QUEENSLAND

COMMISSIONS OF INQUIRY ACT 1950

BUNDABERG HOSPITAL COMMISSION OF INQUIRY

STATEMENT OF GERARD JOSEPH FITZGERALD

1. I, Gerard Joseph FitzGerald, c/- Queensland Health Level 18, 147-163 Charlotte Street Brisbane, acknowledge that this written statement by me is true to the best of my knowledge and belief.

Overview

2. I am a registered medical practitioner. Since the end of January 2003 I have held the position of Chief Health Officer within the Department of Health in Queensland.

3. My previous experience is detailed in the attached Curriculum Vitae (**attachment GF1**).

4. The Chief Health Officer is a statutory position created in accordance with the *Health Act 1937*. The position has several responsibilities defined by legislation including
   - Membership of the Medical Board of Queensland
   - Membership of the QIMR Council
   - Membership of the Radiation Advisory Council.
   - Licensor of private health facilities

5. In addition the role is further specified in the Position Description (**attachment GF2**) which includes the provision of advice to the Minister and the Director General on the quality and standards of health care.

6. Since taking up this position in January 2003, I have introduced a range of strategic initiatives consistent with my responsibilities. Included amongst those initiatives have been the reformation of the Quality Councils for Maternity and

8. I was appointed as an investigator under Part 6 of the *Health Services Act 1991* by the Director General, Dr Steve Buckland on the 21 April 2004 up to an including the 31 December 2007. Ms Sue Jenkins – my assistant – had been similarly appointed on the 23 January 2004 for the period up to 31 December 2006. A copy of our investigators cards signed by Dr Steve Buckland is **(attachment GF3)**.

9. This 'standing approval' was to enable me to undertake investigations in accordance with the authority in the Act as may have been required from time to time. The appointment allowed me to act independently of the Director General and on the request of other Queensland Health employees.

10. I have been involved in a number of clinical audits and case reviews including the clinical audit of surgical services at Bundaberg Hospital and the case review of the death in transit of a patient while being transferred from Hervey Bay Hospital to Nambour Hospital. I am also currently supervising a number of other audits which are still underway.

In regard to the role and conduct of the Medical Board of Queensland in relation to assessment, registration and monitoring of Overseas Trained Doctors with particular reference to Dr Patel or other Overseas Trained Doctors.

The Medical Board of Queensland (MBQ)

11. The Chief Health Officer is a statutory appointment to the MBQ.

12 The MBQ is the statutory authority with the responsibility for registration, discipline and monitoring the health of medical practitioners. The MBQ's primary role is to protect the public and maintain high standards of medical practice.

13. The MBQ is supported by the Office of Health Practitioners which is a separate statutory authority that provides administrative support to all the health professional boards except nursing.

14. The MBQ is governed by two separate pieces of legislation:-

- The *Health Practitioners (Professional Standards) Act 1999* ("HPA") provides a framework for management of professional standards.
- The *Medical Practitioner Registration Act 2001* ("MPRA") provides for the process of registration of Medical Practitioners. The MPRA includes s.70 "recency of practice requirements" as a mechanism whereby professional competency may be addressed through provisions determined by way of Regulation.

15. The Queensland Nursing Council is the only registration board to have actioned the "recency of practice requirements". In February 2005 the MBQ, as well as other health practitioner registration boards, released the Recency of Practice Discussion Paper **(attachment GF4)**. The process requires public discussion and comment by relevant stakeholders to the MBQ.

16. Queensland Health fully supports the recency of practice position adopted in the Recency of Practice Paper. My personal view is that recency of practice should be a subsidiary to the much broader but more important issue of "competency of practice" of medical practitioners. The proposal around Recency of Practice provides the opportunity to address this issue.

The Registration Advisory Committee

17. Since February 2003, I have been a member of the Registration Advisory Committee (RAC) to the MBQ. Since December 2004, I have been the Chair of the RAC.

18. The RAC is responsible for reviewing all applications for registration (including special purpose registration). In the case of applications for special purpose registration, the RAC's responsibilities include checking the suitability of the applicant for the position for which they have applied.

19. The RAC checks an applicant for special purpose registration's suitability by reviewing their curriculum vitae to see that they have appropriate experience and training to perform the position. Previously all such applicants were interviewed by the MBQ before being registered. However these interviews were abandoned as they were generally very short (approximately 15 minutes duration) and largely information sessions. A detailed information pack was prepared and is provided to all registrants instead.

20 As Chair of the RAC I can say that the MBQ is becoming more stringent on imposing conditions on special purpose registrants, for example we gradually introduced requirements that all new registrations be conditional on being appropriately supervised. This information was provided from MBQ data. It may not be legislatively possible to impose those conditions retrospectively on existing registrants.

21. Attached is a document that Jim O'Dempsey provided to me in about April 2005 (**attachment GF5**) showing the increase in the number of conditions imposed on registrants and refusals of applications. Significantly it also shows the breakdown between the number of Area of Need registrants working in public hospitals and those working in General Practice.

22. As Chair of the RAC I have been involved in the development of the following documents which are designed to standardise processes by the RAC and MBQ and to improve the consistency of the Board's decision making:-

- The RAC Registration Handbook (**attachment GF6**). We commenced to develop this handbook at the beginning of this year. However the document has not been finalised or endorsed by either the RAC or the Board at this time.
- The MBQ Guidelines for Supervised Practice (**attachment GF7**). This document was developed by the Health Advisory and Monitoring Committee and was amended to obtain standard supervisory conditions. This is still incomplete as it is awaiting legal advice in regard to the responsibilities of supervisors.

Categories of Registrants

23 Medical practitioners working in public hospitals may be categorised into several levels according to their qualifications and experienced

24. Upon graduation a doctor will serve for a minimum of one year as an Intern. During this period the doctor will be registered with "intern conditions" which require supervision and the provision of a report on their competency. Upon completion of this period of intern training the doctor may then apply for the removal of their "intern conditions". This will occur if the doctor has received supportive reports form their hospital supervisors. Once this has been completed the doctor is entered onto the "General Register". Without conditions and may practice in any position.

25. However upon completion of intern training most doctors will serve for a further period of one to two years as a Junior or Senior House Officer in hospitals. These junior doctors together with Interns serve as junior doctors working under the supervision of a Registrar or more experienced doctors.

26. Upon successful application a doctor may then be appointed to a position of Registrar or Principal House Officer. Registrars are generally specialists in training including training for General Practice. Principal House Officers serve in a similar level position but are not enrolled in a training program. These doctors act under the supervision of a senior medical officer. Mostly registrar positions are in public hospitals although some GP Training positions are located in GP practices or community health centres.

27. Senior medical officers include both specialists and non-specialists. Non specialist Senior Medical Officers are either generalist doctors who serve in rural hospitals and provide a range of medical services or they are doctors who have undertaken some specialist training but are not registrable as a specialist because they do not hold specialist qualifications that are recognised in Australia..

28. Specialist senior medical officers are those who hold qualifications and experience which is recognised in Australia. This group includes doctors from overseas who have applied for recognition of their overseas qualification by the relevant specialist College and have been 'deemed' by the college to hold appropriate qualifications and experience to serve in an "Area of Need".

29 Hospitals are also supported by Visiting Medical Officers who are generally specialists who spend most of their time in private practice but who also provide services to the public hospitals.

Overseas Trained Doctors

30. The terms Overseas Trained Doctors (OTDs) and International Medical Graduates may be used interchangeably. The latter is the more contemporary terminology adopted in Queensland. In this Statement the former term is used, given that this term is specifically referred to in the Terms of Reference for the Commission of Inquiry.

31 OTDs are registered under specific provisions of the *MPRA* that provide for registration under special purpose categories including:-

- areas of need,
- postgraduate study or training,
- preparation for a clinical examination,
- medical teaching and research
- study to obtain a qualification in a speciality
- practice in the public interest
- general practice

32. Otherwise OTDs would be required to obtain recognised Australian Qualifications by either the completion of the Australian Medical Council (AMC) examination, or Australian Speciality qualifications including in General Practice. There are significant delays in obtaining these qualifications from the AMC OTDs have to sit for 2 exams (written and clinical). This process may take up to 2 years to complete. As well there are a number of OTDs who want to gain additional training or experience in Australia but who do not intend to remain permanently in Australia.

33. With the current medical workforce shortage a number of 'Area of Need' positions have been determined and filled by OTDs on special purpose registration. An 'Area of Need' is defined by Queensland Health as a particular geographic area that has a need for medical services, and in which Queensland Health has been unable to fill advertised positions for some time At present the whole of Queensland is recognised as an 'Area of Need'.

34. OTDs once in practice in Australia can 'upskill' themselves to pass the Australian Medical Council (AMC) exam to qualify for local registration. The AMC is the national collaborative of Medical Registration Boards. The AMC seeks to develop standard approaches throughout Australia to medical registration and also is responsible for accrediting the medical educational programs including both University and postgraduate (College) programs

35. Also OTDs with specialist qualifications may be able to obtain recognition as a "deemed specialist" to fill an 'area of need' as a specialist. These applications are considered by the relevant College who must endorse their recognition as a "deemed specialist".

36. Specialists seeking "deemed registration" are required to approach the AMC which acts as conduit to the relevant College. The MBQ is the registration body and can accept or differ from the advice of the relevant College, although rarely does so. There are approximately 87 deemed specialists in Queensland.

37. Specialist doctors (including General Practitioners), may obtain qualifications from the relevant College which enables them to obtain permanent registration in that field in Australia.

38. Once registered under the Area of Need provisions, the MBQ has no ongoing statutory involvement in an OTDs unless there is either a need for:-

- disciplinary action for professional misconduct
- health monitoring - due to a health problem eg physically or mentally infirm or a substance abuse problem (drugs or alcohol)
- renewal (that is yearly renewal) or re-application (for example where they move to another hospital)

39. OTDs must renew their registration every year and the MBQ requires a report by their identified supervisor in a standard MBQ format as to their clinical and practice standards before renewal of registration.

40. OTDs would need to "re-apply" for a special purpose registration for area of need if they were seeking a position that is different to the position they previously were approved to serve in. If the OTD was simply seeking to extend their special need registration for an area of need position for a further 12 months then they would be applying to "renew" their special need registration. I am aware of advice to the MBQ from Counsel in relation to this issue.

41. The relevance of this is that special purpose registration for an area of need is granted by the MBQ for a specified position only. As such, a practitioner is not registered to practice in any other position. At the time an initial application is made by a practitioner for special purpose, registration for an area of need position they are not currently in, the RAC considers the practitioner's suitability for the position and makes a recommendation to the MBQ. However, if a practitioner is looking to "renew" their special need registration, the MBQ does not revisit the documentation on the issue of whether or not the practitioner is suitable for the particular position they are being nominated for.

42. In light of this Dr Patel or his sponsor (which is usually the relevant hospital and in this case was the Bundaberg Hospital) should have made a fresh application to the MBQ for special registration for the area of need position of Director of Surgery before commencing that position. This is because he had only been given special registration for the area of need position of a non-specialist senior medical officer.

43. It would appear that Dr Patel did not make an application for special registration for the area of need position of Director of Surgery and that the fact his position had changed from his initial application was not picked up by the MBQ when he applied for renewal in early 2004.

44. If the RAC/MBQ had discovered in 2003 that Dr Patel had made a fraudulent declaration in his application for registration the MBQ would have refused to register him. Every year there are 1 or 2 applicants who are found to have lied in their application about such things as disciplinary action being taken against them. On each occasion the MBQ has refused to register them. I recall only 1 case where the MBQ initially refused to register the applicant but he subsequently was allowed registration with conditions because he satisfied the RAC that he had made a genuine mistake.

45. If applicants are from interstate it is easy for the MBQ to find this information out from interstate registration boards as we have open and direct information sharing arrangements across all jurisdictions.

46 If, after registering Dr Patel, the MBQ had subsequently found he had lied about his overseas registration status, the MBQ would have taken disciplinary action against him and referred him to the Health Practitioners Tribunal.

Appropriate improvements to the functions, operations, practices and procedures of the Medical Board of Queensland, in particular in regard to the assessment, registration and monitoring of overseas-trained medical practitioners.

47. The MBQ's principal functions are to:-

- maintain a register of Medical Practitioners and Specialists.
- determine applications for the registration of Medical Practitioners and specialists pursuant to the provisions of the Act, and the *Mutual Recognition (Queensland) Act 1992*.
- investigate complaints made about Medical Practitioners and to take disciplinary action where appropriate.
- regulate the practice of Medical Practitioners in Queensland and exercise a general oversight over the standards of practice in Queensland.
- publish and distribute information concerning the Act and its subordinate legislation to Medical Practitioners and other interested persons.

48. The MBQ has introduced a range of additional checking procedures to minimise the risk of future falsification of information.

49. New registrants who do not hold Australian recognised qualifications should only be permitted to practice under supervision. The Guidelines for supervision have been prepared by the Board.

50. It has been suggested that the MBQ should introduce a requirement for OTDs to provide certificates of good standing (COGS) from each jurisdiction in which they have previously practiced. My personal view is that this may be partly impractical as it will be very difficult to implement. For example I was once registered in the United Kingdom 20 years ago. To obtain a Certificate of Good Standing from the UK prior to registration in another state would be very difficult. Perhaps a reasonable solution is to provide COGs for each jurisdiction in which the registrant is currently registered or in which the registrant has been registered in the last five or ten years.

51. For sometime the competency of OTDs has been identified by Queensland Health and the profession as an issue of concern. The Board and others have sought reasonable and practicable means of reducing the risks associated with monitoring the competence of OTDs. These initiatives have included the introduction of English language screening, the increased requirement for supervision and the increased scrutiny of individuals experience. In addition the AMC is currently developing a screening examination for competency which should be introduced

over the next 1 to 2 years. The exam is an Internet based exam which tests clinical knowledge.

52. In an attempt to obtain an agreed approach to these issues I established the Queensland Medical Education Council in 2004 as a means of getting all of the stakeholders with concerns about education and associated matters to meet and try to seek cooperative solutions to these very difficult questions.

53. In regard to the issue of competency to practice for all medical professionals I believe that the Recency of Practice initiatives should be encouraged and a comprehensive competency management framework introduced by the Board and supported by the profession.

The Bundaberg Hospital Clinical Review

54. I believe that I first became aware of the problems at the Bundaberg Hospital Intensive Care Unit on the 17 December 2004 when I was provided with a copy of an email reply from Ms Rebecca McMahon (Director Internal Audit) to Mr Peter Leck (District Manager Bundaberg) (**attachment GF8**). I was not provided with a copy of the letter of complaint from Ms Toni Hoffman R N. On receipt of this email, I did not contact Mr Leck but elected to wait for him to contact me

55. I have also been provided with a copy of e-mail correspondence between Peter Leck and Dr John Scott between the period 13 January 2005 and 20 January 2005 (**attachment GF9**).

56. I was scheduled to take leave over the Christmas – New Year period for approximately 3 weeks. On the 26 December 2004 the Tsunami struck in the Indian Ocean. I was extensively involved in monitoring the preparation of Queensland Health's response so I did not go on leave until New Years Day for 2 weeks.

57. Soon after my return from leave on the 17th January 2005 I discussed this matter with Mr Leck. I cannot recall if Peter Leck or I initiated the contact but this was followed up on the 19th January with a copy of material from Mr Leck. **Attachment GF10** comprises:-

- Initial information received from Peter Leck on 19 January 2005 in regard to the complaints made by staff;
- Subsequent information provided by Ms Rebcecca McMahon together with a file note by her dated 17 December 2004;
- Subsequent information received on 14 and 15 February 2005 from staff when conducting interviews at the Bundaberg Hospital.

58. I subsequently reviewed this material and determined that further enquiries would be necessary before any opinion of clinical standards could be offered.

59. At the same time there was considerable activity related to Queensland's response to the Tsunami and the dispatch of Team Foxtrot which prevented any immediate attention to this issue.

60. I consulted with Mrs Jenkins of my office and requested her involvement in the audit and for her to make the necessary administrative arrangements with the District for us to visit and meet with staff. Attached is various e-mail correspondence in regard to those arrangements and the collection of further material. (**attachment GF11**). The first available opportunity for this to occur was the 13th 14th and 15th February.

61 Mr Leck sought clarification of the nature of the review as Dr Patel in particular had not been informed of the purpose of the review. Attached are various e-mails on this (**attachment GF12**). Following consideration I advised Mr Leck that the review would be a "clinical audit" and not an investigation into any individual. The reason for this was that there was at that time insufficient information to direct enquiries at any individual. Such an investigation would require a significantly different methodology and in particular the opportunity for the individual about whom the complaints were made to be provided with copies of all the material relevant to the complaints.

62. I note that prior to our visit to Bundaberg I met with officials of the QNU and provided them with a reassurance that any staff meeting with me would be treated with appropriate dignity and respect and that there would be no disclosure of any individual names.

63. On the 14th and 15th February Mrs Jenkins and I visited the Bundaberg Hospital to meet with staff and to collect further information. We met with any staff who wished to take up the option of meeting with us. In view of the number of staff who wished to meet with us we had to meet with some individually while others we met together. The methodology used was to collect their personal impressions of issues of concern and not to collect 'evidence' for any particular disciplinary or other process. It was made very clear to staff that met with us that we wished for them to provide frank and open information and that at that point details of the individuals would not be disclosed or details of information collected. Any such investigation if relevant would need to be undertaken subsequently by an appropriate body and with due process.

64. Upon completion of the interviews with staff we sought further information from the hospital including infection rates, adverse incidents and clinical indicator data. This data was provided. I understand that copies of these (documents QHB.0003.0002.00328, 0003.0002.00123 – 0003.0002.00166) have been provided to the Commission. This information was incorporated into my report.

65. The principal issues of concern raised with me were that Dr Patel was conducting surgical procedures which were not within the reasonable scope of practice of a hospital of Bundaberg's size and that patients were being retained at the hospital when they would be better cared for in a large hospital. I was assured by both the Director of Medical Services and Dr Patel that he would not conduct any such procedures in the future and that he would refer on to major hospitals any critically ill patients.

66. Upon return to Brisbane we collated and reviewed the information provided to us. This information included copies of a number of cases that had been identified in

the interviews with staff. This information was complied into a preliminary report and further information sought from the Health Information Centre in regard to comparative data on infection and complication rates. This data was not readily available and it took some time to obtain the data. The matter was raised publicly before we had the opportunity to complete the report

67. I recall holding discussions about Dr Patel with Jim O'Dempsey and Michael Demy-Geroe on 16 February 2005. This followed my return from meeting with staff at the Bundaberg Hospital. It was agreed that the RAC would defer consideration of Dr Patel's current application for renewal until I had the opportunity of finalising my investigation and report into clinical services at the Bundaberg Hospital

68. Ultimately the Area of need application was withdrawn by the Bundaberg Hospital when Dr Patel left the country so the RAC never formally considered the application.

69. Concern has been raised that perhaps the board should have acted immediately to suspend Dr Patel's registration. There were a number of factors that mitigated against the Board being able to take immediate action to suspend Dr Patel's registration. Those were:-

- Both Dr Patel and Dr Keating had given undertakings to me during my trip to Bundaberg on 14 February 2005 that he would cease doing complicated procedures at the Bundaberg Hospital and that patients requiring such procedures or who were seriously ill would be appropriately referred.
- At that time I had insufficient evidence to link Dr Patel's performance to particular adverse outcomes. The only information we had were complaints that Dr Patel was carrying out procedures outside his capacity and that of the hospital.

70. A number of other concerns were raised by Bundaberg staff These included clinical concerns as well as behavioural issues.

71. The clinical issues were dealt with in my report. I also formally referred my concerns about Dr Patel to the MBQ in a letter dated 24/3/05 (**attachment GF13**). I expected that the MBQ in their investigation would have looked at Dr Patel's clinical expertise but also obtained information on his behaviour to staff in terms of assessing whether he was guilty of professional misconduct.

72. I wrote to the Director General on 24 March 2005 (**attachment GF14**) providing him with a copy of my report and bringing to his attention concerns I had with the management of these issues and with the lack or failure of quality and safety systems.

73. I referred to some of the non-clinical concerns in my report to the District Manager of Bundaberg These would have required further investigation and management. I also provided Mr Peter Leck with a copy of my report by letter dated 7 April 2005 (**attachment GF15**).

74. The failure of Quality and Safety checks and balances was in my view one of the most significant issues. Had these systems been in place then the scope of practice of Dr Patel and the other behavioural and competency issues could have been addressed at a much earlier time. I recall at the meeting with Dr Keating and Peter Leck on the 14th February 2005 they advised me that they had a Credentials and Clinical Privileges Committee for Medical Officers. This was a joint committee comprising representatives from Hervey Bay, Bundaberg and Maryborough Hospitals. However they advised me that the Committee had not considered Dr Patel as the Royal Australian College of Surgeons (RACS) wouldn't nominate one of their members to sit on the Committee. Attached is an e-mail from Dr Keating dated 2 April 2005 together with a number of attachments including e-mails dated 15 July 2004 and 7 January 2005 on the issue of engaging RACS representation (**attachment GF16**). The Record of Meeting dated 29 November 2004 does not list Dr Patel as one of the doctors who received clinical privileges.

75. Under cover of a memorandum dated 14 February 2005 (**attachment GF17**) Peter Leck provided me with patient satisfaction survey information. That survey information has been provided to the Commission (document ID QHB.0003.0002.00076 – QHB.0003.0002.00122). I was also informed by Peter Leck and Darren Keating that there were no patient complaints or adverse incidents about Dr Patel. Attached is e-mail correspondence on 20 and 21 October 2004 concerning adverse events (**attachment GF18**). However on 15 April 2005 Mr Dan Bergin, Central Zone Manager while in Bundaberg, found evidence of complaints concerning Dr Patel in a folder (**attachment GF19**) and faxed these down to my office via Mr Graeme Kerridge, Manager of the Central Zone Management Unit. This was after my report had been completed.

76. At my meeting with Dr Patel on or about 14/15 February 2005, he provided me with a copy of his Curriculum Vitae (**attachment GF20**). Susan Jenkins conducted internet searches of the MBQ register on Dr Patel (**attachment GF21**). I had not conducted further internet searches of his previous registration until this was subsequently highlighted. Attachment 21 also includes this additional material.

77. Dr Peter Miach also provided me with information in regard to cases of concern he had and a copy of a letter from Dr Jenkins 2 November 2004 (**attachment GF22**).

78. I had not raised the Bundaberg matter specifically with the Minister prior to the public disclosure of this matter. It had not been my custom to do so as clinical audit is intended to be conducted in a confidential manner. Following the raising of this matter in Parliament resulting in considerable public and media attention, I was requested by the Minister to orally brief him on my investigations. I was asked by the Minister and the Director-General to participate in the provision of advice to the public through the media on the findings of my report once it had been completed.

79. Soon after the matter was raised in Parliament the benchmark data was made available from the HIC and the report was completed. This benchmark data has been provided to the Commission (document ID QHB.0003.0002.00359 –

QHB 0003.0002.00441) A copy of the Report has been provided to the Commission as part of Queensland Health's submission.

80 On 9 April 2005, the Minister Gordon Nuttall MLA announced that a comprehensive review would be undertaken of safety and quality at the Bundaberg Hospital.

81. On the 12 April 2005, at the request of Dr Steve Buckland, I prepared a submission for his signature to allow for the appointment of investigators under Part 6 of the Health Services Act 1991 for the purpose of a Bundaberg Hospital Services Review.

82. It is my understanding that Dr Steve Buckland had already spoken to and requested of each of the members of the review panel that they accept appointments as investigators. My submission was to formalise their appointment. The submission was signed by Dr Steve Buckland on the 14 April 2005 and appointed Dr Mark Mattiussi, Dr Peter Woodruff, Dr John Wakefield and Ms Leonie Hobbs RN as investigators pursuant to specified terms of reference (**attachment GF23**)

83 On the 18 April 2005, once again at the direction of Dr Steve Buckland I settled more comprehensive terms of reference for the review team (**attachment GF24**).

84. On the 13th April 2005 at the request of the Minister and the Director-General I travelled to Bundaberg to provide feedback to the staff on the outcome of my investigations (**attachment GF25**). I advised that I was not in a position to release a copy of the report. The reason for this was that the report although avoiding mention of individual names did contain information which could identify people either patients or informants and thus it would be inappropriate to provide this information in the public arena. However I indicated that I was prepared and authorised to provide access to the report to allow key representatives to validate the comparison between the public disclosure of information and the contents of the report.

85. My public statements indicated the essence of my findings:

- Operations were being conducted at Bundaberg which exceeded the capacity and service framework of the hospital.
- That there appeared to be a higher complication rate at the hospital for certain surgical procedures.
- That the system of checks and balances in place to monitor and manage such concerns appeared to have either not been present or to have failed.
- That as a result there was considerable distress caused to both patients and staff.

Attached is an e-mail dated 14 April 2005 to Desmond Hall of Public Affairs with my overview of my report (**attachment GF26**).

86. I apologised on behalf of the system to both the patients and staff and indicated in broad terms the remedial action required including the need for much more

detailed assessment both of the needs of the patients and the performance of Dr Patel and others.

87. My Office provided a written briefing to the Minister dated 15 April 2005 (**attachment GF27**). The Minister subsequently announced an immediate internal inquiry into surgical services at the Bundaberg Hospital.

88. During subsequent days I was involved in innumerable meetings and consultations in regard to the issue.

89. On the 21st April I received a request from the Director-General to travel to Bundaberg for a period of two weeks to provide personal supervision of the response to the growing concern amongst the community and the patients. I travelled to Bundaberg the following morning and apart from brief returns to Brisbane during the weekends I remained at Bundaberg for the following two weeks.

90. During that time a large team of individuals from other locations within Queensland Health, and some from the Department of Emergency Services, were dispatched to Bundaberg to render assistance particularly in the light of the fact that the existing executive had taken leave.

91. During that two weeks which was considered phase one of the response, the key strategies were aimed at:

- Attending to the medical needs of Dr Patel's former patients to ensure they were adequately care for in a medical sense. In addition arrangements were made to ensure personal support for the patients.
- Ensuring normal operations of the hospital as much as possible.
- Seeking to improve the morale of the staff at the hospital so that they could continue to care for patients.
- Seeking to restore the confidence of the community in its hospital.
- Seeking to identify the quality and Safety system in place and then to identify how that system could be improved.
- Seeking to identify the management systems in place and identify how those systems could be improved

92. In particular we established a close working relationship with the patient advocacy group to ensure that any patients with concern were attended to as quickly as possible. We also sought to establish contact with the various enquiries so as to ensure that the enquiries were provided with as much information and assistance as they required.

93. A patient liaison service was established and correspondence sent to all patients who had been operated on by Dr Patel. Subsequently patients who had attended Dr Patel in outpatients or who had outpatient' procedures have also been contacted. In addition public advertisements were placed in newspapers advising patients to contact the patient's liaisons service.

94. Since that time I have continued to monitor the situation in Bundaberg. We were able to obtain the services of a number of specialists from Brisbane who were able to attend to Bundaberg to assist local surgeons in the assessment of patients. In addition a senior recently retired surgeon from the Mater Hospital in Brisbane has agreed to provide services at the Bundaberg Hospital for a period for four to six months.

The case of P369

95. On the 21st January 2005 I received a copy of an email (**attachment GF28**) from Dr Steve Rashford, Director Queensland Emergency Medical System (QEMS) Co-ordination Centre, regarding the death in transit of the above patient. On the 30th January 2005 I was requested by the Senior Executive Director of Health Services to review the management of the case. Attached is a briefing to the Senior Executive Director of Health Services dated 23 January 2005 which was prepared by Dr Rashford (**attachment GF29).**

96. I sought the assistance of Mrs Susan Jenkins from my office and asked her to make the necessary arrangements for us to travel to Maryborough and Hervey Bay to speak to the family and staff members. We undertook this audit at the same time as the audit of surgical services at Bundaberg.

97. We visited Maryborough and Hervey Bay Hospitals on the 15th February 2005 and collected copies of the relevant files and sought input from a number of staff members. We met with a number of members of staff as well as with P369's husband and his son.

98. Upon return to Brisbane we sought to collate the information and in particular sought the release of the post-mortem report from the Coroner. This approval was finally obtained from the State Coroner and the report finalised and submitted to the Director General. A copy of this report has been provided to the Commission. (**attachment GF30**)

99. On the 21st April I travelled to Maryborough to meet with the family and to report back to them on the findings.

MBQ Statements

100. I have read the statements provided to the Inquiry by James Patrick O'Dempsey, Michael Steven Demy-Geroe and Dr Erica Mary Cohn, all dated 17 May 2005 ("the MBQ's statements").

101. I do not personally keep any records of RAC or MBQ meetings nor do I take notes during those meetings. I have no independent recollection of any of the RAC or MBQ meetings referred to in the MBQ's statements that took place prior to 1 February 2005 nor do I have any recollection of reviewing any MBQ documentation in relation to Dr Patel prior to that date. I accept and rely on the information contained in the Board's statements and the documents attached to them relating to RAC and MBQ meetings and steps taken by the Office of

Health Practitioner Registration Boards as a true and accurate reflection of those meetings and steps.

102. I make the following comments in relation to each of the Board's statements:

a) Statement of Erica Mary Cohn

i) Except as set out in sub-paragraphs (ii) and (iii) below, I accept and rely on paragraphs 3, 4, 5, 12, 16 to 29, 30, 32, 37, 43 to 55 of Dr Erica Mary Cohn's statement as it pertains to me or RAC and MBQ meetings or current powers and responsibilities.

ii) Paragraph 13 – Special purpose registration for an area of need is specific to a particular area of need position. Therefore, special purpose registrant's must make a fresh application for special purpose registration before they commence a different position. As such, the reference to "reapply" in the second sentence could cover two situations:

A. Where the special purpose registrant has held a special purpose registration for a particular area of need position but wishes to take up a different area of need position.
B. Where the special purpose registrant's special purpose registration is due to expire and he/she wants to renew the registration for the same position for a further year.

iii) Paragraph 29 – I believe that Dr Patel's application for renewal of his special purpose registration was due to be considered at the RAC meeting on 16 February 2005. As the result of a visit to Bundaberg on 14 February 2005 and my discussions with James O'Dempsey (see below) prior to the RAC meeting on 16 February 2005, I decided to withdraw Dr Patel's application from consideration until further investigations had been conducted.

b) Statement of James Patrick O'Dempsey

i) Except as set out in sub-paragraphs (ii) and (iii) below, I accept and rely on paragraphs 7, 8, 21 to 24, 28, 31, 33 to 39, 41, 44 to 51, 54, 55, 57 to 59, 62 and 63 of James Patrick O'Dempsey's statement as it pertains to me or RAC and MBQ meetings or current powers and responsibilities.

ii) Paragraph 31 – Mr O'Dempsey states that Dr Patel's renewal application did not need to be determined until the end of May 2005. I believe this should in fact be the end of March 2005.

I agree that I spoke to Mr O'Dempsey (I can't recall if Michael Demy-Geroe was involved) regarding Dr Patel on 16 February 2005 and that the matters he refers to were discussed. I cannot recall who initiated the discussion or whether that conversation took place via telephone or in person, it could have occurred prior to the RAC meeting on 16 February

2005. To the best of my recollection, I also advised him during this discussion that:

A. Both Dr Patel and Dr Darren Keating had given me undertakings while I was in Bundaberg on 14 February 12005 that Dr Patel would cease doing complicated procedures at the Bundaberg Hospital and would refer patients requiring such procedures to an appropriate hospital.

B. Further investigation was required, including obtaining infection rates, to establish whether or not Dr Patel was in fact a danger to the public.

iii) Paragraph 41 – Based on 78(b)(ii)(A) and (B) above, I believe the MBQ could not have suspended Dr Patel under section 59 of the *Health Practitioners (Professional Standards) Act 1999*.

c) Statement of Michael Steven Demy-Geroe

i) Except as set out in sub-paragraphs (ii) and (iii) below, I accept and rely on paragraphs 7, 9, 16 to 24, 27 to 31, 34 to 43, 47 to 59, 65 to 72 of Michael Steven Demy-Geroe's statement as it pertains to me or RAC and MBQ meetings or current powers and responsibilities.

ii) Paragraph 7 – I refer to my comments in paragraph 78(b)(ii) above.

iii) Exhibits MDG-12 to -19 and -21 to -25 – I do not believe that I saw these documents at the time Dr Patel applied for special purpose registration in early 2003 because I was not present at the RAC meeting on 3 February 2003. Dr Patel's documentation would not have been reviewed at the MBQ meeting on 11 February 2005.

iv) Paragraph 34 – As noted in paragraph 17 above, the RAC checks an applicant's suitability by reviewing their curriculum vitae to see they have appropriate experience and training to perform the position in relation to which their application relates.

v) Exhibit MDG-20 – I am currently trying to write a handbook to go with the MBQ policy for special purpose registration to improve consistency.

vi) Exhibit MDG-30 and -37 – Both letters confirming Dr Patel's special purpose registration state:

> *"Special purpose registration enables you to practise as a Senior Medical Officer in surgery at Bundaberg Base Hospital or any other public hospital authorised by the Medical Superintendent on a temporary basis.* **It is advised that you are not registered as a specialist.** *Any variation to your practice would require further approval by the Board."*

Neither letter specifically states that Dr Patel's registration was subject to supervision, although that can be inferred from the fact that the initial special purpose registration related to the position of Senior Medical Officer which reported to, and was therefore supervised by, the Director of Surgery (see Exhibit MDG-18).

vii) Exhibit MDG 33 – From the MBQ records, it would appear that Dr Patel's application for renewal was not considered by the RAC. I have no independent recollection whether it was or was not considered by the RAC or, if it was not, why it was not.

Orthopaedic services at Hervey Bay Hospital

103. I recall sometime in early May 2005 I received a phone call from Dr John North who alerted me to the fact that they had undertaken a review of orthopaedic services. Dr North had indicated that there had been some difficulty in obtaining indemnity for their services and that the report was finished.

104. Discussion in the office of the Director General noted that this report was outstanding and that the matter had been raised with the local member for Hervey Bay. At that stage I understood arrangements were to be made to attend to the indemnity issue to enable the report to be provided.

105. I received a further call from Dr North while in Bundaberg advising that the matter had been resolved and that the report was being delivered by urgent mail to the Office of the Director General. I immediately advised the Director General as I knew he was travelling that day to Hervey Bay and the matters could be raised.

106. At a briefing for Ministers including the Premier on Wednesday the 11th May 2005 the matter of orthopaedic services at Hervey Bay was raised. I requested a copy of the report (**attachment GF31**) be provided to me to enable me to provide advice to both the Director General and Minister on this matter.

107. I received the report that evening and read the report that night and the following day sought to meet briefly with the Director General prior to my departure again for Bundaberg to attend the patients meeting that evening. I advised the Director General on that occasion that in my view the report identified issues of serious concern that needed attention but that it also included material which was potentially defamatory and that he should obtain legal opinion prior to any release. He advised me that that was occurring. In addition I noted that the principal recommendation to close the service immediately was unsustainable without first seeking alternatives which provided safe orthopaedic practice. I provided that advice in writing to the Director General on 15 May 2005 (**attachment GF32**).

108. One important aspect to the report by Doctors North and Giblin is that they undertook their assessment in about July 2004. Some of the findings in that report were now out of date, particularly supervision of the OTD Senior Medical Officers (SMOs) and sustainability of the Orthopaedic Unit at Hervey Bay

Hospital, and therefore no longer relevant. This is because since January 2005 an experienced Orthopaedic Surgeon had taken over from Dr Naidoo and he was supervising the SMOs so the Unit was able to fully function and there was minimal risk to patients.

109. This surgeon was to remain at the Hospital until July 2005 however he choose to resign with the public release of the report and adverse publicity. As a result there was no appropriately qualified and experienced specialist to run the Unit so the Minister for Health had no choice but to direct closure of orthopaedic services at the Hospital. On 17 May 2005 the Director General and I met with the Australian Orthopaedic Association to explore ways to try and restore orthopaedic services to the Hospital. I understand those discussions are still continuing. The AOA has indicated that it will develop a proposal for the consideration of the Department.

Signed at Brisbane on 2 June 2005

Dr Gerry FitzGerald
Chief Health Officer
Queensland Health