three nurses sat in the public gallery so that they could bear witness to the things that he was saying. He then gave a speech outlining - sorry, I appreciate what you said, Commissioner.

COMMISSIONER: Yes, yes.

MR ATKINSON: He gave a speech, suffice to say that the speech was greeted in robust terms by members of the opposition.

The nurses, who of course witnessed all this, left the session in tears. They went outside. They were photographed by the media and there was then a call from Mr Cameron Milner, the Press Secretary to the Minister, and he said that he wanted to organise a meeting of, on the one hand, Mr Buckland and, on the other hand, Mr Messenger and the three nurses.
Mr Messenger will say that he subsequently attended that meeting and he made clear at the outset that there was to be whistleblower status for his three nurse constituents, if you like, and Mr Buckland assented to that. He will say that the three nurses then spoke very passionately but cogently for two hours about all the problems in the Mental Health Unit, bullying, security, admissions, illicit drugs, seclusion, and at the end of that, Mr Buckland indicated that there would be an independent inquiry.

At that stage Mr Messenger said to Mr Buckland, "It would be nice if at the same time there could be an inquiry into the whole hospital." Mr Messenger will say that at that stage, Mr Buckland slammed the table in a fit of rage and said, "I don't care if you are a member of parliament. You don't tell me how to run my hospitals." Mr Messenger will say that he was quite taken aback by that response, that Mr Buckland is a very big bearded man - not that there's anything wrong with beards - and that as a result, he felt taken aback at best and intimidated at worst, and he can only imagine that the three nurses who were watching their champion in this discussion were similarly intimidated, and certainly that the room went quiet.

As a consequence of that meeting, Mr Messenger will say there was an inquiry into the Mental Health Unit and it was chaired by a man called Dr Mark Waters. Mr Messenger will say that he and others were disappointed because - well, for two reasons. One is that the report wasn't disclosed in full. What happened was that the Minister said, "There are issues of patient confidentiality and for that reason, I'm not prepared to give the whole report to the public." Mr Messenger will say that he made clear in the House and it was clear to him in any case that many different bodies around this state get around that problem by de-identifying documents and he

couldn't see why that couldn't be done in the instant case.

COMMISSIONER: The author of this report, Dr Waters, was it?

MR ATKINSON: That's right.

COMMISSIONER: Was he someone from outside Queensland Health?

MR ATKINSON: The answer to that is yes and no, Commissioner. Yes, at the outset of the report he was outside Queensland Health and, hence, independent was a name one might characterise the report by. No, in that halfway through the writing of the report, Queensland Health employed him in a very senior executive role, and certainly without telling Mr Messenger he will say. As a result, Mr Messenger, perhaps understandably, felt that the independence of the report had been comprised.

COMMISSIONER: And that occurred prior to the report being completed and tabled?

MR ATKINSON: Yes, it did, Commissioner.

COMMISSIONER: Mr Boddice, do we have a full copy of that report available for the Commission?

MR BODDICE: I will have to get instructions.

COMMISSIONER: Thank you.

MR ATKINSON: Commissioner, Mr Messenger will say that in September 2004 the widow of the lady who Ms Hoffman spoke about at such length, the widow of the man who died and was the subject of some evidence yesterday-----

COMMISSIONER: I think we're allowed to use his name. That's Mr Bramich.

MR ATKINSON: Mr Bramich, that's right. Mrs Bramich approached Mr Messenger to talk about what happened. Mr Messenger will say he has a very clear protocol in his office: when he receives a complaint from a constituent he requires a written letter, he attaches a covering letter and he sends it to the Minister. He adopted that course with Mrs Bramich.

He wrote to the Minister on 7 September 2004 outlining her concerns about how this could happen. He didn't receive a substantive response. On the 13th of October 2004 he received a response from the Minister which said, effectively, "There is legal action contemplated in this matter and that means I can't divulge any details to you." Mr Messenger will say at that stage, whilst he had received a host of complaints about Bundaberg Hospital, he hadn't yet heard the name of "Patel".

He will also explain, by reference to his submissions, that from February 2004, consistently, repeatedly he was making press releases and speeches in parliament about problems that

he was receiving, concerns he was being apprised of in relation to the hospital both in relation to staff and perhaps more in relation to staff than patients. He was will make mention of a question he asked on notice in parliament in the course of 2004. He asked the Minister to divulge or to compare the number of beds in the hospital in 1999 with the number of beds in the hospital in 2004. Can I give the answer to that, Commissioner?

COMMISSIONER: Yes, yes, what was the outcome?

MR ATKINSON: He will say the outcome is that in 1999 there were 216 beds in the hospital and in 2004 there were 138 beds in the hospital.

COMMISSIONER: So a drop of over a third.

MR ATKINSON: Yes, 37 per cent to be precise. He will say that he understands there might be some arguments in relation to his constituents that medical procedures have become so much more efficient that perhaps it's not necessary anymore to keep people in and have beds, but he will say that he is uneasy with that argument with because the population of Bundaberg has swelled by 40 per cent and he has received repeated complaints from constituents about long waiting lists or the manipulation of waiting lists.

COMMISSIONER: So if we have a population increase of 40 per cent and a fall off in the number of beds of 30 per cent, that's practically halved the ratio of beds to population in the catchment area.

MR ATKINSON: That's right, Commissioner. Mr Messenger will say that in the course of 2004 and early 2005, and both formally and informally, he would meet with Mr Leck, that is either at social occasions when they were there by virtue of their respective offices or because of formal meetings at the hospital, or in his office he met with Mr Leck. On those occasions he would raise the many substantive complaints that he was receiving. He will say that on each occasion he received a response that reminded him of the TV show "Yes Minister" in the sense that he was told that things were okay, the ship was sailing smoothly and he shouldn't be concerned. He will say that it was never the case that Mr Leck proposed solutions to the problems he was mooting.

Indeed, on 16 November 2004 the Rosedale train crash occurred, of course near Bundaberg. Mr Messenger at that time made plans to visit the hospital to see how the hospital was coping with the survivors and with the tragedy. Obviously to do that, you will recall that of course, in terms of protocol, he should alert the Minister to the fact that he intended to visit. The Minister denied him permission to visit the hospital on that day.

Two days later-----

COMMISSIONER: I'm sorry, Mr Atkinson. Mr Boddice, can you

remind me, are you representing the Minister?

MR BODDICE: I don't have those instructions as yet, no.

COMMISSIONER: Mr Boddice, with the best will in the world, I'm really finding this situation quite difficult. Now, I just don't understand how you can represent a branch of the government without having instructions from the Minister to do so, but you will have to sort that out for yourself. I have given you the leave that you asked for. I just, frankly, have a lot of difficulty in seeing how it can practically be done. Get what instructions you need and we'll sort it out.

MR ATKINSON: Commissioner, two days later on the 18th of November 2004 Mr Messenger sought again to visit the hospital, this time for a meeting with Mr Leck, but he was told by Mr Leck that he didn't have permission to visit the hospital.

Mr Messenger will say that he received a steady stream of complaints in early 2005. One of them, perhaps the most significant, was from a nurse called Ms Kuhnel. Ms Kuhnel's evidence will be that in late - or his evidence will be that Ms Kuhnel told him, albeit by an unrelated path, an unrelated complaint, that she had done a report - it appears as attachment L to his Commissions, L for Lima. She had done a report in December 2002 into conditions at the hospital and, in particular, about the mix of skills, the communications between doctors and nurses, the need for more resources. Ms Kuhnel told Mr Messenger that within six months of providing that report, which was somewhat critical of the state of the hospital, she was on misconduct charges and she maintained that the report and the misconduct charges were related.

He will also say that of those three nurses that visited him, one of them had a particularly ugly incident in January - or in early 2005. Mr Messenger was contacted by the nurse's daughter. .. .. she called either Mr Leck or Ms McDonald, the head of the Mental Health Unit, to whom each - to whom I understand she bore some animosity and she made threats to one or the other .. .. As a result of those threats she was visited by the police, she was charged, she was taken to the watch-house. .. .. She was denied bail at that early stage. She was put in a pair of paper underwear and she was made to mix with the general watch-house population.

Mr Messenger will say that he doesn't know and he couldn't know whether there is a correlation between people making complaints about Queensland Health and subsequently meeting with some sort of demise but at least, certainly, four instances of which he had complaint, there was certainly a pattern emerging of complaint and then problems arising for that person.

He will then turn to Ms Hoffman and say that on 18 March 2005 Ms Hoffman came to visit him. She was in an agitated state. She was concerned not to be seen. She said that she had very serious concerns about Dr Patel, that she had raised them with the hospital. They weren't taking her seriously and she didn't know where to go. He will say that he made a transcript of an interview he took on that night with Ms Hoffman, and that it appears as divider F for foxtrot in the written submissions. He will say that apart from some typographical errors, which are self-evident in that transcript, it is a fair record.

Commissioner, on the 22nd of March 2005 Mr Messenger decided that before taking Ms Hoffman's statements to parliament or anywhere further, he should corroborate them from an independent source and he will say that, in consequence, he rang a Dr Strahan - I understand that's spelt S-T-R-A-H-A-N - who is the head of the AMAQ in Bundaberg. He will say that he when he called Dr Strahan, he explained that he had received some very serious complaints about Dr Patel. Dr Strahan said that if they were going to continue the discussion, he wanted to speak off the record. When Mr Messenger agreed to that, Dr Strahan said-----

COMMISSIONER: Well, hang on, this is a discussion between a member of parliament off the record with a member of - with a constituent in effect. I'm not sure that it's appropriate to receive that evidence if a person spoke to Mr Messenger on the assurance that it was off the record.

MR ATKINSON: Well, my only concern is that it's a matter of some public importance.

COMMISSIONER: It is, but at the same time, I mean - I have very strong views about these things. I feel that, you know, the gatekeepers of our community, the parliamentarians and the press and media, need to have the ability to speak to members of the public on confidential terms with the assurance that that confidence won't be breached and I'm certainly reluctant to encourage anyone to breach such a confidence in these circumstances. For the time being we will pass over that part of the evidence and if Dr Strahan is prepared to, as it were, waive the confidentiality of what he discussed with Mr Messenger, then I'll receive Mr Messenger's evidence of it.

MR ATKINSON: As you please.

COMMISSIONER: But I'm certainly not going to encourage any parliamentarian or, indeed, any representative of the press or media to breach a confidence without the permission of the person who provided information in confidence.

MR ATKINSON: As you please, Commissioner.

MR TAIT: Commissioner may I say something, please?

COMMISSIONER: Certainly.

MR TAIT: Dr Strahan is indeed a member of the AMAQ but he holds no position on the state council, which was the peak body, and I don't understand the system of the AMA to have anyone being the head of the AMA in Bundaberg or Dayboro or-----

COMMISSIONER: Anywhere else.

MR TAIT: -----Burleigh Heads, or anywhere else. He might be his own member but as far as he know, he holds no position on the governing body of it. But I'll find out.

COMMISSIONER: Mr Tait, would you assist us by finding out, and in the process you might also assist us by finding out whether the doctor has any objection to Mr Messenger revealing details of their conversation.

MR TAIT: I'll certainly do that.

COMMISSIONER: Thank you.

MR ATKINSON: Commissioner, of course, I'm only purporting to outline Mr Messenger's evidence.

COMMISSIONER: Yes.

MR ATKINSON: It may well be that he is only a senior doctor in Bundaberg than formally the head.

MR TAIT: Sure.

COMMISSIONER: Yes, of course.

MR ATKINSON: On the 22nd of March 2005 the Shadow Minister Mr Copeland asked certain questions in parliament and a letter was tabled.

COMMISSIONER: Yes.

MR ATKINSON: Ms Hoffman's letter, of which we've heard, dated 22 October 2004. Mr Messenger will say that he was subsequently informed by Ms Hoffman that Mr Leck had made threats to the nurses en masse about speaking to the local member of parliament and that he raised that issue. He will then say that on 1 April 2005, the day that Dr Patel resigned, the President of the AMA, Mr Molloy, issued a press statement that what was highly critical of Mr Messenger, saying that it was an absolute disgrace that Dr Patel was forced to leave the job. Mr Messenger will say that he spoke to Dr Molloy later that day, and I don't have those same issues of a formal confidentiality, Commissioner.

COMMISSIONER: No, no.

MR ATKINSON: Dr Molloy, when it was explained by Mr Messenger that he had received certain cogent evidence about concerns about Dr Patel, Dr Molloy said that he understood that the

nurses in the ICU hadn't been doing their job and Dr Patel was whipping them into shape.

COMMISSIONER: No-one for a moment disputes that Dr Molloy had received that information in good faith and simply passed it on.

MR ATKINSON: Mr Messenger accepts that. He doesn't cavil with that interpretation or that history.

He will say that there were various other developments and they're set out in his timelines, and they're not hugely significant. Perhaps the most significant development was that on 7 April 2005 the Minister and the Director-General had travelled to Bundaberg and they made an announcement there that the investigation that was occurring into Dr Patel or the fact-finding mission would be dropped.

On 8 April 2005 Mr Messenger will say that an article appeared in The Courier-Mail. I think it was an article in which a journalist had done a Google search and had worked out that Dr Patel had certain charges and findings against him and Mr Messenger will say that on the 9th of April 2005, the Minister recanted and decided that he would have an inquiry after all.

There are other developments but, as I say, they're of less significance. I have-----

COMMISSIONER: Mr Tait, is that sufficient for your purposes?

MR BODDICE: Thank you very much, Commissioner.

COMMISSIONER: Thank you, Mr Tait.

MR DEVLIN: Can I rise on a matter of procedure, Mr Commissioner?

COMMISSIONER: Yes.

MR DEVLIN: There was a matter that was opened as being a - thought to be a matter of evidence falling from Mr Messenger involving the police service and the processing of a person who had allegedly issued a serious threat to someone else.

COMMISSIONER: Yes.

MR DEVLIN: In my respectful submission, on the assumption that none of that has been tested and on the assumption that that's some kind of speculation by the member, the member of parliament, and perhaps by the constituent that there's some link.

COMMISSIONER: Yes.

MR DEVLIN: That in the absence of any exploration of that issue with the police service, that would be an area I'd

respectfully submit where no publication of that assertion ought to be made in fairness to, for example, the officers involved in processing the person who has allegedly committed a criminal offence.

COMMISSIONER: Yes.

MR DEVLIN: I don't purport to act for the Commissioner of Police but I simply rise on a matter of procedure in relation to a matter which seems to have a few steps to go through before it's checked.

COMMISSIONER: Yes.

MR DEVLIN: For any kind of basis.

COMMISSIONER: Mr Devlin, firstly, let me thank you for you for raising that point which I appreciate very much.

Secondly, as I understood the opening given by Mr Atkinson, again, it wasn't suggested that the police acted in any way inappropriately. The significant point was that the police appeared to be acting in response to a complaint from people at Bundaberg Hospital and that, I think, is the only aspect that we need to get evidence about, is whether or not police action was taken. The details of the police action don't matter but whether or not police action was taken as a result of or apparently as a result of complaints from Bundaberg Hospital.

MR DEVLIN: Well, there was a premise though, with respect, about the possibility that someone within Health applied some kind of pressure to a police officer to act in a particularly derogatory way towards a prisoner.

COMMISSIONER: Yes.

MR DEVLIN: That's what concerns me.

COMMISSIONER: We will see how the evidence falls out but I'll be very alert to the point you've raised and you can of course take an objection or rise at any time but I'll make sure the evidence is confined to what is relevant to Queensland Health, and any issues as to the conduct of the officers of the Queensland Police Service are obviously outside the realm of this inquiry.

MR DEVLIN: Thank you.

COMMISSIONER: Mr Atkinson.

MR ATKINSON: Commissioner, I only raise this issue: you expressed some concern about the witness divulging conversations in parliament.

COMMISSIONER: Yes.

MR ATKINSON: I'm not sure how far I can take the witness

until that point is resolved.

COMMISSIONER: Well, I was proposing to address that when Mr Messenger comes into the witness box, so perhaps if you call him now and we'll take it from there.

ROBERT DESMOND MESSENGER, SWORN AND EXAMINED:

MR ATKINSON: Witness, would you tell the Commission your full name and business address?-- My full name is Robert Desmond Messenger and my business address is at shop 7 Bargara Plaza, Bargara.

Could you tell the Commission what you do for a living?-- I'm a member for Burnett and the Shadow Education and Arts Minister for Queensland.

COMMISSIONER: You might take a seat for a moment, Mr Atkinson. Mr Messenger, firstly, thank you for making your time available and to come and give evidence here today. Before your evidence starts, there is something I must explain to you and I regard this as a very important matter.

In Queensland, we have the Parliament of Queensland Act 2001. Section 8 of that Act I'll read out. Section 8 provides, "The freedom of speech and debates or proceedings in the Assembly cannot be impeached or questioned in any Court or place out of the Assembly." Then subsection 2 says, "To remove doubt, it is declared that subsection 1 is intended to have the same effect as article 9 of the Bill of Rights of 1688 had in relation to the Assembly immediately before the commencement of the subsection."

What section 8 of the Parliament of Queensland Act does is to codify and extends to the Queensland parliament one of the most important and fundamental rules of parliamentary government in the Westminster system. If you remember back to the Fitzgerald Inquiry, there was a lot of talk at that time about the concept of the separation of powers. In fact, at the moment, what we're looking at is a very stark and important aspect of the concept of the separation of powers. As a member of the Legislative Assembly, you are, of course, part of the legislative branch of government, and as an elected representative of your community you have a right and a privilege to speak in parliament on any issue that you think is of concern. Some of the greatest Judges in history have acknowledged the importance of the parliament, have described it as the grand inquest of the nation, as a place where any elected member can raise any aspect which is of concern to him.

The concomitant, if you like, of that right and privilege of parliamentarians is that what they say in parliament can't be questioned or challenged anywhere outside parliament. One

place where they can't be questioned or challenged is in the Courts, because that's the judicial branch of government rather than the executive branch. So what you say in parliament can't be the subject of proceedings for defamation for example. You're totally protected as a parliamentarian from any challenge of that nature.

You are also protected from scrutiny by the executive branch of government, and this Commission of Inquiry, you'll understand, is appointed by the Governor-in-Council. So in that sense, although they're quite independent of the government, we are an agency put in place by executive government and it would be a breach not only of the letter but also of the spirit of section 8 of the Parliament of Queensland Act for this inquiry to question or impugn anything that went on in the Legislative Assembly either involving you or involving people on the other side of the House.

I want to stress to you that I'm not being precious about this, it is a vitally important aspect of parliamentary democracy going back many centuries, that Queensland actually refers to the Bill of Rights of 1688, and it's relevant to refer to how that came about.

1688, of course, came at the end of the Stuart reign and the Stuart Monarchs didn't particularly like the fact that parliamentarians were free to express their opinions and to challenge government decisions, and during the Stuart reigns, there was a lot of attacks on parliamentarians for doing their job as parliamentarians, particularly in the period from about 1614 through to 1621 during what was known as the addled parliament, parliamentarians found themselves sent to gaol for saying things in parliament that displeased the King, being locked up in the tower or being bound from travel outside the city of London, and so when the Bill of Rights came through in 1688, the parliamentarians regarded as tremendously important that nothing said by a member of the legislative branch of government in parliament could be questioned or challenged either by the judicial branch of government or by the executive branch of Government.

What that means in a practical sense is that this inquiry should not and will not investigate what went on on the floor of the legislative assembly. You can certainly mention the fact that you made speeches and you can certainly refer to the fact, for example, that your speeches were reported in the press and media, but actually what you said in the parliament and what other people said, whether that's the Minister for Health, the opposition health spokesman or any other member of the parliament is really out of bounds for us, and for those very important and significant constitutional reasons I've mentioned.

Do I make myself sufficiently clear for your purposes?-- Perfectly clear Commissioner.

Does anyone at all at the Bar table wish to add anything to what I've said? Mr Atkinson, we might begin the evidence.

MR ATKINSON: Thank you.

Mr Messenger, are you a Bundaberg boy?-- That's correct, yes, I was born in Bundaberg Hospital.

The Base hospital?-- That's right.

And have you lived your life in Bundaberg?-- Not all my life, until - at about the age of 15 I left Bundaberg and joined the RAAF and spent about 20 years away from Bundaberg.

And what year did you return?-- It was about seven or eight years ago now.

Now, you were elected to parliament on 7 February 2004?-- That's correct, yes.

Prior to that time, what were you doing for a living?-- I worked in the media in the lead-up to it and the last three years before I was elected to parliament, I was with the ABC, started out as a sports presenter, breakfast presenter and then I was put in - I won the permanent tenure of the radio talkback host, if you like, between 9 and 11 on ABC regional radio, Wide Bay.

And is that a show that discusses current issues?-- Yes, it is.

So it has a similar format to that of Steve Austin in Brisbane?-- That's correct, yes, although I wasn't as good as him.

If you say so. Now, prior to entering into parliament, did you have any knowledge of the Bundaberg Base Hospital and its workings?-- Yes, I did, my knowledge of the Bundaberg Base Hospital, I guess firstly was based on the fact that my ma passed away from bowel cancer and she pent some time in the Bundaberg Base Hospital where I visited her.

When did she pass away, Mr Messenger?-- That was September 2002.

And so you were visiting her in the course of 2001 and 2002?-- That's right, it was about an 18 month battle.

Any other sources of information?-- Yes. During my normal course of work, I remember I covered the nurses industrial action, I can remember being in the streets recording conversations with nurses during that. I particularly remember their chant which went, "What do we want? More nurses. When do we want them? Now." And as well as that, there were issues regarding the health waiting lists, or the waiting lists for dental health, there were people concerned that the waiting lists were up to three years in length.

And was that something you knew from the nurses strike or from your talkback show?-- No, that was from the talkback show.

Now, did you also have an association with the Queensland Cancer Fund?-- Yes, that's right, I joined the Queensland Cancer Fund and for a short time, about 12 months I think it was, I was the publicity officer for the Bundaberg branch of the Queensland Cancer Fund.

What year was that, roughly?-- I guess that would have been 2003, yes.

Now, you mentioned that you became aware through those different sources of some problems with the hospital, and you mentioned waiting lists in particular?-- Yes, waiting lists and more nursing staff that were needed for the Bundaberg Base Hospital and I had that informal network of cancer survivors and also health professionals who were themselves part of the Bundaberg branch of the Queensland Cancer Fund.

And what did you learn from them?-- It wasn't a happy camp at the Bundaberg Base Hospital is probably the best way to summarise it.

Okay?-- I'd heard grumblings then of dissatisfaction with management.

And can you recall whether that was about pay conditions or management issues or anything specific?-- It leaned towards - it leaned towards the management and the very - probably the best way to describe it is autocratic management style.

Did you learn anything from your visits to the hospital to see your mother?-- When I visited mum, one of the things I became aware of was the acute shortage of beds and that there seemed to be pressure on the nursing staff to get patients out of hospital as soon as possible. My mum had a friendship with, I think the lady who was the previous Director of Nursing, Glennis Goodman, and I'm pretty sure - yes, Glennis was working that time as the Director of Nursing and it seemed as though it was only because of Mum's friendship with Glennis that she wasn't made to move on. She was initially admitted to hospital with a haemorrhage, and she's very scared of - and she almost passed away, I remember that the last rights were read to Mum and the doctor in charge said to, "Say your good-byes" and fortunately she didn't pass away at that stage, but in - I think she was probably in hospital for about another five, six, maybe a week afterwards where she couldn't stand but there was pressure to move her out of hospital.

COMMISSIONER: Mr Messenger, no doubt you'd appreciate, of course, that there's at least a large body of medical opinion these days that says that it doesn't only make economic sense but it also makes medical sense for people to be allowed to go home from hospital as soon as possible. When you're talking about pressure, what sort of pressure do you mean?-- I remember a conversation with Mum where she said that various nursing staff had said that she must get on her feet and start walking around and be prepared to leave. The nature of the haemorrhage meant that if she did stand on her feet, there was a possibility that the haemorrhage could start again and I remember that fear.

Was there anything that suggested to you that those nurses weren't motivated by what they regarded as being in your mother's best interests rather than simply freeing up a bed?-- I must say, Commissioner, I don't want to give the impression that she received poor nursing care, she received excellent nursing care, but I'm still left with the impression that she was told to move out as soon as possible.

Thank you Mr Atkinson.

MR ATKINSON: Can you say whether or not on those occasions when she did have to leave, whether that caused her any pain or discomfort to move away from the bed?-- Yes, once again, relating back to the nature of the haemorrhage, it was virtually, it was a life and death issue, she was in pain, as

you can imagine, being in the final stages of terminal bowel cancer.

Now, in September 2003, you gained preselection from the National Party in the Burnett seat?-- Yes, that's correct, yes.

Did you conduct a campaign to get elected?-- Yes. Part of the conditions of being preselected as a National Party candidate, and like every other political candidate, is that you go out there and find out what the issues are, and that involves quite an amount of doorknocking, and I conducted a doorknocking campaign up until the next election which was the 7th of February.

How many doors did you knock?-- At least a few hundred. It's quite a large electorate, Burnett, and I knocked on areas from Woodgate stretching as far north as 1778, Agnes Water.

And in the course of that doorknocking, did you gain any understanding of the issues that were concerning people in your constituency?-- Yes. Waiting lists for joint replacement was an issue that I discovered and I think just one of the people that I - that had one of the meetings that had an effect on me was with Shirley Clark - Doug and Shirley Clark.

I might stop you there if I can, Mr Messenger. Commissioner and Deputy Commissioners, I've provided my learned friends with copies of this document called a "timeline".

COMMISSIONER: Yes.

MR ATKINSON: It was a document that was prepared by Mr Messenger, he can attest to its accuracy and this is a chronology that sets out his involvement in these events. I propose to hand it up.

COMMISSIONER: I'll receive it for the moment and we'll just follow the evidence and we'll have it marked as an exhibit once the witness has been through it.

MR ATKINSON: I might take you to that document straight away?-- Sure.

The timelines document, who prepared that, Mr Messenger?-- I did, in conjunction with my staff, my staff put in some of the timelines and then myself, I went over and finished it off.

And is it accurate to the best of your knowledge?-- Yes, it is accurate to the best of my knowledge.

Now, if I can take you back to you were talking about doorknocking people?-- Mmm-hmm.

And you mentioned waiting lists for prosthetics, essentially?-- Yes.

Did you become aware of any other issues in the constituency?-- Waiting lists and then - one of the issues that I did become aware of during the course of my campaign was the fact that health professionals' concerns weren't being addressed certainly in a political level. I remember meeting with a mental health nurse, Scott Anderson, and he used the metaphor as you described in the-----

Opening?-- -----opening statement that he felt that concerns or criticisms of the Bundaberg and District Health Council or the service there would "lay like a dead mullet" on the floors of the respective - the sitting members of parliament and that was Bundaberg and also Burnett.

And the sitting members for those two electorates, from what party did they come?-- They were both members of the Labor Party.

Now, you ran a campaign. Did it have recourse to radio and television?-- Yes, it did, and I constructed - it was a multimedia campaign, radio and television. I constructed ads myself previously being a radio and television producer/director, and I wrote my ads around the themes, firstly of health and I have - I also have a copy of a script that I wrote.

Well, tell me perhaps at this stage, if you could just confine yourself to the themes you chose to run with?-- Sure. Basically, I'm just reading from the audio here, " I know how run down our State hospitals are. We need more nurses, doctors and specialists. We don't need more excuses." That was one central theme. The other central theme was, "I'll be there to speak out for those people who've been bullied, forgotten and ignored.", and then the other theme around the commercial - 15 second TV commercial was about the sneaky government taxes and charges, and I was referring to the ambulance levy in that case.

Tell me, when you spoke about people who had been bullied, forgotten or ignored, were you aware of other areas of Government where people in the constituency were complaining about those practices?-- No, no, I was mainly focussing in on health there and recalling my conversations that I had with - within that informal network, within the Bundaberg branch of the Queensland Cancer Fund and also that conversation that I had with Scott Patterson, the mental health nurse.

Now, after your election on 7 February 2004, did you meet with Mr Leck?-- Yes, I did.

And that's Peter Leck of the Bundaberg Base Hospital?-- That's correct.

Can you describe that meeting to the Commission?-- It was a very cordial meeting, I had spoken with Peter too in my life as a radio talkback host with the ABC, so it wasn't as though I was meeting him for the first time, but he was very professional and it ran very much in the same vein that many

other middle level bureaucrats said to me, the tone of the conversation and that was basically, "If you have a problem, come and see me, I'll be there to try and help you with those problems and you needn't bother the Minister." I developed a philosophy very quickly that colloquially putting it, I'd rather go to the organ grinder than go to the monkey, so I developed a policy there where if constituents had concerns, I'd get them to put those concerns in writing and then I'd forward that letter on to the Minister with a covering letter from myself.

Now, this timelines document, you refer to meetings on 18 February and then 1 March 2004 with a mental health nurse. I understand that the meeting on 5 March is with three of the mental health nurses. Could you tell the Commission something of those meetings or that meeting?-- Okay. Well, the first time I had contact with a mental health nurse, that was on the 1st of March. Am I allowed to say that person's name?

COMMISSIONER: In what capacity were you dealing with this person? Was it a patient or a-----?-- This person came to me and was subsequently one of the nurses that I presented to Parliament.

Well, you heard my comments earlier about people who spoke to you in confidence?-- Yep.

But leaving that to one side, if someone came to you as a constituent in relation to their employment as a nurse, I have no difficulty with that name being used in the proceedings; do you have a different view, Mr Allen?

MR ALLEN: Well, perhaps it could be established whether that person sought anonymity when speaking to Mr Messenger and whether they did seek that confidence?

COMMISSIONER: Yes. What's the situation?-- Initially that person did seek anonymity.

Yes?-- That person has subsequently spoken publicly though.

Well, given that the person has spoken publicly, feel free to use the name?-- That was mental health nurse Ursula Cooper. I had a-----

MR ATKINSON: I might just interrupt you for a second there, Mr Messenger. There is one issue you should be comprised of and Commissioners, and whilst they spoke to Mr Messenger professionally, as the story unfolds, as I intimated in the opening, they will have personal issues. Perhaps at that stage maybe it won't be necessary to identify them.

COMMISSIONER: Well, I think not because the relevance of the personal issues is they flow on from the fact from the their duties as nurses.

MR ATKINSON: That's true.

COMMISSIONER: So I wouldn't put them in the same category as people whose only connection with Bundaberg Hospital is that fact, that they were patients or members of patient's families. I think we're looking at different categories here, so feel free to go ahead.

MR ATKINSON: Thank you. Carry on, Mr Messenger?-- I did have a meeting in my office on the 5th of March with the mental health nurses in my office. At one stage there was two mental health nurses and also the mother of the mental health nurse that was missing. I subsequently had meetings with her as well.

When you say "missing" you might need to elaborate?-- .. ..

And so effectively, you have two nurses and a representative for the third nurse?-- Of the third nurse, yes.

What did they discuss with you?-- They discussed with me issues involving the Bundaberg Mental Health Unit, a broad description would be that they were concerned about what they thought were bullying tactics on behalf of management, they were being asked to do what they described as possible illegal behaviour.

And what was that, Mr Messenger?-- That was in relation to the disposal of suspected elicit drugs that they discovered on clients within the Bundaberg Mental Health Unit.

What were they being asked to do and why did they think it was illegal?-- My recall is that the nurses said that if they confiscated what they thought was an elicit substance, they were being then asked to firstly not go to the police, they were very concerned about not taking those substances to the police, they were being told to dispose of those substances by, for example, flushing them down the toilet.

Sorry, when you say - used the past tense, who were they being told that by?-- The management of the Bundaberg Mental Health Unit.

All right. So you were just outlining concerns and you mentioned elicit drugs; were there others?-- Assaults on the nurses by relatives of patients and also the security of the facility itself. The seclusion room was a problem for them and I recall a conversation where they told me that a nurse, and I can't identify which one - I can't remember - was locked in the seclusion room with a kickboxer.

All right. Now, they were raising those concerns with you; did they say whether or not they had raised their concerns with their line manager or the hospital manager?-- Yes. They had made their concerns known and it was because of the fact that they'd made their concerns known that they feel as though that they were being bullied. That's my memory of the conversation.

Now, you've prepared and submitted written submissions to the Commission?-- That's right.

And is it the case that divider D, behind divider D to those submissions one finds a transcript of your conversations with those nurses?-- That's right.

And do those transcripts accurately reflect the conversations?-- Yes, they do accurately reflect the conversation. I taped those conversations with a minidisc recorder.

All right. Now, what did you do with that information at that time?-- I used that as background briefing and I took it on board. I wrote to the Minister and on my notes here I've got the 30th of March I received a letter from - I wrote to the Minister on the 30th of March and the Minister gave me a reply dated the 29th of April and I talked to him about waiting times of specialists, staff turnover and I'm - I don't - I may have that letter in my correspondence - I'm pretty sure I've got that letter in my correspondence-----

All right?-- -----but I've mentioned bullying.

And that's as far as you took it at that time?-- Yes.

Just before we move on, tell me, did the nurses present as experienced people or were they young women just starting out?-- Oh, the nurses themselves were middle aged, around 50 and they described themselves as the "Mental Health Grannies".

And in terms of their superiors, did they mention people with whom they'd had problems?-- Yes. Judith McDonald was one person that they said they had problems with.

All right.

COMMISSIONER: Do you know what position Judith McDonald held at the time?-- Judith McDonald was in charge, the manager at the Mental Health Unit.

Was she a nurse or a doctor or an administrator?-- I couldn't answer that accurately, Commissioner.

Thank you Mr Messenger.

D COMMISSIONER EDWARDS: How big is the Mental Health Unit? A big unit or small? How many beds?-- It's a medium size.

Small? Medium size?-- Yes.

Inpatient and outpatient?-- Yes, Deputy Assistant Commissioner.

D COMMISSIONER VIDER: These mental health grannies, were they experienced psychiatric nurses? They'd worked in the Mental Health Unit for some time?-- That's correct. Each of these nurses had around 30 years experience, I think there was one

nurse who had over 20 years experience, but I remember saying that they - between them they could add up almost 90 years worth of mental health experience.

And as they talked to you, were they able to identify a change in the culture in the Mental Health Unit at Bundaberg Hospital or had that been like that for a long long time?-- They - many - I think most of those nurses had, had recently been employed by the Bundaberg Mental Health Unit and the contrast that they gave between culture in Bundaberg was the contrast between other mental health districts that they'd worked in and it was interstate experience, that's from memory. So they were quite upset with the culture that existed within Bundaberg and they based that on their experience in other areas.

Did they nominate specific points of difference in that culture? Did they say what was different about Bundaberg in particular?-- Deputy Assistant Commissioner, from memory, the main thing that jumps out was in reference to the handling of suspected elicit drugs that they were - they wanted to go to the police very soon after discovering those suspected items and there was a reluctance on the part of the management to allow that contact with the police. One other thing that comes to mind is that an assault on one of those nurses by a relative of a consumer, mental health consumer, there was quite a delay between that nurse being assaulted and then actually contacting the police and that was of concern too.

D COMMISSIONER EDWARDS: At this stage you had not heard or noted any complaints about Dr Patel?-- No.

It was all about the Mental Health Unit?-- No. Yes, it seemed as though 50 per cent of my parliamentary time was taken up with mental health issues.

COMMISSIONER: Mr Atkinson, since we've had those interruptions, we might take the morning break now, and I think it might be a good idea to take a slightly longer break than usual because you might appreciate the opportunity to get together with the witness and make - and work out how you're going to deal with the point that I raised earlier about evidence of what was said in parliament and what bits to put in and what bits to leave out.

MR ATKINSON: Thank you, Commissioner.

COMMISSIONER: So we might take half an hour if that suits you?

MR ATKINSON: Yes, Commissioner.

COMMISSIONER: Also for Mr Messenger, just for your benefit, it gets a bit tongue-tying addressing each member of the bench, and I'm sure each of us would be comfortable, but it's easier just to call each of us "Commissioner", then you don't have to worry.

MR BODDICE: Commissioner, just before you adjourn, I have death certificates P21 and P22 and I'll provide them to the Commission.

COMMISSIONER: Thank you very much. If that can be passed up and we'll now adjourn for half an hour.

THE COMMISSION ADJOURNED AT 10.57 A.M.

THE COMMISSION RESUMED AT 11.32 A.M.

ROBERT DESMOND MESSENGER, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Thank you, Mr Atkinson.

MR ATKINSON: Thank you, Commissioner. Mr Messenger, before the break Deputy Commissioner Vider had asked you a question in relation to the nurses, in particular how the environment at Bundaberg Base compared to other institutions in which they'd worked. Can I ask you to have a look at this document? This is part - if you can go to divider D, perhaps, in your submission, otherwise just look on your screen. And maybe if it could be moved down the screen so he could read further down the page? Now, you will see there - can you read that page, Mr Messenger?-- Yes, I can.

You will see there there is reference - and this is, of course, a transcript of Ursula Cooper's discussion with you?-- Yes.

And she talks there about an unsafe seclusion room, an intensive care area that wasn't adequate for unmedicated patients, verbal assaults and nurses being in tears. Down at the bottom of the page, the second last line, she talks about people being too frightened to work there. She talks about taking those concerns to management and being told that she's colluding with the staff. And over to the next page, if we might, she talks there about taking her concerns to management and being told that she is neurotic and incompetent. And she talks there about some of her experience in the Richmond Report of New South Wales". Further down the page, if we might-----

COMMISSIONER: Just while that's on screen, this is a transcript from a tape recording of the discussion with the nurse?-- That's correct, Commissioner.

All right. It says, "One particular act" - this is under the subheading "Do you consider you were asked to do a legal act?" I imagine it means "illegal act"?-- Illegal act, yes.

"I got the policy and I" - it says "relished". Perhaps "relinquished the policy"?

MR ATKINSON: Realised, I thought it might be, Commissioner.

COMMISSIONER: But was she referring to a particular written document that contained this policy?-- Yes, it is my recollection that there was a - some documentation that they'd obtained from the hospital.

Right. Did she show you this document?-- Yes, yes.

All right?-- And I think I then went on to table that document in Parliament.

All right. And this was a policy issued by the hospital, was it, or by Queensland Health?-- It was by the hospital itself.

Right. Is a copy of that document available, Mr Atkinson?

MR ATKINSON: We haven't found it amongst the documents with which we have been provided.

COMMISSIONER: Mr Messenger, I might ask you, perhaps at lunchtime, to see if you can track it down?-- Sure.

The inquiry legal team will give you any help that we can.

MR ATKINSON: Just to continue with the point raised by the Commissioner, if you go halfway down that page, you will see a sentence that starts: "I told him to take the drugs with him but he wouldn't take the drugs. He made me keep them in the ward. And I showed him a Queensland Health document and this document means I have to call the police." Is that the same document from your discussions with Ms Cooper?-- I will just - can you just repeat that again, Mr Atkinson?

Do you see that sentence that starts, "I told him to take the drugs"?-- Yes, "I told him to take the drugs with him"-----

And the sentence is about a Queensland Health document which apparently says that-----?-- Yes.

-----if drugs are found on a patient, then the police should be called?-- Yes.

Do you have a copy of that document?-- No, I don't.

Now, further down that page you will see there is talk about being "locked in the seclusion room with the kickboxer", and that management laughed about that issue. And if I can go to the next page, please? You will see at the top of that page discussion about "Ms McDonald absolutely abusing Ms Cooper in front of the staff"?-- Yes.

And a suggestion that she change the locks. There is more pages, of course, in your submissions, and they're from the three nurses - the two nurses and the daughter. But they're all accusations of that level of seriousness?-- Yes.

All right. Now, you mentioned in relation to the nurse who couldn't be there - I think her name is-----?-- G.

Yes,.. .. In the transcript I think from her mother in that same folder-----

Right?-- .. ..

All right?-- .. ..

My question is this: were you told whether the .. treatment was related to the working conditions?-- Not - I couldn't be sure on that. At that particular point in time I couldn't be sure.

Now, that was in February/March 2004. If I can take you to your timelines? 6 March 2004 you mention receiving a complaint about treatment that a man's wife had received and her death?-- That's correct, Mr George Connelly.

You relayed that to the Minister?-- Yes.

11 March 2004, the author of the dead mullet metaphor came to see you?-- That's correct, yes.

What did you do with that complaint? What was the nature of that complaint at that stage?-- I think Scott congratulated me on my election and said, "Keep up the good fight". That was the gist of the conversation.

You mention in your timelines that on 25 March 2004 you have a meeting with a Dr Scott Jenkins?-- That's right.

What can you remember about that meeting?-- I drove around to Dr Jenkins' practice.

COMMISSIONER: Is Dr Jenkins a GP?-- He was a psychiatrist.

And in private practice in Bundaberg?-- That's correct.

Right?-- Either a psychiatrist or a psychologist, I am not quite sure.

Yes.

MR ATKINSON: It seems from the records, actually, that he worked at the Base Hospital in the Mental Health Unit. The transcripts suggest that he certainly worked in the unit.

COMMISSIONER: Right. He might have been a visiting medical officer there.

MR ATKINSON: Yes, he may well have been, Commissioner. Tell us more about that meeting?-- He discussed concerns about the mental health delivery in the Bundaberg area. I don't have too much of a recollection, I didn't keep any notes or transcripts of that conversation, but he was overall concerned about mental health patients receiving the proper care.

Right. And then you speak on 12 April 2004 - the item there is about a lady called Christine Ryan. I appreciate again, as you make clear, that there is more information about her in your written submissions, but tell us about your meeting with Christine Ryan?-- That was in a social basis at Woodgate. I was visiting Woodgate and Christine - I was introduced to

Christine and then Christine disclosed a number of things to me about Bundaberg mental health. I have got in reference G - can I just look at reference G?

Certainly. And perhaps we can go to reference G on the overhead projector?-- She worked in administration in the Bundaberg Base Hospital and that she had been suspended for 14 months on full pay.

So if we go to reference G, working from the back there is a four-page document, the last four pages. So this is a note to yourself about your meeting with Christine Ryan?-- That's correct. My electoral staff.

It is a note that's made almost contemporaneously, about the same time as the meeting, two days later?-- Yes, a couple of days after.

All right. Now, she tells you about misconduct and mentions a man called Peter Leck that you have talked about?-- That's correct, yes.

Now, what concerned you - what issues did she raise which concerned you?-- Well, as seen there in the documentation-----

Right?-- -----she was suspended on full pay. She talked to me about the CMC contacting her with regards to industrial relations matter. She was almost saying that - that it was used as a weapon, the suspension on full pay, that it became quite a burden for her. And she thought that it was a technique used by administration to, as it was, discipline people who may speak out.

Now, the second heading in bold is "Union delegates and professionals who speak out targeted".

COMMISSIONER: Mr Atkinson, before we go on, did this particular nurse tell you how long the charges had been hanging around? I see you refer to a period of three months in the second paragraph under "suspended on full pay"?-- I - yeah, no, I don't have a recollection of that at all, Commissioner.

D COMMISSIONER VIDER: Mr Messenger, what was Christine Ryan's actual position? You state administrative nurse. Could you be more precise about that?-- No, I couldn't, Commissioner. I just understood from the notes that I took that she was in administration.

In the general administration at Bundaberg Hospital or in the mental health administration?-- No, not in mental health, in the general administration within Bundaberg Hospital. Not in mental health.

MR ATKINSON: Mr Messenger, you will see at line 3 of the page it talks about the fact that she had been suspended for the last 14 months on full pay?-- That's right.

That accords with your recollection?-- Yes, that is - that is my recollection.

Indeed, you subsequently asked a question of the Minister about how many people had been suspended on full pay at the hospital?-- And I received a reply back, which is in my documentation as well.

And the answer was five?-- Yes.

Now, if I can take you down to the second bold heading, "Union delegates and professionals who speak out targeted". You mention over the page that the notes say that Ms Ryan had been asked to do illegal things and then there is a note to find out what they were. Did you ever find out what they were?-- No, no, I have no recollection of that. It may have been referring to fiddling the waiting list figures, which is the next heading down.

All right?-- But I have no recollection of that specific claim.

And then you talk about "waiting list figures fiddled". Is that an accurate recollection of the conversation?-- Yes, it is.

Then down the bottom, skipping ahead, you talk about the "bloated executive management group"?-- Yes, Christine thought that there were an inordinate amount of administration staff at the Bundaberg Base Hospital.

Then over the page you speak about Mr Leck reportedly receiving a bonus of $30,000 a year?-- That was the first time that I'd heard that rumour, that the CEO of the Bundaberg Base Hospital received from Queensland Health a bonus if he comes in under budget, if there is an under-spend.

All right. I will ask you to put that to one side for a minute. The timelines effectively show that there were a number of other complaints you received. One of them, I understand, was from a Major Peter Peterson?-- Yes, there was, but Major Peter Peterson came to me this year, rather than last year. It was around Anzac Day.

All right?-- I remember Peter Peterson came to me.

And there was a Dr Greg Brugman?-- That's correct, yes.

Now, all these people who were approaching you, were they telling you why they weren't going to Queensland Health instead of you?-- Well, they felt as though that-----

Don't tell me what they felt; what did they tell you?-- What did they tell me? They told me that if they made their concerns known, they would be professionally punished.

COMMISSIONER: That's the people who were working for Queensland Health?-- That's correct.

What about people outside the system?-- Constituents, Commissioner?

You mentioned Major Peterson?-- Yes.

Was he working for Queensland Health or was he outside the system?-- He was outside the system. And the timeline in the initial submission is incorrect with Peter Peterson. Major Peterson came to me at Anzac Day this year, so it was 2005.

Yes, okay?-- So he recently came to me asking that this Commission be expanded to look at the mental health issues in Bundaberg.

There is something I should raise. We did hear a little evidence earlier about a Mr George Connelly?-- Yes.

And he spoke to you about his wife's treatment?-- That's right.

Again, that's, I guess, a case of a patient. So the earlier ruling about disclosing patients' names will apply unless there is permission from Mrs Connelly or her family for that name to be used in the press or media, and steps should be taken to have that name excised from the transcript when it goes on the internet.

Thank you, Mr Atkinson.

MR ATKINSON: Now, you gave your maiden speech on 18 March 2004?-- That's correct.

I won't ask you to go into the detail, but a topic was, amongst other things, the Bundaberg Base Hospital?-- Yes, I described it as a health crisis in Queensland.

COMMISSIONER: As I indicated earlier, because of the legislative situation we can't go into what you said in Parliament. But were the remarks made in your parliamentary speech reported in the media?-- Yes.

For example-----?-- Yes, they were.

-----the Bundaberg News Mail, and other newspapers in the Wide Bay area?-- And I also issued media releases myself.

All right. So the important thing is that you said things in Parliament, that they also got into the public domain in that sense, through the press and media?-- That's correct.

And can you inform the Commission in general terms of what was - what received press coverage in the media?-- That - I think I remember listening to an ABC radio report - I can't be sure whether it was in relation to that speech or a subsequent

speech, but the ABC radio report said that I thought that there were patients dying unnecessarily.

Right.

MR ATKINSON: Now, you gave another speech on the 21st of April 2004 in Parliament?-- That's correct.

And, again, if you would follow the Commissioner's approach, don't talk about what you said in Parliament but the topic was - well, there was a report in the media subsequently and you issued media releases?-- Yes, I have got a table of summaries of media releases. I have issued 20 media releases.

One of them dated 23 April 2004 is a media release entitled "Messenger begs for district health review"?-- 20th of April?

23 April?-- That's correct, yes. The media release says - and in that media release I talked about the failure of the management of the Bundaberg Base Hospital to address fundamental issues of patients and staff care, the patient lives were being put at risk because work standards among health professionals was at an all time low, and I renewed calls for a full and open inquiry into management and operation of the Bundaberg & District Health Service.

After those press releases and after your speeches in Parliament, were you approached by the Director-General or the Minister to understand and ventilate your concerns?-- There was one letter that I received from the Minister and that's dated the 29th of April.

D COMMISSIONER EDWARDS: 2004?-- 2004, correct.

MR ATKINSON: And what's - what's that letter?-- And in the letter the Minister thanks me for my letter dated the 30th of March, and then once again he says, "I am advised there are waiting times to attend any specialist working in the public hospital in Queensland. These time periods do vary according to location, specialty and, most importantly, clinical acuity." Would you like me to continue reading?

No. It addressed the waiting list issue, it doesn't address the broader issues from your press release?-- Staff, numbers of staff across - it monitors - it talks about the total number of staff across all disciplines, including administrative staff. He talks about staff turnover. He talked about the retirement of Dr Thiele, who was a vascular surgeon in Bundaberg, and then he closes saying, "These senior clinical staff support Mr Peter Leck, district manager of the Bundaberg Health in the provision of high quality, safe health services throughout the district in a financially responsible and effective manner so as to contribute to the health status of residents in the region."

I tender that letter, Commissioner.

COMMISSIONER: May I see that?

D COMMISSIONER VIDER: Mr Messenger, in your timeline, 21st of April 2004, you make mention - one of the dot points refers to health professionals being bullied. The health professionals you refer to, what categories of health professionals had you been speaking to or coming to?-- The health professionals that I had in mind were the - with the mental health.

Nurses?-- Yeah, and the psychologists as well, Mr Brugman.

And the psychologists?-- Yeah.

Had any medical staff at this stage come to see you with concerns?-- As in other medical staff? As in other nurses?

No, just general doctors I am talking-----?-- Oh, no, no doctors had come to see me.

Thank you.

MR ATKINSON: You mentioned Dr Jenkins in your evidence but you don't recall that he complained about bullying?-- No, that's right.

COMMISSIONER: Mr Atkinson, the letter from the Minister for Health, Mr Nuttall, to the witness Mr Messenger dated the 29th of April 2004 will be admitted into evidence and marked as Exhibit 11.

ADMITTED AND MARKED "EXHIBIT 11"

MR ATKINSON: Thank you, Commissioner. Now, on 11 May 2004 you decided to go public with the complaints from the Mental Health Unit?-- That's correct.

And, again, I won't ask you to discuss what you said in Parliament, but I think we can go this far, Commissioner, to say that the nurses were in the public gallery whilst you gave a speech; that's correct?-- Can you just say that again?

The nurses were in the public gallery to the Parliament whilst you gave your speech?-- That's correct.

Your speech, the topic was the Mental Health Unit?-- That's correct.

After the speech you came - the nurses came down from the public gallery? They were in tears?-- They were. They were in tears. It was a very emotional time for the nurses.

Right. And you were approached at about that time by Mr Cameron Milliner?-- Cameron Milliner made contact with me possibly 10 minutes after the speech had finished, maybe

within half an hour.

And he asked that there be a meeting between the Director-General, Mr Buckland, on the one hand?-- That's correct.

And you and the nurses on the other?-- Yes.

Did you go to that meeting?-- Yes, I did. I attended that meeting that afternoon, around 4 or 5 o'clock.

Would you tell the Commission what happened at the meeting?-- Before the meeting started - I also took along - there was myself, the three mental health nurses, and a staffer from the Opposition Leader's office. Before the meeting began I asked that Dr Buckland recognise that the nurses were claiming the status of whistleblowers. Dr Buckland acknowledged that and then the meeting proceeded from there.

All right. How did it proceed?-- The nurses spoke to Dr Buckland. I was, for the most part, an observer. They spoke eloquently and passionately about the concerns that they had at the Bundaberg Base Hospital. The meeting probably went - well, it went more than one hour, possibly closer to two hours, and in that time they laid all their cards on the table.

And the complaints that you had received from the nurses, is it fair to say they canvassed them with Mr Buckland?-- In great detail.

And what was Mr Buckland's attitude in response?-- He listened attentively to their concerns and then indicated that it was more than likely going to be an independent - well, a review of the Mental Health Services in Bundaberg, at which time I suggested that if - that maybe the review should be widened to include the whole of the Bundaberg & District Health Service, and-----

If I can stop you there? I don't like to ruin your train of thought, but Mr Buckland was well aware of who you were?-- That's correct, yes.

And, as you said, in your media releases, which you set out in a schedule in your submissions, to put it colloquially you had been banging on about the Bundaberg Hospital for quite some time?-- That's correct.

Continue. What did Mr Buckland have to say to you when you suggested an entire review might be in order?-- It was an extraordinary outburst. First of all, there was a physical response. He banged the table and said words to the effect, "I don't care if you are a Member of Parliament. I won't be told how to run my health department." And it was met with stunned silence.

COMMISSIONER: In what tone of voice was that said?-- It was in a very loud tone of voice and a condescending tone of

voice.

D COMMISSIONER EDWARDS: Still no mention of Dr Patel? This is all mental health?-- That's correct, Commissioner.

You felt you got very poor response from the hospital administration on that issue?-- On the mental health?

Yes?-- I felt at that particular point that we were making headway, I was very glad that there was going to be a review of the Mental Health Unit there.

MR ATKINSON: You were saying, Mr Messenger, that when he spoke so loudly there was stunned silence around the table?-- That's right.

What kind of man is he physically, Mr Buckland?-- He is a hairy man. That's my first impression. My recollection is he is a big man, but, then again, most men are big compared to me.

You think he is over six foot?-- I don't know honestly how tall he is.

How did the nurses respond to the slamming of the table?-- There was - once again, what I observed was that there was stunned silence. It certainly put a different tone on the meeting. Up until that point there had been quite a conciliatory tone to the meeting.

All right. How did the rest of the meeting play out, if you like?-- We picked up from where we left off, and when I say "we", I should mean the nurses continued their explanation. I

didn't say anything in response to Dr Buckland's outburst. The conversation continued, the evidence continued and then possibly about four or five minutes after that, he then turned to me and apologised for his outburst.

But didn't relent on whether or not there might be a full inquiry?-- Definitely no - no full inquiry.

He said that, or he didn't change his comments?-- No, he just didn't change his comments.

Now, was there an investigation into the Mental Health Unit subsequently?-- There was. There was an independent - well, at that stage it was promoted as an independent review and investigation into the Bundaberg Mental Health District by a Dr Mark Waters.

Now, what became of that report? When was it delivered?-- Can I consult my notes?

Yes?-- I think on my timeline - it took a number of months for that-----

Can I take you to 30 September 2004 in your timeline. Now, I don't want you to say out loud what you said in parliament?-- No.

But that gives you-----?-- But that record shows me that - that the report details were released around September and I did make comment - I made comment also publicly-----

Right?-- -----in press conferences, that I was disappointed about the report. It was what I called the Clayton's report. It was the report into mental health that you have when you don't have the report, because the full details of the report weren't released. There was - I think it had 13 recommendations containing in that - contained in that report and I also felt that during the reporting process, that the independence of the report had been compromised because Dr Mark Waters had subsequently been employed by Queensland Health.

When you say subsequently, was he appointed before or after he delivered his report?-- It was actually at the three-quarter mark, from my recollection, that he was employed, or around the halfway mark.

And how did you find out about his appointment?-- The exact - I can't remember the exact way - the exact person I found out from. There were nurses - I think the mental health nurses firstly heard rumours that this gentleman had been employed by Queensland Health and I recollect having a conversation with Dr Mark Waters himself. Whether he told me during that conversation, I'm not sure.

Okay. Now, certainly, you weren't told formally by Queensland Health that the author had been employed by them?-- No.

Right. You mentioned earlier that you were disappointed that full disclosure of the details of the report weren't given?-- That's right.

What did you mean? To what extent was it lacking?-- I think - the report came out and, as I said, with 13 recommendations. It didn't have complete details of, for me, the allegations of not processing suspected illicit drugs properly. I don't think it dealt with the assaults.

COMMISSIONER: Mr Messenger, you don't know if those were in the report or not. Were you given an incomplete copy of the report?-- I was given the 13 recommendations.

But not the body of the report?-- That's correct.

So all you were told about was the actual recommendations that came from the report?-- That's right, that's correct.

Mr Farr, have you found out yet whether a copy of that report is yet available?

MR FARR: We are having some inquiries made in that regard.

COMMISSIONER: Thank you for that. While I have you on your feet, I have just been handed correspondence received from the Premier's office which includes a memorandum of yesterday's date from the Director-General of Health to the Minister for Health stating: "The department has discovered irregularities in Dr Patel's payment records, including over-reimbursement for airfares, excessive recreational leave", and of course the airfare that he was given back to Oregon in April 2005. Will you make sure that, after lunch, all the relevant documents in relation to that matter are available. The memorandum says that these matters have been referred to the Queensland Health Audit and Investigations Unit, which I assume is an internal unit within Queensland Health. I might have been forgiven for thinking that the Director-General's priority was to tell us about it, but if he's prepared a bundle of documents to go to that internal unit, presumably he can give us a copy as well.

MR FARR: Yes, I will make those inquiries.

COMMISSIONER: Thank you.

MR ATKINSON: Mr Messenger, do you know the formal name of the Waters' report?-- No, I don't.

You mentioned to Commissioner Morris that you received the recommendations. Do you know whether the body of the report was ever made public?-- No, it's my understanding that the full report was never made public.

When you say the full report, was any report apart from the recommendations made public?-- There were pages attached to

the recommendations.

When you say pages, was it an executive summary or just select pages?-- Without sighting that, I couldn't give you an accurate answer.

Now, in September 2004, according to your timeline, you had a discussion with Mrs Bramich?-- That's right, yes.

You understood her to be the widow of Des Bramich?-- Yeah.

Is that right?-- That's correct.

All right. Now, you don't need to explain the circumstances of that death, because that will be done and has been elsewhere, but did you write to the Minister as a result of her approach?-- That's right, I met with Mrs Bramich. And then from the meeting, from meeting with Miss Bramich and the information she supplied me, I wrote a letter to the Minister on the 7th of September. From memory, what I asked for in that letter, Mrs Bramich was most concerned that her doctor - that her husband, rather, wasn't transferred through to Brisbane and I can remember asking a question to that nature in the letter twice, "Why wasn't this man transferred through to Brisbane?"

Twice in the letter you asked that specific question?-- Mmm.

Now, that letter was dated 7 September 2004?-- That's correct.

Did you receive a response?-- Yes, I did receive a response.

What was the date of the response?-- The 13th of the October. The health Minister responded to a letter regarding Tess Bramich.

Do you have a copy of the letter there?-- Yes, it's ministerial references and in my references here.

That's not part of your submissions?-- No.

No, all right. Could you fish the letter out?-- Sure.

It's a short letter, is it?-- That's correct.

Can you read it out?-- "Dear Mr Messenger, thank you for your letter dated the 7th of September 2004 on behalf of the family of Mr Desmond Bramich concerning his death in July this year. I'm advised the Bundaberg Health Service District has recently been advised that legal action is being pursued and a notice served under section 9A of the Personal Injuries Proceeding Act 2002 (the Act). I am therefore unable to provide details of Mr Bramich's admission at that time. Should you have any queries regarding my advice to you, Mr Cameron Milner, Policy Adviser, will be pleased to assist you and can be contacted on" - telephone number - "3234 1191. Yours sincerely, Gordon Nuttall."

COMMISSIONER: You wish to tender that?

MR ATKINSON: Yes, please, Commissioner.

COMMISSIONER: That's the letter from Minister Mr Nuttall to yourself of what date?

MR ATKINSON: 13th October 2004.

COMMISSIONER: All right. Well, in fact, 12 October 2004; received on the 13th.

MR ATKINSON: Yes. Now, did you receive any other communications from the Minister by way of explanation for the care that had been given to Mr Bramich?-- No, I did not.

COMMISSIONER: The letter of 12 October 2004 will be admitted and marked as Exhibit 12.

ADMITTED AND MARKED "EXHIBIT 12"

MR ATKINSON: Thank you, Commissioner. You asked a question on notice at about this time concerning hospital bed numbers and a comparison. I think in my opening I said it was '99 and 2004?-- That's correct.

But it was in fact '89 and 2004?-- '89. There was a 15, approximately 15-year period.

You asked that question on notice in parliament?-- That's right, yes.

All right. The response you received formally was that in '89 - 1989 - there were 216 beds?-- That's right.

And in 2004 there were 138 beds?-- That's correct - 136.

COMMISSIONER: Just thinking about it, I suspect that an answer to a question on notice is also covered by proceedings in parliament and therefore, within article 9 of the Bill of Rights, it shouldn't be canvassed in these proceedings.

MR ATKINSON: I'll try and address that differently. Independent of the answer to the question on notice, have you been able to ascertain the number of hospital beds for those respective years?-- Mr Atkinson, I put out a press release, a media release, which did get some coverage in the local media up there, dated the 24th of May 2005. The title of it was "More Fuel for Messenger's Health Blow Torch: Bundaberg Hospital Bed Number Slashed" and in that, the basic gist of that media release was that the hospital bed numbers decreased in the Bundaberg Base Hospital by approximately 37 per cent in the last 15 years while the population has increased by 40 per cent.

COMMISSIONER: Thank you.

MR ATKINSON: Just on the subject of blow torches, did you have an incident in parliament concerning criticism of Queensland Health and referral to the Speaker?-- Yes.

And a blow torch?-- That's correct. Yes. I - would you like me to describe how it came about?

If you would?-- It came about because of a conversation that I had with Mr Vivien Chase, who was the chair of the hospital council in Bundaberg. I have had two conversations with Mr Chase. One was not long after my maiden speech, where I - where I raised an issue of health and Mr Chase rang me and asked that I not be so vocal in raising health issues. I said that I appreciated his position but I was there to represent my constituents and if they came to me, then it was my - I was duty-bound to raise those issues in my forum of parliament.

And the second conversation with Mr Chase?-- The second discussion with Mr Chase was not long, I think a day or two after I had presented the three mental health nurses in parliament and I'd noticed comments that Mr Chase had made in the "Letters to the Editor" section in the Bundaberg News Mail where he was critical of - of me. And he'd placed - and what he was suggesting in that article was that he listed his number and the number - and the names and numbers of other members of the health council and that if anyone had problems, they should contact those people. I contacted Mr Chase and we had an animated discussion about the Bundaberg and District Health Service and in that conversation I used the metaphorical term that I was going to turn the blow torch on this health issue. Not long after that, and I'd left Mr Chase-----

COMMISSIONER: Mr Messenger, I think you're about to go into something that occurred within the proceedings in parliament and, again, we can't go into that. But can I ask you this: this is - Mr Chase is the chair of the Bundaberg District Health Council; is that right?-- That's correct.

Does he operate out of the administrative services at Bundaberg Hospital?-- Commissioner, I have no idea where he operates.

All right. Has your attention been drawn to a letter that Mr Chase took it upon himself to send to Dr Patel four days after he fled from Australia on the 5th of September addressed to Dr Patel in Portland USA saying that he was writing on behalf of the district health council "to offer our support and to advise that we're deeply saddened and appalled by the disclosure in parliament of confidential information which has subsequently" - it says "l-e-a-d"; I assume it means led - "to your decision to leave Bundaberg. I would like to express my thanks for all your hard work while you were here and for the care you have provided to the residents of our community. All the best wishes for your future. Yours sincerely, Viv Chase,

Chairperson, Bundaberg District Health Council 05/04/2005." The 5th of April 2005. You're not aware of that?-- No, Commissioner, that's the first time I'd heard that.

More serious, the letter is headed: "Inquiries to Peter Leck, District Manager" with his telephone number. I will have that letter of the 5th of April 2005 put into evidence as Exhibit 13.

ADMITTED AND MARKED "EXHIBIT 13"

MR ATKINSON: Mr Messenger, you received all these complaints in 2004 up to early 2005. Did you receive complaints about admissions into Mental Health Units and what was required to be admitted?-- Yes, Mr Atkinson. I remembered attending mental health functions and dinners and I've spoken to a number of people who admitted that they suffered from mental health illnesses. The common theme from those discussions was that when they presented themselves to Bundaberg Mental Health, that the mental health bar, if you like, was raised too high. They presented and said that they were a common - a common theme was that they presented with feelings of self-harm and were thinking about committing suicide - I received documentation - and yet they weren't allowed - they were basically given, "Here's the number to Lifeline. Go away, you're not really sick." They felt as though their needs weren't being acknowledged.

COMMISSIONER: Do you know who was making these decisions within the Mental Health Unit? Was it psychiatrists or psychiatric nurses or admissions staff?-- I couldn't answer that accurately, Commissioner.

No. Okay. Thank you.

MR ATKINSON: Now, that complaint but also all the other complaints, did you discuss them with Peter Leck at any time?-- Yes, there were a number of times that I'd met with Peter Leck and there were a number of times that I've phoned Peter Leck regarding different cases and just-----

How many times would you have communicated with Mr Leck, roughly, in the course of 2004, whether it be by telephone, in person or by letter?-- No more than half a dozen.

And a lesser number in the course of this year?-- That's correct.

So you did approach him with some of these complaints?-- Yes, I did.

What response did you receive from Mr Leck?-- Polite, a polite response. A very official response. And I was left with the feeling that the ship was sailing along quite

smoothly and that everything was fine.

Sorry, you were left with the feeling, or that's what he said to you?-- No, I was left with that feeling. I couldn't say that he didn't say that to me, no, but he spoke very - very bureaucratically to me and I didn't feel as though my concerns were - were being addressed.

All right. Did he at any time propose solutions to the problems you were raising?-- No, it's my recollection that he didn't.

Now, 16 November 2004 was the Rosedale train crash date, or thereabouts?-- That's - I'll just go to it. Yes, that's correct.

All right. You sought to visit the hospital on that date?-- Yes, I did. I visited the train crash site, met with the Premier briefly as they flew in on the helicopter. Tour of the crash site. Spoke with the emergency service people on site and then mid - not long after midday, maybe around 1 o'clock, I started driving back to my office. On the way back to the office I listened to the news and heard that the Premier was visiting the hospital to speak with survivors. I thought as part of my duty as the member for Burnett, and the Rosedale train crash occurred in Burnett, that I should go and visit the patients, the survivors as well, also the staff to congratulate them on the sterling job that they were doing and also offer the services of my office to those train crash survivors. Many of those people were interstate and we might be able to supply them - contact family members or supply them with information about accommodation and the like.

And did you visit?-- No, I didn't.

Why not?-- The reason I didn't visit, because on the way there I rang my staff to - to get permission from Bundaberg Health to attend the hospital. We had to go through the Minister's office to get permission and it came back that permission was denied.

COMMISSIONER: Are there any guidelines as to situations or circumstances in which parliamentarians are allowed to visit public hospitals?-- Not that I'm aware of, Commissioner.

D COMMISSIONER EDWARDS: Did you think about going without that permission?-- I felt as though I very much wanted to go without that permission but I thought then that would be the issue, and the issue was providing a quick and sound medical care for the survivors.

COMMISSIONER: Mr Messenger, there used to be a tradition, and perhaps Sir Llew can answer this question better than you can, but many years ago there was a tradition that when the Premier or Prime Minister was visiting a parliamentarian's electorate, the parliamentarian was informed of that and given the opportunity to accompany the Premier or the Prime Minister, whether they were from the same party or from different sides

of politics. I take it that's died out, has it?-- It seems to have died out in Queensland.

COMMISSIONER: Was that your experience, Sir Llew?

D COMMISSIONER EDWARDS: It was my experience but it's a long time since I left parliament, Mr Commissioner.

COMMISSIONER: Yes. Perhaps we can go back to this after lunch but I wonder if you can think about whether amongst the recommendations that this inquiry makes at the end we should be addressing the question of the circumstances in which parliamentarians are allowed to visit public hospitals. Plainly, there must be some regulation because public hospitals are very busy places and they don't want politicians walking in and out all the time but it does seem, at first sight anyway, inappropriate that you should be prevented from visiting your constituents or other members of the public in those circumstances.

MR ATKINSON: Thank you, Commissioner. You were also going to have a meeting with - at the hospital on the 18th of November 2004?-- That's right. There were still a number of survivors in hospital and I think it was already a scheduled meeting that I had with Peter Leck and I - I thought, "Well, I haven't been able to"-----

Well, don't tell us what you thought. What became of that meeting?-- That meeting was rescheduled. I expected to have the meeting at the hospital and I was told by Peter Leck that I wasn't allowed to have the meeting at the hospital.

COMMISSIONER: So even the hospital manager couldn't allow you into the hospital to have a meeting with him?-- That's correct.

That was the word from Charlotte Street, that you were banned from the building, even to visit the hospital manager by appointment?-- I don't know what the word was but I know, Commissioner, that I wasn't allowed to go to that hospital on that afternoon, two days after the train crash, to visit the - any survivors there still.

MR ATKINSON: And at that stage you weren't proposing an official tour but just a meeting with the hospital manager?-- And-----

Is that right?-- That's correct, and the possibility of visiting the remaining survivors.

Now, did you have contact with a lady called Fay Kuhnel in the course of early 2005?-- That's right. Mr Atkinson, I just correct you. It is Fay Kuhnel.

Kuhnel, sorry. K-U-H-N-E-L?-- Yes. That's correct.

I know she came to you about an unrelated reason but did she tell you about a report she did for the hospital in December

2002?-- That's correct. She told me about a report. She'd said that she'd worked at the Bundaberg Base Hospital for 30 years and that in the latter years she was in charge of the Department of Emergency Medicine from the nursing sense and that she'd written a report that was highly critical of the staffing levels, also the staff skill mixture levels and also the waiting times for patients within - of emergency medicine.

That appears behind divider L for Lima in your submissions to your report?-- That is correct.

Now, did Ms Kuhnel tell you about things that happened to you after that report?-- She did. The report came out, as you've mentioned, and it's annotated there December 2002. She gave that report to the management of the Bundaberg Base Hospital. In fact, I can recall that she said that she gave it to Peter Leck, the Manager. Shortly thereafter, and she didn't go into too much detail, I can recollect her saying that it was about mid-2003 when she was placed on a charge.

All right. Misconduct?-- Misconduct charge 2003, and there, for her, professional hell began.

Did she say whether or not she thought the two events were related?-- In her mind, and she told me, that these two events were very related. Connected directly.

COMMISSIONER: Did she tell you the nature of the misconduct charge?-- It was a bullying charge, Commissioner.

How apposite?-- Mmm.

MR ATKINSON: Now, speaking of what became of people, Ms G, the nurse, one of the ladies I - the three nurses who came to visit you?-- That's correct.

Was it also in early 2005 that you received a call from her daughter?-- That's right. It was actually the weekend that the notes for Toni Hoffman were being transcribed. I was in Gladstone and I had a phone call from G's daughter that.

That would place it at about 18 March 2005?-- That's correct.

All right. You had a phone call from G's daughter?-- That's right. And G's daughter said to me that her mother had been placed by the police in the watch-house in Brisbane. Her mother, in fact, had been .. .. placed in a watch-house on that evening, the Saturday afternoon and evening-----

COMMISSIONER: Well, Mr Atkinson, and I think for the reasons raised by Mr Devlin, it is unnecessary to go into the details of what happened to this person. The important fact is that police action was taken apparently as a result of a complaint made from the Bundaberg Hospital; is that-----?-- That's correct.

-----your understanding? The details of the police action really aren't within our Terms of Reference.

MR ATKINSON: What you understand is that she's alleged to have threatened one of the management at the hospital?--Alleged to have threatened some of the management at the Bundaberg Base Hospital....

Yes.

MR ALLEN: Commissioner, it wouldn't seem necessary that the name of the nurse be published in that context.

COMMISSIONER: What I'm about to say is really just thinking out loud but I am reluctant to make a non-publication order because one of the advantages of media coverage of these sorts of matters is that if what we've heard is reported in the press or on television, it may jog other people's memories about things and they may come forward to inquiry and provide that information.

MR ALLEN: I don't have instructions to seek a non-publication order on behalf of that nurse.

COMMISSIONER: Yes.

MR ALLEN: But one might think that a report that a particular person .. ..

COMMISSIONER: There's force in what you say, Mr Allen, but the relevance .. .. of this is the fact that all of this apparently has a connection with her employment at Bundaberg Base Hospital. At this stage, I won't do anything more than urgethe press and media to be sensitive in reporting that issue and particularly to bear in mind that the evidence we have heard is entirely second-hand evidence and it is as yet untested, but I won't go beyond that and make a non-publication order.

MR ALLEN: Thank you, Commissioner.

COMMISSIONER: Is that clearly understood by representatives of the press here? Thank you.

MR ATKINSON: Mr Messenger, tell us about your interaction with Toni Hoffman. She came to see you on the 18th of March?-- That's correct, yes.

All right?-- Friday afternoon.

And how did that come about?-- That came about as a phone call that Toni made through to me mid-week.

All right. And when she came to see you, what was her state, if you like, how did she present?-- It was after my staff had gone home, it was around 5.30 in the afternoon and Toni presented to my office. My memory is that she was wearing an overcoat or a large coat and she was very distressed.

All right.

COMMISSIONER: Mr Atkinson, forgive me for interrupting again. Mr Allen, I've consulted with my learned - with my colleague Deputy Commissioner Vider about the matter you've raised. She shares your concern and in the circumstances I will make a non-publication order : .. .. The press are free to report the fact that she was arrested and that the arrest had a connection with the Bundaberg Hospital.. .. So we'll make that non-publication order limited in the way I've indicated.

MR ALLEN: Thank you Commissioner, Deputy Commissioner.

COMMISSIONER: Thank you Mr Allen.

MR ATKINSON: So she came to see you in an agitated state. You had an interview with her at the office?-- That's correct, I had a conversation with Toni for probably about an hour and a half, two hours, and some of that conversation I recorded on a minidisc.

And to the extent it was recorded, it appears behind divider F to your written submissions?-- That is correct.

I notice that talks - there's a reference there to a "Dr Butel"?-- Yes.

Was that in fact a reference, the words she said out loud were "Dr Patel"?-- Yes.

P-A-T-E-L?-- Correct, I had that conversation transcribed that weekend by my electoral officer.

All right. Now-----

COMMISSIONER: Dr Patel wasn't a household name at that time?-- No, it was the first time they'd heard of Dr Patel.

MR ATKINSON: Now, having received that information from Ms Hoffman, what did you do with it? And Commissioner, can I interrupt my own witness or the witness here to say this: that I have had discussions with Mr Tait and as a result of those discussions, that one, Dr Strahan is not the head of the AMAQ in Bundaberg.

COMMISSIONER: Yes.

MR ATKINSON: Two, he is a member of the AMAQ.

COMMISSIONER: Yes.

MR ATKINSON: Three, Mr Tait has been good enough to contact Dr Strahan and he doesn't mind, he's prepared to wave the privilege, to the extent he has one, in the conversation which he had on a confidential basis with Mr Messenger.

COMMISSIONER: Thank you Mr Atkinson. I know he's absent.

MS GALLAGHER: That's correct, Commissioner.

COMMISSIONER: But if my thanks can be conveyed for that assistance? Yes.

MR ATKINSON: Thank you. What did you do with that information?-- First of all I had the information transcribed so that I could read the full, the full documentation. After my conversation with Toni, I realised that there was a real issue to be dealt with at the Bundaberg Base Hospital, a very serious issue. That weekend, I was in Gladstone on National Party business and also Calliope, I had a full transcript of that conversation delivered to me by e-mail on Sunday evening. On Monday, I flew from Brisbane to Bundaberg and discussed the issue with my parliamentary colleagues, we had a shadow cabinet meeting at approximately 2 o'clock. Before that shadow cabinet meeting, I decided to cross-reference Toni's story with a local medical representative who I think is mentioned in the - in one of the documents that Toni gave to me, the letter dated the 22nd-----

You can say his name; that's Dr Strahan?-- Dr Strahan. I rang Dr Strahan at around midday, I'm pretty sure it was before the shadow cabinet meeting.

Why did you choose Dr Strahan?-- He was, to my best knowledge, a representative of the local medical association there.

Right. Did you know whether he practiced at the base hospital?-- I think in the letter it said that he did, so I took his - took his name from that letter.

Right?-- I'd also-----

The 22 October 2004-----?-- The 22nd of October, I think he is mentioned in that letter.

All right, so you took his name from there. You've called him?-- I called him and I asked Dr Strahan what he knew about Dr Patel and that I was in possession of some letters and also I'd been given information about Dr Patel and that related to serious medical concerns about his competence.

All right?-- Dr Strahan said to me, "Yes, I know about Dr Patel. We think he's going to resign in June and we'd like this matter to go away quietly. However, if this man - if this man was to stay on for another 12 months, we'd have serious concerns."

Did he tell you who "we" were? When he used the first person plural "we"?-- "We"?

Did he ever intimate who "we" were?-- No, no, he doesn't.

COMMISSIONER: From the context of your discussion, was he talking about the local medical practitioners or the AMA or some other group or wasn't he clear?-- I took "we" to mean, Commissioner, the doctors, the local doctors at the hospital.

Right. Thank you.

MR ATKINSON: Did the conversation go any further?-- No, it was a very short conversation.

Why didn't you pursue it further?-- I didn't pursue it any further because I'd - he'd confirmed for me Toni's fears and I didn't think that there'd be any point pursuing the conversation after that.

All right?-- I'd had the - Toni's letter and testimony cross-referenced.

Now, did you ever have a conversation with Mr Molloy, the head of the AMA?-- Yes, I did.

How did that come about?-- That came about as a result of a media release Dr Molloy had put out and the media release is also part of my submission.

All right. Well, we'll find that in due course, but the media release describes you in unflattering terms; it's fair to say?-- Yes. The AMA press release was stated, "It's absolutely disgraceful this has occurred in State Parliament. Rob Messenger's irresponsibly used State Parliament. Dr Patel's resignation has left Bundaberg without a surgeon. Rob Messenger has left Bundaberg with no surgical cover to help with accidents. Absolute disgrace that Dr Patel has been forced to leave his job. It was based on gross misjudgments on the Opposition's part."

Right, and did you speak to Dr Molloy following that shellacking?-- Yes, I did. I had a conversation with him, I remember I was in Hervey Bay at an indigenous health - rather, indigenous leadership forum and I spoke with Dr Molloy from

there.

By telephone or was he at the forum too?-- No, it was by telephone, and I firstly asked him if he'd read the letter which had been tabled in parliament.

The Hoffman letter?-- The Hoffman letter. He indicated to me in that conversation that he hadn't read the letter. I suggested that he should get himself up to speed and read the letter before he goes making what I thought were gratuitous comments. He - we then talked about the situation in Bundaberg and his - his opinion was that he'd received information from Bundaberg and I assumed that he was talking about his doctors, that it was a case of lazy nurses at Bundaberg and that Patel was merely trying to whip them into shape.

All right. Now, is it the case that the Minister and the Director-General visited Bundaberg on the 7th of April 2005?-- Yes, that is my recollection, I was contacted by media representatives saying, you know, that Nuttall's into town.

And you saw releases in the press at that time that they announced in Bundaberg that the fact-finding mission into Dr Patel would not proceed?-- That's correct, yes, the Health Minister announced that the investigation into Dr Patel would be stopped.

And let's just be careful about that word "investigation"; you had been informed by Toni Hoffman that there was a fact-finding commission?-- Yes, the fact-finding commission was how Toni Hoffman described chief health officer Gerry Fitzgerald's investigation which began in February in the year after, February 2005.

And do you know whether Queensland Health makes distinctions between fact-finding missions and investigations?-- No, I didn't know whether by classifying it as a fact-finding commission, whether it was a higher status than investigation, it was a question that I had.

All right. Suffice it to say, Dr Patel continued to operate at that time?-- Dr Patel continued operating at least for 48 hours, it's my understanding, after I named him in parliament.

All right, on the 22nd of March?-- That's correct.

All right. Now, on the 8th of April 2005, the Courier-Mail published a report, I think that was Mr Thomas' report revealing what a Google search shows about Dr Patel?-- That's correct.

And then on the following day, that you saw media announcements to the effect that there would be an inquiry or an investigation after all?-- On the following day I was - I think it - I was in Sydney at a meeting with Brendan Nelson and on the Saturday morning I was, I was asked if I would like to make comment to the media and I was on stand-by for that

Saturday in relation to Mr Nuttall's indication that he was going to have an independent investigation of Dr Patel.

All right. I might just ask this last question, your Honour?

COMMISSIONER: Yes.

MR ATKINSON: Commissioner. You've had an involvement through the whole period from way back in September 2003 right to the present day. You've listened to a lot of complaints from patients and staff. What would you like to see change?-- Well, first and foremost I'd like proper medical care for my constituents and the victims of Dr Patel, and secondly, I'd like - I would like a medal for Toni Hoffman, I'd like some - somehow someone to acknowledge her heroism.

And in terms of changes to the system, do you have views on that?-- Yes, I do. I think the system needs to be able to respond to genuine criticisms and concerns from the nursing staff.

All right?-- I think that the system let them - let those people down.

That's the evidence-in-chief, Commissioner.

COMMISSIONER: Thank you Mr Atkinson. Mr Messenger, I'm inclined to accept into evidence and mark as exhibits both your timeline and the bundle of documents comprising your submission and documents referred to in that submission. My concern at the moment is that we still have the problem under Article 9 of the Bill of Rights of 1688 and the Queensland Parliament Act.

What I'd like you to do, and it doesn't have to be done today, just whenever it suits your convenience, is to produce for the inquiry an edited version of both your submission - I notice in this bundle, for example, there are some photocopies of pages from Hansard, and for the reasons I outlined this morning, it's very important that we respect the sanctity of parliamentary proceedings - so what I'd like you to do is to prepare edited versions of the timeline and of your submission and the accompanying documents which leave out any direct reference to anything that took place in parliament.

You are certainly at liberty to refer to the consequences of proceedings in parliament, if there was a press report and that led to people coming to visit you or providing you with information, that's quite important for us to know about, but what actually occurred in parliament is out of bounds. Can I also offer you this free piece of advice?

We're lucky in Queensland that Mr Neil Laurie, who I think's currently the Clerk of the Parliament, is one of Australia's most competent and knowledgeable parliamentary officers, I think Mr Harry Evans from the Australian Senate is the only person who could contest that title from Mr Laurie, so it might be worth your while before finalising the documents,

going to see Mr Laurie and making sure that what you've provided to this inquiry can't be said to amount to a contempt of the parliament.

Now, there is obviously the opportunity to cross-examine Mr Messenger. I assume Mr Boddice, that you'd be first?

MR BODDICE: But I'm not in a position to cross-examine him, Commissioner.

COMMISSIONER: Well, we'll take an earlier lunch if you like?

MR BODDICE: But Commissioner, we were given - or the submission's dated the 16th of May, we've only been provided with it today. There's been no notice given. The practice direction said statements were going to be provided.

COMMISSIONER: Provided to us, not to you.

MR BODDICE: Well, to expect that we would be in a position to be able to cross-examine Mr Messenger on the whole range of issues that he's raised is simply unfair.

COMMISSIONER: Well, you know, your client, if that's what I can call Queensland Health, is the one that expects us to jump over 20 thousand pages of documents to try and get at the facts. Now, to really lie ill in your mouth, speaking on behalf of your client, none of this is directed to you personally, Mr Boddice, but it does lie ill in your mouth of accusing this Commission of being unfair when it is, I think I can say with a reasonable measure of pride, the most open inquiry ever conducted in this country. But I take on board your concern.

Mr Atkinson, if we were to stand down Mr Messenger so as to give Mr Boddice time to arrange his cross-examination, do we have another witness available to go on with in the meantime?

MR ATKINSON: Dr Miach is the next witness, of course, as Mr Andrews indicated, and he is in Brisbane and I think he may well be available certainly immediately after lunch, I would expect.

COMMISSIONER: All right, well, we'll take lunch now. Mr Messenger, I'll stand you down as a witness. That will also give you time to consult with Mr Laurie if necessary and to edit the documents you've provided to us. It will be necessary to come back at some time so that Mr Boddice has an opportunity to put any questions to him that I permit to be put.

In the meantime, we'll try and schedule your reappearance at a time that suits your parliamentary and other commitments, and if you can keep in touch with Mr Atkinson, we'll do our best to ensure that you're not inconvenienced?-- Commissioner, will it likely be today?

COMMISSIONER: No, I expect it won't be today, Mr Boddice?

MR BODDICE: No.

COMMISSIONER: How long do you think you'd need? Would you be ready tomorrow?

MR BODDICE: I doubt it. Next week or I'll tell you, if Mr Messenger is, from a parliamentary point of view, convenient in the Bundaberg sittings, it could be done there?

COMMISSIONER: Well, indeed, Mr Messenger, there might even be some political mileage to be gained in appearing before your local constituents?-- I've never been accused of trying to make political mileage.

Well, no, well, no politician ever has. Well, yes, if it suits everyone, you might be able to give the balance of your evidence at the sittings in Bundaberg. Anyway, Mr Atkinson will stay in touch with you and work out something that's convenient.

WITNESS STOOD DOWN

MR ATKINSON: Thank you, Commissioner.

COMMISSIONER: Mr Ashton?

MR ASHTON: Commissioner, might I be heard on something arising from your decision to receive this material into evidence?

COMMISSIONER: Yes.

MR ASHTON: Commissioner, as an example, if I may, there's material there which I think under attachment G, and I take this merely as an example:

> "Christine also claims that her trouble started when she wouldn't carry out Leck's orders to do illegal things."

And Mr Messenger has said in brackets:

> "I have to ring her and find out some more detail."

Now, the witness has very fairly told you, Commissioner, and told us that he doesn't know what that means, he doesn't know what the illegal things were. In part, Commissioner, the uncertainty that's exercising my mind arises from the fact that we've heard quite a lot of evidence this morning about the Mental Health Unit and some issues there, and I think my point is cast into relief by something, for example, Sir Llew said, that it's quite late in the piece and still no mention of Dr Patel I think were his words. Also, Major Peterson at some stage has said that he has wanted to see this Commission

broadened so that these issues could be looked into, and some of your own questions were focussed on this on whether psychiatrists had made judgments about several of the things being complained of.

The connection to the Terms of Reference is getting a little blurred there, with respect, the connection to practice and procedures, clinical practices and procedures of Dr Patel and other medical practitioners. Now, may I say with emphasis, Mr Commissioner, I make no application and no complaint about that.

COMMISSIONER: Yes.

MR ASHTON: But I say merely that something of this kind leaves us in some confusion about whether we're going to hear evidence about these illegal things, and if not, if we're not going down that track, then some appropriate further caution is called for, in my submission, as to discretion of about publishing something of that kind. The witness through whom it's received doesn't know what it means. Either we hear from someone who does or it ought not to be published.

COMMISSIONER: Mr Ashton, you make a very valid point and I thank you for raising it. I'm certainly not going to make a non-publication order and I understand you not to be applying for such an order.

MR ASHTON: I have no application, may I stress, and I am sorry for interrupting but we have no interest except in assisting this Commission.

COMMISSIONER: Yes.

MR ASHTON: But we simply ask, as you've done in other examples, that you caution discretion until either this matter is pursued or abandoned.

COMMISSIONER: And I certainly do make such a caution. I think we can all take notice of the fact that the level of media reporting of these proceedings has been very high in the sense that very senior and experienced journalists are involved, and I don't think I need to stress these things ad nauseam, but since you've asked me to I will again emphasise the point that these allegations against Mr Leck are both hearsay rather than direct allegations, allegations that are entirely untested, but also on this occasion, allegations that are at best ambiguous if not somewhat meaningless, and so any report of those facts in all fairness should reflect the very tenuous nature of the evidence as it presently stands.

MR ASHTON: Thanks Commissioner. The one other matter is that by raising to my feet, I am not volunteering to go first in my cross-examination.

COMMISSIONER: Thank you Mr Ashton. Mr Atkinson?

MR ATKINSON: Just very quickly: my learned friend suggested

that some of these allegations should either be pursued or abandoned.

COMMISSIONER: Yes.

MR ATKINSON: It may well be the course that counsel assisting takes, it doesn't seek to do either, that there are perceptions out there of mistreatment and that alone is relevant, it doesn't mean that they will be verified or not verified, they're relevant in terms of what's in the public domain in terms of what can be found out on reasonable inquiry, and in terms of what - testing what is said by Queensland health in response. So I wouldn't like it to be thought that counsel assisting necessarily accepts Mr Ashton's dichotomy.

COMMISSIONER: I accept that also, Mr Atkinson, and Mr Ashton, for your benefit, perhaps I can say by way of reinforcing what Mr Atkinson has just said, a number of these matters are of interest to this inquiry, not because the details of what is alleged to have gone on in the hospital are of interest, as you say, some of those matters bear quite a tenuous relationship to the Terms of Reference.

As I said, I think on day one, we don't want to chase down every rabbit warren to look at every complaint about every problem that went on in every hospital in Queensland. The matters about which Mr Messenger has given evidence are significant, not because of the details of what he's talking about, but of the way in which those complaints were dealt with once he made them.

I mean, we've heard for the first time there may well be cross-examination on this when Mr Boddice has instructions, but we've heard about the Director-General of Health angrily refusing to have an inquiry in relation to things at Bundaberg. That was based on the mental health issues rather than the Patel issue, but it's still a relevant body of evidence as to the way in which Queensland Health deals with complaints and responds to allegations of that nature.

So I think it's unlikely that we will pursue the question of whether the Mental Health Unit was operating properly or otherwise, what we will be pursuing, and I imagine quite vigorously pursuing is the suggestion that Queensland Health was unresponsive to concerns raised by Mr Messenger and other appropriate spokesmen on behalf of the local community. That's our big concern at the moment, and that's why Mr Messenger's evidence is important.

Almost everything he has told us about what went on in the hospital is hearsay, he wasn't there, he didn't see it happen. He is an important witness because he came along and told us that he had communicated those things in parliament, in the press and media, directly to the Minister, to your client, Mr Leck, and to other people, and the fact of the matter seems to be that little or nothing was done about it until Mr Thomas managed to pull up Dr Patel's details on Google. So that's

why it's relevant, not because of what went on.

MR ASHTON: I don't dissent from that for a moment, with respect, Mr Commissioner, I'm merely concerned about "illegal things" left hanging in the air.

COMMISSIONER: Yes.

MR ASHTON: And I ask no more than that which is what you've already given us, which is what you've mentioned to the press.

COMMISSIONER: Thank you Mr Ashton. Mr Deihm?

MR DIEHM: Commissioner, taking on board the force of what you've just said about the nature of the Terms of Reference - and these things may not concern my client as much as they concern others, but they potentially do - the Terms of Reference do obviously cover the nature of the sort of inquiry that you have just referred to. Subject to the qualification that the allegation of the complaints or concerns that can be inquired into must be substantive ones.

COMMISSIONER: Well, I'm not sure that that's right. I mean, the allegations or concerns must come from a reliable or apparently reliable source. Ultimately, if the matter were examined properly by Queensland Health, it might be found that they're entirely unsubstantiated but that's no excuse for not looking into it.

MR DIEHM: Yes.

COMMISSIONER: And that's the point that I think we have to stress. I mean, I've only just received your client Dr Keating's letter to Dr Patel of the 18th of January 2005, relating to the - Dr Patel's decision not to renew his contract and saying that he'd:

> "...like to take this opportunity to thank you for your sustained commitment, ongoing enthusiasm and strong work ethic in the multiple duties and responsibilities that you've undertaken whilst employed by Bundaberg Health Service District. I have greatly valued your advice, insight and support over the last two years and I wish you well in the future in whatever endeavours you may take."

That your client, Dr Keating, wrote such a letter in the context of the issues which had already been raised by Toni Hoffman is a matter of concern in itself. Even if it were proved that every concern raised by Toni Hoffman had a complete answer, the very fact that the Director of Medical Services was prepared to commend Dr Patel without any attempt to investigate those allegations is something that I would find troubling.

MR DIEHM: Commissioner, my point was simply that the Terms of Reference themselves say that the allegations, complaints or concerns must be substantive.

COMMISSIONER: The nature of the complaint must be substantial, it doesn't mean it has to have been proved at the time when the complaint is made.

MR DIEHM: Like most of these things, Commissioner, may no doubt be best considered when particular circumstances arise.

COMMISSIONER: Yes.

MR DIEHM: Thank you.

COMMISSIONER: Since I've referred to it, I should have marked as an exhibit the letter from Dr Darren Keating to Dr Jayant Patel of the 18th of January 2005. Just so that the exhibit and numberings remains in order, I'll save number 14 for Mr Messenger's timeline when that comes back in amended - in its edited form and number 15 will be Mr Messenger's submission, when that comes back in its edited form, and number 16 will be the letter of the 18th of January 2005 from Dr Keating to Dr Patel.

ADMITTED AND MARKED "EXHIBIT 16"

COMMISSIONER: All right.

MR ALLEN: Commissioner, just briefly, could I inquire of counsel assisting whether the parties should expect a brief of evidence of the next witness before the evidence commences?

COMMISSIONER: Look, you can take those things up with counsel assisting. I don't think you need to raise those things in open Court, but if you have some difficulties, no doubt you'll bring those to my attention just as Mr Boddice has done.

MR ALLEN: Thank you, Commissioner.

COMMISSIONER: Anything else? All right, well, we'll now stand adjourned until - we'll make it 2.15 p.m.

THE COMMISSION ADJOURNED AT 12.59 A.M. TILL 2.15 P.M.

THE COMMISSION RESUMED AT 2.14 P.M.

COMMISSIONER: Yes, Mr Andrews?

MR ANDREWS: Commissioner, I call Peter John Miach.

PETER JOHN MIACH, SWORN AND EXAMINED:

COMMISSIONER: Thank you, Dr Miach. Please take a seat and make yourself comfortable.

MR ANDREWS: Dr Miach, would you tell the Commission your full name, please?-- Peter John Miach.

You're currently Director of Medicine at the Bundaberg Base Hospital?-- Yes, I am.

And you were since August 2000?-- That is correct.

Have you had prepared for you over the last hour or so a statement? You have not yet, as I understand it, had an opportunity to read it all. I might ask you - do you have a copy of the document, the draft document before you? I will seek to proceed through the topics within it in a sequence that follows that draft. Your qualifications-----

COMMISSIONER: Mr Boddice, I am sorry, we did actually start a minute or two before a quarter past, but we haven't got to anything of substance yet. Mr Miach has just been sworn in.

MR ANDREWS: You are a fellow of the Royal Australasian College of Physicians?-- Yes, I am.

Did you obtain a Doctor of Philosophy from the University of Melbourne while undertaking research in Paris?-- Yes, I have.

For many years have you been an examiner and censor for the Royal College of Physicians?-- Yes, I have been.

Are you a general physician and nephrologist?-- Yes, I am.

Now, what is the specialty of a nephrologist?-- A nephrologist deals with all aspects of kidney disease, and that includes general nephrology, it includes kidney failure, it includes transplantation, it includes the various forms of dialysis, it includes all types of diagnostic procedures and opinions related to renal medicine, to nephrology.

COMMISSIONER: Dr Miach, could you gratify my curiosity? What's the origin of the word "nephrologist"?-- Nephron comes from the Greek meaning kidney. Nephrology - the derivation is Greek.

Thank you.

MR ANDREWS: And-----

COMMISSIONER: Mr Andrews, I might mention, for the benefit of Mr Devlin and a couple of others, I apologise, we actually started a minute or two early, but you haven't missed anything of substance yet.

MR ANDREWS: What brought you to Bundaberg Hospital?-- That question has been asked of me a thousand times and it keeps being asked. I have been a senior nephrologist in the Austin Repatriation Centre for almost a quarter of a century, probably more.

Where is the Austin Repatriation Centre?-- It is in the northern parts of Melbourne. In fact, when the repatriation system some years ago changed the way it functioned and the repatriation patients were supposed to be looked after in the public sector, a lot of the repatriation hospitals in fact changed. Some of them became private hospitals and other things happened to them. The one in Melbourne, one of the large ones in fact was very, very close to the Austin Hospital. In fact, it was within walking distance, and the State Government in fact bought the place, in fact assumed control of the place with the understanding there would be the amalgamation of the two hospitals, the repatriation hospital plus the Austin Hospital, which meant a lot of staff, two budgets, and what effectively happened is that in fact there was a lot of turmoil, there was a lot of commotion, there was also a move to try and improve the Austin Hospital. In fact, they have just done that. The Austin Hospital is in fact about to open in the new guise last week, this week, certainly in the near future. With that, a lot of the senior consultants - I am talking about directors of all areas, biochemistry, haematology, a lot of the senior clinicians, in fact, left because of the fact that there was a lot of turmoil, a lot of commotion. The kidney unit, in which I was a senior nephrologist, the vast majority in fact decided to leave. My children in fact had left home, they were all working in London and I sort of said, "Well, do you want a change of life?", I said to my wife. She said, "Sure", with the understanding if I didn't like where I was coming, I'd go back to Melbourne. In fact, I still have two houses in Melbourne which I haven't sold. To be quite frank with you, I am surprised I have stuck it out for so long. But things - it is pretty rare to have a nephrologist in the regions. In fact, there are two nephrologists in Nambour and I am the only resident nephrologist between Nambour and Townsville. So we decided to come to Bundaberg, mainly because, in fact, we were alone, I'd worked in the same system for 25, 30 years and I was getting a bit tired. In fact, I came up here to relax but I have never worked so hard in my life. So that was a bit of an issue. So that's the reason, in a nutshell.

And you had a friendly working relationship with Dr Brian Thiele?-- Brian Thiele is a vascular surgeon who in fact

worked as a vascular fellow in the Austin Hospital with me many years ago. He subsequently went to the United States and practised for most of his life there. In fact, he became a Professor of Surgery. For reasons he came back to Bundaberg. In fact, I think his family, or part of his family come from Bundaberg, so he always intended to come back here, and I knew he was in Bundaberg and I knew he was the Director of Medical Services, and to some degree that swayed me. The other reason that I came up, because in the early 1990s I spent some time in Rockhampton. I did a friend a favour. In fact, it was the Director of Medicine at the Rockhampton Base Hospital, and I got to see the country. So, in fact, I subsequently went back for another stint to Rockhampton to do a locum for one of the physicians up there. So the area - I travelled around. The area seemed reasonable to me. That is the reason that I came to Bundaberg.

COMMISSIONER: Mr Miach, if you will pardon my ignorance, I am sure my Deputy Commissioners understand these things fully, but in your specialisation as a nephrologist, from your description of it it involves both surgical and medical areas. You are dealing with things like kidney transplants and other operative procedures as well as medical procedures?-- Sure.

Do you see yourself as a surgeon foremost, or a physician foremost, or is it a mixture of both?-- No, I am 100 per cent a physician.

Yes?-- We work - we work in concert with the surgeons. And, in fact, our opposite in the surgical sphere are the neurologists, but because of the work the neurologists do as far as dialysis, we have dealings with a number of other surgeons, specifically vascular surgeons, as may become obvious as we go along. But we also deal with other surgeons as well. Some of the other procedures sort of don't specifically require a vascular surgeon to be involved in, some of the things we do.

So when you are dealing, for example, with a transplant patient?-- Yes.

You are not involved in the - you are not the surgeon who conducts the transplant?-- No.

But you are managing the patient?-- No, I am not. In different units, different parts of the world in fact run transplant programs differently. In Australia, generally the physicians, the nephrologists run the transplant program. In other words, they do the work-up for transplantation. It is quite extensive. The surgeons then do the operation and usually in fact that's all they do. In some units around the world the surgeons have a much more active role in transplantation, including the preparation, the subsequent managing of patients. But in Australia, in the vast majority of cases the physicians, the nephrologists who do everything, they manage the patients afterwards and they prepare the patients.

I was just thinking of an example. I think at the PA there is a very experienced liver transplant expert, Dr Stephen Lynch?-- Yes.

My understanding is he does the surgery but he is also involved in the management of the patients?-- Absolutely. As I mentioned, some surgeons, quite correctly, if they run the unit they want to be much more involved in the day-to-day management.

Yes?-- That happens quite commonly in the United States.

Yes?-- It also happens quite commonly in England. In fact, I worked with one of them who actually was an Australian transplant to England. But certainly - certainly the surgeon, the transplant surgeons, sometimes have a very, very important role. But on the whole, for example PA, as you mentioned, the management of post-transplant patients are done by the physicians. The surgeons are involved and they have an interest, but usually if there is a problem the physicians - the nephrologists tend to sort it out.

Whilst I have interrupted the flow of evidence, can I ask you about something else of a medical nature you might be able to assist with? I have been given to understand from earlier evidence that specialists known as intensivists are a rather unusual species, in that they come up either as physicians in the system or anaesthetists in the system and then there is - I think it is called a joint faculty between the two colleges?-- Sure.

Can you explain how that works?-- Intensivists in fact are a fairly specific breed these days. In the past, intensive care units were usually - were frequently managed by anaesthetists or they had a significant involvement in the management of intensive care patients, mainly because, in fact, when patients are critically ill they are intubated, and the intubation procedure is done by anaesthetists. Anaesthetists usually know the gases, some of the drugs used to maintain patients, and they are still done in a lot of units. In the larger units, in fact there is an intensivist that take over the role much more - they can do the things anaesthetists does, the intubations, the management of ventilation, the machines, the setting, but they also are aware of a number of other critical issues, for example the support of the circulation, the treatment of infections. They are usually much more aware of some of the other medical and surgical issues that arises in particular patients. So intensivists these days, in fact, are becoming much more common, and certainly they're fairly common in the larger hospitals in the major cities.

But one wouldn't expect to have an intensivist at a hospital the size of Bundaberg?-- No, no.

I am sorry, Mr Andrews, to have interrupted you yet again.

MR ANDREWS: You haven't inconvenienced me at all. It has

been a useful break. The Bundaberg Hospital, upon your arrival, had how many persons working - or there were two physicians rather than the current team of four?-- That's right. When I arrived in Bundaberg there was a VMO, visiting medical officer, who had been there for quite some time. There was also another nephrologist from overseas. The nephrologist from overseas was doing nephrology in the Wide Bay area but he was also contributing to general medicine. When I arrived that's all there were there. Because I am a nephrologist, the nephrologist that was there eventually left.

COMMISSIONER: Doctor, it would probably help if you identified these people by name, just because otherwise we will confuse ourselves as the evidence goes on?-- The visiting medical officer, Dr Martin Strahan, and the nephrologist that was there when I arrived was Dr News I am must began any.

D COMMISSIONER EDWARDS: What year was that you arrived?-- 2000, August 2000 was the start of my appointment, and Dr Nasimul Ghani.

Would that be N-U-S-S?-- I think it is N-A-S-I-M-U-L, G-H-A-N-I.

Thank you. And now there is a team of four physicians, two general physicians, yourself and a cardiologist?-- That's right.

Would that be you, Dr Malcolm Strahan-----?-- Martin Strahan.

Martin Strahan.

COMMISSIONER: Is he still a VMO?-- He is a VMO.

Yes?-- General physician. He does some procedures but he is a VMO.

And how many sessions would he be doing?-- He is doing three sessions.

Per week?-- Per week. He runs one of the general medical units.

MR ANDREWS: And the other two persons?-- The cardiologist is Dr Antre Conradie and the other physician is Dr Dawid Smallberger. Dr Conradie is a cardiologist and Dr Smallberger is a general physician, but Dr Smallberger still does not have his Australian credentials, his FRACP. He is not a physician so he works under my supervision.

Now, you are not a surgeon. Are you in a position to recognise when you are dealing with a competent surgeon and when you are dealing with surgeons of lesser competence?-- Surgeons do a lot of procedures for me. The procedures that they do are related to renal work. In other words, mainly the institution, the development of somebody, something that we call access. So we are able to dialyse people. To dialyse

people it is a fairly complex issue and there is a whole string of procedures that we do in different circumstances. So I do know - as far as vascular surgery, some of the surgery related to renal disease, I do know what to expect because I have been doing it for a long time, a quarter of a century or more, so I do have some idea, even though I am not a surgeon myself.

COMMISSIONER: Is most of the surgery that you are involved with the renal surgery and the vascular surgery laparoscopic, or is it through open incisions?-- They can be done both ways. I think you are referring to laparoscopy, the insertion of the tubes in an abdomen. They can be done both ways. They were always done via a small laparotomy under direct vision. These days more and more surgeons do them laparoscopically. Some surgeons still do a very small incision. In fact, the surgeon who currently does these operations for the renal unit, both in Bundaberg and also on the Fraser coast, does them through a small incision. So you can do them both, but the way things are moving these days in fact more and more things are done laparoscopically.

In any event, you certainly have had enough experience to judge who is competent in both areas of surgery or both forms of surgery and in managing surgical patients, whether they are renal surgical patients or some other form of surgical patient?-- Absolutely. I mean, I have been doing it for a long time and certainly as far as renally-related surgery, I have more idea than most physicians. In general surgery I know what to expect because, in fact, we are frequently called on to manage patients everywhere who develop subsequent problems, for example their kidneys have failed. We see a lot of that.

Is it common for you to be present in the operating theatre when renal surgery is taking place?-- That's an interesting question. Where I came from in Melbourne, in fact, I set up and I ran a large transplant service. When the transplants were done, then in fact I would usually be in theatre because, in fact, I would make sure that the patient had the right drugs at the right time, that the fluids things. So from that point of view I'd be in theatre quite frequently for other things. It is not the practice. I don't think - most physicians, in fact, would not go to theatre. I have been to theatre once or twice, but, no, it is not the practice but I used to do it. But I have been in Bundaberg - it is just not my practice to go to theatre when the patients of mine are being operated on. Same as the other nephrologist I know.

MR ANDREWS: When Dr Patel arrived at Bundaberg Base Hospital, did you ask him what sort of surgery he performed?-- Yes, yes, I did. I did. You know, I basically - nephrology is sort of - in sort of more regional areas we're extremely interested to have support from surgeons. So certainly in a diplomatic fashion I did ask him what in fact he could do. And he told me basically he did everything. And that just was - you know, that wasn't a question I would have actually expected. If I can just qualify that, for example there are a

number of other surgeons in Bundaberg. I asked them the same thing, for example insertion of - doing some of these procedures. Quite correctly they sort of said, "Look, Peter, I mean, I haven't done these procedures. I don't think they're very complicated but I haven't done them and I am not the best person to do them." And I certainly respect that. You know, I thought, "If they are not happy to do them or they don't have the qualifications, the experience" - in fact, I did that with two surgeons and I have never used them because, in fact, they weren't happy to do them. But Dr Patel sort of was happy to do everything, which, you know, was a somewhat unusual response as far as I was concerned.

COMMISSIONER: Perhaps a little disconcerting that he claimed to be an expert in everything?-- Well, this is the reason that I sort of said - it just jangled my nerves when I heard that. For all I knew, maybe he did do everything, maybe he did do everything, but it was a little bit strange.

It has been suggested to us that the difference between Dr Patel and some other surgeons is because he did his residency and a lot of his practice in the United States there is a tendency in the United States for general surgeons to operate little empires by themselves, where they do whatever form of surgery comes in. Have you come across that in your experience?-- I don't know too much about the United States because I have never worked there, but certainly that's - it doesn't seem to be the practice here. You have to understand that I've worked the vast majority of my life in a large tertiary referral hospital under the best possible circumstances, and if I had - for example, if I wanted one piece of surgery done, I would go to a particular surgeon. If I wanted another aspect of surgery done for another organ or another system, I go to somebody else. So, in fact, that was a luxury. In fact, it is a luxury in most - in most large hospitals. But in a place like Bundaberg or Rockhampton or Hervey Bay or whatever, you don't have that luxury, so, in fact, you are left to decide for yourself who might be able to better, you know, accomplish what you want to do.

Just to explore that a little more, as I understand all surgeons are qualified through the college merely as surgeons, there is no separate qualification for a vascular surgeon or a colorectal surgeon, or another specific form of surgery, is that correct?-- I am not sure, because, in fact, I am not a surgeon.

No?-- I can't actually tell you - but I do know that if - for example, vascular surgeons are a group to themselves.

Yes?-- I do know that orthopaedic surgeons are a group to themselves.

Yes?-- I do know sort of colorectal surgeons are a group to themselves, and I do know some surgeons in fact will specialise on surgery of a particular area, for example head and neck. Some surgeons will specialise on surgery on the colon. So they do split themselves up into little groups.

Now, the general surgeons, I mean they - as far as I am aware, the general surgeons that I've always known tend to sort of mainly operate on the abdomen.

Yes?-- But some of them do other things.

And I think what I put to you a few moments ago was a little bit too wide because, for example, there is a separate college for orthopaedic surgeons?-- Sure.

And separate qualification. But as I understand it, there is no college of vascular surgeons or college of colorectal surgeons, to take two examples. They are just - I shouldn't say "just", they are general surgeons who have chosen to specialise in one particular area of surgery?-- I am sure that's correct, but I am probably not the ideal gentleman to pronounce on that.

But the real point is that in a regional centre like Bundaberg, you don't expect to have specialist surgeons on hand, so you need to make arrangements with the available general surgeons to choose which of them are most competent to do the type of surgery you had in mind?-- Yes. I mean, in Queensland, in fact the major regional - the major hospitals in Brisbane support the regional areas. You know, to have a vascular surgeon in Bundaberg is unusual. There used to be a neurosurgeon in Rockhampton which is also unusual. It is probably unusual to have a nephrologist - Australian trained nephrologist in Bundaberg, that's also unusual, but these things happen. I mean, if they are there and in fact you can use them, then I think it is advantageous to the hospitals, to the community.

But during your time in Bundaberg, apart from Dr Patel, what other surgeons did you have available to you, either as visiting medical officers or staff surgeons?-- Well, in the last three or four years I have been there there have been a number of surgeons. One was Dr Nankivell, Mr Nankivell who I regarded as an excellent general surgeon. There was a gentleman who was generally called Lucky because his name was so unpronounceable. He was also fairly competent. I think he is Lakshman something or other, you know. The whole world knew him as Lucky. Maybe he was. He now works elsewhere. The other surgeon that has worked in the system is Dr Brian Thiele, mainly as for vascular surgery. There was another surgeon that currently is employed in the public system, mainly as a neurologist and that's Dr Peter Anderson. There are a number of other general surgeons in the town. They mainly work in the private system and I don't know too much about them.

Those ones you have mentioned, Nankivell and Lucky, were on staff?-- Yes, they were.

Brian Thiele and Peter Anderson were visiting medical officers?-- Peter Anderson was the Director of Surgery at one time in the Bundaberg Base Hospital.

Prior to Dr Patel?-- Yes, yes. Not immediately prior. Immediately prior to him there was Lucky and then Nankivell, and then at the same time - the chronology escapes me - there was also a young surgeon called Sam Baker, now currently works in the northern parts of Queensland.

You mention there are also some private surgeons in Bundaberg who you haven't worked with?-- Yeah.

I am interested in the system for bringing visiting medical officers into a public hospital as a surgeon. You see, one of the things that has been suggested to us is that if - if overseas trained doctors were not brought into the public system in Queensland, there wouldn't be enough specialists to go around. Whose decision would it be or what would the system be to get one of these private surgeons on the list as a visiting medical officer and do a number of sessions a week or a month?-- I am probably not the best man to answer that. But my understanding - and I may be wrong, I may be corrected - is that it depends on the local administration to foster or to appoint these people, these - the surgeons in the private sector. But if you are in the private sector, life is pretty good in the private sector.

Yes?-- They are pretty busy. So, in fact, there would need to be - most physicians and most surgeons, certainly physicians, in fact, like working in the public sector for a variety of reasons. There is more lubrication with their colleagues, there are seminars, there is cross fertilisation, there is a colleagues atmosphere. So, in fact, it is good to actually work, you know, with your colleagues and they like that. Surgeons may like the same thing, but, as I say, I am probably not the best person to talk about the surgical aspects of the hospital.

What's been suggested to us in very general terms is that a lot of specialists - not only in surgery but in other branches; from paediatricians, to psychiatrists, through to ENT specialists, gastroenterologists, and so on - provide their services as VMOs more or less as an act of charity to the system; they're helping public hospital patients, they're providing training to residents and registrars within the hospital, but they're also getting a benefit, as you say, from being in a public hospital, discussing matters with other specialists who are in the public hospital system and often VMOs make their time available for fees, which it has been suggested to us don't even cover the rent on their rooms in Wickham Terrace, they do it very much as an act of generosity. Is that your experience?-- Absolutely. Absolutely. You know, working in the public system is not easy at times. For a nephrologist, in fact, that's where the dialysis - this is where the specialised treatment occurs, but there are difficulties of working in the public system.

D COMMISSIONER EDWARDS: May I ask, Commissioner, but even working those limited hours you would make - as a highly respected specialist, you would be able to make a fairly considered judgment on the performance and ability of other surgical, medical specialists working in that system?-- As far as medicine goes, sure. That's - that's what I do. In fact, you know, when people from overseas work in our hospital, that in fact they're under the observation of an Australian physician, and there's only two of us in Bundaberg. So in the public system, that's what I do. As far as surgeons go, even though I'm not a surgeon I have been dealing with surgeons for all of my life and I have a pretty good idea by comparison, from what I know and what I've known in the past, whether I'm happy to accept the performance of the surgeon. If I'm not, I'm not in the position to sort of - I behave the way I think I should behave as far as medicine is concerned if a surgeon, according to me, is deficient in some - in some area. But I don't - as a physician, as Director of Medicine, I mean, I don't delve into surgical issues. When the surgical issues involve my practice and patients, then it's a different story.

You indicated that very early in the piece, that you were becoming I think, that you were not happy with the insertion of catheters, which is a fairly straightforward procedure I would think, and you started, obviously, in your statement to have some concern in the early part of his career at Bundaberg, and other matters as well, I think, in your statement?-- Yes - yes, I did and, you know, we will get to examples later on, some of the concerns that I had, but it's a fairly nebulous thing on how you - as a physician - I mean, I see a lot of patients and I have a pretty good idea after I have spoken to them, you know, what - I get an opinion. And when I ask a senior surgeon, for example, what he can do, he tells me he can do everything, then it's - you know, that doesn't ring true to me. Now, maybe he can. Maybe he can. But that didn't ring true to me.

D COMMISSIONER VIDER: I can understand that.

COMMISSIONER: Yes. Mr Andrews, please, you are going to have to stop letting us interrupt you and get on with the evidence.

MR ANDREWS: I know when I'm beaten, Commissioner. Representatives at the Bar table now have an advantage that the Commission doesn't: they have a draft statement of Dr Miach, which because of time constraints the doctor hasn't finally perused but it has been prepared in accordance with instructions given during the lunch hour. You may care to follow-----

COMMISSIONER: Thank you, we'd appreciate that.

MR ANDREWS: -----from it.

COMMISSIONER: I suspect, unfortunately, Dr Miach, we will have to keep you down overnight. It is unlikely we will finish your evidence this afternoon. So you might have an

opportunity overnight to review the statement?-- Certainly.

And either confirm it or make any changes that you think appropriate. Thank you, Mr Andrews.

MR ANDREWS: With each of those piles there is also a patient key and-----

COMMISSIONER: So we have got it wrong already.

MR ANDREWS: And perhaps another exhibit. Dr Miach, during the lunch hour were you asked to confirm that several patients you discussed within your statement were one and the same as a number of patients mentioned on a patient key designed to give codes to the patients?-- Yes, I was.

I'll give you the opportunity when your oral testimony concludes today to refer to that key but until the stage when your statement was removed from you for word processing purposes, do you recall that you successfully matched the names of patients to the names on the key?-- Yes, I.

Now, when Dr Patel came to your notice at Bundaberg, did you then have the opportunity to observe a number of different operations which he performed or the consequences of those operations?-- As far as operations are concerned, yes. Yes, I had.

Do you have a patient key in the witness box with you? If not, I will hand one up anyway?-- No, I don't.

Would you look at P51 on the second page of that key?-- Yes.

Do you remember that patient?-- I remember the name. I actually did - never - didn't manage the patient, I didn't see him myself, but I remember the name.

COMMISSIONER: Mr Andrews, this is the same key as used by Ms Hoffman?

MR ANDREWS: It's now been expanded to include some patients who were not within Ms Hoffman's key.

COMMISSIONER: But if, for example, P8 is someone referred to in Ms Hoffman's evidence, that will be the same P8 in this witness's evidence.

MR ANDREWS: That's the intention, Commissioner, yes.

COMMISSIONER: Thank you.

MR ANDREWS: I think there are at least a half dozen persons from Ms Hoffman's key who are referred to by Dr Miach. The patient P51, can you - he was Dr Smallberger's patient; is that correct?-- That's correct.

And when a patient is admitted by, for instance, Dr Smallberger, is there a protocol that before any surgeon

deals with the patient, the surgeon should speak with Dr Smallberger?-- There is a protocol. It is very, very clearly understood in Australia and I suspect the world over when a patient is admitted under a specific consultant, he remains under that consultant. That consultant, if he's sensible, and the patient turns out to have another issue, for example, if he has an issue that might be a surgical problem, it might be an orthopaedic problem, or it might be another problem, then it's the custom that you actually ask for an opinion. That's how it's always done. This is the way medicine is practised, for, you know, the benefit of the patients and everybody else. It he comes in under your care and you manage him as best as you can but then in fact you ask for an opinion, if an opinion is warranted, and that's what usually happens.

COMMISSIONER: Is there some formal procedure for handing over patients from one consultant to another where appropriate? If, for example, a patient comes in that appears to have a kidney problem and comes in under your care but it turns it's out a cancer and has to go to a cancer specialist, is there some mechanism by which it's - patients are handed over?-- It happens all the time. There's usually an understanding. Consultants talk to each other and the understanding is if an unexpected problem arises there that is better managed by another consultant, then there is communication with a consultant. You ask for an opinion and then you ask whether you'd actually like to - you know, whether you would like to take the patient over. It is usually a formality but that's what usually happens, and it happens to me all the time.

Yes?-- A patient comes in with a cardiac condition, the cardiac condition is sorted out but he also has kidney failure, which sort of happens more often than - once the heart problem is sorted out, then in fact people come to me and they sort of ask for an opinion, they ask me whether I'd like to take him over, and I always do.

Yes?-- So that's the formality. As far as sort of filling in forms and writing letters, it doesn't work - I mean, you get caught up in a million bits of paper and it just doesn't work. People discuss things, people communicate with each other. That's what usually happens.

Yes?-- But it's the right, it's the responsibility of the physician or the surgeon who the patient comes under to do - it is just manners and diplomacy.

Yes.

MR ANDREWS: Now, you're aware that patient P51 came in with chest pain?-- P51 is a gentleman that I was involved in. I don't think I oversaw him but, in fact, there was a lot of commotion over this patient. This is a man that came in with chest pain, and when someone comes in with chest pain in a public hospital, you always make sure that you exclude a cardiac problem. If the chest pain is due to a bit of pleurisy, nothing is going to happen. But if it is due to a

cardiac condition, anything can happen. So you always exclude that. And this gentleman, P51, who came in, had chest pain. But he also - my understanding was that the chest pain was atypical. In other words, it wasn't what you read in books, you know, a classical cardiac pain, and a significant percentage of cardiac pain are atypical. So I don't think that means very much. So you need to exclude a cardiac problem. Now, this gentleman was also anaemic, for some reason. You know, people aren't anaemic. If they're significantly anaemic, there's a reason for it. The reason could be anything. There's a hundred different causes for anaemia. Because his pain was atypical and because, in fact, I hadn't seen him, the physician quite correctly had an X-ray done, a computer tomography of his abdomen. He had a CT done of his abdomen. And the X-rays were done in the radiology department and I'm told that Dr Patel was wandering through and sort of had a look at these things and said, "Who is this patient?", and one would have told him, whether it was the radiologist or one of the junior doctors, I'm not certain. But he was also told that, in fact, that the patient was anaemic and he looked at the X-rays and he sort of said, "He's got a ruptured spleen." Now, a ruptured spleen for a physician or a surgeon is quite a major thing. A ruptured spleen occurs, for example, in a football field or in a motor vehicle accident. It needs a lot of trauma to rupture a spleen. It is usually the rib sort of gets bent and it sort of punctures the spleen and it sort or - the bleeding from a ruptured spleen is quite - is quite significant. Now, this gentleman in fact did have some sort of trauma many, many, many weeks previously. Many weeks previously. But Dr Patel decided this was a ruptured spleen. I was asked to come down, because in fact there was a bit of tension. So I looked at the X-rays and I'm not a radiologist but I've seen plenty of X-rays and I said, "The spleen doesn't look ruptured to me." I was giving support to the physicians and the staff who were working for me and I said, "The last thing that in fact that should happen here is for this chap to go to theatre", and there was a move to take this patient to theatre. To take someone to theatre with unstable angina, with a potential coronary problem when you're anaemic, it's extremely dangerous. So I advised the physician who was working for me, "Look", I said, "If he's anaemic, you think so, you can transfuse him up but you have to sort of take his - his heart takes preference. You think about his heart. You think about the anaemia but you send him to Brisbane", which is what happened, under a significant amount of duress. So he went to Brisbane and, in fact, they sorted out his heart and there was a report. Now, usually if someone go down to Brisbane for a chest problem, a heart problem, in fact you wouldn't expect to get a radiological report on a guy's spleen. That doesn't happen. But in this particular case, the people in Brisbane were forewarned that there were these issues up in Bundaberg and, in fact, I believe - in fact, I saw a report saying the spleen is perfectly normal, and that was another issue that got me thinking. You know, I sort of - I was told that - he told me he could do everything, then this episode happened. So, you know, I was - I was just subconsciously on my guard.

D COMMISSIONER VIDER: Dr Miach, given what you described earlier in terms of normal protocol for asking someone to give an opinion on a patient, you've used the terminology that said Dr Patel was wandering through the X-ray department and then offered an opinion about this particular patient's spleen. No observance of normal protocol had then taken place. He was not asked for a opinion?-- None at all. In fact, the physician who was involved with this was quite - you know, was quite unnerved by the whole issue. He's a fairly young physician, he hadn't been in Australia for a long time and to be confronted in this situation was somewhat unusual. This is the reason that, in fact, I was asked to become involved. And I supported him and I agreed with his assessment of the whole thing. I agreed with what he wanted to do and I supported him and what was done in fact was the right and proper thing to do. He went to Brisbane and he was sorted out and then came back. There was nothing wrong with the spleen.

COMMISSIONER: Doctor, given that this patient had some cardiac problem, some apparent angina or something of that nature, if Dr Patel had had his way and performed an operation on him with a view to a splenectomy, presumably he would have opened up the patient and seen that there was no need to remove the spleen, but what implications might that have had for the patient's health?-- Quite dire. Sometimes cardiac disease isn't clear cut. You can have degradations of cardiac disease. You can have unstable angina, you can have cardiac damage, or you can have a full blown heart attack, which is called an infarct, and it is generally known amongst physicians any surgeon - if you operate on someone who has got an unstable cardiac problem, you know, the consequences can be quite dire. In fact, most surgeons and most physicians - in fact, it happened to me in Hervey Bay a few months ago with a lady. Most surgeons would take the advice of a physician when to operate and it's the general teaching that, in fact, someone who just had a cardiac problem, that you don't operate within months of that acute episode. The incidence of complications in fact decreases with time. But to operate on someone who may potentially have a cardiac problem, in fact the consequences can be quite - quite dangerous.

Do you mean life threatening?-- Absolutely life threatening. There are mortality rates - after having had an infarct, a heart attack, the mortality rate is very high. So, in fact, it is quite dangerous. I mean, the patient could die. And then, in fact, was the issue with another patient with I was involved in late - later on which may come up. So, in fact, it is quite dangerous to operate on a patient who has an unstable cardiac problem.

MR ANDREWS: The junior physician you supported, what is that person's name?-- Dawid Smallberger.

You said that the patient was transferred to Brisbane and you used the word "with duress" or-----?-- Under duress. The medical staff that were there felt themselves under pressure.

From?-- From Dr Patel.

Who wanted him to remain so that the spleen could be removed?-- He wanted to take him to theatre straightaway, and that wasn't the thing to do.

D COMMISSIONER EDWARDS: Would it be fair to say that a ruptured spleen patient would be in a fairly poor condition?-- Well, if you've got a significant splenic rupture, in fact if you don't operate straightaway when the thing occurs, you know, you bleed to death. Some spleens, in fact if they're not badly ruptured, exactly the same as some kidneys in fact, sometimes they can be managed conservatively, but if it is a significant rupture - and this again is a surgical discussion, so the surgeons will be sort of - will certainly comment more effective than I do. But my understanding is if you've got a massive splenic rupture, that you exsanguinate pretty quickly. If you don't stop the bleeding and remove the spleen, you're in trouble. If it's a minor rupture for example, you can manage them conservatively, exactly the same as a kidney. These days renal ruptures in fact are frequently managed conservatively. So for someone that may have had an issue with a spleen weeks beforehand and weeks later to be in this situation, you would never think of operating.

MR ANDREWS: After this incident, what was your attitude to Dr Patel?-- Well, as I said, you know, I was more circumspect than I was. I mean, I was very, very careful on what - you know, the way I did things.

Can you tell us, please, about patient P45, whose name you will see on the key?-- Yes. P - that gentleman is a patient who has chronic kidney failure, chronic renal failure. This is a man who had had abdominal surgery some years ago for a cancer of the colon. The surgery was fairly straightforward and it wasn't complicated but he had a scar in his abdomen. When I spoke to him about his surgery, he pointed out that it was fairly clear cut. He'd had his operation, he healed well and he went home, but nevertheless he had an operation in his abdomen. Now, this gentleman in fact lives in Gin - I think it's Childers, which is about 50 kilometres out of Bundaberg, but he needed dialysis. There's only two ways that we dialyse patients: we either put them on a machine, in which they come to the hospital three times a week and get dialysed, and then they go home. Doing that three times a week week-in, week-out, month-in, it gets quite strenuous for him. So preferably, what you would do with that gentleman in fact, you would try and offer him peritoneal dialysis, which is a procedure that he could do himself at home and he would stay at home and do that at home. Now, when someone has had abdominal surgery, frequently the procedure doesn't work because in fact you've had - you've got scars in the abdomen and the procedure for a variety of reasons doesn't work. So a lot of nephrologists, once you've had an operation in the abdomen, in fact you don't do that procedure. But you never know your luck in a big city; I mean, sometimes it does work. So, in fact, I offered this chap, I said, "Look, there is an issue here but you may be lucky, you know, it may work on you, but there are potential issues that it may not be effective in

you, in which case you will end up having to come to the hospital three times a week." So I decided to insert - you know, to have one of these catheters inserted in the abdomen. But as - as happens, I examined his abdomen and as well as his incision, his scar, he also had a hernia in his abdomen. Now, a hernia, if it's asymptomatic, if it doesn't cause you any problem, it's not a big deal. You know, you just leave it alone. There are plenty of people running around the world with hernias but you don't operate on them. But if you have a hernia in an abdomen and in fact you want to put people on peritoneal dialysis, then you need to fix it because otherwise the hernia gets bigger and the whole thing is just impossible. And this gentleman had a hernia, because I saw it, and I sent him fairly early on in the piece, I sent him to Dr Patel for an opinion and also the understanding was to fix this hernia so that we could actually go and perform peritoneal dialysis. He came back and there's a note there, "There's no hernia that I can see." I mean, I saw it.

So what did you do, Doctor?-- I sent him to another surgeon.

Which surgeon?-- Peter Anderson.

And-----?-- Peter Anderson said, "There's a significant hernia here and I'll fix it." So he fixed it. The gentleman had private insurance, so it was actually done in the private sector. The hernia was fixed and then a Tenchkoff catheter was replaced. And he's still okay. He's still dialysing. He's-----

Now, for Dr Patel to miss the fact that there was a hernia, is that something that a competent surgeon might miss?-- Well, a hernia is a surgical thing. I mean, I'm a physician; I picked it up. This is why I actually sent him to a surgeon, and he sort of said that it wasn't there. But I was convinced that it was so I sent him to another surgeon and, in fact, it was there, it was a significant hernia and it was repaired.

But my interest is whether even a competent surgeon-----?-- Sure.

-----might have missed this or was it a sign of incompetence that it was missed?-- Well, this gentleman had a hernia and it was missed. You know, now-----

COMMISSIONER: You don't have to adopt the word "competent" or "incompetent" but it is something you would have expected-----?-- I wouldn't have expected that at all. And it was proved by having the hernia fixed by another surgeon, who, as a matter of fact, said, "There's a significant hernia here. I'll fix it."

MR ANDREWS: At paragraph 49 of your draft you speak of a lady that came into the hospital with chest pain. Are you at the moment unable to recall that patient's name?-- No, I can't - I can't recall her name. I can't recall her name, but it's available. I'm sure she's probably been contacted by the hospital because I'm sure she would have ended up on this

gigantic list that, you know, that ex-patients have been-----

Now, was she a patient who had previously had a carcinoma on her breast, had it treated and was returning twice a year to the Bundaberg Hospital for review?-- That's right.

What happened when Dr Patel saw her?-- He discharged her.

And does discharged mean gave instructions that the bi-annual reviews were no longer to continue?-- If you discharge someone from a clinic, that means you don't make an appointment to see them again. The understanding is that the patient will go back to the local doctor, which some patients do, some patients don't. But she was discharged. But she was regularly, routinely seen every six months for quite some time by the surgeons to make sure she was all right, but that woman was discharged.

Now, to discharge her, is that orthodox?-- Again, carcinoma of the breast is a surgical issue. But my understanding of it is if you have someone in that situation, surveillance is a significant part of the treatment. Because if you have got polyps or if you had a carcinoma of the bowel, then in fact you routinely have had surveillance, and with a carcinoma of the breast, you would do the same thing, which is what the previous surgeons were doing.

Now, in any event, this lady did return to the hospital-----?-- Yes.

-----after she'd been discharged by Dr Patel?-- Yep.

And she returned presenting with chest pain?-- Yes, she did. She had some chest pain and she was admitted under the physicians, again one of the other physicians, and I didn't see her myself but I understand that it was a significant tumour, there was a significant carcinoma in this lady.

COMMISSIONER: In her breast?-- In her breast.

MR ANDREWS: Now, patient P33, can you identify him for yourself from the key?-- Yes, I can.

Now, do you recall the circumstances relating to that patient?-- Yes, I do, I recall it very well because it was a fairly recent - a recent patient. This was a man who came to the hospital with - with a heart attack. He was in - from memory, he was in his 70s. Again, he was admitted under one of the other physicians. He had - he actually had a heart attack. He also had kidney failure. He had severe kidney failure. He also had a condition called atrial fibrillation, which is an irregularity of the heart, which is treated always, if possible, with anticoagulants; in other words, blood thinning substances. He was also anaemic, this man, probably because of his kidney failure. People with kidney failure are sort of almost invariably anaemic. And as fate would have it, he was also a Jehovah's witness. Now, this man in fact had a number of serious problems. He had his age, he

had his anticoagulation, he had his anaemia, he had his kidney failure, he had his heart attack, so he was quite marginal, and he was in the coronary care unit. One of the staff in the coronary - in the unit tried to put a central line into him, into the neck, which is routinely done. The vein and the artery in the neck in fact are fairly close together, and they missed the vein but got the artery. And what then happened is because, in fact, the arterial pressure is lot a more than the venous pressure, his carotid started bleeding, there was blood gushing out of his carotid, but it was a thin - a thin stream.

And I was called down to the intensive care unit because the nurses, and mainly the nurses but also some of the junior medical staff were concerned about this chap, they were concerned because Dr Patel was all scrubbed up in his surgical gear wanting to take this patient to theatre to fix up his carotid, and I came down and it was quite an unusual situation, there was quiet, there was tension, you had a cubicle there, one of the doctors was putting pressure on this gentleman's neck and, you know, I asked him to sort of let me have a look, he took it off and blood was squirting out and I said, "Just put pressure on it" and again, Dr Patel insisted - was insisting on taking this man to theatre to fix up his carotid, and I said, "Look, this - the carotid doesn't need fixing, his priorities is his heart, his anaemia, everything else, and I know when you put a needle into the carotid and sometimes that happens, that if you put pressure on it, it will stop, it's not a big hole, it's a very small hole, so if you put pressure on it, it will stop. The complicating issue in this gentleman was that he was also anticoagulation and that sort of made the situation a little bit worse. I sort of said, "Reverse the anticoagulation, this is what you have to give him.", and Jehovah's Witness, sometimes they don't let you give them blood products, they don't consent to that but you can give him this, this, this, and put pressure on it, it will stop, might be five minutes, might be 10 minutes, might be half an hour, might be an hour, just keep putting pressure on it because of his heart, because of his infarct, because of his anaemia, because of the fact of Jehovah's Witness, you need to send him to Brisbane, but Dr Patel was there and I sort of took him aside, sort of five metres and I said to him, "Look, this man is not going to theatre and that's the end of it, these are the issues: he's going to Brisbane", so that's it, no questions asked, and this man went to Brisbane, the bleeding stopped, as it's always done, they didn't fix up his carotid because they didn't need fixing, they sorted out his heart. In fact, he came back to Bundaberg because of his kidney failure, now comes to my clinic but that man with his comorbid conditions, with his complications, he would have had absolutely no chance of coming out of theatre alive because they couldn't have transfused him if he was bleeding, he probably - there was absolutely no way he could have got out of theatre alive and he's okay now.

COMMISSIONER: I can't even understand what sort of operation Dr Patel wanted to perform?-- Well, if you have a hole in the carotid artery, you expose it and you put a stitch there.

Yes?-- If you need, but you don't need that if you've actually got a thin needle that went into the carotid artery, you can put pressure on it and it will stop which is what happened with this man.

And your opinion is that the likelihood is if he'd had that sort of operative treatment, he would have died under the - on the table?-- Absolutely, the chances of him coming out of theatre alive would have been minor, because he had, as I mentioned, he had these other compounding things, so you manage that sort of man conservatively as much as you can, you

stop the bleeding. You can't transfuse him but if he went to theatre, that man wouldn't be here and, you know, and after I said what needs to be done, there was a sigh from the nurses and everybody else and I, you know, Patel left because I said there's, you know, "This is what's happening, he's a medical patient and he's under the control of the physicians and I'm one of them and that's what happens" and so he left.

D COMMISSIONER VIDER: Dr Miach, I was just going to ask you about the interaction you had with Dr Patel?-- Yep.

Was he grateful for your comments?-- No, he wasn't, no he wasn't. He - it was pretty amicable, it was pretty quiet but I took him aside, still in the unit so still in full view of everybody, but I said, "Look, this man is not going to theatre.", but he just walked off, so no gratitude or those sorts of terms was never an issue.

COMMISSIONER: Mr Andrews, we might take a five minute comfort break.

THE COMMISSION ADJOURNED AT 3.20 P.M.

THE COMMISSION RESUMED AT 3.25 P.M.

PETER JOHN MIACH, CONTINUING EXAMINATION IN CHIEF:

COMMISSIONER: Mr Andrews, before you continue, Mr Boddice, I can expect, can't I, that you'll be in a position to cross-examine this witness when his evidence-in-chief finishes?

MR BODDICE: Well, I was just asking Mr Andrews about that because as I understand it, this witness is giving evidence in the CMC.

COMMISSIONER: Yes, I don't - I consider that's an issue though, it doesn't go to the complaints handling process.

MR ANDREWS: Indeed, this witness will touch upon issues that he brought to the attention of Dr Keating.

COMMISSIONER: Yes. Well, it's up to you, Mr Andrews, to - you prefer that the cross-examination be postponed?

MR ANDREWS: Because of offers made to the CMC.

COMMISSIONER: Certainly.

MR ANDREWS: I prefer not to, not to in any way impinge upon

promises made.

COMMISSIONER: Yes, of course, of course. Dr Miach, I should explain to you what's going on. Apparently you're also going to be asked to give evidence at the CMC inquiry in a couple of weeks time. We have an arrangement with the CMC that we don't allow witnesses to be cross-examined here before they give their evidence to the CMC so that you don't - you're not exposed to being cross-examined twice on the same issues. For that reason, when you finish what we refer to as your evidence-in-chief, the evidence being led from you by Mr Andrews, we'll have to stand you down as a witness and resume your evidence at a later time.

We'll probably try and schedule that in Bundaberg because we're going to Bundaberg in about four weeks time and hopefully that should be less inconvenient for you. Needless to say, Mr Andrews or one of the other staff will be in touch with you to make sure that it doesn't interfere with your clinical duties and other professional responsibilities. I'm sorry about that inconvenience, but you'll understand there are important reasons for it. Thank you Mr Andrews.

MR ANDREWS: With respect to patient P33 about whom you were speaking before the break, you mentioned that staff asked you to come down even though patient P33 wasn't your patient?-- That's right.

Is it unusual for staff to ask a physician to interfere with surgery that's proposed by a surgeon?-- This was a medical patient, it wasn't a surgical patient. This patient belonged to another physician who I actually rang and explained to him just how to manage out of courtesy and diplomacy and those sorts of things, this is what's going on here, involved and he sort of said, "Thanks very much for handling it, I would appreciate your involvement." But this was a patient with medical conditions.

Yes?-- But the staff were sufficiently concerned - the physician that was looking after this patient in fact had done a ward round in the morning, it's just a review of the patient which is done regularly on a daily basis, they'd done a ward round and then he left but he wasn't expected to come back and they had an issue that was there and I was on site and they asked me to see the patient.

Thank you. Now, Dr Patel is a surgeon you did ask to do some work for you in the early stages, is he not?-- Yes, I did.

And he did perform some work apparently competently for you?-- He did.

And indeed, one procedure, which was the insertion of a gortex, G-O-R-T-E-X, loop, into a patient's arm, was a procedure you would normally ask a vascular surgeon to perform?-- That's correct.

And what did Dr Patel say to you when you asked him about

whether he was prepared to perform this procedure?-- I can't remember the exact words but he was quite confident that he had done plenty and that, you know, he knew what he was doing and so he did it and in fact, it worked and in fact is still working.

Now, please tell us about patient P34?-- Patient P34 was a man, I believe in his 40s, he was on dialysis, he was a chronic dialysis patient. He had numerous other complications, in fact, he'd had them long before I arrived in Bundaberg, he was - developed all sorts of complications and he was left in a fairly frail position. He had weakness of his legs, he had difficulty walking, he had a wide stepping gait, but he coped.

Is it the position that he'd developed cancer of the oesophagus, at the bottom of the oesophagus?-- That's right.

And in such cases, is surgery usually prohibited if they're suffering from any significant comorbid conditions?-- The surgery of cancer of the oesophagus, and again, I'm sort of talking outside my scene, but the ones that I've seen is it's a significant operation and it involves operation inside the chest and also inside the abdomen, and they're usually done in much larger hospitals than Bundaberg. It's a significant operation for anybody, even if you're sort of fit and well, but if you've got kidney failure, if you've got a number of other complications, then it's fraught with danger. Now, it was put to me sometime ago and he sort of said, "Well, why did you ask Dr Patel to see him?", which is a very very good question, but when physicians have come across a surgical problem, we always get an opinion for a variety of reasons. In fact, for physicians, it helps me know what some of the possibilities might be, it helps the patient know that in fact you're doing everything possible he can for him, it helps the relatives know, the family know and it also helps the staff know, but when it's a procedure like that, and in fact there was another gentleman subsequently that developed the same thing and he was managed totally differently, but when a procedure like that comes, you get a surgical opinion. I never got that opinion because in fact this man was fast-tracked into theatre.

Had you asked for the opinion?-- Yes, after I gave it to him. It's a normal thing that when you actually ask for an opinion, in fact, people come to talk to you, when people ask me for a opinion I either write my opinion down, but very frequently it's a routine that you ring up the consultant and you discuss it with him, you can get a much better idea of what you think on some of the issues, but sometimes you also record what you're thinking, that's common practice.

So you'd sought an opinion from Dr Patel and while you were waiting for his opinion, Dr Patel fast-tracked the surgery?-- That's what I believe happened.

So the surgery took place without your knowledge at the time?-- I can't - I'm just trying to - this man, if in fact,

if an opinion - in fact there was a discussion with Dr Patel about this man, I would have, you know, I would have sort of said no, I mean, I wouldn't even have thought of sending him to Brisbane because in fact there were so many other issues with this man that in fact no-one would have operated on him, but he was operated on in Bundaberg. I don't know whether the exact date this happened or the day that it happened, but for three days out of 10 in a fortnight between Mondays and Fridays in fact I'm - I work in Hervey Bay, I run the whole renal services down there so I don't know when - if I was around, whether in fact he was - when he was operated on - that can be checked - but it surprised me that in fact he was operated on, and I can understand it because in fact the way surgery happened with Dr Patel, in fact, if you actually asked him to see someone, automatically in fact he regarded it as his patient, he had 100 per cent control over him and he did whatever he wanted, and that was my impression and that I was quite disturbed when this man went to theatre.

D COMMISSIONER VIDER: Dr Miach, can you recall at any time raising with Dr Patel this issue of protocol? Was there any attempt to say to him, "Normally in Australia we do da, da, da, da, da, asking someone for their opinion usually means" and the protocol here; was there any discussions with Dr Patel?-- Not by me because in fact it's very well recognised everywhere that if you ask for an opinion, that's what you want and when you have a complex patient, then it's - then it's almost incredible to do something without discussing it with a responsible physician.

Yes?-- So, no, I didn't specifically spell out protocol to him because as a senior surgeon, which is what he purported to be, I would have expected that sort of protocol, manners, courtesy, diplomacy would have been followed.

COMMISSIONER: What was the outcome of the oesophagectomy?-- The patient died.

D COMMISSIONER EDWARDS: In the theatre?-- I think he did, I think he did.

So there would have been a Coroner involvement in that case?-- I expect so, I don't know what subsequently happened.

COMMISSIONER: And that outcome wasn't one that surprised you, given your knowledge of the patient's condition?-- Oh, sending this patient to theatre? In fact, I would have been very surprised if he would have survived.

MR ANDREWS: Now, an oesophagectomy would be classified as elective surgery?-- Yes.

And is there some incentive to do elective surgery at Bundaberg Hospital?-- Well, there is, I think everybody, everybody knows that.

Well, would you please explain to us what it is?-- Part of the funding of a hospital in fact depends on elective surgery,

so in fact the more - the percentage in fact I'm not aware of because, as I say, I'm not a surgeon, I don't work in administration but I know that the more surgery you do, the more money the hospital makes. Exactly how much it makes, I don't know.

And is it elective surgery in particular?-- I think it is, but it doesn't apply to medicine, which is what I know about, but I do know that the elective surgery attracts reasonable remuneration and the more you do, the better off the hospital is.

D COMMISSIONER EDWARDS: Is that part of the Medicare agreement rather than the patient paying?-- I don't know the exact formula and the exact thing because I'm not involved with that at all.

But it is an incentive, obviously?-- Yes.

COMMISSIONER: Dr Miach, just going back to the oesophagectomy and patient P34 for a moment, accepting that you wouldn't have approved or recommended an oesophagectomy at all, were there any circumstances that made it urgent for Dr Patel to perform the oesophagectomy on a fast-track rather than wait until he could consult with you?-- No, there was no urgency about it. When you have - when you have in the gullet the oesphagus, sometimes the gullet blocks off, sometimes it bleeds, sometimes it's painful but you usually have days, weeks to sort that out, so there was no, there was no acute, immediate acute problem in this man, there was the major problem with his cancer of his oesophagus, but there was nothing acute that demanded that he be operated on straight away.

Thank you.

MR ANDREWS: Patient Ms P53?-- Yes.

She's a patient upon whom Dr Patel performed a procedure?-- She's a lady with severe kidney failure who in fact had multiple problems with access - with access, in other words, it was very difficult to establish something that would work and she'd be on all different types of procedures to try and keep her going. She needed a procedure though in one of her arms to try and establish some permanent access that we could keep using to dialyse this lady. Sometimes it's very difficult to do, sometimes it's very difficult to do. I discussed her with Dr Patel, it was early on, I don't know the exact dates, but I referred to my notes recently and it was - must have been about June or July of 2003, so fairly early on in the piece. I'm not sure whether it was before or after I had the gortex loop inserted in that lady that it's still working, I'm not - that can be checked - but I just can't remember the chronology of those two patients. It's possible that it was after this gortex, it was - would have reinforced my idea that in fact maybe it could work, but he performed the procedure and in fact the patient had to be transferred urgently to Brisbane because her arm became ischaemic and she was flown down and in fact she was in danger of losing her

arm, but the vascular surgeon down in Brisbane repaired the problem, tried to establish other access in this lady which was very very difficult, but the following day or one or two days later in fact the vascular surgeon rang me up, he sort of said, you know, this lady almost lost her arm what's - and he advised me that vascular surgery by Dr Patel shouldn't be performed, which is basically what I'd come up, you know, I'd come independently to realise.

So by June or July 2003, you'd formed the impression that Dr Patel should not perform vascular surgery on your patients?-- That's right.

The procedure on the arm, was it by any chance another insertion of a gortex loop?-- No, it wasn't, it was a connection between a large artery and a vein in the upper arm to create what we call an arterioventrical fistula which is an internal procedure, if you can achieve that, it's better than someone putting in these prosthetic loops in people.

And was it this procedure on Ms P53 that finally persuaded you not to permit Dr Patel to perform vascular surgery on your patients?-- Absolutely, absolutely.

Patient P52 is another matter involving Dr Jenkins from Brisbane?-- Yeah, this lady is a young Aboriginal indigenous lady who lives in Gayndah, she's now moved to Bundaberg but she lives in Gayndah which is a couple of hours west of Bundaberg. She's severely diabetic and kidney failure is one of the things that frequently happens with diabetic patients and diabetic patients also have problems with their vessels, in other words, they become ischaemic. This lady was not optimal in attending her outpatients appointments, sometimes she'd come, sometimes she wouldn't, but I knew that he was in fairly severe kidney failure and unbeknown to me, in fact she was admitted without my knowledge by Dr Patel who removed her leg, he did a left below knee amputation, he removed her leg. I've got no qualms about that, maybe she needed her leg removed, that's not the issue, but he removed the leg but then he left her in the bed in the ward for some days, just forgot about her as far as - there's no, people tell me that he never reviewed this patient. Now, this patient had severe kidney failure and she was just left in bed and the staff, and again, I can't recall exactly who - whether it was the nurses who talked to my junior doctors who let me know, and I was quite aghast when I found out that this lady was in hospital because usually with severe kidney failure, if you've got a nephrologist around the place, that that's what you refer to, and if surgery needs to be done, the management of kidney failure is extremely important but she was admitted, she had a leg off and she was left in the bed. When I was called, she was sort of basically or semicomatose, she had a - the poisons had built up to such a level in her circulation because of the kidney failure that in fact she was obtunded and I could-----

COMMISSIONER: Sorry, what was that last term?-- Obtunded, sort of that's sort of suppressed, you know, her sensorium, she was sort of lying in bed hardly responding.

Something just short of comatose almost?-- Absolutely.

Yes?-- Absolutely, I was quite aghast when I knew she was there so I took her up to the renal unit and, you know, I treated her extensively for weeks until she recovered, when she recovered and she was stable and she was awake and smiling and eating, then in fact I sent her to Brisbane to have one of these accesses put into her arm so that we could continue dialysing her. Before these things, these permanent accesses are put in, in fact, we have to rely on a number of - sorry, semipermanent or acute procedures which I can go into if needs be, so she went down to Brisbane to have this access put in and I received a letter from Dr Jenkin which I think is-----

MR ANDREWS: Would you look at this copy letter please? And Commissioner, the copy letter I expect is-----

COMMISSIONER: It's actually stapled to the patient key that was handed up so we do have it.

MR ANDREWS: Is that the letter you received from Dr Jenkins?-- That's the letter that I received from Dr Jenkins. A photocopy of the letter because the actual original letter I haven't been able to find. This is - this is a copy of a letter that in fact when I knew that the chief health officer was coming up to Bundaberg, I wanted to give him some evidence and I actually looked for the original of this letter and I looked for hours and I couldn't, I couldn't find it, so in fact I rang up Dr Jenkins' secretary and she faxed me up and this is a copy of the fax.

Yes?-- But this is the letter.

Now, what is it about the procedure that so astounded Dr Jenkins?-- The fact that where it states there that the fact that she had a below knee amputation, there was no follow-up, that's the first thing, that in fact there was no follow-up, the stitches in the stump were left there for six weeks, I believe it's sort of stated there. There were areas of infection, areas of gangrene, areas of necrosis and, in fact, in fact it was very very difficult, there was quite a concern whether in fact this lady might lose a little bit more of her leg, but with continuous both our own staff up in Bundaberg and also down in Brisbane, in fact, she's okay now, the stump is healed and we're fitting a prosthetic device on her.

Why did you send her to Brisbane rather than having her treated by Dr Patel in Bundaberg?-- Well, she went to Brisbane specifically to have one of these vascular accesses fitted, sort of, and I'd decided a long time ago that in fact he wasn't going to do anything as far as the renal, so someone had to do it and the available vascular surgeon was the Royal Brisbane Hospital, they're the ones who support us.

So this lady's procedure was done sometime late in 2004 and you'd decided much earlier than that not to permit Dr Patel to insert these accesses in your patients?-- This is vascular

access that I'm talking about here.

Yes?-- This is an operation on the arm. Unfortunately, with renal, we're talking about access and for all sorts of things and it's a bit confusing, I understand, but this is a specific procedure performed on an operation on a woman's arm to connect two vessels that we can subsequently use.

COMMISSIONER: Is that what another witness has already referred to as a Vascath?-- No, Vascath is something different again, something different again. There's about, as I mentioned, there's sort of three or four different things that we do and we do them - or I do them when in different circumstances, whatever I think is more appropriate in the situation. A Vascath is something else and there's also PermCath which is something different again, so it's-----

MR ANDREWS: I tender the letter you received from Dr Jenkins.

COMMISSIONER: Yes. The letter from Dr Jason Jenkins to Dr Peter Miach dated the 2nd of November 2004 will be admitted and marked as Exhibit number 16.

D COMMISSIONER VIDER: Dr Miach, given the series of events you've just discussed, including the fact that the amputation had occurred without your knowledge and then the patient had been left for some weeks without appropriate postoperative supervision, it would appear, at any stage then Dr Patel did not make any contact with you regarding this patient?-- No, he didn't.

And given that this letter has been CC'd to Dr Patel, even after that, still no comment from Dr Patel-----?-- No comment.

-----to you?-- No comment at all.

Thank you?-- I should mention this sort of - I may have forgotten with patient number P53, if I'm allowed to backpedal for a few seconds, I discussed that particular lady with Dr Patel after Dr Jenkins rang me and I sort of said - I said, "Look, there's this issue, I think it would be advantageous if you were to ring and have a discussion with Dr Jenkins yourself.", but he never took that up, I'm fairly certain he never took that up.

MR ANDREWS: The exhibit being Dr Jenkins' letter, I'm instructed, has been given a number already allotted to another exhibit before lunch.

COMMISSIONER: You're perfectly right, Mr Andrews. Exhibit 16 was the letter of the 18th of January 2005 from Dr Keating to Dr Patel. So the letter just admitted into evidence from Dr Jenkins to Dr Miach will be Exhibit 17.

ADMITTED AND MARKED "EXHIBIT 17"

MR ANDREWS: Thank you. And it needs to be depersonalised in the sense that the patient's name appears within it.

COMMISSIONER: Yes, before it goes on the inquiry web site the names will be covered up.

MR ANDREWS: Thank you, Commissioner.

COMMISSIONER: Or erased. Yes. And needless to say, to the extent that the patient key has been added to, the additional names added to the patient key are covered by my earlier non-publication order and in due course, Mr Andrews, you might provide a copy of the updated patient key which can be substituted as Exhibit 5. When that's done, we might add in at least one of the missing names that's been provided and that's patient P1. If there are any other missing names that can be added in before that goes on to the inquiry record, that would be helpful too.

MR ANDREWS: Certainly Commissioner.

COMMISSIONER: Thank you.

MR ANDREWS: You went on sabbatical at the end of January 2004. At that time, you engaged two locums, Dr Martin Knapp, K-N-A-P-P, and Dr Malcolm Cochrane?-- That's right.

Now, did you leave instructions with them about what was to happen if surgery was to occur to any of the renal patients?-- Yes, I did, I left the - I left my comments and I spoke with Dr Martin Knapp, I did not talk to Dr Malcolm Cochrane because in fact they were alternating two weeks on, two weeks off, Dr Knapp sort of didn't think he could cope with, you know, continuous renal work for a couple of months, so in fact I spoke to Dr Knapp and it's likely that he spoke to Dr Cochrane but I didn't myself.

And the instructions you gave about surgery?-- I sort of said, "I would not, if I were you, I would not let Dr Knapp" - I'm sorry - "Dr Patel do any surgery on any of your patients".

Is it the case that you'd made a determination about referring patients to Dr Patel for peritoneal catheters at sometime before you left on sabbatical?-- Yes, I did. That was one of the things that I was alluding too but I gave a general impression, a general instructions, if that's the correct word, to stay clear of Dr Patel as far as any surgery on renal patients were concerned, and it's interesting that I met him just recently at a nephronological meeting and he was aware from the newspapers, from the press of some of the issues up in Bundaberg, and in fact, he reminded me and he recalled that I actually told him that, he reminded me, you know, and in fact he took my advice because I'm not aware that any patients were forwarded to Dr Patel when I was away but I could be mistaken but I doubt it.

Now, what did you do - what was it about peritoneal catheter placement surgery that caused you concern?-- The rate of complications and the rate of problems, if you want to put it that way, was prohibitive. You know, I've been involved with these catheters for decades and once in a while you get a complication, sometimes you'll get two complications, but these complications in fact, you know, were happening very frequently. So what I did, I did an audit, I got some of the senior nurses who work in the renal unit to go through the charts and chart what the issues were and, in fact, Dr Patel did six peritoneal catheters and they all had problems.

Would you look at this document please? Is this a document prepared by those senior nurses edited in its left-hand column to remove the names of the patients referred to and insert instead the code from the patient key, Exhibit 5?-- I believe I've gone through the key but that is the list that I developed that was done for me.

COMMISSIONER: This shows a 100 per cent failure rate?-- It shows a 100 per cent complication rate and problem rate.

Yes?-- And the problems and issues in fact are defined in those columns.

You mention that they do occasionally fail?-- Yes, they do.

Or complications. Would you be able to indicate an average rate of failure or complication?-- Perhaps - perhaps 10, 15 per cent, perhaps less.

Yes?-- If I may, there have been no failures in the last seven that we have done using an alternate system that was developed. But there are complication rates. That's very well recognised, but not this sort of level. It was highly abnormal.

MR ANDREWS: As a result of your concerns - I tender that document.

COMMISSIONER: Yes, the schedule headed "Peritoneal Dialysis Catheter Placements (2003) will be admitted into evidence and marked as exhibit 18.

ADMITTED AND MARKED "EXHIBIT 18"

MR ANDREWS: As I understand it, doctor, you have some difficulty recalling when that audit was completed, that is whether it was before or after your sabbatical?-- The - almost certainly it was before I left for England for the following reasons: I actually left at the end of January and the senior nurses made an appointment to see their acting Director of Nursing in early February, in the first one or two weeks in February, and that is recorded in a diary entry, which I photostatted and which I have given to people. So it is likely, very likely that this audit in fact was performed before I left.

I see. And the acting Director of Nursing with whom the appointment was made, do you know what that person's name was?-- Patrick.

Martin?-- Patrick - I am trying to remember his name. I think it was Patrick Martin, but I am just - I think it was Patrick Martin is the one.

Right. Now, before your departure for sabbatical, had you been referring patients who required peritoneal catheters to someone other than Dr Patel because of your disquiet?-- No, I wasn't. The options when you - the options - what I in fact did is I warned the locums to stay clear of Dr Patel, so no catheters were - in renal medicine you have the possibility of using another form of treatment. In other words, you can

actually use haemodialysis. So you can dialyse people another way. So patients were treated, but for the time being, while I was away in fact, I sort of said, "Don't have anymore catheters put in. If they need treatment, you treat them by this alternate mechanism", which is haemodialysis.

Is the insertion of a peritoneal catheter a difficult procedure?-- It is not difficult but you have to be meticulous on how you do it.

Is it something that ought to have been able to be performed by a surgeon in Bundaberg rather than a tertiary hospital?-- Well, yes, yes, but, as I mentioned before, if - I spoke to a number of other surgeons - and I told you their names previously - who weren't happy to do this procedure because they said they have never done them before, "we're not happy", and I sort of said, "Fine." That's the end of it. But it is not a difficult procedure but you have to be meticulous with it.

Now, patient P31 was a young patient who arrived at the hospital comatosed and suffering kidney failure?-- That's right.

He developed a rare complication?-- He developed a quite lethal complication if it isn't diagnosed and treated properly. This man was what we call very uraemic, he had severe kidney failure, his blood tests were highly abnormal. In fact, he was again semicomatose, quite suppressed, quite depressed, so I dialysed him straight away. I put him on these temporary catheters, which I do myself, and he woke up. When he woke up he sort of developed pain in the chest. I listened to his chest and he had a certain sound there, and I knew that, in fact, he had an inflammation of the lining of the sac around the heart, which we call pericarditis. The problem with this condition is that if you have fluid that accumulates between the heart and the sac, the fluid squeezes the heart and the heart in fact fails, and there are fairly classical symptoms and signs of these people here, but I don't think anybody in Bundaberg would have ever seen them. Anyway, this is what this man developed. I explained to the junior staff - I said, "Look, these are the sorts of things you need to keep in mind A, B, C, D, E, but, anyway, when I came back from Hervey Bay, sort of going home I said, "I will just pop in to see how this man is going." He was in intensive care with hardly any blood pressure and I knew what had happened. He accumulated fluid - bloody fluid in his pericardial sac and it was squeezing his heart. So the procedures that we do, we sort of very quickly remove the fluid via a special technique introducing a fine needle inside the sac, and the fluid comes away, the heart expands, starts working and it improved. Now, I know for a fact that when this happens, in fact, it is likely to happen again. And in fact it did. And it was - the pericardium was drained again. In fact, I said, "This man needs an operation", and the operation that he needs is sort of to remove a little bit of the pericardium, the sac, so that the fluid can dissipate, not cause him any problems again. So he went to theatre. Now, I rarely go to theatre, as I

mentioned before. I have been to theatre twice, I think, in Bundaberg. But I went to theatre in this situation and I came in late. And this pericardectomy was being performed by Dr Patel. And he wasn't properly anaesthetised, he wasn't anaesthetised at all, and the patient was quite distraught. He was sort of - he was in pain and I was - you know, I had never seen anything quite like that before. And I've been involved with many of these people over the years, you always anaesthetise, make sure everything is calm, quiet, and that was quite, you know, quite - I mean, I have seen most things these days but that sort of jangled my nerves.

Was the patient in distress?-- The patient - I don't know how much sedation he had but certainly he was feeling everything. He was - he was agitated, he was moving, he was sort of moaning, he was screaming. It was quite a procedure.

So there is no doubt that Dr Patel ought to have known that the anaesthetic was not sufficient?-- The - I am not quite sure what happened but my impression - my impression was - and I may be totally wrong - that in fact the anaesthetist was told that in fact it is better to do this procedure without an anaesthetic. I might be totally wrong there but that's my impression.

COMMISSIONER: Was there an anaesthetist present?-- I think there must have been. I have been trying to find out who that was and I can't remember, but it will be in the hospital notes.

MR ANDREWS: But have you had experience with this procedure elsewhere?-- Oh, yes, yes.

Is your experience that the patient is left without anaesthesia?-- No, they are all anaesthetised. I mean, this is - this is a complication which specifically occurs in people with kidney failure. It can occur in other situations. There are many causes of fluid developing in the sac. There are plenty of conditions that do that. But kidney doctors, we're particularly aware of that. And, you know, certain symptoms and signs in fact lead you to expect, because if you don't, the patient will die. Simple as that.

The catheter audit that you caused to be performed, when you received the results, as I understand it some of the staff at intensive care made an appointment to see the Assistant Director of Nursing?-- These were renal unit staff, not intensive care staff. These were some of the senior nurses who work in the renal unit.

Did you yourself take the information to anyone?-- Yes, I did.

To whom?-- To the Director of Medical Services.

Is he your line manager?-- Yes, he is. He is my direct superior.

COMMISSIONER: That was Dr Keating, was it?-- Dr Keating.

MR ANDREWS: Do you recall when you took it - the information to Dr Keating?-- No, I can't, and I have thought and thought and thought repeatedly. It was either before I left to go to England or when I came back. I suspect it was when I came back.

And how did you convey the information to-----

COMMISSIONER: I just want to be very clear about this because it may be important. You can't recall whether it was before your sabbatical or after?-- That's right.

But do you - as you sit there in the witness-box today, do you have a clear recollection of being face-to-face with Dr Keating and handing the document to him?-- Yes, I do, and I have thought about this intensely. I actually brought it up personally and gave it to him.

Thank you?-- And I have thought and thought and thought, and I have been asked this question repeatedly, and my memory is that that's exactly what I did. I can't remember if it was before I left or after I came back from sabbatical leave.

MR ANDREWS: And you gave him a copy of exhibit 18, the chart of Peritoneal Dialysis Catheter Placements 2003?-- That's right.

With the patient names upon it in the left-hand column?-- That's right.

D COMMISSIONER EDWARDS: Did you give that to other people within the various units, too?-- It was available.

I see in your statement you made some comment that appears that you may have distributed further?-- No, it was available - it was available - the renal unit staff did it, so in fact it was freely available there. I didn't give it to anybody else, but the document was freely available and I suspect that people knew it existed because it went up also through the nursing stream, up that channel.

MR ANDREWS: Do you recall the names of the renal staff who did the audit and prepared the chart?-- There were three that almost certainly would have been involved. Usually the ones that are involved with peritoneal dialysis - and different nurses have different interests - they would have been Lindsay Druce Robyn Pollock, who is the nurse unit manager, and perhaps also Mandy McDonald. But I suspect that the - it was a combination of Lindsay Druce and Robyn Pollock.

D-R-U-C-E and P-O-L-L-O-C-K?-- That's right.

Now, had you discussed with Dr Patel at any stage the procedure for insertion of peritoneal catheters?-- Yes, I did. There is a protocol, which in fact has been written by an international body, which we follow and I distinctly

remember speaking to him about catheters and offering - trying to give - it is very difficult to give advice from a physician to a surgeon, but I remember where it was and I spoke to him about these peritoneal catheters, that there are different ways of putting them in, that - you know, the direction they should go in, and I offered to actually give him some of the literature related to that. I don't think I gave it to him because he showed no interest at all, but I certainly remember discussing the issue with him.

COMMISSIONER: After you had the audit performed, did you have any further discussions with Dr Patel relating to catheters?-- I don't think so. I can't remember specifically. Probably not.

Did you discuss the matter with any other doctors connected with the hospital?-- The audit was made available to Dr Keating.

Yes?-- I don't think anybody else would have known what all of this means, but I decided - when I saw this audit I decided, in fact, that this audit came out - this was part of the reason, not the whole reason why in fact I warned the locums - they were working for me - to sort of stay clear. But at that stage I already decided that, in fact, I wasn't going to use Dr Patel for anything.

Right.

MR ANDREWS: So the persons working with you, doctors working with you, were made aware of your opinion that no surgery was to be performed upon your patients, or was it simply no insertion of peritoneal catheters?-- The doctors working for me were junior doctors, principal house officers who'd come and go at a great rate. There were also much more junior doctors than that. Junior house officers and interns, they come and go. They don't have any particular interest or expertise in renal medicine, so if I actually talk to them about Tenckhoff catheters, they wouldn't have known what I was talking about. I doubt whether if I discussed it with them, it wasn't relevant to them, they wouldn't have known what I was referring to anyway. But I certainly discussed with the nursing staff and I certainly brought it up at one of these clinical forums, clinical medical forums that we had once a month.

D COMMISSIONER EDWARDS: That's the audit you are talking about, you brought that up with the medical-----?-- Yes.

COMMISSIONER: Is the practice in Bundaberg to have M&M meetings, mortality-----?-- I am sorry?

Is it the practice to have M&M meetings, mortality and morbidity-----?-- Different units do different things. I believe it is. We have audit meetings in the department of medicine.

Yes?-- And they're - it is on the roster and people rotate to

discuss issues. So, in fact, it is a formal audition in the department of medicine. I suspect it is the same in the other units. I am not aware, but certainly in medicine there is an audit meeting that is done regularly and it rotates between the different services.

Yes.

MR ANDREWS: You raised the matter of the audit of the peritoneal dialysis catheter placements at a clinic - one of the monthly clinical forum meetings?-- Yes, yes.

Who attends those meetings?-- That meeting is attended by the clinical director, which was me, but also by the nurse unit managers in the different areas. For example, they are attended by the ward - the nurse unit manager from the ward, the medical ward, by the nurse unit manager from the renal unit, from the coronary care unit, and also from the rehabilitation unit.

Now, is this a meeting that a Director of Nursing would attend?-- No.

Or that Dr Keating would attend?-- I believe I was told that he attended one meeting while I was away but, no, it is not.

Certainly not the meeting at which you raised this audit?-- I don't think he was. I don't think he was ever at a meeting which I was at.

Now, when you handed to Dr Keating the audit on the first occasion, was it a document that he ought to have been able to see the significance of?-- Absolutely. It is fairly - it is fairly clear-cut. I mean, I did it for a reason. I did it to sort of have evidence, I did it to alert people, I did it for a variety of reasons, and one of the reasons was to show people there was an issue, there was a problem.

Do you recall whether you and Dr Keating had any conversation in respect of that document on the occasion you first gave it to him?-- No, I actually walked into his office and gave it to him. I can't - I remember that distinctly and very, very clearly. Whether in fact there was any discussion on another occasion, one or two days previously, a week previously or whatever, I can't remember that. But I certainly - you know, I walked in and deposited it, gave it to him.

Now, late in 2004 you spoke with Dr Keating and this audit was a topic. Can you recall how you came to have that conversation with Dr Keating in late 2004?-- Yes, I do. In fact it was on the - it was the 20th or the 21st of October. I know that date because in fact it happens to be the birthday of one of my family. So I remember that. Plus, I refreshed my mind by getting a subsequent email which occurred at one - at the same time. I remember distinctly that I was actually - an appointment was made for me to come and see Dr Keating.

Who made the appointment; you or Dr Keating?-- No, he made

it. His secretary rang me and, you know, an appointment was made. So I went up and sat there and I was - it was an interesting meeting because, in fact, I am trying to remember - I remember sort of this - I am trying to remember the exact words, but I was told that, "Your name" - Dr Keating speaking to me, "Your name has come up two or three times recently in fairly quick succession." I said, "Oh, that's interesting." I said - he said, "Is there any issues? Any problems?", and I said, "Not as far as I am aware. I mean, we're pretty busy, we're running around doing everything, but there is nothing that I am aware of." He said, "Well it has come up." I said, "Well, can you refresh my mind what the issues were? If you tell me what they were, in fact I will be able to explain things." He said, "Oh, well, no, but it has come up." So I said, "Well, how many issues? How many instances were there?" He said, "Two or three." And I thought to myself, "I wonder what these two or three issues have recently been?", and it occurred to me, in fact, there were three issues that happened that could have actually filtered up, and one of them had to do with Dr Patel. The other two didn't, but they are quite interesting in their own right. Almost certainly in relation to one of these patients - and I am fairly certain, but I can't be absolutely dogmatic - a lady was admitted with a chest pain and had cancer, which wasn't followed up almost certainly in relation to that patient. One of the junior doctors came up to me and complained that Dr Patel was in fact roughing him up because of this patient, you know, sort of trying to suggest that, in fact, it was something that Medicine did, that we didn't pick up this cancer. We had never seen this lady before. She came in with a heart problem and, incidentally, there was this lump there. And they, you know, one of the junior staff came up to me and sort of said, "Look, we're getting shouted at. We're getting"-----

By Dr Patel?-- By Dr Patel. And I said, "Well, I will see what I can do." And I remember where we were. In fact, it was just outside the hospital. In the hospital there is a little kiosk, which you can buy, you know, an apple tart and chips. All of the good food in life. There is a door that actually goes outside. And I actually spoke to Dr Patel out there. Mainly I did that because there weren't any people around. And I was sitting at a little table there. And he come up and he sort of - he stood over me and started in a fairly loud voice, sort of saying, "Where I come from, we do A, B, C, D and E." I said, "Look, where I come from we do A, B, C, D as well. While staff work for me, this is what we intend." I sort of said, "If there is an issue that you have in Medicine, you are the Director of Surgery, I am the Director of Medicine, you talk directly to me. This is what is the protocol. This is what is done everywhere. Upsetting the junior staff in fact is not on." And, you know, the conversation became a bit heated, I must confess, but, you know, he was trying to shout me down, probably not - I wasn't going to stand for that. Anyway, it is very likely that someone heard or someone saw us, you know, talking, and I suspect - I don't know, because it has never been put to me, but I suspect that was one instance that my name came up, because in fact, you know, it had to do with Dr Patel. The

second one didn't have to do with Dr Patel, but I can tell you, if you like.

No, thank you?-- Okay.

COMMISSIONER: Only if you think it is relevant for us to know about?-- Well, indirectly I think it is relevant to, you know, to the ineptitude of some of the administrative staff in the hospital. It has nothing to do with Dr Patel but if you like I will tell you about it.

MR ANDREWS: I would like to hear it, thank you?-- At about the same time, in fact, the Australian Kidney Foundation, which is these days called Kidney Health, decided to have something called D Day. It stands for Dialysis Day. And the idea was as a public relations exercise to have the community, the leaders in the community, perhaps the press, support groups, the Lions group, these people all over Australia to open up dialysis units and actually talk to the staff and talk to the patients, mainly to give more information to the community on how dialysis works. It was purely - purely, you know, a public relations and it sort of occurred to me that it would be a good idea for the local press to actually see what goes on, because there has been tensions between the local press and the hospital over the years. So I thought it would be a good idea to try and smooth a few waves, get them to come in, talk to people, and the rest of it. So I wrote a letter to the district manager sort of saying, "This is what's happening. It is happening all over Australia. It would be a good idea", and I got a pointblank refusal. Couldn't believe it. Pointblank refusal. I said, "Okay, if that's" - and the reason was that, in fact, they thought I was trying to do politics. Politics had nothing to do with it. But as I work down in Hervey Bay, down on the Fraser coast, I put the same issue to them and they jumped at the opportunity. So the press came in, you know, they interviewed me, I showed them dialysis, there was sort of a two-second report on the TV that night. So, in fact, it happened at Hervey Bay. Now, the support group in Bundaberg, which is a fairly active group, they knew that in fact that this day was occurring and they were very, very - they knew - in fact, I offered to open up the renal unit. I went to the administration and they knew that in fact I was knocked back. So they sort of got involved. They organised, I think, all sorts of people to write letters of complaint to the press. And the press - in the press the following day there were half a dozen, a dozen, two dozen letters of complaint. Everybody was happy in Hervey Bay, yet Bundaberg there wasn't. The interesting thing was the Director-General, at approximately the same time, sort of wrote an email to all renal units in Queensland, "this is an excellent idea. You should go ahead with it", but it was already knocked back and this sort of showed me the attitude, of what was going on there.

So am I to understand that it occurred to you in this meeting with Dr Keating-----?-- That there was this second issue.

-----that that was another issue that was possibly raised with Dr Keating?-- Absolutely.

What was the third, please?-- The third was a minor thing. Had to do with a junior doctor who had had a problem in filling in forms correctly and I - again, she didn't work for me but I knew that there was an issue and I sat down with her but apparently she got a bit upset that I picked up this irregularity, and that was it. That was something - and I suspect that was another issue that in fact may have filtered up.

COMMISSIONER: Dr Miach, just going back to the second point that you mentioned?-- Sure.

I think you used the word "ineptitude" in relation to management. Where you previously came from, the Austin Hospital in Melbourne, who was the operational head of the hospital, was it an administrator or a clinical practitioner?-- The - I'm just trying to remember. The Director of Medical Services was obviously a clinician. I'm just - no, it was an administrator. It was a lady administrator. In fact, she left. But the administrator there now in fact is a consultant nephrologist. He is actually the chief executive officer. He is now a specialist nephrologist. He is a friend of mine. But when I was there, it was an administrator. It was a lady called Jennifer Williams.

I take it you've had experience both in hospitals where the person in charge, if I can use that general term, is a clinician and hospitals where the person in charge is an administrator. You have had experience of both kinds?-- I'm just trying to think of the administrators that were there. I think at the Austin, generally the Chief Executive Officer has been an administrator. The Director of Medical Services obviously - you know, was a medically qualified doctor. But now the administrator at the Austin hospital, he's a clinician.

Do you have any personal views as to which arrangement is preferable?-- The problem with clinicians, like myself, we know - we know clinical areas but we're not experts, you know, in administration. That's the - it's a bit difficult to answer. You know, my preference, which is something that I think I've expressed a number of times, is to get much better communication between clinicians and administrators, so actually - you know, that's my preference. I wouldn't know whether an administrator or a clinician would be a better chief executive officer but certainly the exclusion of clinicians from making decisions in a hospital is a major mistake, is a major error as far as I'm concerned.

And with positions like Medical Director and Director of Nursing or, to use the old language, Superintendent, Medical

Superintendent?-- Yes, yes.

Do you have a preference as to whether that person is, as it were, office bound, or that person is active in performing clinical duties?-- Oh, the second one by a mile. The second one by a mile. My impression, for what it's worth, is that in fact, that the Directors of Medical Services in my medical upbringing for my whole life, in fact there was a nexus, was a medium between the clinical aspect of the hospital and the administration and that the Director of Medical Services, of which I'm used to, in fact always tried to help doctors, tried to improve their lot, had an interest in patients. My impression from a number of areas in fact is that that's changing.

What was the situation at Bundaberg in respect of Dr Keating? What was his presence in the functional parts of the hospital as opposed to the administrative parts?-- The - he was rarely seen on the wards, for example. When I - when Dr Keating arrived at the hospital, I specifically spoke to him and I said, and again I remember this extremely vividly, I remember, "Look, I'd like" - "There are issues that have come up in medicine and I suspect in the area others and I would actually like to sit down with you at your convenience, any time you like, but regularly, once a fortnight, once a month or whenever you say when we both mutually think", and I used to do that with one of the previous Directors of Medical Services and it worked very well. So that's what I wanted to do. I was told, "Not interested." You know, my offer of sitting down with him in fact was - was turned down completely. You know, I've been - I've been a physician for about 30 years. I mean, I know something about physician practice, about how you manage patients. You know, I've worked all over the world. I ran a hospital in Saudi Arabia in all places. I worked in France, in Paris, for three years, mainly as research but also some clinical duties. I've worked in Oxford in England for many months, so I know the system and I was absolutely astounded that, you know, my approach to try and improve things in the hospital as far as medicine was concerned was turned down point-blank. I scratched my head. I couldn't believe it.

D COMMISSIONER VIDER: Dr Miach, could I just ask then, that was turned and given what your objective was, to create some liaison and some communication links that were regular, no alternative? He didn't suggest to you, "That's not my way of operating but I like to"-----?-- No, no there was an alternative, which I took up, sort of, "If you have an issue, then make an appointment to see me", which is the alternate, which is fine. There is nothing wrong with that approach except that, in fact, it is much better to do it the way it is and to sort of - the terms that I use with a number of people, I say in a place like this it is better to actually prevent things than be putting out spot bush fires all the time, but I was quite amazed that I got nowhere there.

COMMISSIONER: Dr Miach, you may not be able to answer this but the question that occurred to me, what is a Director of

Medical Services doing if he's too busy even to see his Director of Medicine? What does the Director of Medical Services do at the hospital if it wasn't to liaise with one of the two most important clinicians?-- Well, that's exactly my question and I've answered - I've asked myself that. You know, when you're turned down in that situation, then you wonder, "What's the point of doing anything?", and there are other examples of which I was quite concerned about. But you're perfectly correct. I mean, the issues were - you know, I did go and see him a couple of times. It was the most amazing experience I've ever had. You know, you walk - you walk into his office. You're never asked to sit down, for example, you just sort of stand there. I used to help myself to a seat whether I was welcome or not. You're never asked to sit down. You'd be told straight off, "I've got a meeting to go to and how long will this take?" Then, in fact, you - he'd look at his watch, you know, repeatedly. I mean - and then, in fact, I'd say my thing, I had my concerns and then in fact nothing was ever accomplished. So after this session I had with Dr Keating in October of last year, I mean, I didn't bother because, in fact, we weren't getting anywhere.

We have been told, and you may or may not be able to comment on this, that in days gone by you would have a doctor who was, for example, Medical Superintendent at the Royal Brisbane Hospital, said to be the largest hospital in the southern hemisphere, and that doctor, apart from being, in effect, Chief Executive Officer at the hospital, was also seeing patients and performing operations. I just find it bizarre that someone - we're also being told that there aren't enough doctors being trained. I find it bizarre that Queensland Health would have a qualified doctor doing desk work and not even seeing his senior medical officers on a regular basis?-- Well, that's what happened in Bundaberg. That disturbed me quite a bit. But, you know, I wasn't getting anywhere. There are other examples which may come up as, you know, whenever, but the - my impression was that the relationship between the clinical areas of the hospital and the Director of Medical Services in fact were flawed. Now, the relationship between - in other areas may have been better, I don't know, but I can only talk for myself and I can actually talk that when previous people were there, it worked very, very well, and I'm the same person.

Well, we might follow that up in the morning. Is it convenient for you to be back at 9.30?-- Of course.

To continue your evidence?-- Of course.

I look forward to seeing you then. Is there anything we need to canvass before-----

MR BODDICE: Your Honour, I'll just give you an update on those documents that you asked about.

COMMISSIONER: Yes.

MR BODDICE: The Review of the Mental Health Services at

Bundaberg, which was called the Waters' report, I understand was delivered to the Commission's office today.

COMMISSIONER: Yes.

MR BODDICE: On my instructions, Commission staff had sent it to Bundaberg. We arranged for a copy to come to the Commission's offices. The second matter was the Queensland Health internal audit investigation into irregularities into Dr Patel's payment records.

COMMISSIONER: Yes.

MR BODDICE: My instructing solicitor arranged for the internal audits investigation file to be delivered to the Commission's offices.

COMMISSIONER: Thank you.

MR BODDICE: And the third was the names of the Queensland Health internal audit staff who provided that seminar that was referred to by Ms Hoffman.

COMMISSIONER: Yes.

MR BODDICE: And the documents, I understand, are being provided to the Commission this afternoon.

COMMISSIONER: Thank you for that. You were also going to get - Ms Kelly raised the question about whether the arrangement with the nurses union and the AMA could also be extended to her client.

MR BODDICE: Yes. I should add this, that - there is in fact a second page I see. The Director-General's written authorisation that was raised about the authorising of people I understand would be completed tonight and that issue - they're actually waiting to see the transcript to ensure they cover everybody that was intended where an issue of a written authorisation was required under section 62F.

COMMISSIONER: Yes.

MR BODDICE: I think that was all of the material.

COMMISSIONER: I think, finally, you were going to - two other things. You were going to inform us whether you have instructions to represent the Minister for Health.

MR BODDICE: Yes, it's parliament this week so I have not got instructions in relation to that.

COMMISSIONER: And you were, likewise, going to inform us whether the announcements by the Premier yesterday should be taken as superseding any contrary position put forward by Queensland Health in its submissions to the inquiry.

MR BODDICE: And I have sought those instructions but I

haven't got a response as yet.

COMMISSIONER: I'd ask you also to give some thought overnight to the nature of the representation which you have here. Just going back to our discussion on Monday afternoon, the idea of representing however many present and former staff there are at Queensland Health, theoretically from what you told me on Monday, you're representing the present witness Dr Miach, who doesn't seem to be conscious of that; similarly, if you're representing all former staff of Queensland Health, that would include Dr Patel, it would include Sir Llew Edwards. It just seems a nonsense, frankly, and I sincerely urge you to give some re-consideration to the proposition that you're here representing all of the staff of Queensland Health apart from those who have separate representation. It just doesn't make sense to me but think about it. I will speak about it in the morning. Adjourn till 9.30.

THE COURT ADJOURNED AT 4.35 P.M. TILL 9.30 A.M. THE FOLLOWING DAY