Transcript of Proceedings

THE HONOURABLE G DAVIES AO, Commissioner

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MR R DOUGLAS SC, Counsel Assisting
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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 2) 2005

QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

BRISBANE

..DATE 26/09/2005

..DAY 11

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

THE COMMISSION RESUMED AT 10.00 A.M.

COMMISSIONER: Before any evidence is called this morning, there are two documents I want to tender. One is an Order in Council amending the Terms of Reference of this Commission of Inquiry. It is an Order in Council made on 23 September 2005. That will be exhibit number 374.

ADMITTED AND MARKED "EXHIBIT 374"

COMMISSIONER: It is not entirely self-explanatory on its own, so what I propose to do is to produce a consolidated form of the Terms of Reference as now amended, and I will make that, when I make it an exhibit, make it A. The second is a letter from the Premier to me today, the contents of which are self-explanatory. That is Exhibit 375.

ADMITTED AND MARKED "EXHIBIT 375"

MR ANDREWS: Commissioner, before calling Dr Mattiussi to the box for cross-examination, may I mention that there is an additional witness proposed for tomorrow whose name does not currently appear on the website and that will be a Mr Dan Bergin who at relevant times was the zonal manager of the relevant zone. The secretary is nodding to me and indicating the matter now is on the website. It is proposed that Mr Bergin will be called at noon tomorrow.

COMMISSIONER: Thank you.

MR ANDREWS: I recall Dr Mattiussi. Commissioner, the status is that I think counsel for the Medical Board has completed cross-examination.

MARK PETER MATTIUSSI, RECALLED:

MR MACSPORRAN: Commissioner, I seek leave to appear on behalf of Ms Mulligan. MacSporran is my name.

COMMISSIONER: Yes, thank you.

MR DIEHM: I think it was up to me, Commissioner.

COMMISSIONER: Yes, Mr Diehm.

CROSS-EXAMINATION:

MR DIEHM: Dr Mattiussi, my name is Geoffrey Diehm and I appear for Dr Keating. The first thing I want to ask you about, Dr Mattiussi, is that when you gave evidence last week, in answer to a question from - a series of questions from Mr Andrews, counsel assisting the Commission, you - and this appears at page 5598 - you seem to be saying, as I understood your evidence, that there was no credentialing and privileges committee in place at Bundaberg during the relevant time period?-- What I-----

Is that what you understood to be the position?-- What I said was we couldn't find evidence that there was one functioning, if I remember correctly.

The Commission has evidence before it here of credentialing and privileges committee convening for the purposes, in late 2004, of assessing the credentials and granting privileges to a range of medical practitioners, including physicians and obstetricians and gynaecologists and paediatrics. Are you aware of those matters?-- No, but the - those areas were looked at by John Wakefield, so you might have to direct that to him.

All right. So where you have related, to the extent you have, that there was no functioning credentials and privileges committee, that's not something that's actually within your knowledge as a result of investigations?-- That's correct. We - as I said at the outset, had a range of investigators who looked at different aspects of the Terms of Reference and service and we came together and compiled a report and I mentioned that the risk management framework was John Wakefield's area.

All right, thank you. Doctor, also on the credentialing and privileging aspect of things, as I understood your evidence, again at 5598, last week, you seem to be saying that it was not a requirement of the Queensland Health policy, the one that came into force in 2002, that there be a representative of the college on a committee that assessed the application made by a surgeon. Is that what you meant to convey?-- In the policy it doesn't specify that you have to have representatives, as I understand it. They are an optional person but there are - when you look at credentials and clinical privileges committees, it is desirable to have a representative from the college on that to give you advice. It is certainly desirable to have a person who is a technical expert in that area, such as in Patel's case another surgeon.

It is the expectation, and has been, I should say, the expectation of Queensland Health that a credentialing and

privileging committee assessing the credentials and privileges of a surgeon would have a representative of the College of Surgeons on it, is that right?-- It is the expectation, as I understand it, that there is a representative - not necessarily having to attend the meeting but providing input. So they may do that by letter or they may attend the committee, yes.

One way or another they are expected to participate in the committee's deliberations?-- Yes.

And the expectation is that that will happen; not just that it might happen but that it will happen?-- It should happen, yes.

So would it be right to say, from the point of view of the Director of Medical Services of any of the hospitals in Queensland applying this policy, that the practice has been to acknowledge that expectation and to seek out a representative of the college on the committee?-- That's correct.

It has been the practice to regard the expectation as mandatory, has it?-- Sorry, can you repeat that question?

It has been the practice-----

COMMISSIONER: Whose practice are you asking about? His practice?

MR DIEHM: I will clarify that, Commissioner. It has, in your understanding, been the practice of Directors of Medical Services to regard that requirement as mandatory?

COMMISSIONER: You might ask him how he would know that, because to me it doesn't seem obvious that this witness would know what the Directors of Medical Services might be doing or what their practice might be.

MR DIEHM: Thank you. Are you familiar with the practice of Directors of Medical Services with respect to placement of - or with respect to seeking out representatives of colleges on credentialing and privileges committees?-- I can tell you what my practice has been in the past. I can't speak for others, unfortunately.

What has your practice been?-- To involve the college.

Yes. Did you regard it as a mandatory requirement?-- Yeah.

Thank you.

COMMISSIONER: But it is not in the policy?-- No. But, as I said last time, it is fairly difficult, unless you have got someone who is a technical expert, to undertake those protocols of looking at someone's credentials, so it is worthwhile having them on the committee, and I found in practice that it has been most helpful and therefore I have made it a habit doing that.

All right.

MR DIEHM: Commissioner, might I interject to say I have been tempted to cross-examine the witness about the words in the policy but it strikes me that it is really a matter of construction as to what a fair-minded reader might make of them.

COMMISSIONER: Exactly.

MR DIEHM: Something better to do in submissions.

COMMISSIONER: I agree.

MR DIEHM: Thank you. Now, also on credentialing and privileging, Dr Mattiussi, you mentioned - or there were some questions asked of you on the last occasion, again page 5603, about what should have been and what would have been the outcome with respect to Dr Patel had he been subjected to a credentialing and privileging process. And, in particular, the outcome with respect to whether privileges granted would have or should have been confined or been expressed as being for general surgery, or might have been more specific by inclusions or exclusions. Do you recall those questions being asked of you?-- Yes, I do.

Now, just to make sure that it is clear - and it might be clear to others, but perhaps not to all of us - I want to put each of the scenarios to you and get your observation. If a committee had been formed, including a nominee of a college or including some other surgeon, not necessarily nominated by the college, if such committee had been formed and had applied the policy as it has been applied in your experience for credentialing and privileging, would you expect that Dr Patel would have been privileged simply for general surgery or, rather, for general surgery with some inclusions or exclusions?-- The privileging statement likely would have read - and this is speculative, but from my experience likely would have read "general surgery at Bundaberg Hospital". There may have been inclusions or exclusions in relation to endoscopic procedures because there are separate mechanisms to credential people for endoscopic or colonoscopic procedures.

Is that because those procedures use particular technologies?-- It is, because they use particular technologies but also there is a mechanism within the colleges to say yes, this person has done enough of these to be privileged, or no, they haven't.

COMMISSIONER: You are making the assumption, I presume, that Dr Patel would have been credentialed and privileged; that is he would have been passed for credentialing and privileging?

MR DIEHM: Passed in the credentialing sense, yes, Commissioner, yes - and this is, again, yes, as the Commissioner says, it is on the assumption that no discrepancy with respect to his documentation had been picked up?-- Sure.

I made that assumption, yes.

Perhaps I should deal with that, too. In your experience what is the prospect that those problems in his documentation would have been picked up by a credentialing and privileges committee?

COMMISSIONER: I wonder whether this witness has any experience about that, Mr Diehm? Perhaps you might ask him that question first.

MR DIEHM: Thank you, Commissioner. Are you in a position, based on your experience, to make any comment about that?-- All I can tell you is from my experience we would rely on the Medical Board having registered them, therefore that they would have done those checks.

All right. You have participated in credentialing and privileges committees on many occasions, I assume?-- Yes, that's correct.

Does that answer differ depending on whether you are subjecting him to this process prior to his appointment with the hospital as opposed to after his appointment?-- Sorry, I am not quite sure-----

Does it make any difference to your answer about the extent to which there would have been simple reliance on the Medical Board if the process was being undertaken before he was actually formally appointed to the position as opposed to after he had commenced?-- If - and part of recruitment and selection requires credentialing, and then you get into the issue of what is a usual recruitment and selection process, right, and that is looking at referees, looking at their credentials. The allocation of privileges that flows from that, then, is a matter of determining okay, what do we think this person has from a skill set and registration? You still rely on the Board to do a lot of those checks.

In terms of the credentialing aspect?-- Yeah. I don't know if that quite answers your question.

COMMISSIONER: What about in terms of privileging aspects of it?-- I am not - can I try and define the difference between credentialing and privileging? Credentialing is do you have the qualifications and skills. Privileging then is taking those qualifications and skills and saying, "What will we allow this person to then do in our health service?"

In the hospital?-- Yeah, based on what the capacity of that hospital is and that's where the services capability framework comes into it.

I understand?-- So there is those three different elements.

Yes?-- So once you have established their credentials and you think, "Yes, this person is up to what we want them to do", then allocating the privileges won't change. They will still

allocate privileges in general surgery.

MR DIEHM: Doctor, I will move on to another topic. You were asked some questions on the last occasion, and they stem from matters in the report, about what a Director of Medical Services acting reasonably would have done in certain particular circumstances about issues raised concerning Dr Patel. And the first of them concerns what is described in the report as being concerns being expressed about oesophagectomies being performed in May and June of 2003?-- Right.

And your view, as expressed, was that after Ms Hoffman and Ms Goodman had been to see Dr Keating, and Dr Joiner had been to see Dr Keating subsequent to that with their respective concerns about oesophagectomies, in your view a reasonable Director of Medical Services would have convened a multidisciplinary meeting to address the concerns. Is that a fair summary of your view?-- That's a fair summary, yes.

I want to take you through an alternative course of events, and some involve some variation on what are assumed to have been the facts?-- Okay.

Acknowledging you don't have any direct knowledge about what actually happened, you are relying solely upon what others have said?-- That's correct, what was reported to us during interviews or documentations we have looked at.

All right. The first thing is - and this perhaps matters little, but the first thing is that the dates as expressed in your report include a suggestion that on the 19th of June Ms Hoffman and Ms Goodman approached Dr Keating concerning the patient Phillips. And then there is a mention about Dr Joiner approaching Dr Keating in early June. Assume, for what difference this makes, that in fact those communications, to the extent they occurred, occurred in early June in the first instance concerning Ms Hoffman and her Director of Nursing, Ms Goodman, and then in mid-June concerning Dr Joiner, that then in terms of the substantive matters raised, that in the respective meetings the net effect of the issues raised were firstly interpersonal behaviour, that is the way Dr Patel spoke to the nurses, and also some issues about the way he described the critically ill patient's condition, concerns about the capability of the ICU to handle such patients, and finally whether this surgery was being done often enough at the Bundaberg Hospital for it to be appropriate for it to be done?-- Mmm.

Now, the context of that for the Director of Medical Services - again I ask you to assume these matters - the context is that the Director of Medical Services is new to the job and to the district, he has under him a person who is a Director of Surgery appointed to that position by his predecessor. That Director of Surgery, for all intents and purposes, appears to be a very experienced, American-trained surgeon who conducts himself in a confident manner, as if he knows what he is doing. Also working under the Director of Medical Services is

another doctor who is British-trained, Australian-qualified, and apparently very experienced. He is the Director of Anaesthetics, and also the director by virtue of that position, Director of the ICU. And he has been at the hospital for a number of years at that time. Confronted with these matters as raised by these people, what the Director of Medical Services does, instead of convening a multidisciplinary committee that you spoke of, is that he asks the nurse from the ICU, the ICU unit manager, to talk to the surgeon about the interpersonal issues and subsequently inquires of the Director of Nursing about whether the meeting has taken place and is told that it has and that it was satisfactory, the Director of Medical Services speaks to the surgeon about the interpersonal issues and reminds him about the ICU capability and gets acknowledgement from the Director of Surgery about what's been said. He also questions the surgeon about the operation type and whether it should be being conducted at Bundaberg, and the surgeon expresses confidence that it can be done at Bundaberg. And further, the Director of Medical Services speaks to the Director of Anaesthetics and Director of ICU, who tells him that he has no difficulty with the surgery being done or with the capability of the ICU to manage the patients. Now, you would accept, would you not, that in response to any particular problem that might arise for a Director of Medical Services, there will often be a range of options open in terms of the management of that problem?-- Yes, I do.

In terms of this issue that's raised, as opposed to calling a multidisciplinary committee meeting or a multidisciplinary team meeting, do you have any difficulty, as someone with experience as a Director of Medical Services, with that course being taken to manage the problem?-- I can see why someone who is not familiar with the service capability of Bundaberg may have sought advice in that way and made that decision. I mean, if you are asking about me as a Director of Medical Services, I mean, I have been in the system a while and, therefore, I know a bit more about the services and what's provided.

So it is not what you would have done but do you regard it as unreasonable practice for a Director of Medical Services in Dr Keating's position to have carried himself in that way?-- It is not unreasonable, if you are new to a service, to ask the people who are there taking lead roles in other areas for their advice on such an issue.

COMMISSIONER: But should he have been satisfied just with doing that?-- It is speculative because what you have told me is a different story to some of the information that we have been given in our report.

I understand that?-- If those were all of the facts, and that is that the Director of ICU says yes, the service is okay; yes, there is an interpersonal conflict between a doctor and a nurse; yes, the surgery is okay, and you don't know anything else to the contrary about the competence of that particular practitioner because you think it is reasonable, then you can

draw all those conclusions logically, yes.

All right.

MR DIEHM: Thank you.

COMMISSIONER: Can I take you back to something? You may have answered this. Is it your understanding that a Director of Surgery is a member of an Australian College of Surgeons as a matter of practice?-- It is more common that they are. There is nothing enshrined that says that they have to be. You would need to compare it to the job description of what you expect.

But is that the general practice?-- As I said last time, I mean, I know of some services that are headed up by senior medical officer non-specialist. I have got to be careful-----

We're talking about surgery here, not other specialty?-- In surgery, to my knowledge most services have - and this is in the provincial and metro areas - directors who are college specialists.

Do you know of any that are not?-- No.

All right, thank you?-- No, but that doesn't mean they don't exist, obviously.

No, no.

MR DIEHM: Dr Mattiussi, you gave some evidence on the last occasion - and, again, it appears in your report - about the sentinel event report concerning Mr Bramich, and about the requirement of Queensland Health policy for such events to be reported to head office?-- That's correct.

Are you aware that the - or were you made aware as a result of your investigations that the policy that required that course was one that was introduced by Queensland Health in about June of 2004?-- I seem to recollect that fact. As I said, John Wakefield looked at this area so he would have more information on that.

Well, it is not your investigation area, I won't press you too much further over it, but can I ask you this: would it surprise you to know that whilst the policy may have been created in about June of 2004, it did not become known to the Bundaberg Hospital management until August of 2004?-- I can't comment on the specific times but it certainly occurs, when a document is written on a certain time, that an implementation strategy rollout sometimes takes a little while.

Yes, thank you. The usual course, I would suggest to you, for management of a hospital when a new policy is brought to their attention, even when that new policy may have been formalised some months before it comes to their attention, is to look at the policy, develop their own local policy, adopting the new Queensland Health policy, and commence to implement it from

that time forward?-- You would either develop your own policy or procedure, and that's essentially semantics, but you would operationalise it within your health service, and that can take some time, yes.

Then you would apply it from that time forward, from the time you have operationalised it, as you have described it?-- Yeah.

You wouldn't go back and look for things that happened in the months in between and try to apply the policy to those things retrospectively?-- That's practically impossible at times, yeah.

Now, again, concerning the case of Mr Bramich, you have given evidence that you would have expected that the appropriate course - with what you described was a rather complex case medically - was for local hospital management to convene a multidisciplinary team with the view to having it reviewed, is that the case?-- That's correct.

And that is because it was apparent to you, not only from what you saw, but also from what Dr Woodruff reported, that it was a complex case involving the contributions, positive or negative, of a range of medical practitioners and nurses?-- There was a range of practitioners, from what I can see, from a range of areas within the health service as well from different areas.

Yes, all right. Now, you have acknowledged that from the investigations your team carried out, it appeared that Dr Keating was carrying out a review in the sense that he was soliciting information from a number of the people involved and obtaining reports or statements from them, but what you observed, it seems, in summary - and tell me if I'm being unfair to you - but what you observed is that that was lacking the advantage of a multidisciplinary team being brought together to look at all of that evidence instead of Dr Keating just looking at it himself?-- Yeah, it seemed that the Director of Medical Services had asked individuals for individual reports, and that's a good way to start, but in order to get all of the issues on the table, you need to pull together all of the different players, as I call it, or people who are involved in that scenario to get their view to understand what actually went on.

Yes. Were you aware from your investigations that it was Dr Keating's intention, once he gathered all of that information, to convene such a meeting, to get a multidisciplinary group together to look into the case?-- No, as we understand it, the Director of Medical Services, Dr Keating, had started that investigation and it stopped because of, I think, a PIPA notice or other notification.

COMMISSIONER: Because of what, sorry?-- A PIPA notice.

Right.

MR DIEHM: Can I suggest to you that it stopped because Ms Hoffman's complaint was received by Mr Leck and Mr Leck informed or made the decision to commission a review of Dr Patel, and so it was left to be part of that review?-- Yeah, that was put to us also as a reason why it was stopped or wasn't continued.

COMMISSIONER: It wasn't, sorry?-- That was put to us also as a reason why the investigation that Dr Keating had started was stopped.

You said something, a PIPA notice. What's that?-- Yeah, there was-----

What's that?-- Sorry?

What is that?-- A Personal Injuries-----

MR DIEHM: Proceedings Act?-- Proceedings Act.

COMMISSIONER: I see. Who was that from?-- From the family, as I understand it, of Mr Bramich.

Family of?-- Mr Bramich.

Bramich?-- Sorry, I am trying to recollect all of this on the-----

I understand that.

MR DIEHM: Doctor, also on the last occasion you gave evidence you said, at page 5,626, that if you were in Dr Keating's position you would not have offered Dr Patel a four year contract as Dr Keating appeared to have done on the 24th of December 2004?-- That's correct.

Again, I am going to ask you to assume a number of facts that I will put to you and seek from you as to whether you have a different view if you assume those facts to be the case?-- Okay.

And when I talk about facts being the case, facts as apparent to someone in a position of the Director of Medical Services. Whether they are literally true or not is beside the point?-- Okay.

That at the time of making the offer, writing the letter, there had been since late October an external review pending but you don't know what the outcome of it would be and you have been holding off doing anything about looking into any extension to Dr Patel's contract since about the time you have became aware that there would be a review of Dr Patel's position. So, in other words, from late October to late December you have been waiting to see what happened, you don't

know what the outcome is going to be one way or the other, and you have been holding off making an offer. You know that if the contract is to be renewed, something has to be done about it soon because if the contract is to be renewed you have to go through the process of getting the Area of Need certification through Queensland Health, getting the Medical Board registration or reregistration attended to, and having the Department of Immigration extend the visa for the overseas trained doctors, and your experience is that that takes some months to go through?-- Mmm.

I pause to say that's right, isn't it?-- That's correct.

To go through all of that process takes some time?-- It takes some time.

At the 24th of December, Dr Patel is about to go on holidays and is, like the hospital is, contemplating his future at the hospital and he wants any offer to be made to be made before he goes on holidays so he can consider his position with respect to it. Now, again, from the Director of Medical Service's perspective you are unaware of any requirement of Queensland Health for there to be some formal merit based assessment for appointments longer than one year, as you have spoken of-----?-- Mmm.

-----elsewhere in your evidence. You are aware that the Medical Board will only certify for one year at a time or register for one year at a time, even if you take the step of appointing Dr Patel for as long as four years. You believe that recent changes to immigration rules for overseas trained doctors mean that if you appoint an overseas trained doctor for four years, you can get a visa or that doctor can get a visa to work for the sponsor and the sponsor only for four years as opposed to the previous period of one year?-- Mmm.

And if a further year visa is granted, then that certainly allows for a reduction in the paperwork that needs to be done on any further extensions for registration subsequent. You also know that the Medical Board or Queensland Health processes, as I say, would still require yearly approval and paperwork. Further, you believe that if the external review that is not yet completed, indeed not yet been able to be started since Dr Patel, decides that action should be taken, the fact of the extension of the contract will be irrelevant. In particular, if the review reaches the conclusion that Dr Patel should not be allowed to practice as a surgeon at the Bundaberg Hospital or elsewhere for Queensland Health, then his employment can be terminated and it won't matter that it was extended for three months or for four years?-- Okay.

You have already made the decision at that point in time and communicated it that there would be no more oesophagectomies performed at the Bundaberg Hospital. Now, in those circumstances, and if you were to have that perspective, Dr Mattiuissi, do you still have the view that you would not have been prepared to make an offer to Dr Patel extending his

employment for four years?-- I would need one other bit of information and that's about whether you felt the allegations that were made against him, because you didn't make a comment on this about his competency-----

Yes?-- -----how you actually felt that was. I mean, as the Director of Medical Services, you are a medical practitioner also.

Assume that at that point in time you don't personally have the view that his competence is such that he represents a danger generally to patients treated at the Bundaberg Hospital.

COMMISSIONER: And that view was reasonable. You want that assumption made too?

MR DIEHM: Well, I will come back do that, if I may, Commissioner. I shall deal with them serially?-- Sorry.

If an assumption is simply that he was a competent surgeon, that is what the state of mind of the Director of Medical Services is?-- If you genuinely believe that to be true, aside from all of the other HR issues that we have already spoken about, it would be reasonable to extend his contract under-----

COMMISSIONER: Surely it would be only reasonable if it was - if your belief was not only genuine but a reasonable belief?-- Yeah. That's why-----

I understand why you put that qualification?-- I am trying to understand what you meant by "reasonable".

Yes, but that is so, isn't it? There is not much point in me having a genuine belief if it's not reasonable. If he does - has an unreasonable belief that he's a perfectly competent surgeon, then it wasn't a reasonable decision to make, was it?-- If he had an - I am trying to convert your legal interpretation into my medical interpretation.

I am very sorry?-- Which is what I think happened last time.

It could well be the case. If his belief that Dr Patel was a competent surgeon was not a reasonable decision, then any decision he made to extend his contract could not have been a reasonable decision, could it?-- I am going to have to ask you to define "reasonable", I am very sorry.

A decision which a reasonable doctor in his position would have made?-- Yep. That's fine. If a reasonable Director of Medical Services in his position made that decision, yes, then I think it would be reasonable to extend the contract.

But only if that was so?-- Correct.

In other words, if he made that decision that Dr Patel was competent but that decision was not a reasonable decision,

then it would not have been reasonable for him to extend the contract, would it? Did you follow my question then?-- I am trying to follow your question.

All right?-- If a reasonably competent Director of Medical Services genuinely believed that Dr Patel had good clinical skill-----

Reasonably believed that?-- Or reasonably good-----

No, reasonably believed he had good clinical skill?-- Yeah.

Yes. It would have been reasonable?-- Then it would have been reasonable.

Yes?-- Then the converse, I guess, is that no, no, it wouldn't be if all the other nos were there.

I understand that.

MR DIEHM: Doctor, I will pursue the Commissioner's point now. On your understanding of what Dr Keating knew about as at the 24th of December, and remembering that he's taken a decision that no - there will be no more oesophagectomies to be performed, is it unreasonable, in your view, for Dr Keating - well, I will recast it in a way that I think you might find comfortable?-- Okay.

Could a Director of Medical Services acting reasonably have had a belief, albeit proved to be erroneous by subsequent events, but had a belief at that point in time that Dr Patel was a competent general surgeon?

COMMISSIONER: You don't know what information Dr Mattiuissi was given about Dr Keating's belief at that time and your question presumes that, Mr Diehm. You can't ask that question. Surely you have to find out what Dr Mattiuissi knew about Dr Keating's belief at that time, because all this depends upon what, in fact, Dr Keating knew at that time.

MR DIEHM: Commissioner, it does. This is one of the reasons why I approached the matter with Mr Andrews last week about the difficulties of pursuing some of these areas with Dr Mattiuissi. It was a course that wasn't taken consciously by the Commission and counsel with Dr Wakefield because of some of those difficulties. But I do understand from what Mr Andrews has told me, Commissioner, that you do have the view that these matters should be ventilated by way of evidence.

COMMISSIONER: Well, as to whether you mean by "these matters", you mean as to whether your client's belief was a reasonable one as to Dr Patel's competence at the time?

MR DIEHM: Obviously that is a matter about which the Commission is concerned. I am talking about whether they should be pursued with the witnesses such as Dr Mattiuissi.

COMMISSIONER: Well, they can be pursued with Dr Mattiuissi but only if we know what Dr Mattiuissi knows about Dr Keating's belief at the relevant time and forms the opinion on the basis of that knowledge. He may have inadequate knowledge of what Dr Keating's belief was at the reasonable time-----

MR DIEHM: Yes.

COMMISSIONER: -----at that time.

MR DIEHM: Yes. Commissioner, I suppose what I was pausing to elaborate or clarify with you was whether you regard this as being of any assistance or whether you are of the view that these are matters for you to judge on the evidence as you find it to be with respect to what witnesses did know of how they did respond.

COMMISSIONER: Well, the answer is the latter, because in the end this depends on what Dr Keating knew at any relevant time, whether any decision he made on the basis of that knowledge or what he ought to have known at that time - not just knew, knew or ought to have known at that time-----

MR DIEHM: Yes.

COMMISSIONER: Whether the decision based on that knowledge that he did have wasn't a reasonable decision.

MR DIEHM: That being the position, I am happy not to pursue these matters with Dr Mattiuissi, because I do see in it problems with matters of fact.

COMMISSIONER: Problematic as to what he knew and whether he, the - he thought Dr Keating knew and whether it had anything to do with what Dr Keating in fact knew or ought to have known.

MR DIEHM: Indeed. Even if I put a scenario to him, there are so many combinations and permutations-----

COMMISSIONER: So I've noticed.

MR DIEHM: It is unlikely to be helpful. I won't pursue it further, thank you, Commissioner.

COMMISSIONER: All right. Thank you.

MR DIEHM: Dr Mattiuissi, you describe the - you make reference in your report and, indeed, in your evidence to the issue concerning the audit of catheter placements that Dr Patel - sorry, that Dr Miach had involvement in and the communication of that information to Dr Keating. In your report at pages 33 to 34, if you still have a copy of it there with you, we're told that under the heading of, "What Happened.", you see down the bottom of page 33 on 6 February 2004, "Dr Miach had provided Mr Martin, Acting Director of Nursing, and Dr Keating an unsigned and

undated complication report and the report had been completed by Dr Miach and outlined a 100 per cent complication rate." Do you know where that information came from insofar as it appears in your report?-- All that we are aware of is that the report was found on Mr Leck's desk and as outlined in the report there was a request for Dr Keating to follow that up. That's on page 34 at the top, third line or fourth line.

When was it found on Mr Leck's desk?-- I can't recollect the exact date. We may have it in our file notes, if you need to check that up.

Do you know what the source of the information is that Dr Miach had provided that document to Mr Martin?-- My understanding is that report was a single page sheet of paper. It was a table, if I recollect correctly, with six names or six people on it with complications of Tenckhoff catheters.

Yes?-- I don't believe there was a covering note or memo. I think it was just a standard sheet of paper.

All right. More directly, in answer to my question, do you know what the source of the information was to the investigators of that report or that document was provided by Dr Miach to Mr Martin?-- Sorry, what do you mean by "source"?

Well, who told you that Dr Miach provided the document to Mr Martin?-- I can't remember. I would have to look back through the notes.

You identified this issue, being raised in February 2004, as being an opportunity that might have arisen and identified itself for there to be some external review of Dr Patel; is that right?-- There were a range of events or flags that would have led to thinking maybe there's something's going on here. This is but one of those flags.

So, of itself do you not see it as being a document of great moment, it's only something in combination with other circumstances?-- It depends on the context. I mean, if it was handed to me with a note or a conversation that said - say I was in the Director of Medical Services role - "Look, this guy's done six of these and they are all really bad and I don't believe he can cut.", it's a very different discussion than, "Here's a report of six Tenckhoff catheters with no explanation."

Yes. Or indeed being brought up in an entirely different context about how services might be provided at the Bundaberg Hospital?-- That's correct. So the context is important.

And the timing as to when the document was given is also something of importance too?-- It depends what you mean by timing. I mean, this was in February of 2004 from the report, so there was some incidents before and there was some subsequent events afterwards.

All right?-- Sat between the middle.

If the document in its full detail wasn't provided until October of 2004, at around the time a decision was being taken to arrange for an external review of Dr Patel in response to Ms Hoffman's complaint, then again that's more context for saying, well, you don't do anything independent about this document but leave it to be all part of the process of the review?-- Sorry, is your question do I agree with that?

Yeah?-- The context is the important bit.

Yes?-- Not - say - your question came back to say it's the context in relation to when it was, but it's the context.

Yes. When it was given, how it was given, what it was, all a matter of time?-- That's correct.

Similarly, with respect to the - perhaps I should remove the word "similarly". With respect to the wound dehiscence issues that arose through the committee meetings in 2004 that you have referred to in your report - are you familiar with what I'm speaking of?-- Yes.

Again you don't see that as becoming an issue of great significance in itself, but rather it's a little piece of information that in context might mean something that warrants some further investigation?-- That's correct.

And again important in that context is the way things are said and how they are portrayed and the way in which people seem to think that this is an ongoing problem?-- Yes, and also what they say.

Yes. Dr Mattiuissi, it's perhaps obvious to say but I will put it to you anyway, that insofar as the report to which you are a party and, indeed, your evidence before this Commission identifies things that can be seen as being criticisms of the role of the Director of Medical Services at Bundaberg Hospital, any such opinions expressed depend upon the particular facts that you have assumed to be the case prior to expressing those opinions?-- That's correct. I mean, if you look at the methodology within the report it outlines we interviewed people, took their information, formed opinions based on what we held as being appropriate at the time or what we thought because of what people had told us were the facts at the time.

Thank you. Thank you, Commissioner.

COMMISSIONER: Thank you.

CROSS-EXAMINATION:

MR ASHTON: Thanks, Commissioner.

COMMISSIONER: Yes?

MR ASHTON: Doctor, my name is Ashton. I am counsel for Mr Leck. When you gave your evidence-in-chief, you were asked by Mr Andrews some questions about whether there'd been a delegation from the District Manager to the Director of Medical Services of the responsibility for convening or getting up the credentialing and privileges committee. Do you remember that?-- Yes, I remember the question.

In fact, I think you volunteered in your evidence that that was sometimes done, that the responsibility would be delegated from District Manager to Director of Medical Services?-- That's correct.

And when you were asked whether you knew whether such delegation occurred in this case, you responded that you had seen some letters from Dr Keating trying to organise credentialing and privileging of staff which suggested that, but that you hadn't seen a delegation, a formal delegation or looked for one. Is that-----?-- That's correct, we weren't-----

You weren't?-- Didn't find or didn't go looking for a further document that said, "As District Manager, I delegate this to you as Director of Medical Services". But there were documents from the Director of Medical Services suggesting that they were managing that.

Yes. I wonder if the witness could see Exhibit 276, Commissioner. I have a spare copy if it's convenient.

COMMISSIONER: Yes, it is.

MR ANDREWS: I probably don't need to put it on the monitor, Commissioner. It is a very brief reference.

COMMISSIONER: All right.

MR ANDREWS: You will see in the panel - the shaded panel on the left. It's not easy to read because it's a photocopy. Do you see-----

COMMISSIONER: What is Exhibit 276?

MR ASHTON: It's the credentialing and privileging policy-----

COMMISSIONER: Oh, yes, yes.

MR ASHTON: -----of the Bundaberg Hospital, Commissioner.

COMMISSIONER: Yes.

MR ASHTON: Can you see there the identification of the initiator?-- Yes.

That's Dr Keating, isn't it?-- That's correct.

And Mr Leck is identified as authorising-----?-- That's correct.

Does that further suggest that the delegation occurred?-- What it suggests to me is that the person who initiated the policy and procedure document was Darren Keating and that was authorised and signed off by the District Manager.

Yes?-- I'm not sure about their protocol for signing off on policies and procedures, but it's not unusual for the District Manager to have to sign them off and other people to write them.

Does it help you at all in relation to your inference about delegation which you drew from other documents?-- Not particularly, no.

All right. Thank you. Can I have that back, please?-- Thank you.

Just one other matter I wanted to ask you about, doctor. You mentioned in your report that following the presentation by a Nurse Hoffman to Mr Leck of her concerns, he contacted a number of colleagues to identify potential reviewers, having taken the decision to have Dr Patel's performance reviewed?-- That's correct.

Now, you are one of the colleagues he contacted?-- Yes.

And do you remember what you suggested to him?-- I only started remembering this when I spoke to Peter Leck during the interview and he said to me, "Mark, I rang you", and then it started-----

You mean the interview when you-----?-- When we were actually-----

For this investigation?-- For this investigation.

Yes?-- And I remember he rang me saying he was concerned about a surgeon and was trying to find another surgeon to assess them, and as the conversation moved on, it was more about service capability and I suggested he should contact an anaesthetist intensivist to review his services capability and recommend that he talk to - I think it was Dr Alan Mahoney.

Yes, Dr Mahoney was in Redcliffe at the time?-- Yes.

COMMISSIONER: What do you mean by "service capability"?-- There are two aspects in relation to this, as I see it. One is about the skill of the surgeon. The other is about the ability of the health service to support those particular

procedures.

I see?-- And it's the ability of the health service to support a complex procedure that's the service capability.

MR ASHTON: That's what Mr Leck was contacting you about, not about the ability of the surgeon?-- He was contacting me in order to, as I recollect, find names of people who may be able to look at this for him. Mr Leck's not a clinician.

I understand that. Not about the quality or capability of the surgeon concerned?-- No. He wasn't asked me to do a review, no. He was asked me for a name-----

He wasn't asking you to do a review-----

COMMISSIONER: Wasn't asking you any aspect about the capability of the surgeon to perform the surgery?-- No.

MR ASHTON: Well, all right. Can I just clarify that. Are you quite sure about that now, that I understood you to say in response to my question at first that he was concerned about a surgeon and the conversation moved to capabilities?-- I am trying to recollect a phone conversation that I get many of during the day.

Yes?-- He asked me about - I am trying to remember. He said that they had found a surgeon who was up north somewhere and thought that they might use that particular surgeon, but he had reservations. He then made a comment about they were doing some procedure, I think he mentioned Whipples and something else, and there was some concern about whether the ICU was capable of looking after those people. That's my recollection. So then I thought, well, what he needs is someone to look at the service capability as well, not just the surgeon. That's what I-----

As well. As well as reviewing the surgeon?-- I didn't suggest a surgeon for him, no.

No, no, no, no. But that's what his concern was, he was seeking to establish a review-----?-- Right.

-----in relation to the performance of this surgeon and the discussion moved to capabilities as well?-- Okay.

COMMISSIONER: Is that your recollection, he was inquiring about both those matters?-- It's hard for me to recollect the specifics.

No, no. If you can't just tell us you can't?-- And what I recollect is that, as I said, he was looking for a surgeon officially but then mentioned this and I think, "No, you need to actually look at the service capability", because that for me was of greater concern. I remember that bit.

Did you think it was for him a matter of greater concern?-- I can't comment on that, Commissioner.

All right.

MR ASHTON: I have nothing further, thanks, Commissioner.

COMMISSIONER: Thank you. Mr MacSporran, you want to ask some questions?

CROSS-EXAMINATION:

MR MacSPORRAN: Yes, thank you, Commissioner. Dr Mattiuissi, my name is MacSporran. I appear on behalf of Mrs Mulligan. You have your report there. Could you turn to page 14, please. Now, you refer there to a section 1.3 dealing with nurses' services?-- That's correct.

And towards the bottom of that page you refer to the removal of the Assistant Director of Nursing from the line management structure?-- That's correct.

You go on to say that it was unclear when that happened, but it appears to have happened prior to the time Mrs Mulligan took up the position in 2004?-- That's correct.

What did you look at to determine when that move had occurred?-- We - after a range of staff interviews, I didn't attend all of the interviews for nursing staff, but it was clear when we spoke to the Directors of Nursing particularly, they weren't able to tell us that this is when the structure changed. All we know is that it was a very flat structure and it had changed from the structure that was more hierarchical as per the Judy March review.

Can I show you quickly a copy of the position description that applied to Mrs Mulligan's job application in early 2004?-- Okay.

This is Exhibit LMM10 or part of it to Mrs Mulligan's statement. I don't know whether it needs to go up on the overhead projector but if other parties wish to see it, perhaps it should be, Commissioner.

COMMISSIONER: Very well.

MR MacSPORRAN: Just that sheet.

COMMISSIONER: All right. We will put it on.

MR MacSPORRAN: It would be common, Doctor, for there to be an organisational chart to accompany a position description document?-- That's correct.

Are you able to see that?-- When it stops moving I will. Yep.

Right. You agree that it's fairly obvious that the - at that time - if we assume for a moment that's the chart that applied at the time Mrs Mulligan applied for the role of District Director of Nursing, that the Assistant Director of Nursing was taken out of line management structure?-- That's correct.

And you then have all of the Nurse Unit Managers, as the chart reveals, reporting directly to the District Director?-- That's correct.

As opposed to through the Assistant Director and then on to the District Director?-- That's correct.

Now, is it the case that necessarily means that the District Director's workload is increased?-- I can't comment on the workload but they have a significant number of people reporting to them that wouldn't ordinarily report to them.

And that may mean that the workload is significantly increased?-- If you want to draw that inference.

That is, you have to deal directly with a larger number of people rather than having them filtered through the Assistant Director, who would otherwise deal with them?-- Yes, that's what I just said before.

So it seems as though that structure was in place - you would

accept that this chart applies to the application Mrs Mulligan made, the structure was in place at that time?-- Yes, that's what our report says.

That's the structure she inherited it seems?-- Well, our report says that it was - our view was that the structure was there similar to this prior to her starting duties, yes.

Yes. Now, you say at 1.3 on page 14 it is a flat structure. You have told us what you mean by that?-- Mmm-hmm.

You go on to say, "Nurse managers, Nurse Unit Managers and clinical nurses that are heads of a unit report directly to the District Director"; is that so?-- Yes.

Now, where from the chart do we get the proposition that clinical nurses report directly to the District Director in cases where they're heads of units?-- The infection control CNC is a clinical nurse.

Is that reflected though in the chart anywhere that you can see?-- Yeah, it's on the right-hand side next to the after hours nurse manager. NO3 infection control CNC nursing information NUM-----

Does the chart reflect that the person report directly to the District Director as opposed to a Nurse Unit Manager?-- That's correct.

One of the others you quote, I think, is the clinical nurse involved in Stonewall therapy?-- Yeah, I remember that being in the report.

Now, where is that reflected in the chart though as being the case?-- You're asking a doctor to look at the nursing structure, but let me have a look and see if I can find it for you.

The one I see is on the left-hand side, the second row down. There's a nursing officer level 2, Stonewall therapist?-- Yep, that's not reflected in the organisational chart, no.

So on this chart at least, that person reports to the Nurse Unit Manager above that position and then on to the District Director?-- Yeah, I'll accept that.

Do you recall now who told you or where you had the information that the clinical nurse heads of units report to - directly to the District Director?-- The nursing structure was reviewed by the nurse who was on our team, Naomi Hobbs. So you may need to direct that question to her.

Sure. It was in her area of responsibility?-- Yes.

All right. You comment at page 25, if I could take you there briefly. Towards the bottom you refer to experiencing some difficulties with some of the documents that were collected as many being loose-leaf documents from staff raising concerns

undated and some even unsigned?-- That's correct.

Now, you saw that or the review team saw that as being a significant difficulty; is that so?-- That's correct.

Is that because without there being signed and dated copies of documents, it was very difficult to effectively action concerns raised in them?-- The review team found difficulty with this because as we were trying to put a chronology together, understanding where they fell in the chronology or who the authors were or when they were actually written was very difficult.

So in terms of placing any concerns that arose firstly in time, without being dated you couldn't determine that?-- Yes.

You had to rely on other external events?-- Yes, or information that was portrayed or given to us during interviews.

All right. Coming back to my point though, was it a policy or practice at least that was desirable that where complaints were to be made, they should be signed and dated?-- I can't comment about whether there was a policy or a practice in relation to that.

Was it your experience that they were?-- When documents of complaint are sent to me in my general practice, as in my practice within the health service, and they're undated and unsigned, I usually chase them up to find out what the details were there so I can place them in some degree of order.

So it was your practice to have them where possible signed and dated?-- That's correct. That's correct.

That's a desirable practice from a management point of view?-- It makes it easier later on to work through the time frames and period and such.

It is a way, I suppose, of having someone who is complaining or making a complaint or raising a concern to take ownership of the matter, what, by putting their name to it and signing off on it?-- I can't comment on that. I mean, for me, I use it from the point of view making sure that when I look at the document, I know where it came from, who it came from and that this was the time that it was either written or delivered.

And if you're going to investigate, you can go to that person and properly investigate their concerns?-- That's correct.

All right. Now, can I take you to page 34. Towards the bottom of that page under subheading (e) you talk about the sentinel event involving patient P11?-- Mmm-hmm. Yes.

And you refer on page 35 that that event was reported to Mrs Mulligan as you understood it?-- That's correct.

And you say at the end of that long first paragraph on page

35, "It was alleged that no feedback had been given to the ICU staff regarding the handling of the incident report or the result of any investigation." Can you now remember where that information came from? Firstly, was it something you'd dealt with or was it something Ms Hobbs dealt with?-- I'm trying to - I'm trying to remember and it would be speculative. I suspect that this came out of interviews with Toni Hoffman.

Okay. That would be the natural place I suppose for it to be raised in that form, because she had been the person who had raised the event form as you understood it?-- I can't remember that. I'd have to have a look at the copy of the form to see who signed it off.

In any event, can I suggest this to you, that in fact the allegation is misconceived, that there was in fact feedback. Now, you may not be able to comment. There is an exhibit here, Exhibit 86. Could the witness see that for a moment-----

COMMISSIONER: Well, if he can't comment, is there any point in taking him to it?

MR MacSPORRAN: Well, probably not. Probably not.

COMMISSIONER: Why don't you move on then.

MR MacSPORRAN: Yes. You accepted what you were told as you've indicated earlier, for the purpose of this review you accepted what you were told from various people and you've made conclusions from those - that information?-- Yeah, as I said, if you look at the front of the report under methodology, we were very clear to state that we - and words to this effect - interviewed people, gained that information plus the information from documents. There was no compulsion on anyone who was talking to us to either speak with us or to tell us the truth for that matter. And then we formed opinions based upon that.

Yes. You have had no opportunity or desire, understandably, to review evidence given here that may be in conflict in any way with what you were told?-- That's a statement of fact.

Yes. Could I take you to page 80 of your report. And you say or you refer at the bottom of that page under the heading "Complaints Management Process", "The complaints procedure at Bundaberg Hospital had been changed with the District Director of Nursing assuming responsibility for complaints from management since her arrival." Do you see that?-- That's correct.

Again, are you able to tell us anything about where that information came from?-- It was an opinion that we formed from information that came to us from either documentation or from interviews with staff. I can't give you specifics.

All right. You can't now pinpoint where it came from?-- No.

Or in what form?-- No.

I was suggesting to you that's an incorrect conclusion from the information. I take it you again can't comment?-- No.

You refer to the industrial environment in your report; is that so?-- Yeah, I believe so.

And you report accounts being given to the team of bullying by management to staff, staff to other staff, union to staff, et cetera?-- Yes.

Is it the case that if we accept as accurate for one moment at face value those claims, that would be an environment in which management would have some difficulty managing? It's an unhealthy environment in which to manage a workforce?-- It was reported to us that there were significant industrial difficulty at Bundaberg because of the structure and the levels where some of the union representatives were employed at.

I think that you refer that in the report as creating some perceived conflict of interest?-- There's always an area of tension when union delegates or representatives or union members are at high levels within the organisation as they're advocating for staff usually against management. If your middle managers are active in the union, that can create significant tension for the staff.

Now, regardless of the rights or wrongs of that, it does in turn create difficulties for management?-- I said before that there were difficulties in the industrial environment, particularly for change management.

Yes, thank you. Thank you, Commissioner.

COMMISSIONER: Thank you. Anyone else want to - you, Mr Applegarth?

MR APPLEGARTH: Thank you, Commissioner.

CROSS-EXAMINATION:

MR APPLEGARTH: Dr Mattiussi, my name is Applegarth. I'm acting for Dr Buckland and I'd like to ask you a few questions about something completely different as they say?-- Okay.

So if you can take off your review panel hat and put back on the normal hat you wear, which is a District Manager and you're also a Director of Surgical Medical Services?-- No, I run with two job descriptions: one is a District Director of Medical Services - the District Director of Medical Services; the other is as District Manager.

And you've had some experience for some years in each of those roles, not necessarily in the present position?-- I have had experience before as a Director of Medical Services, however you want to title that, so med super or a director med services. I've been employed as a District Manager since about April last year.

And what's your history as a medical superintendent if I can call it that? Have you been a Medical Superintendent for a few years at different places?-- Yeah, since about 1997, '98 either in deputy or med superintendent role.

I just want to ask you a few questions about the administration and funding of elective surgery and I would like you to assist us if you can?-- Okay.

I should ask you this: have you served from time to time on the Medical Superintendents Board?-- I have served on the Medical Superintendents Advisory Committee and I'm now the chair of the Director of Medical Services Advisory Committee.

Thank you. Now, based on your experience, I would like to ask you about your dealings as a Medical Superintendent with head office in terms of the administration of funding of elective surgery?-- Right.

Did you find that until recent changes that were brought in about 2004/2005, that was a very bureaucratic process?-- Until recently I hadn't actually been involved in the funding submission side, more the activity side. Elective surgery was treated as a sort of bolt-on, add-on, until recently.

And from your position as the Medical Superintendent, what implications did that have for you in terms of running the medical services that you had to run and planning ahead?-- Always creates a two-edge sword. I mean, elective surgery was a source of funds that you could tap into if you needed to expand services but they were targeted funds for elective surgery and therefore had to be used for that purpose. So, you know, if you had services that were expanding in the medical area and you needed to have beds for those acute emergency medical patients, you always had a healthy tension there. The other thing is elective surgery tends to be funded on a year to year basis so you have got money this year but you may not have it next year. So it is akin to turning on and off a tap.

COMMISSIONER: If you have a certain amount allocated for elective surgery in year 1 and you don't utilise all of that amount in that year, does that mean that your allotment for elective surgery in the following year is likely to be reduced by that amount that you haven't used?-- It's a little more complex than that.

Is it; perhaps you might explain that?-- You're allocated targets and you're allocated money to those targets, so it is an output based funding model essentially. What then happens is that you try to achieve those targets.

Yes?-- And if you manage to achieve the targets, then you get all the money.

That's elective surgery we're talking about?-- Yeah, that's correct. And if you don't, then they either take the money back from you or don't give it to you depending on where you are in the cycle of the year.

Right?-- For the following year, the allocation of targets isn't necessarily related to your performance against those targets for the previous year.

All right?-- They may be but they may not be.

More often than not, are they?-- In the health services that I have been in, we have achieved our targets really every year so I have had not any problems looking for additional money because you have had a reputation for performance.

Thank you.

MR APPLEGARTH: Just to add to the Commissioner's question, there have been recent decisions made about putting elective surgery funding at a base funding of districts?-- That's correct.

Yes. So most of your comments about what's happened relates to what has happened until recently?-- That's correct.

COMMISSIONER: What's recently?-- Recently is for this financial year.

Right?-- There has been some amalgamation of elective surgery targets for last financial year but it's been incrementally increasing so that it becomes more core business than just a bolt-on.

MR APPLEGARTH: If you could then cast your mind back to a few years ago, say, 2002/2003?-- Yes.

When you were a Medical Superintendent?-- Yes.

Did the system as it then operated mean you have to spend a lot of time talking to your District Manager about the administration of funding for elective surgery?-- I needed to spend some time doing that. Most of the time was how you managed the counting of activity and the performance against the targets, or the measures.

And there was a lot of counting, wasn't there, to be able to report back to head office about how many procedures in this area, how many procedures in that area had been done? There was a lot of reporting back and number counting?-- Yeah, there was a number of reporting involved. Most of that comes out of our standard activity reporting systems but they're related to business rules as well. So there were specific criteria that you had to apply in order to say, "Yes, this was

elective surgery activity, that can count as such", or, "No, this couldn't be counted as elective surgery."

Based on your experience and your dealings with other medical superintendents and dealings with the District Managers back in those times, was there something of a confrontational relationship between the hospital level and the surgical access team that administered these funding arrangements?-- It depends on the relationship that you had. I mean, if you performed your activity and there was more money there, it was always a good relationship because they came bearing cash, money. If there were concerns about what you could or couldn't count, then it was a different discussion.

And were these perennial issues about whether the hospitals were spending money that should have been spent on emergency services and should have been not classified as elective surgery, were you aware of those ongoing issues?-- There was always concern about what - what you could or couldn't count.

Yes. And the approach that you perceived was that the head office was as it were purchasing services from the - from the hospital. There was a purchase of provider model, or perhaps you weren't-----?-- You could call it a purchase of provider model. It is sort of a purchase of provider model. As I said, it was activity based funding. They would say to you , "How many activities can you perform?" "Yes we have this amount of money to match that. There's your targets", then you would aim to achieve those targets.

In terms of the actual funding, I suggest to you that until about July 2004 certain elective surgery procedures were paid in accordance with schedule of rates that had been determined back in '96, '98 or 2000, though were as it were out of date?-- The case mix funding model that we use changes as years progress on, so you may have one model for this year and a new model for next year and that may last for two years. When that model changes, the price per weighted separation or per piece of activity changes as well but there was always a desire to make sure that you got for the same amount of dollars the same amount of activity, so the price was not escalated over those years.

Now-----?-- Does that make sense?

I think it does. Now, until July 2004 there was a phenomena with funding of elective surgeries, that, as it were, the tap was getting turned on and off by the surgical access team from year to year?-- The-----

It was a bolt - I think you used the expression it was a bolt-on?-- Yeah, the phenomenon of turning on and off elective surgery I think still exists. I mean, it is a matter of whether there is money available, whether it's a government imperative.

In terms of, though, the funding that - the funding arrangements that predated July 2004, it wasn't simply a

hospital was given a certain amount to fund its elective surgery. The funding was earmarked for particular types of services, wasn't it?-- I'm trying-----

If you don't know - if it is not-----?-- I'm trying to contextualise your question and that is that money is allocated in different pools or different buckets for elective surgery. So there's different - as times progress on. So in 1998 there might have been X bucket and then added to that there was another bucket and then another bucket depending on, you know, how much money is allocated and which is new bits and those are funded at different levels.

And do I take it that until-----?-- And not necessarily recurrent. So that means you might have money for this year out of this particular bucket but it is not necessarily available for five years, 10 years' time, so you can't necessarily develop new services there expecting that the money is going to be available.

No, you have answered my question. So the problem was you might have so much in the bucket for cardiac services this year but there is no guarantee you are going to have that amount in the cardiac services bucket the following year?-- That's correct.

And that makes it extremely difficult to plan medical services as a Medical Superintendent?-- Yeah, well, what you end up doing is having to take a punt as it were on whether you put that service in or not, how you employ people, because if you employ people on a short-term basis, they probably won't come to your health service. So sometimes you've got to increase your establishment hoping that there'll be new buckets of money every year in order to fund it, or just not doing that and just doing it on a short-term basis and then making decisions as time progresses on.

Now, I preface my next question with the appreciation that there is enough money for elective surgery but as at - as from July 2004, the funding structure of elective surgery was changed so that funding was distributed directly to the hospitals as a one-line item of recurrent base funding, there might be some allocations but it was base funding?-- There has been a change this financial year to combine a whole lot of the historical activity for emergency, other and elective service as one bucket and put that recurrently into the districts, yes.

And that's vastly improved your planning processes?-- It makes it easier for us to manage because you're only managing then the small bit that sits on top of that which is usually the election commitments.

So you'd need to be less preoccupied with how much is in the bucket this year and worrying about how much might be in the bucket next year?-- It gives you the ability to plan services a little bit further into the long-term rather than just whether the money is going to be there or not.

Yes, I have no further questions, thank you.

COMMISSIONER: Thank you. Anyone else want to ask any questions on that?

MR ALLEN: Just briefly Commissioner.

CROSS-EXAMINATION:

MR ALLEN: Doctor, John Allen for the Queensland Nurses Union. You were asked a question by my learned friend Mr MacSporran to my right in relation to the information at the end of the first paragraph of page 35 of your report?-- Let me just find that.

It was in relation to the events regarding Mr Bramich?-- Right.

And you included there an allegation that staff in the ICU have received no feedback in relation to their complaints?-- Yes.

And you expressed the opinion that or the suspicion that that information would have come from an interview with Toni Hoffman?-- That's correct.

The information made available to you was that there were a number of written complaints from various nurses in relation to Mr Bramich?-- There were a number of complaints or reports about Bramich. They were the documents that were by and large unsigned and undated so we weren't sure when they were presented.

Yes. But it was clear that concerns in relation to Dr Patel's treatment of Mr Bramich were coming from a number of nurses in addition to Ms Hoffman?-- The only evidence that we reasonably - and I say we as a collective we but me as the person who's holding this report standing in front of you, reasonably sure is that there was a sentinel event form and there was an incident form completed in relation to Bramich. There were a range of other documents including a letter in October from Ms Hoffman, and then there were the other undated, unsigned documents and it was reasonably unclear about when a lot of those surfaced.

COMMISSIONER: But it appeared, did it, that came from people other than Ms Hoffman, which is the question that's being asked?-- That's correct. That's correct.

Yes.

MR ALLEN: Indeed, this Commission has heard sworn evidence from nurses in addition to Ms Hoffman in relation to their

involvement in events concerning Mr Bramich?-- Are you asking me a question or making a statement?

No, and it is quite clear in fact that there was a level of concern and distress on behalf of nurses in addition to Ms Hoffman. Now, do you know whether or not any of those additional nurses were interviewed by your team?-- There were a number of nursing staff interviewed by our team and I believe that some of those who had provided those statements were, yes.

Do you know if any of those nurses said that they had not received any feedback in relation to concerns they had raised with management?-- Yeah, I can't comment specifically about that. I didn't interview many of the nurses.

The source of the information that appears at the end of that paragraph on page 35 may have in fact been nurses other than Ms Toni Hoffman?-- You could draw that inference, yes.

Yes. You can't say one way or the other?-- No, I would need to consult with other members of the team specifically about what they heard and they'd probably need to consult their notes about the interviews.

Okay. Now, you were asked a number of questions by my learned friend Mr Diehm in relation to the reasonableness of steps taken by a Director of Medical Services in various scenarios. Now, you agreed with the proposition that if in fact Dr Patel had been credentialed and privileged according to the policy, that he may well have been privileged for general surgery?-- That's correct.

All right. And you seem to agree with the proposition that that credentialing and privileging procedure, if it had occurred according to policy, may not have uncovered any difficulties with his past registration history in the United States because it's likely that the members of the committee would have relied upon the Medical Board in that regard?-- Yeah, that's correct.

And you were then asked about other scenarios of what reasonable action might have occurred in certain instances?-- Yeah.

Okay. And can I ask you this: when dealing with those subsequent events and considering what a reasonable response by a Director of Medical Services would be to concerns raised about wound dehiscence, peritoneal dialysis catheters, incidents regarding certain patients, would it have been a relevant circumstance to take into account that that particular surgeon had never been credentialed and privileged?-- More importantly you would have been looking at what his skill and capability was and assessing that to further inform aspects of what you would allow him to do, ie his privileges.

Given those subsequent concerns as they arose, wouldn't it have been even more an acute need to undertake some type of credentialing and privileging process with the input of a suitably qualified surgeon?-- If there were concerns - and I am trying to keep the hypothetical stuff out of my head now because I have got that in there - but if there were concerns raised by staff that you believed were legitimate concerns that you needed to assess and you have reviewed those and, yes, that would feed into the credentials and privileging.

Wouldn't it be even more acute because you know, as the Director of Medical Services, that you don't have that safety cushion of the fact that that doctor has been appropriately credentialed and privileged before they started in the position?-- I wouldn't have said that it was a safety cushion if you had credentialed and privileged them. I mean, you would - even if you had credentialed and privileged them at the beginning and concerns were raised, you would have to revisit that decision.

Yes. But if that credentialing and privileging had never taken place at all, wouldn't it be even more acute?-- This is just-----

A concern that that occurred?-- This would be a reason just to make sure you had undertaken that.

In the first place?-- The credentialing and privileging.

I suppose once the subsequent concerns start arising, the need to remedy the absence of credentialing and privileging would become more obvious and acute?-- The need to clearly define privileges, particularly if you are worried about scope, would certainly become acute.

Can you see, on the basis of any of the information provided to you, by way of a scenario by Mr Diehm, any reasonable basis for a Director of Medical Services to continue to permit a Director of Surgery to practise without having been credentialed and privileged at all?-- I am trying to remember, the hypothetical was that the director of - the

Director of Medical Services reasonably believed that there wasn't concern for this practitioner when he offered him an ongoing appointment in December of 2004 for four years. If he reasonably believed that, then the whole debate about credentials and privileging becomes a different discussion because what you are saying is, "Well, no, I didn't actually believe there was a problem with this person." What we've highlighted in the report is that there were a number of aspects as reported to us that may have been flags to actually sit down and think about this again. Does that answer your question, because it is a fairly circuitous question? I didn't quite-----

I apologise for that. You have earlier given evidence about the importance of a credentialing and privileging process?-- That's correct.

The policy is there for good reasons?-- That's correct.

It is important that that policy be followed to the extent of a surgeon being appropriately credentialed and privileged before they are permitted to operate on patients?-- That's correct.

Your investigations uncover the fact that Dr Patel was never credentialed and privileged according to the policy?-- There were difficulties with his credentialing and privileging. He had privileges allocated in I think it was June 2004 in a letter but had difficulties with the process. That's what that letter highlighted.

COMMISSIONER: But there had never been that process of credentialing and privileging?-- There was never a credentialing and privileges committee, from what we understand, who sat down and reviewed his privileges and-----

That's what credentialing and privileges means, someone makes those assessments about - some qualified person or group of people make an assessment about credentials and privileges?-- That's correct.

That's what it is, isn't it?-- That's correct.

And that never occurred?-- No.

MR ALLEN: It never occurred prior to his appointment as Director of Surgery or any time subsequent, right up to the time that he finished in the position?-- He was - he was credentialed as part of the selection process but privileges weren't allocated. Someone reviewed his qualifications and looked at whether the Medical Board would register him.

How was he credentialed as you understand it?-- We probably need to get into a discussion about what credentialing involves because credentialing is where you look at what their qualifications and skills are and decide whether they are appropriate to undertake the duties of the position. The allocation - as I said before, privileges then is what will we

let them do.

COMMISSIONER: Who credentialed him for the position of Director of Surgery then?-- It would seem that the person who allocated him to the Director of Surgery was Dr Nydam.

Yes?-- And you would then assume, from what he had said to us as part of the review team, that he looked at his qualifications and his CV and the Medical Board registered him, and he had referee reports undertaken by Wavelength who introduced him to the health service, both in written format and verbally over the telephone, with a filenote documenting that.

But that's not credentialing in terms of the policy, is it?-- Sorry?

That's not credentialing in terms of the policy?-- It is - it is part of that process, yes.

It is not fully credentialing in terms of the policy. It doesn't comply with the policy?-- The only - and I am trying to remember the specifics of the policy off the top of my head, but the policy looks at other things or suggests that you look at other things in relation to ongoing-----

Requires a committee to look at these things, doesn't it? A group of people?-- Yes.

Yeah, all right.

MR ALLEN: And that didn't happen?-- No, a group of people didn't look at this person, no.

So therefore Dr Patel was never credentialed according to the policy?-- That's correct.

And he was never allocated privileges according to the policy?-- He was never allocated privileges through a recommendation of a committee, no. He was allocated privileges through a letter.

Okay. So he was never allocated privileges in accordance with the policy which requires a credentialing and privileging committee?-- That's correct.

Now, given that knowledge on the part of Director of Medical Services, wouldn't there be a continuing concern on the part of a reasonable Director of Medical Services that that policy has not yet been complied with?-- I guess so.

Wouldn't that concern, on the part of a reasonable Director of Medical Services, increase or become more acute as these further concerns are raised as to the practice of that surgeon?-- The answer to that was yes.

Isn't it inexcusable conduct on the part of a reasonable Director of Medical Services that notwithstanding such

concerns being raised, the surgeon is permitted to practise in the absence of credentialing and privileging and in the absence of some type of review from a peer?-- You would hope that there was peer review ongoing and that these people were credentialed, yes.

COMMISSIONER: Not just hope. Not just hope; it would be unreasonable not to have that?-- I am trying to understand your term of "unreasonable".

It would not be the conduct of a reasonable Director of Medical Services?-- To allow them to continue, no.

That's right, thank you.

MR ALLEN: It would not be the conduct of a reasonable Director of Medical Services in those circumstances to be offering that person a further contract for four years?-- You would hope - you would expect that if you are reemploying them, that you would make sure they underwent that credentials and privileging process.

Yes, thank you, doctor?-- Thank you.

COMMISSIONER: Do you have some questions to ask, Mr Boddice?

MR BODDICE: Yes, thank you.

RE-EXAMINATION:

MR BODDICE: Dr Mattiussi, could we just deal with the credentialing and privileging process? You gave some evidence the other day at page 5603 that the privileges that should have been allocated were for general surgery but within the service definition at Bundaberg Hospital?-- That's correct.

Is the process of credentialing, privileging and role delineation - which is another name for the service capability framework, isn't it?-- That's right, yeah.

Is that process a tiered process?-- It is. I mean, if someone has credentials to undertake particular procedures, you may or may not privilege them to undertake those procedures based on whether the service capability or role delineation, as you have used it, of the health service allows them to do that. An example may be neurosurgery in a small rural facility. Even if you employ a neurosurgeon who has the credentials to do that, you may not privilege them to undertake those procedures.

So the three work in unison?-- That's correct.

So the process is the credentialing and - your Honour, could the witness see exhibit 279, please, which is the policy?

COMMISSIONER: Yes.

MR BODDICE: Doctor, don't worry about the few pages that accompany it. Go to the policy itself. Page 5 of the policy?-- Yep.

At paragraph 2.2 there is a definition of credentials?-- That's correct.

And that definition refers to "credentials represent the formal qualifications, training, experience in clinical competence of a medical practitioner providing the professional health service"?-- That's correct.

But it goes on to deal with, in effect, the documentation that would evidence those things?-- That's right.

Is it fair to say that credentialing deals with the documentation surrounding qualifications and experience?-- Yes.

And then privileging deals with the issue of what actual procedures the person should be allowed to perform?-- That's correct.

But that, of course, is in the context of the service capability framework of the particular hospital?-- That's right.

So when you speak of credentialing, you are speaking of the qualifications and documentations surrounding that person's qualifications and registration?-- And their skills and experience, yes.

COMMISSIONER: And their skills and experience?-- That's correct.

As you knew the credentialing committee would perceive them to be?-- That's correct.

MR BODDICE: And their skills and experience as evidenced by things as referee reports, any certificates they may have, those sorts of matters?-- That's right.

COMMISSIONER: And your assessment of them as the credentialing committee? Your assessment of those skills by the credentialing committee?-- The credentialing committee would usually assess these based on documentation and application; not necessarily, as is the case in some colleges, knowing the applicant personally but some other members on the committee, such as a medical superintendent would know the applicant personally.

But in the case of an overseas-qualified person, the credentialing committee might want to see what skills that person actually has in the performance of his or her-----?-- It is not usual with medical practitioners to, you know, do an

on-the-job skills assessment before you employ them, like typing tests for AOs and those things.

It is not, all right.

MR BODDICE: And so when you gave evidence at 5613 that "it is the executive of the health service that needs to make that determination" - this is about what services to be provided - "because it is not just a medical issue, as you can see in this case related to whether the nursing staff have relevant skills and so forth, whether you have relevant infrastructure from the point of view of operating theatre, intensive care." So it is an executive decision?-- That's correct.

Is that there dealing with the service capability framework issue?-- That's correct.

And so the way the policy works, in your experience, is there is the credentialing, which is looking at the documentation and assessing the qualifications and skills and experience?-- Yes.

There is the privileging process, which looks at what procedures, but that is in the context of the executive deciding what those procedures may be?-- That's correct.

So in the case of a general surgeon, you said typically the privileges afforded would be general surgery?-- That's right.

But that would be in the context that the executive would be deciding what procedures, be they complex procedures, may fall within the general surgery that can be performed at that hospital?-- That's right.

COMMISSIONER: By that doctor? By that doctor?-- By that particular practitioner, yes, but that's the privileging bit. So you have got the credentials, the privileging and the services capability.

I understand that?-- And the services capability is the generic-----

The capability of the hospital. The privileging bit is the capability of the doctor?-- As linked to-----

The capability of the hospital?-- The hospital, yes. What we will allow you to do.

Yes, all right.

MR BODDICE: So when you were asked some questions, when you appeared the other day, about whether it would be general surgery or general surgery with certain procedures, in effect, marked as yes and some marked as no?-- Yes.

And you indicated no, you would expect it to be general surgery?-- Yes.

Is that in the context, however, that of course the hospital will have designated that certain types of procedures are not procedures to be performed at that hospital?-- That's correct. That's why there is the services capability framework.

Now, you were asked some questions in relation to the senior medical officer?-- Mmm.

And you gave some evidence the other day there is an industrial - I think you spoke about it being an industrial award matter?-- Yeah, there is great confusion about what is an SMO.

Is it the case that under Queensland Health's - under the industrial policy, the award policy that Queensland Health operates under, that a senior medical officer actually applies from medical superintendent down?-- A senior medical officer is above a registrar but not including a registrar, so not including a trainee.

Uh-huh?-- Can have specialist qualifications or not have specialist qualifications, can be the medical superintendent, not be the medical superintendent - that's industrially. But then that term - and this is creating some of the confusion, I am sure - but that term "senior medical officer", even though under the award it applies to specialists and medical superintendents as well as non-specialist registered doctors, other terminology is used such as staff specialist or specialist for those who have specialist qualifications rather than as an SMO, and medical superintendent, or Director of Medical Services rather than an SMO. But they are still under the award, the same category of employment.

COMMISSIONER: That's just an industrial category. That's got nothing to do with the way the medical profession should see it?-- Sorry?

That is just an industrial classification. It has nothing to do with the way the medical profession should see the role of an SMO?-- That's my point.

Yes, I understand your point.

MR BODDICE: But you were asked some questions the other day about whether, for example, an SMO can be appointed to the director of a particular position?-- That's correct.

And is it industrially plainly an SMO can be appointed to the position of director because it can cover a range of people, staff specialists, et cetera-----?-- Yes, that's correct.

-----is that the case? But as you were asked some questions today about whether you know of, for example, a Director of Surgery in any other place that is an SMO?-- Yes.

Is that then a question, however, of looking at the position description, for example of a particular hospital's

appointment?-- That's correct. I mean, if the position description doesn't specify specialist qualifications, you can be an SMO director.

Now, doctor, you were also asked some questions in relation to your report concerning Dr Miach-----?-- Yes.

-----and the inclusion in your report. You said that - you gave evidence the other day that you were ensuring that all the senior medical officers or visiting medical officers were appropriately credentialed and registered?-- That's correct.

When you went to undertake your investigation, were you aware that there were concerns in relation to Dr Patel's registration?-- I am trying to remember back. Because it was all over the news and I tried to avoid that stuff. In early April we were in Bundaberg. I think at that time concerns were out in the public space about his credentials overseas.

All right then. So when you were instructed by the then Director-General to ensure there was not another Dr Patel, what did you understand that to mean?-- Two aspects: make sure that people were appropriately registered and that that had been checked off, and also to make sure that the people who were in those jobs had appropriate skills to undertake that job and there weren't concerns about another practitioner that hadn't been brought to the surface.

And we have seen, from the definition of credentials in the policy, that credential includes the registration-----?-- That's correct.

-----of the particular person with the relevant Medical Board?-- That's correct.

And your report indicates that your investigation revealed that Dr Miach was employed as a specialist?-- That's correct.

With a right to private practice as a private specialist?-- Option A private practice.

He had a specialist provider number?-- We subsequently became aware of that when I asked questions of the private practice agency.

Which is essentially the Commonwealth system which allows for a person to charge as a specialist?-- That's correct.

But your inquiries revealed that the registration of Dr Miach was not as a specialist?-- That's correct, he was registered in Queensland as a general practitioner.

Now, were you aware that there are restrictions within Queensland on the use of the term "specialist" if you are not registered as a specialist?-- Yeah, I understand that you can't do that.

COMMISSIONER: He was registered elsewhere as a specialist?-- He - as I understand it he had been registered in Victoria. I didn't check to see whether his registration was current in Victoria.

MR BODDICE: But were you aware that in Queensland there are restrictions on the use of the title "specialist" unless you are registered in Queensland as a specialist?-- Yeah, I understand that to be the case, yeah.

And also are you aware that under the Commonwealth system, unless you are registered as a specialist you can't use a specialist provider number?-- There is a schedule that allocates particular practitioners who - or colleges that are - you know, if you are a fellow of that college that you can practise as a specialist and bill as a specialist.

You gave evidence the other day that that was your concern, that this revealed a systemic problem in terms of the employment of Dr Miach as a specialist when he was not registered in Queensland as a specialist?-- That's correct. That was one of the concerns.

Is that why you included it in the report?-- Yeah, absolutely.

You did, however, include in the report the fact that Dr Miach had the relevant qualifications?-- Yes.

And you also included in the report the fact that Dr Miach had previously been registered as a specialist in Victoria?-- Well, that he had been registered in Victoria, yes.

But was your inclusion because of that systemic problem of how he had been employed by Queensland Health?-- He had been employed as a specialist and also no-one had picked it up.

Did you include it in the report for any other reason?-- The only other aspect was in relation to the provider number and the Australian government disconnect between a specialist level provider number but not registered in Queensland.

COMMISSIONER: If you were concerned about malice, I am unlikely to find that Dr Mattiussi was motivated by malice, Mr Boddice. But it did seem absurd that it was included in the report that became public, but I would not attribute any malice to Dr-----

MR BODDICE: That's all I was concerned about, Commissioner, thank you. Finally, you were asked some questions about whether you had highlighted in your report the need for all practitioners to be credentialed?-- Yes, I remember that.

Have you got a copy of the report there, doctor?-- Yes, I do.

Page 45 has, as recommendation 3 that appears at the top of page 45, your recommendation of the committee was "to ensure that all medical staff are provided with written clinical

privileges upon appointment consistent with the service capability and credentials"?-- That's correct.

And that related to all medical staff?-- That's correct.

Is that the reference you were referring to that you had highlighted in your report?-- Yes.

Yes. Thank you. Those are the only matters.

COMMISSIONER: Thank you. Mr Andrews?

MR ANDREWS: Thanks, Commissioner.

RE-EXAMINATION:

MR ANDREWS: Dr Mattiuissi, that recommendation at page 45, recommendation 3, that "all medical staff be provided with written clinical privileges upon appointment", is very sensible unless you are dealing with overseas appointees. Don't you agree that if clinical privileges are provided upon appointment, it would mean that one - if appointing an overseas-trained doctor subject to receiving registration from the Medical Board of Queensland, that one will hypothetically have a case where a doctor will travel from overseas having received conditional appointment from Queensland Health for a regional hospital, that the conditional appointee will then come to Brisbane, travel to the regions, but upon arrival in Brisbane will receive registration from the Medical Board of Queensland, arrive at the regions and already upon arrival have clinical privileges?-- Yes, that's a possibility.

But that would deprive the credentials and privileges committee of the opportunity for discussion with the employee or perhaps the opportunity to see the employee perform particular services?-- If you utilise a selection committee, that selection committee can actually form the credentialing committee, so they may have already discussed or spoken, during the interview, with a senior medical officer or the overseas-trained doctor before they arrive. You won't be able to have observed them operate, but unless you let them operate you can't observe them operate.

Well, I ask you to consider a variation on recommendation 3, that "all medical staff are provided with written clinical privileges consistent with the service capability and credentials before being permitted to perform a medical procedure"?-- So if we had a physician who doesn't actually undertake any procedures under your recommendation, would we allow them to see a patient but not perform a procedure?

That's a very good point?-- I don't want to answer your question with a question, but I am trying to understand the question.

Let me use the hypothesis of a surgeon to see if the general proposition you have at recommendation 3 ought to be applied only generally and whether there ought to be exceptions in the case of surgery. Do you recommend - I want you to consider an amendment to recommendation 3 that you ensure that all surgical staff are provided with written clinical privileges consistent with the service capability and credentials before being permitted to perform surgery. Is that recommendation a reasonable one?-- It is not unreasonable.

COMMISSIONER: Well, if it is not unreasonable, it is reasonable, isn't it?-- I guess. But - yeah, it is fine.

MR ANDREWS: Now, the advantage of that is that it would permit a committee to observe an unknown quantity, like a person recently arriving in the country, if the committee felt that it was warranted in a particular case?-- That's correct, but would you do the same for emergency medicine physicians? Would you do the same for gastroenterologists who aren't surgeons but undertake procedures?

COMMISSIONER: Why wouldn't you?-- Well, then his recommendation is not reasonable because it only applies to surgeons. That's why I made the comment before.

Well, would it be - is there any reason why it would not be reasonable to apply to anyone who does medical procedures?-- To supervise them beforehand?

Yes?-- As long as it was practical.

Well, it's practical if you provide sufficient money to enable to do that?-- You-----

Otherwise you are - otherwise, aren't you, permitting the risk of serious injury or even death?-- Everything we do in medicine is balance of risk.

Of course it is?-- And, therefore, you have to balance up sometimes in rural communities whether you provide the service or don't provide the service while you are trying to assess someone to make sure that they are up to speed or do you assess them along the way, balancing the risk.

But there is a point, isn't there, where you should not provide services which are inadequate and consequently unsafe?-- I would argue that that's absolutely correct.

All right.

MR ANDREWS: Dr Mattiuissi, I notice from your statement, Exhibit 353, a copy of which I have, that Exhibits MPM1 and MPM2 reveal a change in the Terms of Reference for your review which seems to have occurred in the four day period between the 14th of April 2005 and the 18th of April 2005. I see from the frown on your face-----?-- I don't understand.

-----that I should make it clearer for you?-- Mmm. Thank you.

Would you please put this second page of MPM1 on the monitor. It's the, "Issues" section that I ask you to direct your attention to. Do you recognise it?-- Can we just scroll back a little bit so can I can see what document this comes from?

Perhaps you should put the first page on to the monitor, which is the page before. MPM1, it's a submission to the Director-General dated the 12th of April 2005, but it appears to have been received on the 13th, a document cleared by Dr FitzGerald, the subject being, "The Appointment of Staff Investigators." Can you scroll down the page. And it seems to have been approved by Dr Buckland on the 14th of April?-- Yep.

And on turning the page, one sees that the form of the review, which appears to have been contemplated on the 13th of April and 14th, had been to look at five dot points. Do you see them?-- Yes.

Now, by the 18th of April the terms of the review were expanded to seven in number and, in particular, the first of them, I can tell by looking at MPM2 to your statement, is to examine the circumstances surrounding the appointment, credentialing and management of Dr Patel. Now-----?-- Right.

You recall that was one of the things that you specifically-----?-- One of the Terms of Reference, yes.

-----considered. Did you have any discussion with those who instructed you to perform this task as to why you were given that new term of reference; that is, examining the circumstances surrounding the appointment, credentialing and management of Dr Patel?-- The document you are referring to, I think, is the Terms of Reference. This is a brief for approval to undertake the review.

COMMISSIONER: No, no. The point is that your Terms of Reference were expanded to include a new term of reference, namely, "Examine the circumstances surrounding the appointment, credentialing and management of Dr Patel." That term was not in your original Terms of Reference?-- We were - we were provided with a document that's listed as the Terms of Reference for the review. This, as I understand it, is a brief.

Perhaps you should see page 2 of your statement.

MR BODDICE: Perhaps it might be helpful to first ask if he's ever seen that earlier version.

COMMISSIONER: Of his Terms of Reference?

MR BODDICE: Well, yes.

COMMISSIONER: Well, maybe.

MR ANDREWS: The reason I have made that assumption is that it's Exhibit MPM1 to the statement of Dr Mattiuissi.

COMMISSIONER: Yes. Exactly.

MR ANDREWS: Do you have a copy of your statement with you, Dr Mattiuissi?-- I think we understood last time the copy that I had wasn't the most up-to-date version because there was some typographical changes. Can I have a look at your-----

Certainly.

COMMISSIONER: Take a copy of mine if you like.

MR ANDREWS: Thank you, Commissioner.

COMMISSIONER: This doesn't have the exhibits to it, doctor, but you will recognise that MPM1-----

MR ANDREWS: I think in the circumstances, Commissioner, I should hand Dr Mattiuissi a copy that does have the exhibits.

COMMISSIONER: All right.

MR ANDREWS: And it has the advantages of having them marked with flags as well.

COMMISSIONER: Okay. Perhaps you can hand mine back, doctor.

Doctor, would you hand mine back to me?-- Yes, I will.

They will give you a complete one with exhibits. Yes, Mr Andrews?

MR ANDREWS: Dr Mattiuissi, you have before you your statement and you will be able to see - as I recall I probably marked MPM1 in your statement with a highlighter so that you can see how it's described?-- That's correct.

It's described as a, "Copy of the Appointment Document." Now, when one turns to MPM1, which is flagged on the side of the document you hold, you will see you have annexed to your statement MPM1 which runs for a number of pages, the first of which is a document signed by Dr Buckland, the second of which contains those five dot point, Terms of Reference?-- Now I understand.

The third of which names you as an investigator?-- That's correct.

But despite being dated the 14th of April - I will just put this page up on the screen. Despite being dated the 14th of April, it appointed you as an investigator from the 18th. Do you see that on the monitor?-- Yes, I do.

Now, it suggests to the reader that you would have received the five dot point original Terms of Reference when you received your appointment?-- No. We - now I understand the confusion. Someone's attached what looks like an older version of the Terms of Reference. I have the copy that we are operating on here that I brought with me today.

COMMISSIONER: Yes, we understand that. We understand the Terms of Reference under which you operated?-- Yeah.

The point is you were appointed at one stage under the Terms of Reference, under that document which came to you dated the 14th of April; that is, Exhibit MPM1?-- No, I haven't seen this document. This is the embarrassing thing for me. I mean, my statement was put together by lawyers assisting. They have attached the wrong document. I haven't seen MPM1 as it's written here.

You have never seen MPM1 before?-- Not as my terms of appointment.

Even though you were appointed under MPM1 and those later - and those Terms of Reference appear to have been later expanded?-- There was some discussion prior to us commencing and us receiving official appointment about trying to understand the Terms of Reference and clarify-----

Just answer my question - this question. Can you - if you don't understand how the document MPM1 compares with MPM2 and how MPM1 came into existence, please say so?-- I am just looking at MPM2.

It's the one that contains paragraph 1-----?-- Yeah, that's okay.

-----that we were talking about before?-- Yep.

The Terms of Reference are different. That's the point?-- Yeah, no, I appreciate that. There was some discussion. I am trying to contextualise it, so I can give you an answer to this. The initial - when the review team were appointed, there was some discussion about the Terms of Reference and trying to make them clear so that we were able to understand, yes, this is what you want to appoint us for, and we provided some feedback. Our understanding or my understanding as the team leader for the review team is that that was the Terms of Reference that were created for us.

We understand that. That was they were eventually?-- Yep.

The point is there may have been events that occurred between the 14th of April and the 18th of April. Were you aware of those events?-- No, except for discussions, and I am trying to remember that - the actual dates, but discussions about the Terms of Reference that the team had with the Chief Health Officer.

There may have been a reason for the change. I just wondered whether anything was said to you about adding that paragraph 1?-- No, nothing was specifically said to me about adding it. But, as I said, there was a discussion I had with the Director-General prior to starting the review that said, "Make sure there's not" - words to the effect of, "Make sure there's not another Dr Patel there."

MR ANDREWS: Right. Now, I understand that there were two discussions you had prior to starting, from what you have told me in the last minute or so. One was that before starting your review you had a discussion with the Director-General to the effect that you were to make sure that there was not another Dr Patel?-- That's correct.

You have also mentioned that you had a discussion with the Chief Health Officer, by whom you mean Dr FitzGerald?-- That's correct.

Now, you have mentioned discussions in which you - I think you said "we sought to determine", and I am paraphrasing, but what you were to - what the review was about. Were those the discussions with Dr FitzGerald or the discussions with Dr Buckland?-- Trying to remember, they were primarily with Dr FitzGerald and Dr Buckland also, I think, later on attended the meeting.

I see. So it was a particular day that you had discussions with both Drs FitzGerald and Buckland, was it?-- There was a meeting in corporate office in Charlotte Street looking at how we would set up the team, who would head up the team, what - you know, when we would start on-site, those sort of operational things, and also clarity about our instrument of

appointment, making sure we had the details and documentation.

And do you recall at that stage whether either of the persons with whom you spoke, that is Drs Buckland or FitzGerald, had informed you that there was any allegation or evidence that Dr Patel had some limitations imposed on him overseas as to his scope of practice?-- No, I can't remember that.

Do you mean that by the time you commenced to review the circumstances surrounding the appointment, credentialing and management of Dr Patel - I should say by the time you were appointed on the 18th of April to examine the circumstances surrounding the appointment, credentialing and management of Dr Patel, you didn't know that there was evidence existing that overseas there were restrictions on his scope of practice?-- No, I didn't say that. I don't know because I - I became aware that there were concerns. I can't get the timing.

How did you become aware of it?-- On the media.

COMMISSIONER: On the what? I didn't hear you?-- On the media.

On the media. Right.

MR ANDREWS: And were you aware of those concerns before you spoke with doctors - with Dr FitzGerald?-- That's the bit I can't answer.

Right.

COMMISSIONER: And you can't recall whether you discussed those matters with Dr FitzGerald?-- No.

MR ANDREWS: Would you please look at this document on the monitor. It's a page of transcript which shows some answers you gave to Mr Mullins and the transcript page number appears at the bottom as 5625. Now, you were responding as to things you have said to Dr Keating. "We asked him around the, "Why did you extend this guy? What were you thinking at the time?" You have said you remember Dr Keating's response, "Well, some clinicians thought he wasn't the best surgeon in the world but they thought he was okay." Now, at about line 33 you were asked to identify the people that Dr Keating had advice from that Dr Patel was okay and you say, "Our report highlights that there were a number of clinicians along the way that Dr Keating spoke to, including the Director of Anaesthetics." Now, my interest is whether Dr Keating told you who the clinicians were who had favourable things to say about Dr Patel or whether it was another member of the team who spoke with Dr Keating on this topic?-- I spoke with Dr Keating on this topic.

Now, the answer to Mr Mullins doesn't make it clear to me whether Dr Keating simply mentioned the Director of Anaesthetics as one of a number of people he spoke with or whether Dr Keating had something particular to say about the

comments that were made by the Director of Anaesthetics to Dr Keating?-- He - in response to the question about why Dr Patel's appointment was extended, it was more a feel that Dr Keating had that, you know, clinicians thought he was okay, wasn't the best surgeon in the world but he was okay. The discussion around-----

So is that attributable to clinicians in general or to the Director of Anaesthetics?-- I think it's attributable to what Dr Keating thought of Dr Patel at the time from the information that he gathered and what he reasonably believed.

COMMISSIONER: What he believed, whether it was reasonable or not?-- Sorry, I am using my terminology, not the legal terminology.

Yes, all right.

MR ANDREWS: You were answering a question, I think, of Mr Diehm's and part of your answer was to this effect, and I am paraphrasing - I don't write quickly enough - but someone new to the hospital, that is a Director of Medical Services new to the hospital might be unfamiliar with the service capability. If a Director of Medical Service is coming to a hospital such as Bundaberg in 2003 and was unfamiliar with the service capability of the hospital, what would be a reasonable time within which the director ought to become familiar with it?-- The answer to your question depends on how much detail. You will pick things up along the way based on what people ask you and if you are not sure you can ask around to see.

Well, if the issue is whether there ought or ought not to be performed in the hospital oesophagectomies or Whipples procedures?-- In Bundaberg - the answer to your question is difficult because prior to Dr Keating arriving in Bundaberg and in fact Dr Patel arriving in Bundaberg, as is evidenced in our report, oesophagectomies were undertaken. Bundaberg had previously performed elective triple A repairs and carotid endarterectomies had been reported to us, so-----

Well, is the service capability of a hospital determined upon its history or upon its staff and facilities?-- It's determined upon its staff and facilities, not based on history.

COMMISSIONER: Just because a hospital is performing operations that should not be performed in that hospital is surely irrelevant to the question whether it has the service capability to perform those operations?-- That's correct. If you are a new medical superintendent trying to understand what the capability should be, if those procedures were done in the past, that will create some thought about, well, should they be done now or shouldn't they.

Exactly?-- But-----

You'd give some consideration to the past but you'd obviously then make your own assessment about it?-- That's correct.

That would be based on advice from the staff.

MR ANDREWS: I have no further questions, Commissioner.

COMMISSIONER: Thank you. No-one opposes Dr Mattiuissi being excused, I take it? Dr Mattiuissi, thank you. You are excused from further attendance?-- Thank you very much.

MR ANDREWS: I just wondered, Dr Mattiuissi, do you have my version of your statement? Thank you?-- No, I might need a copy of that but I - thank you.

WITNESS EXCUSED

COMMISSIONER: Mr Douglas?

MR DOUGLAS: Yes. Commissioner, the next witness is Mr Justin Collins, whose statements have been distributed. Can we proceed with Mr Collins now?

COMMISSIONER: Yes, certainly.

MR DOUGLAS: Thank you.

MR BODDICE: Commissioner, we seek leave to appear on behalf of Mr Collins.

COMMISSIONER: Yes, thank you.

MR DOUGLAS: Mr Collins should be here in a moment, Commissioner. Whilst Mr Collins is coming, Commissioner, could I deal with another issue? You will recall that during the evidence of Dr Buckland last week there was canvassed with Dr Buckland his recollection of events pertaining to - I should say Mr Berg.

COMMISSIONER: Yes.

MR DOUGLAS: And there was a specific issue taxed with him with which he was taxed in cross-examination or examination as to whether or not and with what detail he canvassed with psychiatrists within Queensland Health matters which assisted him in the decision he made which he incorporated on the briefing note to the Minister of January 2003. You recall the issue, Commissioner?

COMMISSIONER: Yes.

MR DOUGLAS: Thank you. As a consequence of that exchange, I caused a letter to be written to Queensland Health. It's addressed to Mr Peter Dwyer, Crown Law. It is dated 19 September 2005. I tender that letter.

COMMISSIONER: Is it convenient it be tendered as one-----

MR DOUGLAS: May well be. I will go through the sequence first and then, Commissioner, you can allocate an exhibit number.

COMMISSIONER: Right.

MR DOUGLAS: I asked Mr Dwyer on behalf of Queensland Health to undertake an inquiry within Queensland Health of persons who are named or other persons and also to undertake a search for documents which might evidence contact between Dr Buckland and others in respect of the Berg issue. There came in response to that, Commissioner, a letter dated 22nd September 2005 from Crown Law signed by Mr Dwyer dealing with that particular issue. There came with that statement a statement of one Peggy Brown. The statement is dated the 21st of September 2005. Dr Brown was the director of Mental Health within Queensland Health at all material times.

Can I precis what is in that statement? She says that she does recall attending Townsville and speaking with staff anterior to discussions with Dr Buckland late in 2002, and she did, in fact, express views along the lines that ultimately found their way into Dr Buckland's inscribed decision. There is also as parts of this bundle of documents an e-mail from Mr Dwyer to Mr Atkinson of counsel, the Office of Counsel Assisting the Commission, dated 24th of September 2005, saying that he had made inquiries also of a Dr Waugh about the issue.

I tender those documents. As presently advised, Commissioner, it's not proposed to require Dr Brown to give evidence in relation to those matters. It may be that as a consequence of perusing those documents others present may desire the attendance of Dr Brown. Can I indicate for considerations of those so contemplating, although it's not an impediment in the absolute sense, that Dr Brown is now the Director of Clinical Services, Mental Health in the Australian Capital Territory. So it would be necessary to have her travel to Brisbane to give evidence or perhaps an arraignment could be made for her to give evidence by telephone or video link. I tender those documents.

COMMISSIONER: I will mark all those documents together. Exhibit 376.

ADMITTED AND MARKED "EXHIBIT 376"

COMMISSIONER: Yes?

MR ANDREWS: I call Justin Edward Collins. He's in the witness box. Could the witness be sworn, please, Commissioner.

JUSTIN EDWARD COLLINS, SWORN AND EXAMINED:

MR DOUGLAS: Sir, is your full name Justin Edward Collins?-- Yes, it is.

And you reside at an address known to the Commission?-- Yes.

You are a Queensland public servant in the employ of Queensland Health?-- That's right.

You have been employed in Queensland Health since June 1994 or thereabouts?-- Actually it was '92, February '92.

Thank you for correcting that. Your present designation within Queensland Health is that you are the manager of the Queensland Health body known as Measured Quality Services?-- Yes, that's right.

And the acronym for that which finds its mention in various documents is MQS?-- That's right.

You commenced in that position as manager of MQS in or about September 2001?-- That's right.

Prior to that you were engaged in a program support role within MQS?-- With the Quality Improvement Enhancement Program, brought in, yes.

That was as part of MQS program?-- The MQS program was one of, yep.

Thank you. And the MQS program as a program even its formative stages, to your knowledge, commenced in about the year 2000?-- Yes.

You have provided two statements to this Commission?-- Yes.

The first is dated the 19th of September 2005?-- That's right.

It has a number of annexures?-- Yes.

The second is dated the 23rd of September 2005 and it also carries a number of annexures?-- Yes, it does.

The content of each of those statements is true and correct to the best of your knowledge and ability?-- Yes, it is.

I tender those statements, Commissioner.

COMMISSIONER: They'll be Exhibits 377 and 378 respectively.

ADMITTED AND MARKED "EXHIBITS 377 AND 378 RESPECTIVELY"

DOUGLAS: Commissioner, you have a copy of the statement proper of each of those together with a selection of the annexures with respect to the first statement. I believe it's correct to say you don't have any of the annexures, at least in hard form, of the second.

COMMISSIONER: I think I have all of them.

MR DOUGLAS: Thank you then. I wanted to check. Thank you very much. Mr Collins, is it correct to say that the aim of MQS was to develop a system which routinely measured the quality of services at selected Queensland Health hospitals?-- Yes.

Does MQS as presently structured comprehend the whole of the Queensland Health cohort of hospitals?-- No, it doesn't.

What number does it comprehend?-- At present, 75 hospitals.

What's the total cohort?-- About 200 I believe.

Thank you. And why is it that the - there is a limited cohort which is selected for MQS purposes?-- I believe it's based on the sort of indicators that were developed and their meaningfulness to larger hospitals as opposed to very, very small hospitals.

So if we're looking at the bulk of the cohort over the 75, is it correct to say or not that that balance cohort consists largely of very small hospitals?-- The remaining?

Yes?-- Yes, that's right.

Is it also correct to say that data collected through the MQS process is used to identify variation in performance between

hospitals which can properly be compared?-- That's right.

When I speak of properly compared, under the MQS process, are hospitals divided into groups which basically reflect their size?-- Yes, that's right.

From what can loosely be described as small hospitals right up to the teaching hospitals?-- Yes.

And there are four groups: small hospitals, medium, large and also teaching hospitals?-- Yes.

They may be differently described but that's essentially the flavour of the four groups?-- Yes, that's right.

Thank you. Is the ultimate aim of the MQS process to identify areas of good practice together with areas that warrant improvement as disclosed by the MQS process procedure?-- Yes.

Is it also the intention of the MQS process to focus the attention of the hospitals in question upon identified areas so they can in turn undertake their own in-depth analysis of those specific areas?-- Yes, that's right.

The touchstone of the process, that is the MQS process, I suggest is directed ultimately at providing a safe and efficient service to the users of the Queensland hospital system?-- Yes.

And it's also to maintain standards?-- Yes.

And part of that maintenance of standards under the process is to provide comparisons so that members of any particular cohort, say, large hospitals or medium hospitals, with the ability to see how a brother or sister hospital compares in terms of the discharge of the services provided at that hospital?-- Yes.

Under the process, there may be good reason for a variation merely by the fact that one hospital as opposed to another within the cohort is slightly bigger or slightly smaller?-- Absolutely.

And it may be a function of the geographical area?-- Yes.

It may be the ability to garnish the services of surgeons, nurses or other essential staff in the discharge of the services to be provided?-- Yes.

But it may also point in your experience to a basic differential in standard which might in a particular case or cases call for greater effort or perhaps even greater money to be expended-----?-- Yes.

-----in order to elevate the standard of service provided?-- Yes.

I propose, Mr Collins, to jump a little between your two

statements and, I apologise, if you're confused at any time, you will tell me?-- I will.

But I will refer to them as the first statement and the second statement. Thanks. In the period of time up to mid-2002, Queensland Health essentially promulgated its MQS policy?-- Yes.

In your second statement at paragraph 3 you identify the various purposes for the MQS process?-- Mmm-hmm.

You can refer if you wish, it may assist you in answering some of my next few questions, this is in your second statement. There are four purposes, (a) through to (d), and I won't read all of them out but would you agree with me that items (a), (b) and (d) are really all matters internal to Queensland Health?-- Yes.

(A), and I'll read it into the record, expresses a purpose being "to inform clinicians and managers in a health service district about problems that may exist. The MQS then provides health service districts with assistance to interpret the analysis of the indicators for their hospital and provide direction to other areas that may help with their improvement activities"?-- Yes.

If I could also read into the record item (c), which wasn't part of that internal group which you identified, and that's this: "(c) to advise the public about quality and safety of services provided by Queensland Health and the improvement strategies being implemented by Queensland Health to address quality and safety issues". And you agree from your experience with MQS now for the last four or five years that that collage of four items properly represents the purpose of MQS?-- Yes, it does.

You go on in paragraph 4 of your second statement to identify what you say to be, and I'll quote you, "potential conflict in the methods needed to achieve purpose (c)" - that's the one I just read out - "and those required to achieve other purposes." You see that?-- Yes.

Then you go on to identify in that paragraph the essential need and I quote you: "Engage clinicians in quality and safety management processes", you go on to say to that end, "to foster a blame free environment". Do you see that?-- Yes.

And at the risk of reading out one other portion, you go on to say, "This has known to be a greater tendency to hide mistakes if there is a culture of blame"?-- That's right.

Now, you then go on to refer to a number of studies which you say underscores or supports that particular proposition?-- Yes.

Is that not so?-- Yes.

You collect those in Exhibit JEC27 to your statement?-- Yes.

Is that correct?-- Yes, that's right.

Now, some of those particular documents - I'll start again. Those particular documents are a collection of papers which by-----

COMMISSIONER: Excuse me. Excuse me. Would you go outside if you're answering the phone.

MR DOUGLAS: Some of those - I should say all of those statements - I'll start again. All of the papers in that particular Exhibit JEC27 consist of papers which you have from time to time downloaded from the Internet dealing with this issue of fostering a blame free environment and also public disclosure; is that not so?-- Yes.

To put matters in context, those papers cover a passage of years. Some of them are as early as 2000, 2002?-- Mmm-hmm.

Indeed, one of the papers that you have furnished with that exhibit is a paper from this year, 2005?-- Right.

But you told us earlier that the MQS policy had been promulgated essentially by Queensland Health by mid-2002?-- Yes.

And one of the papers which you include in that exhibit and I think to be fair to you it's actually included twice, obviously by mistake, is a paper by Messrs Marshall and Brook under a heading "Public reporting of comparative information about quality healthcare". You remember the paper?-- Yes.

It's a paper, you might recall, which was published in the MJA, which I take it you understand to be the Medical Journal of Australia?-- Yes.

And it was published in the MJA in May 2002?-- Yes.

You may recall this but I can tell you on the face of the paper it is said on the penultimate page to be received on 10th September 2002 obviously by the journal and to have been accepted by the journal on the 11th of January 2002 - I'll start that again. It was received 10th September 2001?-- Right.

And it was accepted 11th January 2002. Do you recall reading this paper in early 2002?-- No.

So these are a bundle of papers which for the purposes or benefit of the Commission you've cobbled together since?-- Yes.

You adhere to the statement which is contained in your second statement to the effect that these underscore the proposition that care must be exercised with public disclosure?-- Yes.

I'll invite you just to look again, please, at the paper by

Marshall and Brook. I'll have it put on the overhead. I've highlighted a portion of it. But from your research in the area, do you agree that Messrs Marshall and Brook have written extensively in this area over the years?-- I couldn't comment on that.

Thank you. They're referred to in a number of articles that are included in the exhibit, are they not?-- Yes.

Could you put it on the overhead, please. The title is "Public reporting of comparative information about quality healthcare". Can I ask you to assume that the highlighting which appears in yellow in this document is mine. It's directed for you attention. The theme of the article seems to be, "A greater degree of public reporting of information about public health care is an inevitable and desirable way forward"?-- Yes.

In the opening paragraph, you know from reading it before and making statements, speaks about publication of data by the Australian Council for Safety and Quality and Health Care. If you scroll on the visualiser, scroll down to the paragraph commencing, "In addition, public disclosure appears to be an effective way of improving quality", do you see that?-- Yes.

In fact, you know from the footnotes to this article that there's extensive reference to US literature in that regard?-- Yes.

The balance of that can speak for itself but the theme of that paragraph is perhaps summed up in the last sentence: "When comparative data are released to the public, it appears to remind providers of the issues and refocuses them towards taking action." I think I have correctly recited that?-- Yes.

Is that a sentiment with which you agree?-- Can I just clarify which section that is again?

Yes, in the paragraph commencing "in addition"?-- Yes.

Thank you. And that's a sentiment with which you agree?-- Yes, it is.

If you go over the page: "The public won't understand them and the media will misuse them." It is proposed by the authors that "those arguments are not sustainable if public disclosure are introduced properly"?-- Yes.

Then it goes - and the reference to your US is my scrawl?-- Mmm-hmm.

"But recent evidence suggests", the authors say, "that the providers themselves make greater use of the data than the service users"?-- Yes.

And then if you scroll down you will see the author say, "What can we learn from the initiatives that have already been introduced", and it deals with about four items, and I won't

read them out, which I suggest to you in each instance and cumulatively constitute at least in the minds of these authors a thesis which supports public disclosure of documents in relation to health care quality?-- Yes.

Thank you. That can be returned to me.

COMMISSIONER: And they are views which you agree with?-- Yes, they are.

MR DOUGLAS: Thank you. In paragraph - in your second statement you say, and I quote you, that "it was never intended to hide the hospital reports"?-- That's right.

In that regard you were speaking of the hospital reports which made up the phase 1 of the introduction of MQS?-- Yes.

Do you agree?-- Yes.

And the same position obtains in respect of any other phase of the introduction and implementation of MQS in relation to hospital reports?-- That's right.

COMMISSIONER: And you're speaking about your intention and the intention of those who were involved with you in the health department in the establishment of this program?-- Yes.

MR DOUGLAS: In fact, just to follow on from what the Commissioner just said, did you mean by that statement to say that as a matter of its own - that is, Queensland Health's own - internally generated policy, that is the MQS policy, that by mid-2002 that policy was one which did not seek to impose any absolute restriction over the disclosure of the individual hospital reports?-- Not an absolute restriction, no.

I will come to that as to any qualified restriction. In that regard you go on in paragraph 9 of your second statement to say that in mid-2002 the board of MQS within Queensland Health sought, as you put it, to try to meet the needs of clinicians and managers as well as the public?-- Yes.

And to that end the MQS board I suggest, as you amplify in your statement, developed a policy which was in two parts?-- Yes.

On the one part the policy was the - there was to be a public report which provided analysis of data comparing the relative quality and safety performance between peer groups at a state level?-- Yes.

And concomitantly in that public report, comparing Queensland Health's performances with the rest of Australia?-- Yes.

And the other part of the policy consisted of the distribution of the hospital reports as opposed to the public report to each selected hospital with it being, that is the hospital being, and I'll quote from your statement in this regard,

"left to the relevant health service district to determine whether or not to release the hospital reports for their own health service district or their health service district publicly"?-- Yes.

COMMISSIONER: And you knew thought then that was an appropriate thing to do?-- Yes.

Appropriate policy?-- Yes.

And you still think that?-- Yes.

MR DOUGLAS: You go on to say in your second statement that the board of MQS recognised at its meetings that the hospital reports, irrespective of the choice of the health service district, may in fact be disclosed or come to be disclosed in any event to members of the public or the media after a successful freedom of information application?-- Yes.

In light of that, you say that Queensland Health decided to develop a strategy to assist the health service districts in an event that a hospital report was, to put it bluntly, disgorged under the FOI process?-- Yes, yes.

When you say assist, you mean to assist them with providing explanations and answers to questions that might arise as a result of that disclosure?-- Yes.

And you wanted them to be ready for that to occur rather than it being slapped on the District Manager's desk one morning by a provincial newspaper reporter?-- Yes.

Thank you. That policy which is canvassed in your statement is then reflected in the minutes of the MQS board meeting of 21st May 2002 which is Exhibit JEC29. You have a copy of JEC29, do you not?-- Yes, I do.

Right. Could I ask you to go to page 3 of that particular document, thank you. I propose to put a number of these documents on the visualiser, Commissioner. I'm not sure - perhaps I should put this one and we'll see how we go.

COMMISSIONER: All right.

MR DOUGLAS: Thank you. I am concerned to ensure that anyone listening does properly understand matters as we go through.

COMMISSIONER: Yes.

MR DOUGLAS: Thank you. At page 3 there's a heading, if the visualiser could be scrolled, please, there is a heading "Marketing and Communication". Yes, thank you. Thank you very much. Now, there was some slides which are referred to there and they were some overhead slides that - PowerPoint slides that you prepared for the purposes of this particular meeting?-- Yes.

We see that you do seem to have a penchant for producing

slides to communicate matters at various times?-- Yes.

And there are five dot points there which I suggest to you identify the sort of process which you were just telling the Commission about?-- Yes.

Thank you. And the same exhibit at the back of it, you've included a document, I think I'm correct in saying, which is a submission made to Director-General Stable about the same time, the 31st of May 2002. Do you have that?-- Yes.

Thank you. The title of the submission to the Director-General, which I note was Dr Stable and which has been noted by him on the first page, the title of the submission is "Preparation for release of hospital and public reports for measured quality"?-- Yes.

Now, you were the author of that submission to the Director-General?-- Yes, I was.

It was cleared by your team leader Mr Brown and submitted through the Manager of Procurement Strategy Unit Dr Cuff?-- Yes.

Both of those persons, Mr Brown and Dr Cuff, were persons to whom you answered?-- Yes. At that time, yes.

Now, the second page of that document under the heading "Background", I'll put this on the overhead if I may, that speaks of a tentative release date for MQS phase 1 of 12th July 2002?-- Yes, it does.

In fact, as it transpired, the release occurred much later, didn't it?-- Yes, it did.

When did it actually occur?-- The phase 1 reports were never actually formally released.

What happened was that the phase 2 material was collected and, in effect, phase 1 and phase 2 were delivered together?-- Yes.

And that didn't occur until about a year later?-- That's right.

Mid-2003?-- Yes.

Further down the page of that document under the heading "Issues"-----

COMMISSIONER: Excuse me, the release meant what, release to the public?-- Oh, no, release to the hospitals.

Release to the hospitals?-- Yes.

Right.

MR DOUGLAS: You were anxious to release it to the hospitals

were you not?-- Yes, I was.

You were anxious to release it to the hospitals so as to implement the policy and garner the benefits that are associated with such release?-- Yes.

On the same document further down the page under the heading "Issues" there is a paragraph headed, and I'll quote, "Potential misinterpretation of hospital level data by the public"?-- Yes.

Do you see that?-- Yes, I do.

And are you familiar with this particular document?-- Yes, I am.

And that recitation of matters there reflects your recognition and I suggest to you your knowledge that - of the MQS board that the hospital reports could in fact become public?-- Yes.

On the last page of the document, if that could be taken over, there is a heading "Recommendation" and among those recommendations item number 2 was that the Minister be briefed on the report?-- Yes.

Thank you. That can be returned to me, thank you. Now, the next solid event in terms of the sequence comes with your presentation on MQS to Minister Edmond and Director-General Stable on the 13th of August 2002?-- That's right.

And you say in your statement that came about because Mr Filby, the Deputy the Director-General Policy and Outcomings, and Dr Youngman, the General Manager of Health Services, asked you to give a presentation to the Minister and to the Director-General?-- Yes.

In paragraph 12 of your second statement you say that you were advised by Dr Cuff prior to that presentation on the 13th of August 2002 that a possible outcome of that presentation may be that the Minister or the Director-General or both might ask or request or, perhaps more correctly, direct that MQS phase 1 public and hospital reports be sent to cabinet?-- Yes. Yes.

Just a couple of questions about what you say in consequence of that in your second statement. Was it your view - I'll start again. Was there some discussion between you and Dr Cuff such that someone said, one of you, I'm not - I'll ask you which in a moment - what you quote - to quote from your statement, that that forwarding to cabinet would restrict our ability to disseminate our reports to health service districts and effectively kill the measured quality program?-- It could, yes.

Who expressed that view?-- Dr Cuff.

Did he expand or amplify upon that opinion?-- No.

Was that your view as well? At the time?-- At the time, yes.

Why was that your view at the time?-- It was mostly informed by Dr Cuff, I think. I was looking to him for advice in relation to these matters.

And, again, did Dr Cuff express to you why it was that he believed it would, again I'll use the language, kill the measured quality program?-- He didn't really elaborate. I think he was just expressing it the potential might be.

You go on to say though-----

COMMISSIONER: But it was obvious to you, though, wasn't it?-- It was very sensitive information.

Yes, but it was obvious to you that restricting the ability to disseminate these reports to the hospitals themselves could kill the program?-- Sorry, could you just clarify that?

Yes. It was obvious to you that a restriction on the distribution of these reports to the hospitals themselves could kill the program?-- It could make it very difficult, yes.

You saw that as a real problem?-- Absolutely.

Yes.

MR DOUGLAS: You say in paragraph 12 last sentence, "Both Dr Cuff and I agreed that this" - I take it that "this" is the submission to cabinet?-- Mmm-hmm.

"Was not desirable from the perspective of safety and quality as well as overall improvement within Queensland Health"?-- I think, just to clarify if I can, I think it was the outcome or the potential outcome from the cabinet submission that we were most concerned about rather than actually the process of sending it to cabinet. It was the outcome of that I think that we were concerned about.

And the potential outcome that you saw as a risk at the very least to the measured quality program was that the purpose involving the engagement of clinicians, to which I made reference earlier from your statement, would be inhibited by restriction that may emanate from this document going to cabinet?-- Yes.

Did Cuff on this occasion, prior to the presentation of 13th August, specifically raise with you the prospect that going to cabinet would greatly inhibit your ability to distribute the hospital reports?-- Yes.

That wasn't a matter with which you were familiar prior to-----?-- No.

-----your conversation with Dr Cuff on that occasion?-- No.

Do you agree with that?-- Yes.

Can I turn now to the presentation to Minister Edmond and Director-General Stable on 13 August 2002? The bundle of material which you utilise for this purpose appears in your second statement as annexure 30?-- Yes.

Am I correct in saying that?-- Yes.

Is it correct to say that this is not necessarily the entirety of the material that was utilised for the purpose of making this presentation?-- No, it is not.

What's missing?-- Several of the attachments. The agenda appears to be there. Attachment 2, which is a copy of the presentation, is there. Handout 3, which is titled "Public Report", there isn't a copy there.

Which document is that again?-- The "Public Report".

Yes?-- Handout 4, which is titled "Hospital Report", there isn't a handout there.

You mean a copy there?-- Sorry.

You mean there isn't a copy there?-- No, sorry. Handout 5, list of indicators, and there isn't a copy there. Handout 6, list of in-scope hospitals, and, yes, there is a copy there. Handout 7, which is draft media plan for public report, and there is not a copy there, and handout 8, which is draft media plan for hospital report, which there is a copy there.

You have made a search for these documents?-- Yes.

And you can't find them?-- No, not as they were then.

Thank you. It is a convenient time.

COMMISSIONER: Thank you.

THE COMMISSION ADJOURNED AT 1.01 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.32 P.M.

JUSTIN EDWARD COLLINS, CONTINUING EXAMINATION-IN-CHIEF:

MR DOUGLAS: Mr Collins, before the adjournment I had taken you to the presentation that you made to the Director-General and the Minister on 13th August 2002. Do you recall that?-- Yes.

And do you recall that I had taken you to exhibit JEC30 to your second statement and you had identified a number of documents which you had been able to find and those which you hadn't been able to find which were utilised and presented at that presentation?-- That is right.

Now, one of the documents which you said was presented - before I go on, who was present at the presentation apart from you, Director-General Stable and Minister Edmond?-- Helen Little, the senior departmental liaison officer, Bruce Picard, Tony Hayes, Glen Cuff, myself, and Susan Rael.

COMMISSIONER: You have got a question mark against her on the front of your - you weren't sure about that?-- I think it was just the spelling of her name, I think was the question mark.

I see, all right?-- And Lisa Crawford was there.

MR DOUGLAS: All right. Just going through those if I may - I think I can deal with them in order - Helen Little was a Queensland Health employee?-- That's right.

She was a liaison officer between Queensland Health and the Minister?-- I believe that's her role.

Was she based in the Minister's office or-----?-- No, I don't believe so.

Thank you. You mentioned Mr Bruce Picard. Was he a policy advisor to the Minister?-- Yes, he was.

You mentioned a Dr Cuff. You have already identified that person?-- Yes.

Who were the other persons who were present?-- Tony Hayes.

COMMISSIONER: Dr Hayes, is it, or Mr?-- I think it is Mr.

Okay.

MR DOUGLAS: What was his designation?-- He was the Acting Deputy Director-General.

The Acting Deputy Director-General?-- That's right.

And who else?-- Susan Rael.

What was her designation?-- She worked in the Media Communications Unit within Queensland Health.

Thank you. Anyone else?-- Lisa Crawford.

And was she a Queensland Health employee as well?-- Yes, she was.

She worked in the media section of Queensland Health?-- Yes.

Media and communications?-- That's right. That was her role. She actually worked for the Quality Improvement Enhancement Program.

She worked for the MQS services?-- Yes, her services were available to us.

Just coming back to what is described in exhibit JEC30 as handout 8, entitled "Draft media plan for hospital report"?-- Yes.

Are you with that document?-- Yes.

Looking at that document, it has pagination at the foot of the page?-- Yes.

At the foot of each page of the document?-- Yep.

It may be difficult for you to answer this, but I notice that there seems to be one page missing. Page 4 of 9 is missing. You will see page 3 of nine at the foot?-- Yes.

If you go to the next page, the pagination goes to the side of the page which is at the foot of the table 5 of 9?-- Yes.

You can't tell us what was on page 4 of 9, can you?-- No, I can't, sorry.

Thank you. Could I ask you, please, to go then to the second page of the document? Perhaps we can go to the first page initially. The heading is "Communication Strategy, Measured Quality Facility Report Queensland Hospitals, the 21st Century - first report 2002"?-- Yes.

If you go to the second page of the document, about 50 per cent of the way down, halfway down, there is a heading "Communication Objectives"?-- Yes.

There is a series of dot points there. Do you see that?-- Yes.

Can I just pause there and say is this a document that you drafted?-- No.

Is it a document that one of those present drafted?-- Yes.

Who drafted it?-- Lisa Crawford.

Did Lisa Crawford draft it with your assistance?-- Yes, she did.

Did you read the document prior to it being handed out at the meeting?-- I don't think I would have read it in its entirety.

COMMISSIONER: But you knew its substance?-- Yes, yes.

MR DOUGLAS: As far as you were concerned, it was factually correct?-- Yes.

If you go to that second page then under the heading "Communication Objectives", there are a series of dot points?-- Yes.

And those dot points you knew to be the objectives sought to be obtained or achieved by Queensland Health in the communication of the MQS strategy?-- Yes.

The first of those is "Queensland Health is acting on its commitment to continuous improvement"?-- Yes.

The second one, "Queensland Health is delivering on its commitment to be open and transparent", correct?-- Yes.

The last one is at the foot of the page, "Queensland Health is improving responsiveness to community needs and expectations by encouraging participation and feedback"?-- Yes.

If you go further up the page, there is a heading, being the second heading of the document, which is "Issues"?-- Sorry, yes.

I think it might be obscured by your-----?-- Bulldog clip.

Bulldog clip, thank you. The first of those dot points is "journalists will request individual facility reports on local hospitals once they are aware of their existence"?-- Yes.

"A decision needs to be made on whether access will be granted administratively or only through a freedom of information request"?-- Yes.

Have I cited that correctly?-- Yes.

What you understood was being communicated with your knowledge to those present at the meeting by this document by that particular recitation was the fact that local hospital reports, as opposed to the public pool, may well be the subject of request issued by media to district managers or may be elicited by FOI application which is successful?-- Yes.

What you were seeking to identify there was a need to determine whether or not the hospital report should be the subject of issue upon request, so to speak, or be inhibited

such that the applicant for the document need to make a freedom of information application and be successful in the application?-- Yes.

So it was either have a strategy in place whereby if someone asks for it they are given it, even though it is not publicly available?-- Yes.

Or alternatively leave it to that person who wants it to avail himself or herself or itself of the FOI legislation and take their chances?-- Yes.

Thank you. Either way, what you were communicating in this portion of this document to those present at the presentation was the need for that process to be identified as one which was involved in the MQS program-----?-- Yes.

-----that Queensland Health was putting forward?-- Yes.

As part of that process, one of the dot points further under that heading "Issues" is that Queensland Health and the districts "need to identify a district spokesperson to talk to individual facility reports", and you put in parenthesis "(should they be released) and answer media questions locally"?-- Yes.

The words in parenthesis, "should they be released", was a reference to, I suggest, the accessing of the hospital reports administratively as opposed to by FOI request referred to in the first dot point?-- Yes.

This document, was it one which was spoken to at the presentation?-- Yes.

Who spoke to it?-- Lisa Crawford did.

You were present when she spoke about it?-- Yes, I was.

Did she speak more or less in the terms that I have just ventilated with you?-- Perhaps a little bit more broadly. I don't think she went through it in as much detail.

But she went through it nonetheless?-- Yes, I believe so.

Did any person, do you recall, ask any questions about that particular aspect of the matter under the heading "Issues"?-- No, I don't recall.

In your statement at paragraphs 18 and 19 - this is your second statement - you say that you did not raise at that presentation meeting with any person that it was appropriate or apt, or that there might be considered that the phase 1 hospital report should be taken to cabinet?-- I didn't, no.

Are you quite sure about that?-- Yes.

Dr Cuff had raised the issue with you previously, you told us?-- Yes.

Are you sure Dr Cuff didn't raise it at the meeting?-- Not that I recall.

Are you saying you don't recall or that you recall that he didn't?-- I recall that he didn't.

You say in your statement that the issue of taking the program documents to cabinet was raised by Minister Edmond?-- Yes, it was.

Are you quite sure it was Minister Edmond and not the Director-General Stable?-- Yes.

Do you recall the phraseology used or the effect of what was used in order for her to communicate that?-- No.

If you don't, please say so?-- No, I don't.

Do you recall her saying why the documents should be taken to cabinet?-- No, she didn't say why.

In paragraph 20 of your second statement, you make reference to an email which comes fairly close on the heels of your presentation on the 13th of August 2002, and it is an email with - or that you communicated to Mr Filby on 26 August 2002?-- Yes.

That's an exhibit JEC31, correct? Take your time. I will put it on the overhead, Commissioner?-- Yes.

Thank you. You have already identified Mr Filby as one of your superiors?-- Yes.

Thank you. The date of the email is 28 August 2002?-- Yes.

I stand corrected on that. There is a reply email from Mr Filby to you on the 28th of August 2002?-- Yes.

And it is in response to your email to Mr Filby of 26th August 2002?-- Yes.

That's some 13 days after the presentation, correct?-- Yes.

Matters pertaining to the presentation were then fresh in your mind?-- Yes.

Thank you. You record in the third paragraph of your email to Mr Filby that one or some of the persons present at the meeting was or were, to quote you "very concerned about the media consequences". Do you see that?-- Yes.

Does that reference in that email enable you to refresh your memory as to who it was expressed concern about media consequences at the presentation?-- I believe discussion at the time around the media issues were raised by Mr Bruce Picard.

Mr Bruce Picard, you identified earlier, was one of the Minister's advisors?-- Yes.

Was he the only person who raised that issue?-- Ms Edmonds and Ms Little, I think, as well.

Do you recall what was said by each or any of them about that issue?-- No, I don't. Not individually.

You go on to say in your email - and I quote - "as a result, it has been decided that the reports should go to cabinet"?-- Yes.

As at-----

COMMISSIONER: Sorry.

MR DOUGLAS: I am sorry.

COMMISSIONER: Those two things were plainly related? Those two matters were plainly related; that is concern about publicity and as a consequence that the report should go to cabinet?-- Reading it in the email, that seems to be the case, yes.

Well, that's what you thought at the time. That was your impression of what those people said; Mr Picard, Ms Edmond and the other person?-- Yes.

All right, thank you.

MR DOUGLAS: Perhaps the language is a little oblique after that, but you go on to mention both the public and hospital reports?-- Yes.

And then you have inserted in parenthesis the words "(with the view that the DMs" - being reference to the district managers-----?-- Yes.

-----"would be the only recipients of the hospital report"?-- Yes.

Now, as at the 26th of August 2002 - I should say by that date had you been directed, informed or instructed by some person that only the district managers would receive the hospital report generated by the program?-- I don't actually remember specifically receiving that instruction, no.

You had no reason to mislead Mr Filby in your communication on this occasion?-- No.

You were seeking to accurately inform him, as one of your superiors, of what the current state of play was, so to speak?-- Yes.

As you understood it, in respect of the disposition of these reports, namely the draft public report and the hospital reports?-- Yes.

There was also at this time some urgency in your mind in getting both reports into the field?-- Yes.

That would have been a good reason for you to be informing Mr Filby as to your understanding of the status or progress of these documents?-- Actually, Dr Filby had left the organisation at that point. He started work in South Australia.

I see. That's why it has "DHSSAGOV"?-- Yes.

Why would you be communicating to him in South Australia about those matters? Just to keep him informed?-- Well, he initially emailed me asking for some slides on a PowerPoint presentation that I had promised him before leaving and at the end of that he asked what is the current status of the reports.

You still had no reason to mislead him as to the true-----?-- No.

-----status of matters at that time?-- No.

COMMISSIONER: Mr Collins, the view that the DMs would be the only recipient of the hospital reports-----?-- Yes.

-----was contrary to the view that you had expressed earlier?-- Prior to the meeting with the Director-General.

Correct?-- And the Minister.

And still contrary to your view as to what's appropriate?-- Yes.

Thank you.

MR DOUGLAS: In paragraphs 22 to 31 of your second statement, you speak about and refer to documents going to what appears to be, on any view, the rather tortuous process of drafting the cabinet submission in respect of MQS phase 1 documents?-- Yes.

Your various consultations with other public servants and political advisors are referred to in your statement?-- Yes.

And your consultations ultimately led, by way of drafting and redrafting it, to what you understood to be the final form of the cabinet submissions?-- Yes.

That consultation which you undertook was with personnel from the office of Minister Edmond, the office of the Premier, Queensland Treasury and also offices of Queensland Health?-- Yes.

And it is correct to say that contributions were made, to put it neutrally, both in respect of the draft public report and also the content of the submission itself?-- Yes.

The public report was to be annexed to the cabinet submission?-- Yes.

And ultimately that's what occurred?-- Yes.

Now, the ultimate cabinet submission, as you understood it to be, insofar as the consultation thereupon occurred with the office of the Premier and Cabinet-----?-- Yes.

-----involved you speaking to a Ms Lynne Rodgers and Ms Roz Walker?-- Yes.

You know each of those persons?-- Yes, I do.

Was each of those persons a policy advisor within the Premier's Department at the time?-- I believe so, yes.

The same cabinet submission tells us that the persons you consulted within Treasury were Mrs Tania Homan and Ms Peta Tran?-- Yes.

Is that so?-- Yes.

Who did you understand each of those persons to be?-- Members of the - or staff of the Treasury Department.

Were they staff within the office of the Treasurer or staff public servants within Treasury?-- I believe the latter.

The progressive drafting of the document, that is the cabinet submission, remained ultimately for you to complete?-- Yes.

But you completed it with the benefit of the consultations which you made in respect of the document?-- Yes.

Did you make all the changes that were suggested to you by those persons?-- A large majority of.

Did you feel you had any choice about the matter?-- Mostly. I think if there was something that I really didn't believe in, I had the opportunity to express that.

But an opportunity, nonetheless, to enforce your view?-- I didn't put forward my view strongly, no.

You say in paragraph 30 of your second statement this - and I will quote from it: "I do not recall when or who decided but some time during the drafting of the first" - that is the 2002 - "cabinet submission, it was decided to advise cabinet that it was not intended to release the phase 1 hospital reports publicly?-- Yes.

It is correct to say, isn't it, that the phase 1 hospital reports were never intended to be released publicly, at least in the same fashion as the finalised public report?-- Yes.

I am just interested in your statement, therefore, sir. Was

your statement a reference back to what you canvassed at the presentation which you made to the Minister and the Director-General on 13 August when you said a decision had to be made as to whether the hospital reports would be released administratively or made the subject of FOI presentation, or is it something else again?-- Can you just clarify that for me?

Yes, I am seeking to have you clarify what appears at paragraph 30 of your statement?-- Uh-huh.

Where, if one looks at the sentence as a whole, you seem to be saying that it was changed, that is the proposal was changed, such that the hospital reports were no longer to be released publicly?-- Yes.

And what I have suggested to you is on your evidence it was never intended that they be released publicly as such?-- Uh-huh.

I am seeking to have you clarify what it is that you are communicating to the Commission by that paragraph?-- I think what I am trying to communicate is basically at some point between the presentation to the Minister and the Director-General and the actual cabinet submission being finalised, it was advised that that phrase should be included.

COMMISSIONER: Advised by whom?-- Sorry?

Advised by whom?-- Someone that I would have consulted with in that - in that cohort, including the Premier, cabinet, Treasury Ministers.

If I can put it neutrally, someone at the political end, not at the Department of Health end?-- More than likely, yes, based on my recollection, yes.

MR DOUGLAS: All right. Can you be any more specific than that? If you can't be, say so, but do attempt to be?-- Yes, I think certainly the members that I dealt with from the Premier's and cabinet, I think had the most input, if you like, into that process, from memory.

At the time, sir, that is as at 2002, in the lead-up to the finalisation of this cabinet submission, were you a person who enjoyed any experience in the drafting of cabinet submissions?-- No, I had not.

You were a novice at the process?-- Yes, I was.

Were you relying very much upon those experienced in these matters?-- Yes, I was.

A number of the e-mails that you include in your second statement involve you emailing Mr Brad Smith of the cabinet committee asking for assistance in that regard?-- Yes.

I will come to those. Could I take you first to exhibit JEC32

of your second statement?-- Yes.

Now, before we go into this, do you recall your second statement was generated after a request by the counsel assisting the Commission that you provide further information?-- Yes.

In fact, was there a communication you received that was passed on to you telling you that I had asked you to look for drafts of your cabinet submission?-- Yes.

In fact, you were asked to provide, if you could, the first or any subsequent draft of that submission?-- Yes.

Is it the case that you have been unable to find your first draft?-- To positively identify it, yes.

When you say to positively identify it, what do you mean? There are a couple of candidates out there we haven't seen?-- From the records, the hard copies that I have, that is the information that I have provided.

Have you looked at the - have you looked for any soft copies on your hard drive?-- Yes, I have. I haven't found them.

You have searched in your hard drive?-- Yes.

To see if you can find the original document?-- Yes.

In exhibit JEC32 you provide what you say is a draft of the cabinet submission?-- Yes.

Thank you. If you can just turn, please, to the fifth sheet in to start with, you will see a portion of the draft submission?-- Yes.

And there is a heading towards the foot of the page "Consultation addendum"?-- Yes.

Now, from the dates which appear there on this document, it follows, like night follows day, does it not, that this particular draft must have followed the 15th of October 2002?-- Yes, it does.

You started drafting the document well prior to that date, didn't you?-- I would imagine so, yes.

You would have started drafting this document no later than some time in September 2002?-- Yes.

Remembering the presentation was on the 13th of August?-- Yes.

Thank you. Remaining with that page if you would, please, under that statement heading, "Public presentation."-----?-- Yes.

-----in the second paragraph it reads - I will read it into the record, "The sixty hospital reports will be distributed to the relevant zonal & District Managers only, for further dissemination and action."?-- Yes.

Now, there's some handwriting after those typed words?-- Yes.

Is that your handwriting?-- Yes, it is.

What does that say?-- "Will not be available publicly."

Do you recall writing those words in there?-- No, I don't.

Do you recall whether you generated that ID yourself?-- No, I don't recall.

This is a late draft, is it not, given the date?-- Yes.

Given that date - sorry, I will start again. Prior to, say, on or about the 15th of October 2002, are you able to recall approximately how many drafts of this document you prepared?-- I couldn't tell you accurately, no.

There's other handwriting over that page?-- Yes.

Is that all your handwriting?-- Some of it is.

COMMISSIONER: Some is better than others?-- Yes.

I presume the worst part is yours?-- Yes, it is.

And-----

MR DOUGLAS: Commissioner, you should know.

COMMISSIONER: Thank you.

MR DOUGLAS: Sorry.

COMMISSIONER: Even I can't read that.

MR DOUGLAS: Which part isn't your handwriting?-- The part down the bottom where it's written "Tanya Homan and Peta Tran".

All the rest is your handwriting?-- Yes, it is.

You couldn't say, of course, who crossed out the words under heading, "Consultation."?-- No, I couldn't.

Thank you. Go back to the previous page, do you see some handwriting adjacent to heading towards the foot of the page, "Hospital records."?-- Yes, I do.

Do you recall whose handwriting that is?-- That is my handwriting.

Now, this document does go on in its body. If you turn over the next page you will see a heading and the second heading appears, "Information Submission Cover Sheet."?-- Yes.

All right. And two pages on it's a heading, "Body of Submission."?-- Yes.

And if you look at - if you go through the various paragraphs to the last paragraph-----?-- Yes.

-----there's a paragraph 25 which is headed up, "Again, public presentation." Do you see that?-- Yes.

And the words have been added to paragraph 25, "And will not be made publicly available."?-- Yes.

I just need to understand, if you can tell me, with this particular exhibit, that page in particular, was it prepared at the same time as the document we just looked at?-- At the same time?

Yes?-- I wouldn't think so.

COMMISSIONER: Doesn't look like it, does it?

MR DOUGLAS: No, it doesn't look like it.

COMMISSIONER: Looks like it was prepared later?-- Yes.

MR DOUGLAS: Can I give you another example of that, if I may. If you go to the next sheet in the document, there's a heading, "Briefing note for Cabinet submission number 3034." See that?-- Yes.

Did you draft that document?-- Yes, I did.

Thank you. Now, you will see that it doesn't have paragraph numbering, it just has Xs beside the paragraph?-- Yes.

Can I just pause there and say this: were you asked to prepare a briefing note for the Minister to be utilised when the submission went to Cabinet?-- Yes.

And were you asked to draft-----

COMMISSIONER: Go back to page 8. You will see that's

certainly so because on page 8 of that document it has also added, "Tania Homan and Peta Tran".

MR DOUGLAS: Yes. That's quite right. That is quite right, Commissioner.

COMMISSIONER: Sorry.

MR DOUGLAS: Now, do you understand the point the Commissioner just made?-- Yes.

If you go back to page - in contrast with the earlier document, which forms part of this exhibit, there's been added a reference to Ms Homan and Ms Tran. Do you see that?-- Yes.

Just remaining with the briefing note for a moment, on the first page of the briefing note your handwriting appears at the foot of the page?-- Yes.

There's some other handwriting further up the page. The word "each" and the word "nationally", is that your handwriting?-- I don't believe so.

Thank you. There's some other handwriting which seems to be under the same as that last mentioned hand on the next page?-- Yes.

About 50 per cent of the way down the page?-- Yes.

And then with the last X on the page there's a question, "Who will be recipients of hospital reports?"?-- Yes.

And the answer, the typed answer, is, "Each zonal manager and District Manager will receive a copy of the hospital report which is located in their zone or district."?-- Yes.

Now, you have then written words, "Will not be made publicly"-----

COMMISSIONER: "Publicly".

MR DOUGLAS: -----"available because..."?-- Yes.

You have written something else?-- Yes.

Is that your handwriting which says, "Question how has QH"?-- No. That's not mine.

Are you able to read that? Sorry, I will start again. Do you know whose handwriting that is?-- No, I don't.

Your handwriting does appear at the foot of the page, though? There's another question?-- Yep.

"What QH", or, "QI activity."?-- I think it was "Q" for question. Yep, what question, "I" activities.

Yes. Come back to the question that you-----

COMMISSIONER: Who is QI?-- Quality Improvement Program.

Oh, sorry.

MR DOUGLAS: Come back to the question. You say it's not your handwriting, but at the foot of that page-----?-- Yes.

-----the question seems to be, "How is QH prepared to release these reports to the public?"?-- Yes.

There seems to be an answer, "The attached draft"?-- "Com strategy".

"Com", communication, "strategy"?-- "Communication strategy", yes.

"Has been prepared"?-- Yes.

There's an "H", "Press release advocate strategy involving BB". What would be BB?-- Bruce Barraclough.

He is a clinical advisor who was prepared to champion the measured quality strategy?-- Yes. He was. He was also the Chair of the Australian Council for Quality and Safety Healthcare.

He's referred to earlier in your statements?-- Yes.

Now, pausing there for a moment, if you look at what's on that page and look at the next page of the exhibit, it would appear to be, I suggest, the same document?-- Yes.

But with, can I suggest to you, a later draft of the document?-- Yes.

Which incorporates the changes which appear on the previous two pages, at least in substantial part, plus a few other things?-- Yes.

So if we go to the second page of that document, the penultimate item on that page there is a question, "Who" - I will start again. Question, "Who will be the recipients of the hospital reports?"?-- Yes.

And then there's an answer which I will read into the record, "Each zonal manager and District Manager will receive a copy of their respective hospital report(s). The hospital reports will not be made available publicly due to the potential for misinterpretation of the results, mislabeling of the hospital's performance, and potential negative impact on the initiation of quality improvement activities at the facility or departmental level."?-- Yes.

Just looking at to the equivalent portion of the previous document, you will recall that you wrote in the words, "Will not be made publicly available because", and there was a series of dots?-- Yes.

Can I suggest to you that what occurred intervening those two documents was that you came up with some reasons that you could supply to the Minister to vindicate or justify why the hospital reports would not be made publicly available?

COMMISSIONER: Or did someone else do that?-- I don't actually recall.

MR DOUGLAS: Certainly can I suggest to you at the time that you wrote the words on the - can I call it the first briefing note?-- Yes.

At least of this bundle?-- Yes.

You didn't write in any reasons why it was that the hospital reports would not be made publicly available?-- No.

To be frank, the reason why, I suggest, you wouldn't have written anything in is because you couldn't think of any compelling reasons why that was so?-- Quite possibly, yes.

But you don't know the author of those words in the second briefing note; that is the words starting with, "Due to the potential"?-- Well, I would have been the one that actually typed it but it perhaps would have been in consultation with others.

COMMISSIONER: With "others", you mean the people in the Department of Premier and Cabinet and the Department of Treasury?-- Or perhaps even my line manager as well.

All right.

MR DOUGLAS: Forgetting about the genesis or derivation of the words, can I suggest to you that what is expressed there in that answer, particularly focusing on the words "due to" and that that follows, was not your view of what the position was as to why the hospital reports ought not be released publicly?-- My personal view, no.

It also wasn't the view that you can say was identified by Queensland Health under the NQS program up to the middle of 2002?-- No.

You agree with that, don't you?-- Yes, I do.

Thank you. Just bear with me for a moment, Commissioner. I am getting ahead of myself. Yes, thank you. Could I invite you now, please, to look at Exhibit JEC36 to your second statement, JEC36, Mr Collins?-- Yes.

If I am going too quickly, please tell me?-- Yes.

Thank you. Now, that is a document which consists of an e-mail from you to Mr Brad Smith?-- Yes.

And again Mr Brad Smith, you understood to be the secretary of

the Cabinet?-- Is he's the manager of Parliamentary and Ministerial Services in Queensland Health.

Thank you?-- Yep.

You communicate there, if I can paraphrase, that you were attaching the Cabinet submission"?-- Yes.

You use the words, "Prem & Cab changes"?-- Yes.

What were you seeking to communicate to Mr Smith utilising those abbreviations?-- The Department of Premier and Cabinet.

You then refer to the fact that Dr Cuff and Ms Crawford have viewed the submission and you say, "And are happy that it reflects the suggested changes."?-- Mmm-hmm.

Is that not so?-- That's right.

And then you inquire of Mr Smith whether he would like you to forward a copy to Ms Walker?-- Yes.

And there follows with that document the Cabinet submission as it had been drafted to date?-- Yes.

Have you checked to see whether this document, which is attached to this e-mail, is, in fact, word for word what appears in the final Cabinet submission?-- Yes, I have checked.

And there is a difference, isn't there?-- There is.

Could you identify to the Commissioner what the difference is? I might be able to assist you?-- Yes, please.

Was there more than one change or only one?-- There was more than one.

Can I suggest to you that the principal change appears or is to be found, and we can make the comparison of it if needs be - it's quite mechanical?-- Yes.

You go to the third sheet, heading "Body of Submission"?-- Yes.

Page 3, "Body of Submission Objective", there's a paragraph 1?-- Yes.

Some words were added to that, weren't they?-- Yes.

And the words were, "And are not to be made publicly available.", or words to that effect?-- The words that I have here are "which will not be released publicly."

So, it seems after leaving you the submission was changed yet again?-- It appears to be, yes.

Do you know who made those changes?-- I don't know.

What are the other changes that you detected?-- In the summary portion of the submission.

Give me a page number, please? You mean the first two pages?-- Yes, cover sheet.

Thank you?-- I believe under, "Objective.", there were words added, "Proposed release of public".

COMMISSIONER: I do not see that. Where is that?-- "The objective title to inform Cabinet on the content of Queensland Health measured quality, public report and 60 hospital reports".

Yes?-- I believe from what I could tell the words that were added to that were "proposed release", of the public report and "60 hospitals".

MR DOUGLAS: Thank you. I'm not proposing - I don't propose to ask the witness any more questions about that, Commissioner, because it's quite unproductive. It is a mechanical exercise to see the changes.

COMMISSIONER: Yes.

MR DOUGLAS: After you sent this e-mail to Mr Collins on the 4th of November 2002-----?-- Mr Smith.

Sorry, Mr Smith, I apologise. I will start again. After you sent this e-mail to Mr Smith on the 4th of November-----?-- Yes.

-----2002, were you asked or - asked about or shown any changes, that is further changes proposed to be made to the Cabinet submission as you drafted it at that date?-- No, I wasn't.

Thank you. Could I take you then, please, to Exhibit 35, JEC35 to your second affidavit?-- Yes.

Second statement. Now, at that point on the lead e-mail in that exhibit, Mr Smith is communicating to you by e-mail-----?-- Yes.

-----on the 31st of October 2002?-- Yes.

So this is shortly prior to the last e-mail we just looked at?-- Yes.

And a copy is forwarded to various people, including Mr Picard, a lady by the name of Ms Horbury?-- Yes.

And also the Director-General, Dr Stable?-- Yes.

COMMISSIONER: Ms Horbury looks to be in the Minister's office too.

MR DOUGLAS: Yes. I was about to ask that question. Is your recollection that both Mr Picard and Ms Horbury was a person working in the office of Minister Edmond?-- Yes.

You knew Ms Horbury?-- Yes, I did.

And you were told by that e-mail that the Minister had considered the Cabinet submission and the proposed public report?-- Yes.

And the Minister made a number of suggested changes to that document?-- Yes.

Thank you. In that same document - bear with me, please. The second page of that document is one - if you look at the introducing e-mail, it's an e-mail from you on the 31st of October 2002?-- Yes.

Sent at 2.44 p.m.?-- Yes.

And you're telling Mr Smith at that point that you will progress with the suggested changes-----?-- Yes.

-----to the public report. And you ask a question of Mr Smith. I quote, "I assume that even though the Minister is happy with the actual Cabinet submission paper, I still incorporate the suggestion from Premiers and Cabinet, (i.e. e-mail from Ros Walker yesterday)?" I have recited that correctly, haven't I?-- Yes.

You got a response from Mr Smith the same day at 3.23 p.m. and I quote, "Please incorporate the issues raised by Ros Walker. This helps ensure that the Premier is happy when the matter is considered in Cabinet in relation to the concerns about the retention rates, et cetera. I will also pass on the Minister's concerns" - "pass on the Minister's concerns on to Gloria Wallace whose area have been responsible for providing the advice re turnover of nurses."?-- Yes.

Thank you. Did you incorporate the issues raised by Ms Walker of the Premier's office?-- Yes, I did.

Thank you. Did you feel you had any choice about the matter?-- Probably not, no.

If you could look now, please, at Exhibit JEC38 to your affidavit?-- Yes.

Even before you received notice of the Cabinet decision, you had an exchange of e-mails with Mr Smith-----?-- Yes.

-----on the 11th of November with respect to that decision in prospect?-- Yes.

And that particular exchange of e-mails deals with the matter?-- Mmm-hmm.

I won't read it all into the record but is it correct to say

you were making an inquiry of the gentleman concerned, Mr Smith, as to the consequences of the documents in question going to Cabinet?-- Yes.

And you were wanting to know what the security requirements were?-- Yes.

Mr Smith responded to you - I will read this part into the record, "Cabinet will be approving the public release of the report 'Queensland Hospitals in the 21st Century'. The report will be a public document and the copies distributed will have no security attached to them. The 60 individual hospital reports, on the other hand, should remain confidential and to help maintain any protection afforded by the FOI document, the Cabinet material, any distribution of these reports to District Managers, et cetera, should be in a confidential/restricted basis."?-- Yes.

So this is prior to you receiving any notification of the Cabinet decision?-- Yes, it is.

Thank you. On the 12th of November 2002, you received another e-mail from Mr Smith, did you not?-- Yes, I did.

And that's Exhibit 340 in these proceedings. Can this be put on the visualiser, please. Sir, that was an e-mail which you received on that date?-- Yes, it is.

And at least from the face of the e-mail you believed it was sent to others as well?-- Yes.

Including your superior, Mr Cuff, and the director - sorry, the General Manager of Health Services, Mr Buckland?-- Yes.

And in turn above him, the Director-General, Dr Stable?-- Yes.

You refer to this document again later in your statements, do you not?-- Yes.

Can I ask you to keep in mind this document, whichever way you will, but perhaps you can think of it as the 12th November 2002 e-mail instruction?-- Yes.

Did that document have by its content an affect upon your subsequent actions in the disposition of the hospital reports?-- Yes, it did.

Thank you. That can be returned to me, please. Now, on the 14th of November 2002 you received the formal Cabinet decision?-- Yes.

And that is Exhibit JEC10 to your first affidavit?-- Yes.

Thank you. Do you have a copy of that with you?-- Yes, I do.

Thank you. Again, for convenience, Commissioner, I will put it on the visualiser.

COMMISSIONER: Okay.

MR DOUGLAS: You read that document at the time?-- Yes.

Just as you read the last document I showed you at the time you received it?-- Yes.

This document, you can see that that seemed to necessitate you under Minister Edmond and her staff dealing with the staff of the Premier on, among other things, the finalisation of the strategy, and I will quote it, "Finalisation of strategy to manage the dissemination of the information from the 60 hospital reports"?-- Yes.

And you proceeded to do that?-- Yes, we did.

Thank you. That can be returned to me. We have now reached a point in time whereby it is November of 2002; correct?-- Yes.

From what you have said earlier, there's been some delay in the dissemination of these hospital reports at this point in time?-- Yes.

Was that giving you concern?-- Yes, it was.

Why was it giving you concern?-- The age of the data and the usefulness of the reports to clinicians and managers every day that the data got older.

Why would it be that them receiving old data, every day it becomes older, was disadvantageous to the discharge of the program?-- It basically meant that the clinicians - when you are trying to engage them in quality improvement, the more real-time the data is generally I think the better you can engage them, rather than taking them back two or so years to what was happening back then. Generally they are more interested in what happened yesterday if possible.

That was your concern at the time in November 2002?-- Yes.

Has your subsequent experience in eliciting this information from clinicians as part of the program vindicated your view which you held at that time?-- Absolutely.

COMMISSIONER: And you are also concerned even at that stage about the restriction on the extent of communication which looked as if it was going to be allowed?-- Sorry, could you just clarify that?

You were also concerned even at that stage before the final decision had been made?-- Yes.

Which had been delegated to the Premier and the Minister for Health?-- Yes.

About the apparent restriction?-- Yes.

On the people to whom the hospital reports could be distributed?-- Yes.

And that was also an inhibiting factor in enabling satisfactory feedback?-- Yes.

And information to the - those concerned?-- Yes.

Yes.

MR DOUGLAS: Just to take up the Commissioner's point, that matter was one which you expressed in writing on several occasions, wasn't it?-- I believe so, yes.

Right. I want you to look now, please, at Exhibit JEC13 to your first statement?-- Yes.

That is your briefing to the Minister of 10th March 2003?-- Yes.

Can that be put on the visualiser, please. Do you have that before you?-- Yes, I do.

Did you draft that document?-- Yes, I did.

Could I take you to the last page of that document, please?-- Yes.

Can I tell you, Commissioner, that this document is already in evidence as Exhibit 342 as well. It was put in with Mr Buckland. There is a heading on the last page which is "Key Issues"?-- Yes.

And there is expressed there immediately under that paragraph, and I'll read it into the record, "Due to the restricted distribution of the measured quality hospital reports (District Managers only), difficulty may be encountered in the dissemination of the results within the hospital environment. This may impact on the usefulness of the hospital reports and limit the engagement of clinicians and managers to whom change is to be delivered." I have correctly recited it?-- Yes.

That was your view at the time?-- Yes, it was.

Thank you. I'll come back to the second paragraph in a moment. If I could just take you to the first page of the document, please?-- Yes.

This was submitted to the Minister?-- Yes.

And if it could be scrolled up on the visualiser, please. In fact, it was - the Minister has signed her name to it?-- Yes.

It appears to be agreed, signed it and is dated the 17th March 2003?-- Yes.

Thank you. Go back to the last page again?-- Yes.

The second paragraph under the heading "Key Issues" reads as follows, and I'll read it into the record: "The phase 1 hospital reports and public report were considered by cabinet on 11 November 2002. It is recommended that the phase 2 hospital reports also be considered by cabinet as an information submission to afford it the same consideration for FOI exemption"?-- Yes.

Can I say a couple of things - I'm sorry, I'll start again. Can I ask you a couple of questions about that. The phase 2 hospital reports was in effect the reports resulting from the second round of data collection which had occurred through 2002?-- Yes.

You say in your statement that the last clause in that paragraph, that is from the words "to afford" afterwards?-- Yes.

Were inserted into that document by you at the suggestion of your line manager Dr Cuff?-- That is my recollection, yes.

And did he discuss with you that matter before he suggested that you include those words?-- No, he didn't.

Did you understand the import of those words when you inserted them in that document?-- I did.

You had previously discussed FOI exemption on a number of

occasions-----?-- Yes.

-----electronically or orally both with Mr Cuff initially-----?-- Yes.

-----I think and subsequently on at least one occasion with Mr Smith?-- Smith, yes.

And also there was a reference which I'll come in a moment by Mr Picard to the same issue?-- Yes.

Back in September 2002?-- Yes.

I will come to that later. Again, coming back to that first paragraph commencing "Due to the restricted distribution"?-- Yes.

That was your honestly held view at that time?-- Yes, it was.

COMMISSIONER: And the restricted distribution, just to be completely clear, is that which at that stage was very much more restrictive than had been contemplated earlier and is set out at the bottom of page 2 of that document?-- Yes.

Yes.

MR DOUGLAS: The dissemination strategy which was approved by the Minister?-- Yes.

For the hospital reports involved to start with, the distribution of the hospital report for a particular hospital in electronic format only-----?-- Yes.

-----to the District Manager?-- Yes.

There was a software facility available to the effect that would disable any ability to copy that document?-- The majority - there was still some-----

COMMISSIONER: It was a security site accessible only by password?-- Yes, yes.

Yes.

MR DOUGLAS: With a - at least by way of intention, a disability within the software to copy the document?-- Yes.

Coupled with a labelling of the document including "cabinet in confidence"?-- Yes.

So as to communicate to any person who might see it that it was not to be copied or distributed?-- Yes.

The problem with that, can I suggest to you, which was in your mind at the time was that in order to engage clinicians, nurses and other staff at a hospital level-----?-- Yes.

-----you had to give them something?-- Yes.

In order to engage them?-- Absolutely.

And, in fact, even after this, you gave a presentation to the Minister and the Director-General which emphasised that very fact?-- Yes.

I will come to that. Just remaining though, if it can be left on the screen, Commissioner, with that particular submission to the Minister, in paragraph 34(n) on page 7 of your second statement you deal with the fact that Dr Cuff requested you to add that language about FOI?-- Sorry, which paragraph?

Paragraph 34(n) on page 7. Do you see that?-- Sorry, yes, I do.

Thank you. And you indicated a moment ago to me that you recall FOI being canvassed by Mr Picard?-- Yes.

Back in September?-- Yes.

Can I take you, please, in your second statement to Exhibit JEC33. Now, there's a few pages in this Exhibit JEC33 but can I take you, please, to the fifth-last sheet, the best way I can take you there. There's an e-mail exchange between you and Lisa Crawford. L-I-S-A Crawford. Do you have that? I believe it's the fifth-last sheet?-- Yes. Yes, it is, yep.

And Lisa Crawford was the media and communications employee within MQS?-- Yes. Well, within the quality improvement council program, yes.

MQS being one of her stables so to speak?-- One of the - she had to look after, yes.

Thank you. The initiating e-mail is one on 18th September 2002 sent at I think it's 12.11 p.m.?-- Yes.

And this particular e-mail, no doubt you will recall, follows a month or so after the presentation which you made to the Minister and the Director-General on 13th August 2002?-- Yes.

And Ms Crawford informs you that Mr Picard, Bruce Picard, has requested the documents which were utilised at the presentation I suggest?-- Yes.

That's what's being communicated, isn't it?-- Yes.

And you are told there by Ms Crawford that Mr Picard will consider the points raised in the communication plan?-- Yes.

You will recall the communication plan was hand out 8 of those utilised at the presentation; correct?-- Yes.

He goes on to say, apparently to Ms Crawford, "The submission should include the recommendation for (a) what is released, (b) how it is released - this will include some of the material from the communication plan"?-- Yes.

The last item or paragraph in the e-mail is this, Ms Crawford says to you, "I feel the main issue is criticism of QH's lack of transparency if FOI is prevented - Bruce said this is not a concern - it's dealt with as a whole of government response, i.e. it is a cabinet decision and that's the end of it"?-- Yes.

Did you discuss that with Ms Crawford?-- I recall discussing her concerns over Queensland Health's - criticism over Queensland Health's lack of transparency.

What was the concern that she expressed to you?-- That - that we would be criticised because it would be looked like they were trying to hide the documents.

COMMISSIONER: Sorry, I didn't hear that?-- We will be criticised because it looked as though we were trying to hide the documents.

Yes.

MR DOUGLAS: Were you speaking about the hospital reports-----?-- Yes.

-----when you were having that discussion?-- Yes.

Not the public report?-- No.

Was that a view that you shared?-- Yes.

Did you discuss with her any further what it was that Mr Picard had communicated to her about that issue?-- No.

Did Mr Picard discuss the matter with you?-- No, he didn't.

Mr Picard was a member then of the Minister's staff?-- Yes, he was.

That's Minister Edmond?-- Yes.

Thank you. Now, there's a matter I want to deal with which has its genesis in Exhibit JEC12 to your first statement. JEC12?-- Yes.

Are your notes of the - I'm sorry, I'll start again. JEC12 are some notes that you made?-- Yes.

At some point in time?-- Yes.

Now, your statement dictates that on the 11th of March 2003 there was a meeting of the MQS board?-- Yes.

I think you attach those minutes to your statement?-- Yes.

The minutes would appear, with respect, to be rather economical in expression. Was it a fairly short meeting?-- No.

It was a lengthy meeting?-- Yes.

And is it also correct to say that some or all of the matters which are contained in the document which is headed in handwriting "Justin's Notes", which are the third and following pages of JEC12-----?-- Yes.

-----were ventilated at that meeting?-- I would say the majority of. It was certainly my intention to work off that during the presentation - during the meeting.

Were those notes taken by you to the meeting?-- Yes, they were.

Reading those notes, it was clearly intended that it wasn't just you who was to ventilate matters the subject of those notes. They were also to be ventilated by others - namely, the various members of the program staff identified in the minutes under that very leading "Program Area Staff"?-- Yes.

Is it correct also to say that that document records a number of the meetings that you had and suggested changes to the public report?-- Yes.

And those various changes are canvassed in the e-mails which you annexed to your second report as well, are they not?-- Yes.

Commissioner, if I can just pause there for a moment. What I have had prepared in my office is a comparison of the public report, if I can call it that, the draft public report, as it was submitted to cabinet in November 2002 and the public report as it was eventually issued in a form which is Exhibit 352. I wasn't going to put that to this witness because it seems to me it was a-----

COMMISSIONER: Just a matter of comparison.

MR DOUGLAS: Just a matter of comparison.

COMMISSIONER: Yes, indeed.

MR DOUGLAS: But what I will do, Commissioner, is distribute to the parties the fruits of those labours and I have done it this way for those who are beside and behind me: I have gone to first to the report as it was submitted to cabinet. I have marked on that document - I had marked on that document the portions which have been taken out and I have also marked those which had been reworded. I'll distribute those pages which have been changed. I won't distribute the other pages because they haven't been changed. By reference to the document which is Exhibit 352 the same way, those pages which have been changed either by - marked as being re-worded without giving the details of the re-wording and the paragraphs that have been added, they appear on the document. So if those behind me or beside me wish to ask any questions about that, they can do so specifically.

COMMISSIONER: Are you going to tender that?

MR DOUGLAS: I am going to tender that, thank you. Can I tender those as a bundle, Commissioner, at this point? I wasn't going to show them to this witness.

COMMISSIONER: No, no, that's fine.

MR DOUGLAS: Thank you.

COMMISSIONER: Those bundles of comparative documents of Exhibit 352 will be Exhibit 379.

ADMITTED AND MARKED "EXHIBIT 379"

MR DOUGLAS: Mr Collins, as you have heard in the exchange just passed between the Commissioner and me, I don't propose to put all those things to you. It is a waste of time, a waste of time in the sense it will be wasting your time, that's what I mean, but it is correct to say that a number of changes were made?-- Yes, they were.

And those changes, by way of the vast majority of them, were generated either within the Minister's office or in the Office of Premier and Cabinet?-- Yes.

Sir, I don't want to categorise those changes to you as involving sanitising the report or any other epithet or pejorative or the like but it is correct to say that, as you record in your notes, a more favourable view was expressed in the report as a consequence of those changes?-- Yes.

COMMISSIONER: Well, favourable view of Queensland Health and its performance?-- Yes.

Thank you.

MR DOUGLAS: That's really a matter for you, Commissioner.

COMMISSIONER: Oh, well, I'm just getting the witness's view at the moment.

MR DOUGLAS: Thank you. I meant ultimately, Commissioner.

COMMISSIONER: Yes, quite.

MR DOUGLAS: On the second sheet of those notes towards the bottom - the bottom half of the page there is a reference to a nomenclature which appears in a number of places in the various reports and it is to the word outlier, O-U-T-L-I-E-R?-- Yes.

It seems a rather Orwellian phrase but is it intended to

identify a piece of data in respect of a hospital which appears to be outside the peer group?-- Yes.

It's a result which is outside the peer group?-- Yes.

And it could be a positive or a negative outlier?-- That's right.

A more favourable result or a more negative result?-- Correct.

Thank you. If you look at those same notes, that is, the notes which form part of Exhibit JEC12?-- Yes.

If you look on the second page of those notes under a heading "Develop a strategy to disseminate the contents of the hospital reports and form a team in QH to undertake"?-- Yes.

That is more or less a quote from the cabinet decision which was communicated to you in mid-November?-- Yes.

2002?-- Yes, yes.

And we're now on the 11th of March 2003, some four months or so later?-- Yes.

And you make a note there that you're referring to documents e-mailed to the board members. Were you seeking to refer in that respect to the initial e-mail ventilating cabinet's restriction of the 12th of November 2002 and also to the cabinet decision of two days' later?-- I don't believe so.

Well, what - were you referring there to some other documents which you'd sent to the board members?-- Yes.

Are you able to say what those documents are or were?-- I believe it would have been a number of documents but for certain, the last three in that attachment.

I see. So in that respect there were three documents which in effect are the last three sheets, the first one headed "Measure Quality Hospital Report, Dissemination Strategy"?-- Yes.

Coming back to the notes themselves though, the second paragraph in that same section on page 2 of the notes reads as follows and I'll read it into the record, "Restriction from cabinet meant that any dissemination strategy would require visits to sites to highlight outlier results, answer questions on the analysis and provide direction on where to go"?-- Yes.

That was your view at the time?-- Yes.

Now, you developed these topics in a submission or presentation I should say that you made to cabinet I should say - I'll start again. You developed these topics in a presentation you made to Minister Edmond and the Director-General Dr Stable on the 6th of May 2003; is that so?-- I believe so, yes.

Thank you. Would you look, please, at Exhibit JEC14?-- Yes.

Thank you. That's Exhibit JEC14 to your first affidavit?-- Yes.

That's a series of overheads which - and notes to those overheads which you'd presented to those two persons?-- Yes.

On that particular date?-- Sorry, just to clarify, in the end I don't think I actually presented those slides. It was more informal than what I had originally anticipated and I read to them.

Thank you. The form of the exhibit though consists of the slides themselves coupled with some typed wording or prose?-- Yes.

Under each of the slides?-- Yes.

Are you telling the Commissioner that what occurred on the 6th of May 2003 was that instead of affording a PowerPoint presentation on that occasion, you merely spoke to the Minister and the Director-General-----?-- Yes.

-----and did you utilise the typed notes which appear in this document in order to effect that presentation?-- Yes, I did.

And are you able to recall that in fact you read to them from the notes that appear here?-- Yes.

You're quite confident about that?-- Reasonably confident.

I realise it happened a couple of years ago. Well, did you look at anything else for the purposes of speaking to them on that occasion?-- I don't believe so.

If I could ask you then, please, to turn to the fourth sheet in on that particular document, of that particular exhibit, which is Exhibit JEC14?-- Yes.

You tell us that you didn't utilise the PowerPoint display?-- Yes.

But one can see that the display referred to the advice from cabinet 11th November 2002?-- Yes.

Did you refer to that e-mail from cabinet on the occasion of this presentation?-- I believe so.

Can you say definitely one way or the other?-- I couldn't say definitely.

Thank you. What you spoke to those present on this occasion about was the release of the hospital reports?-- Yes.

Just looking at your typed notes here, you say that, "It was decided" - I quote: "It was decided that any strategy

developed should consider how to do various things"?-- Yes.

Isn't that so?-- Yes.

And you say further down in the penultimate paragraph and-----

COMMISSIONER: Are we on the next page, are we?

MR DOUGLAS: No, I'm still on the same page, Commissioner, same page.

COMMISSIONER: You moved on from the page which is talking about the e-mail.

MR DOUGLAS: I haven't, Commissioner, because there is some typing underneath that.

COMMISSIONER: All right, all right.

MR DOUGLAS: Words appear there, "To obtain the serious attention of clinicians and managers"-----

COMMISSIONER: I can see it, all right.

MR DOUGLAS: Thank you. "To obtain the serious attention of clinicians and managers without physically distributing the reports we would need to undertake a presentation approximately two hours." Do you see that?-- Yes.

And what you told the Minister and the Director-General was that in order to engage the attention of those persons-----?-- Yes.

-----you'd need to actually go to the hospital site and make the presentation?-- Yes.

Then you say towards the foot of page, "To ensure the security of the reports but to still engage clinicians and managers we had to address the uncontrollable nature of the hard copy reports"?-- Yes.

"Therefore a strategy put forward proposed that we provide access to DMs only via a secure site"?-- Yes.

Were you describing there the - to those present the system that you had to put in place in order to complete the feedback process which was part of the MQS-----?-- Yes.

-----strategy, having regard to the fact that the communication strategy was restricted in the manner you have already told the Commissioner about?-- Yes.

Just going over the page now, you talk in the opening paragraph about attendees having been varied?-- Yes.

But further down the page you say this, and I'll read it into the record: "Some negativity has been expressed about the restriction of the distribution as nearly all have shown a

great eagerness to discuss with staff further about ways to improve or to identify reasons for good performance in particular areas (so as to share with peers)." Was there in fact that negativity which had been expressed?-- Yes.

Had you attended some hospital meetings of the type which you've described in this document in the month or so prior to this presentation?-- Yes.

And was it from that experience that you were expressing to the Minister and the Director-General-----?-- Yes.

-----the problem?-- Yes.

Do you recall saying that to the Minister and the Director-General or words to that effect?-- I don't recall exactly, no.

You wouldn't have had any reason not to communicate that?-- No, no.

You say here, "When explaining the distribution restriction based on the reports". Do I assume there you were referring to explaining it to clinicians at hospitals?-- Yes.

"We have focused on the potential for misinterpretation and references, the technical supplement and detail behind the analysis"?-- Yes.

"And the likelihood that these caveats would be taken into account when interpreting by external parties"?-- Yes.

By that, did you mean to communicate that you had difficulty explaining to the clinicians on site at the hospital visits why it was they couldn't be shown the hospital reports and that those were the reasons which you proffered in order to deal with their negativity?-- Can I just clarify your question?

Yes. What I mean, sir, is this: in terms of what was happening on the site-----?-- Yes.

-----at the hospital sites with the clinicians, were clinicians saying to you words which expressed a negative approach to responding to you because they couldn't see the hospital report?-- Yes, that is correct.

You were embarrassed about the fact that you couldn't show them the hospital report?-- Yes.

In order to placate them, you were saying to them words to the effect, "Look, you know, we don't want things to be misinterpreted and really what's important is the technical information we get from you"?-- Yes.

Really, you were embarrassed that you had to give them excuses for not providing the hospital reports?-- Yes, I was.

That's what you were communicating to the Minister and the Director-General at this presentation?-- Yes.

What sort of response did you get from anyone at the meeting, that is the presentation, to you saying words to that effect do you recall?-- I don't recall.

COMMISSIONER: No-one said to you, "Well, look, I understand those concerns and I think you're right to a change in that system, the distribution"?-- No, that certainly wasn't the case.

MR DOUGLAS: You certainly, sir, to your credit weren't being reluctant about expressing your views-----?-- No.

-----as to the problems associated - I'll start again. You certainly weren't being reluctant about expressing your views about the problems which were wrought by the restriction placed upon you by cabinet?-- No.

But it didn't seem to change things?-- No, it didn't.

Now, as your first statement reveals, on the 5th of June 2003 the phase 2 hospital reports went to cabinet?-- Yes.

And we're speaking about an occasion which is a matter of-----

COMMISSIONER: Excuse me, just before we go any further.

MR DOUGLAS: Certainly.

COMMISSIONER: Your frustration was one which was common with other people involved?-- Yes.

In this plan?-- Yes, it was.

Other officers of Queensland Health?-- Yes, in particular the team that was working on-----

The team in particular but generally officers of Queensland Health?-- Yes.

Thank you. Sorry, Mr Douglas.

MR DOUGLAS: Certainly, Commissioner, thank you. I want you to consider this proposition: what do you say to the proposition, if it were put to you, that the restriction on dissemination on hospital reports within Queensland hospitals, as, in fact, ensued in 2003 under this program, was a course recommended by staff of Queensland Health?-- Recommended by staff of Queensland Health?

COMMISSIONER: You, in other words?-- We came up with the dissemination strategy, yes.

MR DOUGLAS: Did you come up with that dissemination strategy because you felt constrained by what cabinet had said to you?-- Yes.

If cabinet had not imposed that restriction on you, would that dissemination strategy have ensued as it did?-- Yes.

Would it have ensued as it in fact did with district manager only receiving electronic copy?-- Sorry, no, it wouldn't.

It would have ensued in the manner in which it was promulgated, as you told the Commissioner earlier, in the period up to mid-2002?-- Yes, that's right.

In your statement, that is your second statement, you go on to inform the reader that in 2004 the position which occurred was that the dissemination strategy was altered in a particular way?-- Yes.

Now, I will go to what the alteration was and then I will come to why and how it was altered. The dissemination strategy was altered in 2004 such that the same electronic constraint existed for dissemination of the hospital report to the district manager?-- Yes.

And the electronic form with the same constraint - I will start again - the hospital report with the same electronic constraints was distributed to the zone manager?-- Yes.

In addition, though, the district manager was vested with two hard copies?-- Yes.

Of the hospital report?-- Yes.

They were marked watermarked copies?-- Yes.

There was a clear instruction given that under no circumstances were they to be copied?-- Yes.

There were instructions given that those two hardcopies could be distributed under strict control by the district manager to members of the clinical staff of the hospital in question?-- Clinical and managerial.

Clinical and managerial staff?-- Yes.

And there was to be a register maintained of that distribution so as to identify where any of the hardcopies were at any time?-- That's what was recommended.

Now, that circumstance emanated, that is the change of circumstance emanated as a result of a direction given by Dr Scott?-- Yes.

Dr Scott, at the time he gave that direction, was the either acting or had been appointed General Manager of Health Services?-- Yes.

Did Dr Scott make that recommendation - or give that direction to you at a time before those hospital reports had actually gone to cabinet?-- Yes.

Those were the 2004 hospital reports?-- Yes.

You say in your statement, that is your second statement, that those 2004 hospital reports have actually not yet gone to cabinet?-- That's correct.

Once they go to cabinet, it might be a different story?-- Could be.

COMMISSIONER: But Dr Scott, it seems, was perhaps courageously defying the view that cabinet had, is that right?-- That was the view, yes.

MR DOUGLAS: Did you find that that alteration in strategy mitigated somewhat the difficulties which you confronted as a result of the 2003 strategy following the cabinet decision?-- Some of them.

Yes, all right. Could you explain to the Commissioner the manner in which that mitigation occurred, perhaps by way of anecdotal example?

COMMISSIONER: And the way in which it didn't.

MR DOUGLAS: Yes?-- It basically meant that the issue around getting the information to the right people was less of an issue than what it was, not to say that there still weren't other issues that were raised but they certainly weren't in 2004 as what they were in 2003.

You have been involved in this program again since 2000?-- Yes.

If the strategy that was adopted by Queensland Health up to mid-2002, that is before the presentation-----?-- Yes.

-----were on foot at the present time, is it your view, as the manager of the program, that the program would be likely to be far more fruitful in achieving results if that strategy had been deployed?-- I think we could have been further down the track with how effective the information is being used.

In what sense?-- In the sense that I think over the period since the program started, we're at a point now where more and more districts are becoming more active in using the information, imbedding it in their core activities, and perhaps that could have happened a little earlier than what it has if the information could have been more broadly distributed earlier on.

Just talking about things being done early, the public report was issued in June 2003?-- Yes.

Under Queensland Health's original strategy, when was that public report proposed for release?-- 2002.

July 2002?-- Between July and towards the end of the year, it would have been, yes.

So even if one were to adopt the end of the year, the redrafting of the public report led to a delay in its publication of six months?-- Yes.

Commissioner, that's all I have of this witness. Can I indicate this- and I might say it was prompted by my learned friend Mr Mullins - and it is a correct point - the statements of Mr Collins refer to, among other things, the 2005 measured quality reports. In fact, the statements don't contain those reports. I have taken the matter up with Queensland Health outside. I am told that either by late this afternoon or perhaps tomorrow morning those will be produced. I don't propose to ask this witness any questions about them but there may be others to my right and behind me who do.

COMMISSIONER: Right.

MR DOUGLAS: To that end, they will be copied and produced to the parties as soon as it is available.

Do you know when it is likely to be forthcoming, Mr Collins?-- No, I don't.

Matters are in train, I am sure.

MR BODDICE: That's so, Commissioner.

COMMISSIONER: Thank you.

MR DOUGLAS: Thank you.

COMMISSIONER: Have counsel agreed upon the order of questioning this witness?

MR MULLINS: Commissioner, I was happy to go first, except for that additional report which deals with some Bundaberg Base matters.

COMMISSIONER: All right. You have reached agreement about order of counsel, is that right?

MR MULLINS: I have. I was going to go first.

COMMISSIONER: This is about the third time I have asked counsel to do this. Can counsel listen to what I am saying this time and could you in future agree upon the order in which you intend to ask questions? All right.

MR ALLEN: I have spoken to two of my learned friends who have no difficulty with me going before them.

COMMISSIONER: All right. Well to start, anyway.

MR ALLEN: Thank you.

CROSS-EXAMINATION:

MR ALLEN: I just want to ask you about your knowledge as to the changes to one page only of the public report?-- Right.

And if I could ask for the relevant pages from Exhibit 379 to be placed on the projector? We will try and have both of the relevant columns of page 48 of the draft that went to cabinet in November 2002 and the document that was subsequently released in the middle of 2003?-- Yes.

The document which is on the left is the draft that went to cabinet?-- Yes.

And the document on the right is the report that's eventually released?-- Yes.

COMMISSIONER: Yes.

MR ALLEN: You will see the changes are there is a paragraph that's been removed?-- Yes.

Which has got a box around it and also some highlighting, on my copy?-- Yes.

You will also see that in a graph which is below that, dealing with nursing staff retention rates?-- Yes.

There has been one bar of that graph removed in the ultimate version?-- Yes.

All right. Now, as I can ascertain from your statement and the exhibits, there was an earlier draft, that is earlier than

the one which ultimately went to cabinet?-- Yes.

And in relation to this page, there was some communication between yourself and Mr Brad Smith-----?-- Yes.

-----in relation to the draft - earlier draft-----?-- Yes.

-----regarding nurse retention rates and JEC35 to your statement is an email from Mr Brad Smith to yourself, dated the 31st of October 2002?-- Right.

Where he says that the Minister has requested certain changes-----?-- Yes.

-----to the draft that will ultimately go to cabinet?-- Yes.

And we can read the contents of that email ourselves, but it is concerning suggested changes by the then Minister in relation to the information regarding retention rate of registered nursing staff?-- Yes.

Now, the concern is raised at that time by Mr Smith that the figures, as outlined in the draft report from your agency-----?-- Yes.

-----are different to the figures that the Minister has been announcing publicly-----?-- Yes.

-----as to nursing staff retention rates?-- Yes. Yes.

Okay. Now, firstly, what was the source of your figures that found its way into the initial draft report and then partly into the ultimate report?-- It would have been from the - I believe the human resource management information system in Queensland Health.

In Queensland Health?-- Yes.

Okay. Now, Mr Brad Smith - was he a ministerial advisor at the relevant time?-- Brad was the manager of parliamentary and ministerial services.

Does that mean that he is employed by the Minister's office?-- I don't believe so.

Does it mean he is employed by cabinet?-- I believe he is employed by Queensland Health.

By Queensland Health?-- That's my understanding.

I see. What sort of role does he have that he would be communicating to you certain suggested changes by the Minister?-- I believe his role to be the person that advises on matters relating to cabinet. That's been my experience - only experience with him.

So he is employed by Queensland Health but advises the Minister in relation to cabinet matters?-- I am not sure

whether he advises the Minister. He certainly advised me about the process of doing cabinet submissions and so forth.

But certainly, as far as this issue is concerned, it is clear from JEC35 that he is communicating to you the Minister's position?-- Yes, it is.

Because he indicates, for example, "She has requested that the following issues be addressed in the public report."?-- Yes.

All right. Okay, now, do you have any knowledge as to the source of data that the Minister or the Minister's representative was referring to?-- I don't have any detailed knowledge of that but I would imagine the same information system would be the only place.

Because the email reads "As you would be aware, the government has consistently used figures of 11 and 13.5 per cent"-----?-- Yes.

-----"as the overall turnover rate of nurses in the State hospital system"?-- Yes.

And it is being pointed out that, according to the figures in the draft report, it would indicate 18.1, which is obviously somewhat higher than the official government figures?-- Yes.

You don't have any further explanation as to that apparent discrepancy?-- I do. That can be explained by the way in which we were measuring the retention rate for hospitals, and we were trying - attempting to measure the loss of nursing staff to a given facility. When you add that up to a State level, it is slightly inaccurate. It was believed to be inaccurate because we - the rate that the Minister talks about is a loss of expertise to Queensland Health, whereas our rates potentially included loss of expertise within Queensland Health, so from one facility to another. And when you look at that from a Statewide perspective, that's not entirely accurate.

Okay. So your understanding is that the same data would be sourced-----?-- Yes.

-----to end up with the varying figures depending upon the methodology used?-- Yes.

And it is clear from your statement that upon that being - that concern being raised on behalf of the Minister-----?-- Yes.

-----that the draft that eventually went to cabinet-----?-- Yes.

-----included the note down the bottom of the screen?-- Yes.

"Note: these rates are derived from"?-- Yes.

So that was meant to clarify the basis of the calculation?--

Yes.

All right. So we know that that communication from the Minister's office to yourself results in the inclusion of that note?-- Yes.

So then we have this document on the left of the screen which is the draft that goes to cabinet?-- Yes.

There has been no request at that time, apparently, from the Minister or anyone else, that that paragraph in the box be deleted?-- I don't believe so, no.

All right. After cabinet gives its direction, which includes finalisation of the public report-----?-- Yes.

-----there is communication between your office and the Minister's office and the Premier's office?-- Yes.

And I think Treasury as well?-- Yes.

Okay. And that relates to certain changes which will eventually be made to the draft and be reflected in the public report?-- Yes, JEC41 is an email from yourself to Helen Little of the 26th of February 2003 referring to that cabinet direction?-- Yes.

To finalise changes to the public report?-- Yes.

And there is a response from Helen Little to yourself on the same date, the 26th of February 2003, indicating that she will ask the Minister's senior policy advisor and the Director-General about that?-- Yes.

And then advise you as soon as possible?-- Yes.

Do you recall whether you received any follow-up communications as a result of that?-- Yes, I did.

And who were they from?-- From Helen Little.

Did she indicate any specific changes or-----?-- No, it was just to proceed to cabinet.

Now, in your second statement at paragraph 42, you say that in about early 2003 you had a discussion with Mr Picard?-- Yes.

About nursing retention rates reported in the draft public report?-- Yes, yes.

And Mr Picard's position, was that as an advisor to the Minister?-- Yes, he was.

He raises this issue that's been - had been raised prior to the draft that went to cabinet?-- Yes.

That the rates reported in the draft public report for nursing retention rates were different to information previously

supplied publicly through Ms Edmond's office?-- Yes.

But that's the same concern which had been raised the year before which had led to the addition of the note?-- Yes.

All right. It is being raised afresh?-- Yes.

So you say that, "He asked me to provide greater context to the nursing retention rates reported in the public report"?-- Yes.

"And removed the State median retention rates from the graph on page 48"?-- Yes.

So, it's that request by Mr Picard which then leads to the deletion of the row to the left of the graph-----?-- Yes.

-----from the ultimate public report?-- Yes.

Is that what you meant by - was that removal of the State median retention rates the provision of the greater context to the nursing contention rates that he'd request?-- I believe so.

How does it provide greater context to the information to remove part of it?-- Well, it doesn't really.

Well, it doesn't at all. In your statement you say in relation to Mr Picard, "He asked me to provide greater context to the nursing retention rates reported in the public report."?-- Yes.

"And removal of State median retention rates from the graph"?-- Yes.

Was that the only way he suggested that that context - greater context be provided by removing that bar of the graph?-- Yes.

Because there doesn't seem to have been any further information added-----?-- No.

-----to further explain or provide context to any of that information?-- No.

So the only request was to remove the State median figure?-- That's right.

Which doesn't provide greater context at all?-- No, it doesn't.

It's a deletion of information rather than an expansion?-- Yes.

Does he explain why it was considered desirable to remove the State figure?-- I remember having a conversation with him about it.

Was it because on its face the State figure was different to the figures that were being publicly announced by the Minister?-- Yes.

So it was to remove a possible source of controversy for the Minister?-- And/or misinterpretation, I suppose, yes.

It in no way enhanced the value of your report?-- If you look at it from a misinterpretation point of view, I suppose it could have enhanced it from that perspective.

Well, any misinterpretation, I thought, had been apparently addressed by the addition of the note-----?-- Yes.

-----the year before?-- Yes.

Can you think of any other possible reason how that would - removal of that bar of the graph would enhance the value of the report?-- No.

It still leaves in your statement and your evidence the question as to how that paragraph in the box ended up being removed?-- Yes.

Now, that was a paragraph which spoke about the problem of excessive turnover of nursing staff?-- Yes.

The increase in the average age of nursing staff?-- Yes.

And the risk really of workforce shortages exacerbating in the future?-- Yes.

All right. Now, you don't have any recollection at all as to how that paragraph came to be moved?-- No, I don't.

Well, in your statement you say that although you did not draft the public report, it was originally drafted by Ms Thomas?-- Yes.

That she went on leave from late 2002 until April 2004?-- I can't be certain of the exact dates but that's-----

That's according to your statement. She went on leave from late 2002 until some time after the public report was published?-- Published in June.

Can I put it this way: she had nothing to do with any changes to the public report that were made after late 2002?-- I believe there is an e-mail there in April.

Sorry, there may simply be a typo in your statement?-- Yes.

Can you look at paragraph 36 of your statement?-- Yes.

The second statement?-- The second statement, yes.

Do you see there whether you say, "Ms Thomas went on leave from late 2002 until about early April 2004."?-- Yes.

Is that correct?-- That's right. That's from memory, yes.

So she had nothing to do with the report after late 2002?-- Yes.

During that period, you took over responsibility for finalising the public report?-- Yes.

We have seen communications between yourself and persons from Premier's or-----?-- Yes.

On behalf of the Minister about changes to the report?-- Yes.

How were they physically done?-- Sorry?

Someone had a computer somewhere?-- Yep.

With a document on it which was altered, and in a word processing program-----?-- Yes.

-----I expect?-- Yes.

Who would actually do that?-- I can't recall who actually did that change.

No, not that change. I mean, any changes. They were done in the Measured Quality-----?-- Yes.

-----section?-- Yes.

You, for instance, would speak to, say, Mr Picard about removing the row from that graph?-- Yes.

Would you then direct a staff member in the Measured Quality section to make that change or would you do it yourself?-- In some instances I may have made it myself. In others, for example, that bar, I wouldn't have.

How would you facilitate that change that you'd agreed with Mr Picard?-- I would have asked one of my staff members to make that change.

You would have given them specific direction to change that particular part of that page?-- Yes.

Now, I am just trying to clarify whether it could be that the deletion of that paragraph in the box could have occurred without your involvement at all?-- It could have.

How could that have occurred?-- Well, because I don't recall actually doing it-----

Yes?-- -----there and I believe that Ms Thomas had been working on changes to the report. That was from my memory. I had presumed then that she had made that change, so I couldn't remember.

The draft that went to Cabinet in November 2002 included that paragraph?-- Yes.

Ms Thomas, you are saying, what, could have been around for part of November after that meeting?-- She could have.

Can you suggest any reason why she would unilaterally decide to take something out of a draft that had been submitted to Cabinet?-- Apart from the fact that she may have been involved in some of the meetings that I had with the Premier's and Cabinet, no.

So, obviously if there were going to be any changes made to the draft, such as deletion of that paragraph-----?-- Yes.

-----it would have been because there was some type of feedback coming?-- Yes.

Such as the nature of the feedback you got from Mr Picard on behalf of the Minister?-- Yes.

Or from someone in the department of Premier?-- Yes.

And Cabinet or from Treasury?-- Yes.

All right. But you can't point us to any communications by way of documentation which refer to that change?-- I can't, no.

You don't have any recollection yourself as to discussing that change with anyone?-- Not that change, no.

There would have to be documentation somewhere, wouldn't there?-- There could well be.

Because the statement you have produced contains very detailed record of discussions regarding changes-----?-- Yes.

-----briefing meetings in your own section about what the Premier's department has requested be changed, et cetera?-- Yes.

But you don't seem to include anything relating to the deletion of that paragraph?-- No.

Have you made a thorough search for such documentation?-- Yes.

And you are saying it simply doesn't exist?-- I couldn't locate it, no. It may well be that Ms Thomas may have some record of that. I certainly don't.

Do you recall at any stage during this process of preparation of the draft report for Cabinet or discussion of any changes leading up to the ultimate public report, any discussions with any persons involved regarding the process of enterprise bargaining between government and the Queensland Nurses Union that was occurring at that time?-- No.

You didn't have any discussions with any person on that topic?-- No. Definitely not.

I see. Now, just finally, in relation to the sort of delay that was involved in publicly releasing the public report-----?-- Yes.

-----a lot of that seems to have been this finessing that was being required by Cabinet?-- Yes.

And involving this liaison with the Department of Premier, the Minister's office, et cetera?-- Yes.

And although that produced certain changes, which we can

see-----?-- Yes.

-----it doesn't seem to have any way enhanced the value of the information to the clinicians who'd ultimately use it or to members of the public; is that fair enough?-- Is that my view?

Yes?-- Yes.

Okay. And, in fact, the concern was that the delay would decrease the value of the information to the clinicians because the clock is ticking?-- For the public report to a lesser extent, that was more of an issue with the hospital reports, but certainly still an issue for the public reports.

And the hospital reports were delayed for the same period of time?-- Yes.

So ultimately they - the value of that information suffers through the process of finessing the public report?-- Yes, it did.

This process of finessing and putting spin on the material doesn't seem to have been directed in any way towards furthering the objectives of the office of Measured Quality?-- I wouldn't think so, no.

It doesn't seem to have been in any way addressed towards assisting the public or the clinicians who would ultimately gain the information?-- I mean, there was some additions in providing layman's terms to certain things that I think perhaps could have added a more clearer explanation on some of the things that we were talking about to an average person.

Ultimately, though, that whole process of delay and finessing-----?-- Yeah.

-----seems to have been of advantage really only to the political interest of government?-- Perhaps.

Perhaps?-- Perhaps.

Give us your honest opinion?-- Well, yes.

Thank you.

COMMISSIONER: This might be a convenient time to adjourn. Now, Mr Douglas, you are not available tomorrow.

MR DOUGLAS: No.

COMMISSIONER: You have another witness tomorrow?

MR DOUGLAS: Yes. Commissioner, can I just - before we get to that, I am not sure where we are at with the 2005 Measured Quality reports.

MR BODDICE: I am not sure either but I will liaise with

Mr Douglas after we have finished.

COMMISSIONER: Okay.

MR DOUGLAS: Certainly my learned friend Mr Mullins wants to see those and study them, I am told, and I am obliged to afford him that advantage in any event.

Commissioner, the present plan is to bring this witness back on Wednesday. That might change because, as Mr Boddice reminds me, Wednesday is, to coin a phrase, a Hervey Bay day.

MR BODDICE: I just understood that the information was that Dr Krishna and Dr Hanelt had been arranged for Wednesday. Of course, they would be both travelling presumably down-----

MR DOUGLAS: Yes.

MR BODDICE: -----to give evidence on Wednesday. Perhaps that's again something that we could-----

COMMISSIONER: You can probably change that if it's two days away. We don't put off Dr Krishna or Dr Hanelt-----

MR DOUGLAS: If they are travelling, I might be reluctant to suggest that, Commissioner.

COMMISSIONER: They aren't going to start travelling now from Hervey Bay.

MR DOUGLAS: Can we sort it out and we will advise Mr Collins if he is based in Brisbane. Are you here all of this week?--Yes.

COMMISSIONER: We will get through all of his evidence?

MR DOUGLAS: Preferably Mr Collins can be here Wednesday and then we might rearrange one of the witnesses for Wednesday in this respect. You will recall that Dr FitzGerald and Mr Walker are giving evidence on Thursday. Dr FitzGerald is being recalled.

COMMISSIONER: Yes.

MR DOUGLAS: Thank you. Dr Aroney is giving evidence on Friday.

COMMISSIONER: All right. We will adjourn.

THE COURT ADJOURNED AT 4.33 P.M. TILL 10.00 A.M. THE FOLLOWING DAY