

(Ex 400)

Bundaberg Hospital Commission of Inquiry


COPY

STATEMENT OF Helen Charmaine BEH

I Helen Charmaine BEH of 9th Floor, 229 Macquarie Street Sydney in the State of New South Wales SWORN:

1. I am the Chief Executive Officer (CEO) of the Australian Orthopaedic Association (the Association) which is a company duly incorporated in the State of New South Wales with its registered office located on the Ground Floor, 229 Macquarie Street Sydney New South Wales. The Association is a professional association for accredited orthopaedic surgeons which also oversees the training of orthopaedic surgeons in Australia, provides continuing professional development for members and provides opportunities for professional and scientific meetings for members.
2. Its head office is located in Sydney and it has branch offices located throughout Australia. My role as the CEO of the Association is to co-ordinate the activities of the Association and to oversee its planning. I am a person duly authorised to act for and on behalf of the Association. I am also a duly qualified psychologist registered in the State of New South Wales.
3. In early January 2004 I was approached by Dr. Kalev WILDING, the Federal President of the Association, about the possibility of the Association undertaking a review of Orthopaedic Services in the Hervey Bay Region of Queensland. I understand that this had originated from a letter he had received from the Chairman of the Queensland Branch of the Association, Dr. Chris BLENKIN, relating to that issue.
4. I suggested to Dr. Wilding that he should first make contact with Queensland Health to see if they agreed to the Association undertaking such a review as was being requested by Dr. Blenkin. I believe that this was not done and that Dr Wilding continued to correspond with Dr Terry HANELT the Director of Medical Services for the Fraser Coast Health Service District.

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Signed:  Helen Charmaine BEH.

Deponent

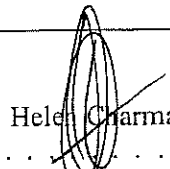
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Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations

5. Following this discussion, a letter was sent to Dr. Hanelt from Dr Wilding, stating that the AOA would be prepared to send investigators to Hervey Bay to conduct such a review subject to certain pre-conditions being met concerning indemnity.
6. The next thing that occurred was that the Association (through Dr Wilding) received a letter back from Dr. Hanelt agreeing that such a review should take place and seeking confirmation that indemnity was a condition for conducting an inspection of Hervey Bay facilities and providing a report.
7. On 28 February 2004 correspondence between Dr Hanelt and Dr Wilding on this matter went to the Association Board and the Board agreed that the matter of the indemnity should be cleared and settled before any investigation was undertaken. The Board also selected two members of the Association they believed were most appropriate to conduct the review and they were Dr. John NORTH and Dr. Peter GIBLIN.
8. There was then a long delay involving some to-ing and fro-ing re the indemnity issue with Dr. Hanelt.
9. Several months elapsed between the time when the Board meeting took place where it was decided that indemnity had to be obtained as an absolute essential prior to any review commencing in which the Association would be involved (February 2004) and when the review eventually commenced (July 2004). Even then, when the review did commence the matter of the indemnity had not been finalised.
10. Dr. Wilding had written to Dr. Hanelt in June 2004 informing him that arrangements had been made to conduct inspections of the Hervey Bay and Maryborough Hospitals but as the matter of the indemnity had not yet been finalised any report furnished by the appointed inspectors would be withheld until such time as the indemnity was received.
11. I understand that before the inspection took place Dr. Hanelt negotiated with the Association Inspectors and that Letters of Appointment had been sent to the two Association surgeons, together with the Terms of Reference and Instruments of Appointment.
12. Upon receipt of these documents, the Association Inspectors (Dr. North and Dr. Giblin) contacted the Association and advised us that they were not happy with the indemnity that they had been provided with and that while they would go ahead and

carry out the inspection they would not submit any report until such time as they had received the appropriate indemnification. They commenced the inspection of the Hervey Bay and Maryborough Hospitals in the Fraser Coast Health District on 01 July 2004.

13. Negotiations continued with Dr Hanelt following the inspection about the indemnity matter, with Queensland Health arguing that, while they could indemnify the Inspectors, they could not indemnify the Association. As a result of this we contacted our own solicitors about the involvement of the Association with the report and our legal standing with the report once it was completed and furnished by our Inspectors. We were advised that the Association was not protected by the indemnity but that the inspectors, as individuals, were indemnified under the Instrument of Appointment. We did not receive this advice until the day before the deadline for the submission of the report, so the Inspectors sought an extension of time to submit the report, advising that they were having difficulty obtaining documentation. Meanwhile, the Inspectors prepared a draft report after receiving an extension of time to complete the report to 31 October 2004. Queensland Health was advised by phone that this was an unrealistic extension, given that the AOA had a very large international congress in the last week of October and both Inspectors were heavily involved in organising the congress.
14. Queensland Health refused to further extend the time for submitting the report and it was the understanding of the Association at this time that the indemnity for the Inspectors expired once the deadline for submission and the Appointment document expired. As a result of this nothing further was done with the draft report prepared by the Inspectors because of the confusion surrounding the indemnity situation.
15. Late in 2004 the Association received correspondence from Dr. Blenkin (Chairman of the Queensland Branch of the Association) inquiring as to what had happened with the Inspectors' report. By this time the position of Federal President of the Association had changed and I wrote to the Inspectors asking if they were prepared to submit the report to Queensland Health. They responded and advised that they were not prepared to submit the report until they were totally indemnified in writing.


Signed:
Helen Charmaine BEH

Taken by: 
Solicitor/Barister/Jurist of the Peace

16. I then contacted someone in Dr Hanelt's office by telephone to inquire about the indemnification and he told me that the indemnity had lapsed because the report had not been submitted on time.
17. In February, I rang Dr Hanelt to explore ways of getting the report to Queensland Health and suggested options for indemnifying the inspectors.
18. The apparent reluctance of Queensland Health to indemnify the Inspectors so they could forward the report was discussed at the meeting of the AOA Board in March 2005. It was suggested that the Inspectors might be protected from legal action if the report could be submitted to Queensland Health as a Privileged Document and the Board agreed that I should put this proposal to Queensland Health, which I did by phone almost immediately following the Board meeting. I was advised that they would get back to me.
19. When nothing had happened by the end of March, I contacted Dr Hanelt to ask whether any decision had been made about receiving the report. In response, I received an email indicating Dr Hanelt had passed the matter to someone else for response. In any event no response to the query was received.
20. There the matter rested with the report being completed but not being submitted to Queensland Health because of the indemnity issue until the matter of the circumstances surrounding Dr. PATEL was revealed in the media. Upon reading the media report, I immediately emailed Dr Hanelt suggesting that it might be in the interests of Queensland Health to resolve the indemnity issue so that the report of Hervey Bay could be sent.
21. Within a couple of hours, I had received an email and telephone call from Dr Hanelt seeking to explore ways of getting the report to Queensland.
22. Within a day or so of this exchange, the matter of our Association being involved in an inspection of the Orthopaedic Services in the Hervey Bay Health District was leaked to the media and we received a call from the Courier Mail newspaper in Brisbane seeking confirmation of this information. They were advised that the Association had not conducted an inspection but that two (2) members of the Association had done so.
23. Shortly after this I received a telephone call from Queensland Health and I recall that it may have been from the person Mr Peter Crofts and he advised that there had been a misunderstanding with regard to the indemnity and that the original

indemnity provided was still valid and that because the required date of submission of the report had run out it did not follow that the indemnity had expired.

24. They were now requesting the report be submitted and insisting that the indemnity was still valid, so I attempted to make contact with the members of our Association who had conducted the inspection (Drs. Giblin and North) only to discover that they were both unavailable at that time to finalise the report for submission.

25. I advised Queensland Health that I would write to the Doctors informing them of the information now provided by Queensland Health and request the report of their inspection from them. I also requested that written confirmation of my discussion with Mr Crofts be sent to the Association. This was received while I was absent on leave and it was a public holiday in Queensland on the day I returned from leave.

26. Consequently, I had no further contact with Queensland Health until Tuesday, 3rd May when I contacted Mr Crofts to advise that the Inspectors were prepared to submit their report. Subsequently, the doctors sent their report to the Association and we then sent the report onto Queensland Health on their behalf.

27. The only other contact we have had with Queensland Health since that time was the receipt of a copy of a letter to the Inspectors from the Director General, Dr. Steve BUCKLAND, of 06 May 2005 in which he indicated "that there appears to be no hard evidence to support your recommendations."

28. A copy of all of the relevant documentation that we hold relating to this matter, in particular documentation between ourselves and Queensland Health, has been delivered to Doctor North in Queensland for collection by Investigators from the Bundaberg Hospital Commission of Inquiry.

Affidavit Sworn on *30 May 2005*

at Sydney

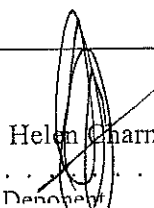
in the presence of:



Deponent



Solicitor/Barrister/Justice of the Peace/
Commissioner for Declarations



Signed: Helen Charmaine BEH

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Commissioner for Declarations



Queensland Government

Queensland Health

Fraser Coast Health Service District.

Enquiries to: Dr Terry Hanelt
Executive Medical Administration
Telephone: (07)
Facsimile: (07)
Email:
File Number:
Our Ref.:
Your Ref.:

4/11/2003.

Dr Chris Blenkin

Dear Dr Blenkin,

I write to you in your position with the Australian Orthopaedic Association in response to the recent media attention in relation to overseas trained doctors in general and specifically the two Fijian trained Senior Medical Officers employed at the Hervey Bay Hospital who are involved in the provision of Orthopaedic services.

From the article in The Courier Mail, it is obvious that certain concerns are held by some members of the AOA in relation to the situation in Hervey Bay. The details in relation to some of the patients clearly indicate local input into the background information. I have confirmed with Dr Sean Mullen that he has expressed certain concerns to the AOA about the local situation. Thus the source of the information passed on to the media is known. I will assume the inaccurate parts of the article and inaccurate inferences were a matter of the media making errors or taking some liberty as seems normally media practice. I note that my response in the media has also been misquoted.

I am disappointed that if the AOA had significant concerns in relation to these two doctors scope of practice and supervision, you have not contacted me as the Director of Medical Services to attempt to resolve the issue. The only contact from the AOA was on 17/06/2003 when Dr Greg Gillett contacted my office and I later returned his call. Dr Gillett raised concerns that these two doctors were –

- working as specialists,
- being portrayed as specialists,
- performing procedures at which they were not competent and

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- that some special significance was being attached to the Diploma in Orthopaedics which is supervised by the AOA.

It was explained to Dr Gillett that –

- Both were being employed as Senior Medical Officers and not as specialists.
- That one non-clinical employee of Queensland Health had been quoted in the media as calling them “Orthopaedic Surgeons” and it was unknown whether this was a misquote or an accurate quote and that employee had been made aware of the differences between a registered specialist and a Senior Medical Officer.
- That the range of surgery being performed by these two doctors was restricted to the range that the Director of Orthopaedics for the Fraser Coast Health Service District had assessed them as competent to perform.
- That many medical practitioners performed procedures and operations for which they did not hold the “Gold standard” qualifications. GP’s do caesarean sections and anaesthetics. General surgeons do some O&G and some Orthopaedics. These two doctors were considered by the District as being in similar category of non-specialists with certain procedural and operative skills.
- That I was fully aware that the Diploma in Orthopaedics was not recognised in Australia and had not been the factor upon which their employment was based. Recruitment had been based on their experience and referee reports as to clinical competence.

I have received no further communication from the AOA and assumed that the AOA was satisfied with the scope of practice and level of supervision provided by another member of the AOA who is on staff with the District.

I have subsequently become aware that the Orthopaedics on-call roster for the Fraser Coast Health District contains terms such as “Orthopaedic Consultant” and “Orthopaedic Surgeon” and has the names of the Senior Medical Officers included on that roster. The wording will be altered to remove any possible inference that the Senior Medical Officers are Registered Specialists in Queensland.

From reading the articles, I believe that the AOA has some genuine concerns in relation to the scope of services provided by these two doctors and the degree of supervision provided. It would be advantageous to work constructively with the AOA to ensure the best quality treatment is available to orthopaedic patients treated within the Fraser Coast Health Service District Hospitals.

Previous recruitment attempts have demonstrated that it is not possible to recruit an adequate number of registered Orthopaedic Specialists in the District to provide continuous services. Due to the distances involved in transporting patients to a specialist orthopaedic service, cases such as contaminated compound fractures and injuries with acute vascular compromise would potentially suffer serious adverse outcomes if local services cannot be provided. Thus some degree of compromise is necessary to provide the best service possible with the available resources. Advice from the AOA would be appreciated to assist the District to define some guidelines for the Senior Medical Officers in relation to the following –

- Conditions that –
 - The management does not require discussion with an Orthopaedic Surgeon prior to commencing a treatment plan.
 - The management must be discussed with an Orthopaedic Surgeon prior to commencing a treatment plan.

- Procedures that each of the SMO's is assessed as –
 - Competent to perform independently without reference to an Orthopaedic surgeon.
 - Requiring discussion with an Orthopaedic Surgeon prior to commencing treatment.
 - Requiring direct supervision of an Orthopaedic Surgeon whilst treating.
- Appropriate assessment processes, if the AOA has concerns in accepting the assessment of one of their members, Dr Morgan Naidoo.
- Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.
- Any other matters that the AOA feels relevant that have been omitted.

I would also appreciate advice from the AOA in relation to the services offered by Dr Sean Mullen. Dr Mullen currently is willing to participate in the after-hours on-call roster for Orthopaedics. He is however not willing to provide ongoing care within the public hospital for patients admitted whilst he is on-call. He is willing to provide the emergency care and then hand their care over to one of the Senior Medical Officers or the Staff Orthopaedic surgeon. This basically falls into the category of itinerant surgery which is considered an unacceptable option by other surgical specialities (if local services are available). The model is accepted for services such as the Flying Surgeon Service and other outreach services where no better option exists. I have concerns in relation to admitting a patient with a complex orthopaedic surgical condition, providing emergency treatment and then making ones self unavailable for the ongoing care of that patient. Does the AOA have a position on the acceptability of a model of care to provide services upon this basis?

I await further input from the AOA on these matters.

Yours sincerely,



Dr Terry HANELT
Director of Medical Services
Fraser Coast Health Service District.

Australian Orthopaedic Association
Queensland Branch



Dr Chris Blenkin
Chairman

Suite 290 St. Andrew's Place, 33 North Street, Spring Hill Qld 4000. Tel: (07)

Fax: (07)

Hon. Wendy Edmonds
Minister for Health
Parliament House
George Street
BRISBANE QLD 4000

9th November 2003

Dear Mrs Edmonds,

I write to you in respect to orthopaedic health care delivery to the people of Queensland. Our commitment in the AOA is to maintain high standards of safety and affordable maintenance of delivery of that care.

More than 90% of our members are involved in teaching at all levels of the medical and allied health disciplines. Approximately 10% of our members are heavily involved in administering that training in the area of orthopaedic surgery. A smaller percentage are heavily committed to assessment and examination of that teaching/training/assessment process so that the orthopaedic surgeons who serve the people of this state, will be and remain world class in their practice of surgery. This is all voluntary activity by those members.

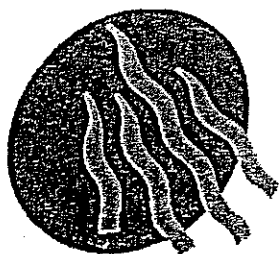
I have been asked for advice from Dr Terry Hanelt, Director of Medical Services, Fraser Coast Health Service District, in a letter this week in reference to orthopaedic services in the district.

Complex issues have been raised which, I believe, need independent review. To answer his request properly I would suggest that you ask the AOA through it's national president Dr Kalev Wilding (Sydney), to choose two experienced assessors from outside this state who would visit the district, discuss the concerns and offer recommendations to you regarding these.

This assessment process is undertaken regularly throughout Australasia by a number of orthopaedic surgeons. A standardised protocol is followed to ascertain strengths or deficiencies that may be present, and advice offered according to established facts. The people of the Fraser Coast deserve the best that can be given to them and I believe that your early request to Dr Wilding would be acted upon within a very short time.

He may be contacted through:

Australian Orthopaedic Association



Queensland Government

Queensland Health

Fraser Coast Health Service District.

Enquiries to: Dr Terry Hanclt
Executive Medical Administration
Telephone: (07)
Facsimile: (07)
Email:
File Number:
Our Ref.:
Your Ref.:

12/12/2003.

Dr Kalev Wilding
Australian Orthopaedic Association
Level 12, Culwulla Chambers
67 Castlereagh Street
Sydney. NSW. 2000.

Dear Dr Wilding,

I am writing to you at the suggestion of Dr Chris Blenkin, Chairman, Queensland State Committee of the AOA. I wrote to Dr Blenkin seeking advice in relation to several concerns with the provision of Orthopaedic services within the Fraser Coast Health Service District. Dr Blenkin chose to reply to the State Minister for Health rather than to me and sent a copy of that response to both you and myself.

Dr Blenkin suggested asking you to facilitate a review of the matters in question by independent interstate reviewers. This could have been requested much earlier but the fact that the response was to the Minister rather than the originator of the request, the Ministers subsequent response was necessary prior to any approach by the District.

Provision of some background information to the AOA will assist in understanding the nature of this request.

The Fraser Coast Health Service District has a population of approximately 90,000 and is based primarily around the two cities of Hervey Bay and Maryborough. The population demographics of the District is that there is a higher than average proportion of social security benefits recipients and a higher than average proportion of elderly people. The impact is that the demand for public health services rather than private health services is greater and the older population means greater demand for joint replacement surgery.

There are three AOA members in the District –

- Dr Morgan Naidoo works in a full-time public capacity.
- Dr H. (Jim) Khursandi does four public sessions per week and does no on-call for the District.

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Phone 07 41238355. Fax 07 41231606.

- Dr Sean Mullen has two public sessions per week but has not been able to perform these for some time and he normally does one weekend in four on-call and one night a week on-call.

There has also been a Senior Medical Officer in Orthopaedics employed by the District for many years. This Senior Medical Officer performs some operative Orthopaedics (e.g. internal fixation of # malleolus and #NOF, tendon repairs, compound scrubs) and closed Orthopaedics. This Senior Medical Officer has been employed by the District since 1978 and provided on-call coverage for "Trauma Orthopaedics" when Dr Khursandi was unavailable. This arrangement worked for many years. Since Dr Naidoo and Dr Mullen moved to the District and Dr Khursandi made himself unavailable for on-call coverage, the model for after-hours coverage needed review. Recruitment attempts in conjunction with the local private hospital were unsuccessful. General surgeons had been involved in managing orthopaedic cases but adequate expertise was not evident. The option of additional Senior Medical Officers was considered the only available option.

Two further Senior Medical Officers with good referee reports as to procedural competence were recruited. Subsequent to recruitment the Director of Orthopaedics (Dr Naidoo) assessed the competence of these doctors to perform various Orthopaedic procedures. Procedures that could be performed independently, ones that required advice to be sought prior to determining management and ones that required direct supervision were determined.

Dr Mullen expressed a view that the level of supervision was inadequate. Dr Blenkin subsequently went to the press with certain allegations.

As the Director of Medical Service for the District, I hold responsibility for risk management. This includes ensuring an appropriate quality of services. I have one member of the AOA basically stating the Senior Medical Officers are performing competently for the range of procedures and receiving adequate supervision. I have another member of the AOA disputing this opinion. I do not have the Orthopaedic expertise to make an adequate assessment of the situation and as such advice from the AOA is sought.

Whilst the simple solution would be to only employ appropriately qualified specialist Orthopaedic Surgeons, this has proven to be unattainable. Previous recruitment attempts have demonstrated that it is not possible to recruit an adequate number of registered Orthopaedic Specialists in the District to provide continuous services. Due to the distances involved in transporting patients to a specialist orthopaedic service, cases such as contaminated compound fractures and injuries with acute vascular compromise would potentially suffer serious adverse outcomes if local services cannot be provided. Thus some degree of compromise is necessary to provide the best service possible with the available resources. Advice from the AOA would be appreciated to assist the District to define some guidelines for the Senior Medical Officers in relation to the following -

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 - ↳ The management must be discussed with an Orthopaedic Surgeon prior to commencing a treatment plan.
- Appropriate assessment processes for determining the procedures that each of the SMO's is assessed as –
 - ↳ Competent to perform independently without reference to an Orthopaedic surgeon.
 - ↳ Requiring discussion with an Orthopaedic Surgeon prior to commencing treatment.
 - ↳ Requiring direct supervision of an Orthopaedic Surgeon whilst treating.
- Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.
- Any other matters that the AOA feels relevant that have been omitted.

AUSTRALIAN ORTHOPAEDIC ASSOCIATION

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From the President Dr Kalev Wilding MBBS FRCS FRACS FAOrthA

8th January 2004

Dr Terry Hanell
Director of Medical Services
Hervey Bay Hospital
P O Box 592
HERVEY BAY QLD 4655

Dear Dr Hanell

Thank you for your letter of 12th December concerning an Independent assessment by the Australian Orthopaedic Association of orthopaedic services within the Fraser Coast Health Service District.

The Australian Orthopaedic Association is prepared to send two experienced orthopaedic surgeons to inspect the orthopaedic services at Hervey Bay Hospital and provide a comprehensive report about the provision of orthopaedic services in the area. It is anticipated that the inspection may take two days if all appropriate parties are to be consulted.

Before the inspection can proceed, however, the Association would require written confirmation from you or the appropriate authority that the Association and the inspectors would be fully indemnified for the contents of the report.

The inspectors will provide their services pro bono, although costs of travel and accommodation would need to be covered by the Area Health Service, together with any costs relating to the preparation of the report. It is anticipated that report preparation costs would not exceed \$600.

Let me assure you that the delivery of quality orthopaedic care is of concern to the Australian Orthopaedic Association and that the Association will endeavour to make a positive contribution in this matter.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Kalev Wilding'.

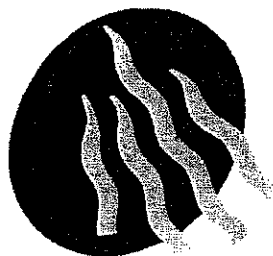
KALEV WILDING
President
Australian Orthopaedic Association

cc. Dr C Blenkins
Chairman, Queensland Regional Branch of the AOA

Handwritten initials, possibly 'V/B', in dark ink.

RECEIVED

- 1 MAR 2004



Queensland Government

Queensland Health

Fraser Coast Health Service District.

Enquiries to: Dr Terry Hanelt
Executive Medical Administration
Telephone: (07)
Facsimile: (07)
Email:
File Number:
Our Ref.:
Your Ref.:

27/02/2004

Dr Kalev Wilding
Australian Orthopaedic Association
Ground Floor,
229 Macquarie Street,
Sydney. NSW. 2000.

admin@aoa.org.au

Dear Dr Wilding,

I am writing to inform you of the progress since your letter of 8/01/2004 in relation to a review of Orthopaedic Service provision in Hervey Bay.

In your letter you agreed to the AOA conducting a review and providing a report, on the condition of provision of written assurance by Queensland Health that the Association and inspectors would be fully indemnified for the contents of the report.

As you may be aware, the Queensland Government is a self insurer and therefore indemnity is provided in accordance with established policies. Unfortunately, there is no provision within the existing policies to cover this current situation and advice was therefore sought from the Legal and Administrative Law Unit (LALU) of Queensland. The advice received is to the effect that there are only three ways this indemnity can be provided –

1. As part of an approved quality assurance committee. The process of establishing the committee, its terms of reference etc and then having the committee proclaimed under the Health Services Act is complicated and time consuming.
2. A contract of engagement with the AOA for the appointment of the orthopaedic surgeons to do the report. That contract could specifically provide that Queensland Health would indemnify the AOA and the orthopaedic surgeons carrying out the review. This option would require time for preparing documentation and negotiation of terms which would delay the review taking place.

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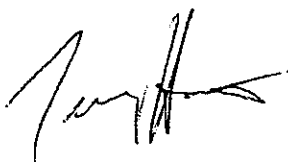
3. The third option is to have the AOA representatives appointed as Investigators by Queensland Health. This only requires the Director General of Queensland Health to appoint the two reviewers as investigators under Section 52 of the *Health Services Act 1991* (the Act). In making the appointments Queensland Health could specifically grant the AOA and orthopaedic surgeons' indemnity for the purposes of the review.

LALU is of the opinion the third option is the simplest and can be achieved with the least delay. The report would need to be provided to the Director General but he could then pass it on to the Health Service. Section 55 of the Act sets out the functions of an investigator -

"The functions of an investigator are to investigate and report to the chief executive on any matters relating to the management, administration or delivery of public sector health services, including, for example, matters relating to clinical practices and standards of health care in the delivery of public sector health services."

Before taking further action, I seek confirmation that indemnity cover is an absolute condition for conducting the review and provision of a report. If this remains the case, I also seek confirmation that the AOA would be happy for indemnity to be arranged through the Option 3 process. Once advice is received, the matter should be able to be progressed within reasonable time frames.

Yours sincerely,



Dr Terry HANELT
Director of Medical Services
Fraser Coast Health Service District.

2 March 2004

Dr Terry Hanelt
Hervey Bay hospital
PO Box 592
HERVEY BAY QLD 4655

Dear Dr Hanelt

Thank you for your letter dated 27 February 2004. This letter was discussed by the Board of the Australian Orthopaedic Association at its meeting on 28 February 2004.

The Board confirmed that indemnity cover was an absolute condition for conducting the review and provision of a report. The Board also agree with you that the matter should be progressed within a reasonable time frame and the third option regarding indemnity which you have outlined in your letter is acceptable to the Australian Orthopaedic Association.

The Association is concerned about the delivery of quality orthopaedic care to the Australian community and will provide a report to Queensland Health about orthopaedic services at Hervey Bay. To be in a position to do so, it is essential that the inspectors have an opportunity to talk to you and all members of the orthopaedic staff and have access to other staff members at Hervey Bay Hospital if they consider this necessary.

In the interests of transparency the report should be available to all stakeholders, including suppliers of orthopaedic services in the area, if you concur.

The inspectors nominated by the Board of the Australian Orthopaedic Association are Dr J North and Dr P Giblin. Dr John North is a senior orthopaedic surgeon and Chief Examiner for the final Fellowship of the Royal Australasian College of Surgeons in Orthopaedic Surgery, and is vitally interested in standards and delivery of orthopaedic care.

Dr Peter Giblin is a senior orthopaedic surgeon and is currently a member of the Management Committee of the Australian Orthopaedic Association Board. He is also currently Honorary Secretary of our Association.

- 2 -

The Australian Orthopaedic Association looks forward to cooperating with you to provide a report so that orthopaedic services can move forward at Hervey Bay.

Yours sincerely

KALEV WILDING
President

CC: Dr C Blenkin
Chairman, Queensland Branch, AOA

Australian Orthopaedic Association

Queensland Branch

Dr Chris Blenkin
Chairman

RECEIVED

- 5 APR 2004



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30th March 2004

Dr. Terry Hanelt
Director of Medical Services
Hervey Bay Hospital
P.O. Box 592
Hervey Bay Qld 4655

Dear Dr Hanelt

Kalev

I have received communication today from Dr. Wilding in Sydney enquiring as to my understanding of the proposed inspection of the Hervey Bay Hospital orthopaedic services. From the AOA's point of view the proposed inspection, and indeed I thank you for your cooperation in this matter, is ready to go ahead. Dr. Wilding is however waiting on a confirmation that the terms of reference and provision of indemnity for the inspectors are in place.

Considerable time has now trickled by since I responded to media enquiries about the provision of orthopaedic services at Hervey Bay. I believe the inspection needs to be hastened,

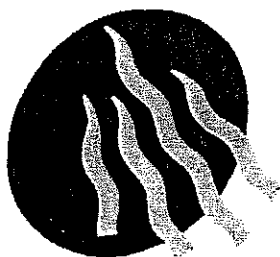
Could you please confirm to Dr. Wilding that provision of indemnity and the terms of reference are acceptable.

Yours sincerely,

A handwritten signature in cursive script, reading "Chris Blenkin".

CHRIS BLENKIN

c.c. Dr. Kalev Wilding
President
Australian Orthopaedic Association
Ground Floor, 229 Macquarie Street
SYDNEY NSW 2000



Queensland Government

Queensland Health

RECEIVED

15 APR 2004

Fraser Coast Health Service District.

Enquiries to: Dr Terry Hanelt
Executive Medical Administration
Telephone: (07)
Facsimile: (07)
Email:
File Number:
Our Ref.:
Your Ref.:

Dr Kalev Wilding
Australian Orthopaedic Association
Ground Floor,
229 Macquarie Street,
Sydney. NSW. 2000.

7 April 2004

Dear Dr Wilding,

I am writing to inform you of the progress since your letter of 27 February 2004 in relation to a review of Orthopaedic Service provision in Hervey Bay.

The Health Service has forwarded a submission seeking the approval of the Acting Director General to appoint Dr North and Dr Giblin as investigators. Unfortunately there was some delay in preparing the case as the process was not as simple as initially thought.

I am sorry for the delay and will inform you of the Director General's decision as soon as we are notified.

Yours sincerely,

Dr Terry HANELT
Director of Medical Services
Fraser Coast Health Service District.

Hervey Bay Office
Hervey Bay Hospital
Cnr Nissen St and Urraween Rd
HERVEY BAY Q 4655
Phone 07 41206666 Fax 07 41206799

Hervey Bay Postal
Hervey Bay Hospital
PO Box 592
HERVEY BAY Q 4655

Maryborough Office
Maryborough Hospital
185 Walker Street,
MARYBOROUGH. Q. 4650.
Phone 07 41238355 Fax 07 41231606

Handwritten note:
Forwarded to E. Hanelt
23/4/04

kalevwilding

From: Terry Hanelt
To: Paul Long
Cc:

Sent: Wednesday, 26 May 2004 12:18 PM
Subject: Re: Inspection at Hervey Bay

Paul,
Please prepare letters of appointment for signing by the Director General as soon as possible.
High time to get the boat in the water!
Terry H

>>> Dr Helen Beh < > 05/26/04 10:30am >>>
Dear Dr Hanelt

I refer to your email of 19th May 2004 concerning the review of orthopaedic services at Hervey Bay-Fraser Coast health Service District.

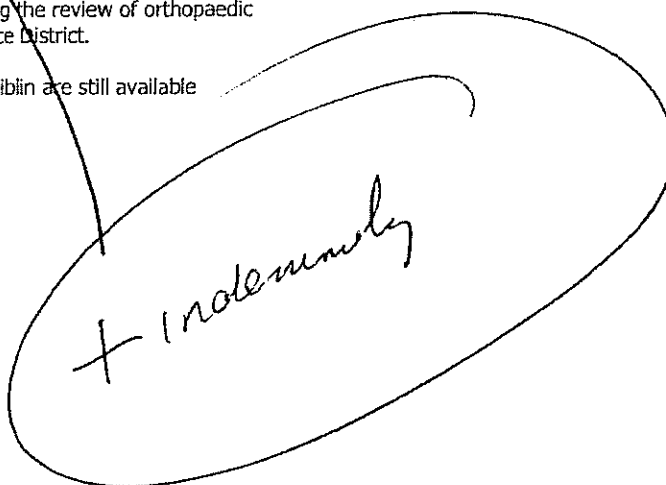
This is to advise that Drs John North and Peter Giblin are still available to undertake the review.

Yours sincerely

Helen Beh

=====
Dr Helen C Beh
Chief Executive Officer
Australian Orthopaedic Association
Ground Floor, William Bland Centre
229 Macquarie Street
SYDNEY NSW 2000

Tel 02 9233 3018
Fax 02 9221 8301



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kalevwilding

From: Dr Helen Beh <ceo@aoa.org.au>
To: <Terry_Hanelt@health.qld.gov.au>
Cc: kalevwilding <kalev@ozemail.com.au>; John B North <johnbnorth@bigpond.com>;
<pgiblin@bigpond.net.au>
Sent: Wednesday, 26 May 2004 10:30 AM
Subject: Inspection at Hervey Bay

Dear Dr Hanelt

I refer to your email of 19th May 2004 concerning the review of orthopaedic services at Hervey Bay-Fraser Coast health Service District.

This is to advise that Drs John North and Peter Giblin are still available to undertake the review.

Yours sincerely

Helen Beh

Dr Helen C Beh
Chief Executive Officer
Australian Orthopaedic Association
Ground Floor, William Bland Centre
229 Macquarie Street
SYDNEY NSW 2000

Tel 02 9233 3018
Fax 02 9221 8301

kalevwilding

From: <pgiblin@bigpond.net.au>
To: <ceo@aoa.org.au>
Cc: <Terry_Hanelt@health.qld.gov.au>; <kalev@ozemail.com.au>; <johnbnorth@bigpond.com>
Sent: Thursday, 27 May 2004 5:10 PM
Subject: Re: Inspection at Hervey Bay

Helen,I have spoken to John North re Hervey Bay,and it would be o.k. for us if the visit was Friday 2 July 04.Hopefully this will also suit the hospital.Concerning the terms of reference,it would be important to have this information to hand two weeks prior.Peter Giblin.

----- Original Message -----

From: Dr Helen Beh <ceo@aoa.org.au>
Date: Wednesday, May 26, 2004 10:30 am
Subject: Inspection at Hervey Bay

> Dear Dr Hanelt
>
> I refer to your email of 19th May 2004 concerning the review of
> orthopaedicservices at Hervey Bay-Fraser Coast health Service
> District.
> This is to advise that Drs John North and Peter Giblin are still
> availableto undertake the review.
>
> Yours sincerely
>
> Helen Beh
>
> =====
> Dr Helen C Beh
> Chief Executive Officer
> Australian Orthopaedic Association
> Ground Floor, William Bland Centre
> 229 Macquarie Street
> SYDNEY NSW 2000
>
> Tel 02 9233 3018
> Fax 02 9221 8301
>
>

kalevwilding

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>
To: <s.mullen@bigpond.net.au>; Damodaran Krishna <Damodaran_Krishna@health.qld.gov.au>;
 Dinesh Sharma <Dinesh_Sharma@health.qld.gov.au>; Morgan Naidoo
 <Morgan_Naidoo@health.qld.gov.au>; Veruthaslam Padayachey
 <Veruthaslam_Padayachey@health.qld.gov.au>; Vinod Gopalan
 <Vinod_Gopalan@health.qld.gov.au>
Cc: <ceo@aoa.org.au>; <johnbnorth@bigpond.com>; <pgiblin@bigpond.net.au>;
 <kalev@ozemail.com.au>
Sent: Friday, 28 May 2004 7:57 AM
Subject: Re: AOA Inspection at Hervey Bay

The AOA review of Orthopaedic services at Hervey Bay Hospital is planned for Friday 2 July 04. Please ensure you mark this day to make yourself available on that day.

I assume the team will want to talk to all the service providers on the visit.

I am sure an Itinerary will be organised prior to that time with adequate notice so you can structure your day.

Terry H

This email, including any attachments sent with it, is confidential and for the sole use of the intended recipient(s). This confidentiality is not waived or lost, if you receive it and you are not the intended recipient(s), or if it is transmitted/received in error.

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kalevwilding

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>
To: Paul Long <Paul_Long@health.qld.gov.au>
Cc: <ceo@aoa.org.au>; <johnbnorth@bigpond.com>; <pgiblin@bigpond.net.au>; <kalev@ozemail.com.au>
Sent: Friday, 28 May 2004 7:52 AM
Subject: Re: Inspection at Hervey Bay

Paul,

Please try to ensure the letters of appointment are finalised adequately prior to the nominated date.

That date suits the hospital.

Terry H

>>> "pgiblin@bigpond.net.au" <pgiblin@bigpond.net.au> 27/05/2004 17:10:43 >>>

Helen, I have spoken to John North re Hervey Bay, and it would be o.k. for us if the visit was Friday 2 July 04. Hopefully this will also suit the hospital. Concerning the terms of reference, it would be important to have this information to hand two weeks prior. Peter Giblin.

----- Original Message -----

From: Dr Helen Beh <ceo@aoa.org.au>
Date: Wednesday, May 26, 2004 10:30 am
Subject: Inspection at Hervey Bay

> Dear Dr Hanelt

>

> I refer to your email of 19th May 2004 concerning the review of
 > orthopaedic services at Hervey Bay-Fraser Coast health Service
 > District.

> This is to advise that Drs John North and Peter Giblin are still
 > available to undertake the review.

>

> Yours sincerely

>

> Helen Beh

>

> =====

> Dr Helen C Beh
 > Chief Executive Officer
 > Australian Orthopaedic Association
 > Ground Floor, William Bland Centre
 > 229 Macquarie Street
 > SYDNEY NSW 2000

>

> Tel 02 9233 3018

> Fax 02 9221 8301

>

>

*formal
 letters
 in consultation for
 inspectors
 AOA
 requested before
 report released.*

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Queensland Government

Queensland Health

Fraser Coast Health Service District.

Enquiries to: Dr Terry Hanelt
Executive Medical Administration
Telephone: (07) 41206859
Facsimile: (07) 41206799
Email: Terry_Hanelt@health.qld.gov.au
File Number:
Our Ref.:
Your Ref.:

28/05/2004.

Dr John North
Australian Orthopaedic Association
Ground Floor
229 Macquarie Street
SYDNEY NSW 2000

Dear Dr North,

The Director-General of Queensland Health, Dr Stephen Buckland, has appointed you as a representative of the Australian Orthopaedic Association, pursuant to Division 1, Part 6 of the *Health Services Act 1991*, as an investigator to investigate matters relating to the management, administration or delivery of public sector health services as set out in the Terms of Reference contained in Schedule 1, and to provide a written report to Dr Buckland by 30 June 2004 or such date as agreed by him.

Copies of the Instrument of Appointment and the Terms of Reference are attached. You will note that the Instrument of Appointment grants you indemnity against any claims made against you arising out of the performance of your functions under this Instrument.

As I have now been informed that you will not be available to visit the Fraser Coast Health Service District until 2 July 2004, the Health Service will advise the Director-General of this fact and seek his agreement to extending the reporting deadline until 30 September 2004 to allow you sufficient time to prepare the report.

Please contact me on 4120 6859 should you have any questions or require further assistance.

Yours sincerely,

Dr Terry HANELT
Director of Medical Services
Fraser Coast Health Service District.

Hervey Bay Office
Hervey Bay Hospital
Chr Nissen St and Urraween Rd
HERVEY BAY Q 4655
Phone 07 41206666 Fax 07 41206799
E-mail: Terry_Hanelt@health.qld.gov.au

Hervey Bay Postal
Hervey Bay Hospital
PO Box 592
HERVEY BAY Q 4655

Maryborough Office
Maryborough Hospital
185 Walker Street,
MARYBOROUGH, Q. 4650.
Phone 07 41238355. Fax 07 41231606.
E-mail: Terry_Hanelt@health.qld.gov.au

SCHEDULE 1

TERMS OF REFERENCE

1. The appointee is to undertake a review of, and report on, the provision of Orthopaedic service in the public sector in the Fraser Coast Health Service District. The appointee is to review the following Queensland Health facilities:
 - Hervey Bay Hospital
 - Maryborough Hospital
2. The review is to include advice to assist the Fraser Coast Health Service District to define some guidelines for the Senior Medical Officers in relation to -
 - Conditions that -
 - ↳ The management of a patient does not require discussion with an Orthopaedic Surgeon prior to commencing a treatment plan.
 - ↳ The management of a patient must be discussed with an Orthopaedic Surgeon prior to commencing a treatment plan.
 - Appropriate assessment processes for determining the procedures that each of the Senior Medical Officer's is assessed as -
 - ↳ Competent to perform independently without reference to an Orthopaedic Surgeon.
 - ↳ Requiring discussion with an Orthopaedic Surgeon prior to commencing treatment.
 - ↳ Requiring direct supervision of an Orthopaedic Surgeon whilst treating.
 - Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.
 - The level of direct and indirect supervision required from Consultants.
 - Clinical Audit / Quality Assurance recommendations.
 - Requirements for registrar training accreditation
 - Any other matters that the Australian Orthopaedic Association feels relevant that have been omitted.
3. The review is to produce a report in relation to these matters and relevant recommendations. An electronic form of report is preferable.

10. MAY. 2004 13:45

CENTRAL ZONE

NO. 628 P. 6/16

INSTRUMENT OF APPOINTMENT

I, STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, appoint, pursuant to Division 1, Part 6 of the *Health Services Act 1991*, Dr John North, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to the management, administration or delivery of public sector health services as set out in the Terms of Reference contained in Schedule 1, and provide a written report to me by 30 June 2004 or such other date as agreed by me.

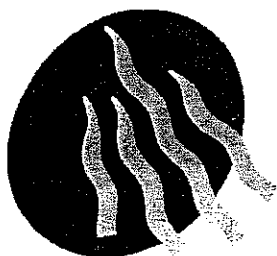
Conditions of appointment

1. The appointment commences on the date of this Instrument and will end on delivery of the required report.
2. The appointee will be indemnified against any claims made against the appointee arising out of the performance of the appointee of his functions under this Instrument.
3. The appointee may only exercise the powers specified in section 56 of the *Health Services Act 1991* where the appointee is satisfied the use of the power is necessary to carry out the terms of reference contained in Schedule 1.



(DR) S M BUCKLAND
ACTING DIRECTOR-GENERAL

06 08 /2004



Queensland Government

Queensland Health

- 1 JUN 2004

Fraser Coast Health Service District.

Enquiries to: Dr Terry Hanelt
Executive Medical Administration
Telephone: (07) 41206859
Facsimile: (07) 41206799
Email: Terry_Hanelt@health.qld.gov.au
File Number:
Our Ref.:
Your Ref.:

28/05/2004.

Dr Kalev Wilding
Australian Orthopaedic Association
Ground Floor
229 Macquarie Street
SYDNEY NSW 2000

Dear Dr Wilding,

I refer to previous correspondence regarding a review of Orthopaedic Services in the Fraser Coast Health Service District.

I note that Dr Giblin and Dr North are still available to carry out the review and that they proposed to visit the Fraser Coast Health Service District on Friday 2 July 2004.

Enclosed herewith are letters to Dr Giblin and Dr North notifying them of their appointment by the Director-General as investigators and enclosing copies of the Instrument of Appointment and the Terms of Reference for the investigation. Please arrange for these letters to be passed on to Dr Giblin and Dr North.

The Health Service will notify the Director-General of the proposed date for the inspection visit and that it will not be possible to provide the report by the 30 June 2004. The Health Service will seek approval on behalf of the investigators to provide the report by 30 September 2004. I trust this will allow sufficient time for preparation of a report.

Thank you for your assistance in this matter.

Yours sincerely,

Dr Terry HANELT
Director of Medical Services
Fraser Coast Health Service District.

Hervey Bay Office
Hervey Bay Hospital
Cnr Nissen St and Urraween Rd
HERVEY BAY Q 4655
Phone 07 41206666 Fax 07 41206799
E-mail: Terry_Hanelt@health.qld.gov.au

Hervey Bay Postal
Hervey Bay Hospital
PO Box 592
HERVEY BAY Q 4655

Maryborough Office
Maryborough Hospital
185 Walker Street,
MARYBOROUGH. Q. 4650.
Phone 07 41238355. Fax 07 41231606.
E-mail: Terry_Hanelt@health.qld.gov.au



AUSTRALIAN ORTHOPAEDIC ASSOCIATION

From the President: Dr Kaley Wilding MBBS FRCS FRACS FAOrthA

3rd June 2004

Dr Terry Hanelt
Director of Medical Services
Hervey Bay Postal
Hervey Bay Hospital
P O Box 592
HERVEY BAY QLD 4655

Dear Dr Hanelt

As you will be aware, Drs John North and Peter Giblin have made arrangements to inspect Hervey Bay Hospital on 2nd July 2004 and have been forwarded your terms of reference.

When I corresponded with you earlier, I sought full indemnity for our inspectors and the AOA before the inspection went ahead. To date, I have not received a letter of indemnity and now ask that this be forwarded to the Australian Orthopaedic Association without delay.

In the event that the letter has not reached the AOA Head Office by the 2nd of July, the AOA is prepared to allow the inspection to proceed as planned, but will withhold the report pending receipt of the letter.

With best wishes

Yours sincerely

KALEV WILDING
President

cc. Dr P E Giblin
Dr J B North

Subject: AOA Fraser Coast Orthopaedic services review request.

Date: Friday, 11 June 2004 10:34 AM

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>

To: Paul Long <Paul_Long@health.qld.gov.au>

Cc: <ceo@aoa.org.au>

Paul,

The AOA is supplying two representatives to do the ortho review on the Fraser Coast. The report generated would on behalf of the AOA and thus the AOA have reasons for genuine concern. Even if both doctors are covered by indemnity, action could be taken against the AOA and it be considered liable for its representatives actions/report just as we are considered vicariously liable for our staff and volunteers.

I think we need to go back to the Director General and ask for an instrument of appointment for the AOA to conduct the review in addition to what we currently have.

The alternative would be for the two doctors be appointed to perform the review but not on behalf of the AOA. They would be selected by us on recommendation of the AOA. The report would then not be the AOA report but would be that of the two reviewers. Not sure how acceptable that would be to the AOA and personally I would like the report to carry the clout of AOA sanction rather than be the thoughts of two individuals.

A review with no report is a waste of time and no point is paying for travel and accommodation for these reviewers if no report would ever be received.

What do you think can be organised.

Terry H

Dr Terry Hanelt
Director of Medical Services
Fraser Coast Health Service District
PO Box 592,
Hervey Bay. Qld. 4655.
Ph 07 41206859
Fax 07 41206799
e-mail: Terry_Hanelt@health.qld.gov.au

*Indemnity
contents report*

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Our ref RKH:40 8300

29 September 2004

Dr Helen Beh
Australian Orthopaedic Association
Ground Floor
The William Bland Centre
229 Macquarie Street
SYDNEY NSW 2000

Contact
Ron Heinrich
Partner
(02) 9228 9209

Dear Dr Beh

**Appointment of Investigators to Review and Report on Orthopaedic Services at
Hervey Bay Hospital and Maryborough Hospital**

I have reviewed the correspondence that you have provided to me including the Instrument of Appointment and Terms of Reference.

I have also reviewed the *Queensland Health Services Act, 1991 (the Act)*.

The provisions relating to the appointment of investigators is to be found in Division 1 Part 6 of the Act, relevantly Sections 52(1), 53, 55, 56 and 57. For your assistance I **enclose** a copy of Part 6 of the Act.

Instrument of Appointment

The Instrument of Appointment for Dr Peter Giblin provides:

'I, STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, appoint, pursuant to Division 1, Part 6 of the Health Service Act 1991. Dr Peter Giblin, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to the management, administration or delivery of public sector health services as

set out in the Terms of Reference contained in Schedule 1, and provide a written report to me by 30 June 2004 or such other date as agreed by me.

Conditions of Appointment

1. *The appointment commences on the date of this Instrument and will end on delivery of the required report.*
2. *The appointee will be indemnified against any claims made against the appointee arising out of the performance of the appointee of his functions under this Instrument.*
3. *The appointee may only exercise the powers specific in section 56 of the Health Services Act 1991 where the appointee is satisfied the use of the power is necessary to carry out the terms of reference contained in Schedule 1.'*

Relevantly you will note the Instrument of Appointment contains an indemnity in Clause 2. I presume that the Instrument of Appointment for Dr North is in similar terms as I have not sighted a copy.

Terms of Reference

The Terms of Reference are set out in Schedule 1 to the Instrument of Appointment in the following terms:

- '1. *The appointee is to undertake a review of, and report on, the provision of Orthopaedic service in the public sector in the Fraser Coast Health Service District. The appointee is to review the following Queensland Health facilities:*
 - *Hervey Bay Hospital*
 - *Maryborough Hospital.*
2. *The review is to include advice to assist the Fraser Coast Health Service District to define some guidelines for the Senior Medical Officers in relation to:*

- *Conditions that:*
 - *The management of a patient does not require discussion with an Orthopaedic Surgeon prior to commencing a treatment plan.*
 - *The management of a patient must be discussed with an Orthopaedic Surgeon prior to commencing a treatment plan.*
- *Appropriate assessment processes for determining the procedures that each of the Senior Medical Officer's is assessed as -*
 - *Competent to perform independently without reference to an Orthopaedic Surgeon.*
 - *Requiring discussion with an Orthopaedic Surgeon prior to commencing treatment.*
 - *Requiring direct supervision of an Orthopaedic Surgeon whilst treating.*
- *Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.*
- *The level of direct and indirect supervision required from Consultants.*
- *Clinical Audit/Quality Assurance recommendations.*
- *Requirements for registrar training accreditation.*
- *Any other matters that the Australian Orthopaedic Association feels relevant that have been omitted.*

3. *The review is to produce a report in relation to these matters and relevant recommendations. An electronic form of report is preferable.'*

The report in response to the Terms of Reference should be limited specifically to the Terms of Reference as set out so as to ensure that Dr Giblin and Dr North are covered by the indemnity.

Advice Generally

In relation to the report and review it was initially anticipated that it be under the auspices of the AOA to provide greater impact. The difficulty with this approach is that the AOA was not appointed along with Dr Giblin and Dr North in its own right as an investigator and consequently it is not possible for an indemnity to be extended to the AOA.

In these circumstances I have concluded that it would not be appropriate for the report to be provided using AOA letterhead or note paper as this could expose the AOA to legal liability without the benefit of indemnity.

Whilst I believe it may have been legally possible for the AOA to have been appointed an investigator, I suspect that this would against policy not be usual practice and in any event it seems to me that things are too far along to now achieve this outcome.

I therefore advise that any report should not be made using AOA letterhead or note paper but that the report be prepared as a separate document signed off by the 2 investigators in their own right.

I note however that the Instrument of Appointment in the first paragraph recites:

'I STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, appoint, pursuant to Division 1, Part 6 of the Health Service Act 1991. Dr Peter Giblin, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to etc'

I further note the Terms of Reference include the following reference:

- *'Any other matters that the Australian Orthopaedic Association feels relevant that have been omitted.'*

In these circumstances I believe that it would not be inappropriate to have an introductory paragraph included at the beginning of the report reciting the fact that the AOA nominated Dr Giblin and Dr North to be representatives of the AOA for the purpose of them being appointed investigators pursuant to the Act. I would further suggest that after this introductory paragraph the Instruments of Appointment should be set out followed by the Terms of Reference and then the report responding specifically to the Terms of Reference.

If the course of action I have suggested above is adopted I do not believe that any legal liability will attach to the AOA for the report.

Yours sincerely

R K Heinrich
Partner
Email:

Our ref RKH:40 8300

29 September 2004

Dr Helen Beh
Australian Orthopaedic Association
Ground Floor
The William Bland Centre
229 Macquarie Street
SYDNEY NSW 2000

Contact
Ron Heinrich
Partner
(02) 9228 9209

Dear Dr Beh

**Appointment of Investigators to Review and Report on Orthopaedic Services at
Hervey Bay Hospital and Maryborough Hospital**

I have reviewed the correspondence that you have provided to me including the Instrument of Appointment and Terms of Reference.

I have also reviewed the *Queensland Health Services Act, 1991 (the Act)*.

The provisions relating to the appointment of investigators is to be found in Division 1 Part 6 of the Act, relevantly Sections 52(1), 53, 55, 56 and 57. For your assistance I **enclose** a copy of Part 6 of the Act.

Instrument of Appointment

The Instrument of Appointment for Dr Peter Giblin provides:

*'I, STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, **appoint**, pursuant to Division 1, Part 6 of the Health Service Act 1991. Dr Peter Giblin, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to the management, administration or delivery of public sector health services as*

set out in the Terms of Reference contained in Schedule 1, and provide a written report to me by 30 June 2004 or such other date as agreed by me.

Conditions of Appointment

1. *The appointment commences on the date of this Instrument and will end on delivery of the required report.*
2. *The appointee will be indemnified against any claims made against the appointee arising out of the performance of the appointee of his functions under this Instrument.*
3. *The appointee may only exercise the powers specific in section 56 of the Health Services Act 1991 where the appointee is satisfied the use of the power is necessary to carry out the terms of reference contained in Schedule 1.'*

Relevantly you will note the Instrument of Appointment contains an indemnity in Clause 2. I presume that the Instrument of Appointment for Dr North is in similar terms as I have not sighted a copy.

Terms of Reference

The Terms of Reference are set out in Schedule 1 to the Instrument of Appointment in the following terms:

- '1. *The appointee is to undertake a review of, and report on, the provision of Orthopaedic service in the public sector in the Fraser Coast Health Service District. The appointee is to review the following Queensland Health facilities:*
 - *Hervey Bay Hospital*
 - *Maryborough Hospital.*
2. *The review is to include advice to assist the Fraser Coast Health Service District to define some guidelines for the Senior Medical Officers in relation to:*

- *Conditions that:*
 - *The management of a patient does not require discussion with an Orthopaedic Surgeon prior to commencing a treatment plan.*
 - *The management of a patient must be discussed with an Orthopaedic Surgeon prior to commencing a treatment plan.*
- *Appropriate assessment processes for determining the procedures that each of the Senior Medical Officer's is assessed as -*
 - *Competent to perform independently without reference to an Orthopaedic Surgeon.*
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 - *Requiring direct supervision of an Orthopaedic Surgeon whilst treating.*
- *Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.*
- *The level of direct and indirect supervision required from Consultants.*
- *Clinical Audit/Quality Assurance recommendations.*
- *Requirements for registrar training accreditation.*
- *Any other matters that the Australian Orthopaedic Association feels relevant that have been omitted.*

3. *The review is to produce a report in relation to these matters and relevant recommendations. An electronic form of report is preferable.'*

The report in response to the Terms of Reference should be limited specifically to the Terms of Reference as set out so as to ensure that Dr Giblin and Dr North are covered by the indemnity.

Advice Generally

In relation to the report and review it was initially anticipated that it be under the auspices of the AOA to provide greater impact. The difficulty with this approach is that the AOA was not appointed along with Dr Giblin and Dr North in its own right as an investigator and consequently it is not possible for an indemnity to be extended to the AOA.

In these circumstances I have concluded that it would not be appropriate for the report to be provided using AOA letterhead or note paper as this could expose the AOA to legal liability without the benefit of indemnity.

Whilst I believe it may have been legally possible for the AOA to have been appointed an investigator, I suspect that this would against policy not be usual practice and in any event it seems to me that things are too far along to now achieve this outcome.

I therefore advise that any report should not be made using AOA letterhead or note paper but that the report be prepared as a separate document signed off by the 2 investigators in their own right.

I note however that the Instrument of Appointment in the first paragraph recites:

'I STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, appoint, pursuant to Division 1, Part 6 of the Health Service Act 1991. Dr Peter Giblin, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to etc'

I further note the Terms of Reference include the following reference:

- *'Any other matters that the Australian Orthopaedic Association feels relevant that have been omitted.'*

In these circumstances I believe that it would not be inappropriate to have an introductory paragraph included at the beginning of the report reciting the fact that the AOA nominated Dr Giblin and Dr North to be representatives of the AOA for the purpose of them being appointed investigators pursuant to the Act. I would further suggest that after this introductory paragraph the Instruments of Appointment should be set out followed by the Terms of Reference and then the report responding specifically to the Terms of Reference.

If the course of action I have suggested above is adopted I do not believe that any legal liability will attach to the AOA for the report.

Yours sincerely

R K Heinrich
Partner
Email:



AUSTRALIAN ORTHOPAEDIC ASSOCIATION
QUEENSLAND BRANCH

7th December 2004

Dr. John Harrison
Chairman
Australian Orthopaedic Association
229 Macquarie Street
Sydney NSW 2000

Dear John

Further to my telephone call last week I feel it is necessary to make some comments regarding the Hervey Bay report on paper. This is essentially a re-hash of our conversation. It has been suggested to me that the AOA has received legal advice not to release the Hervey Bay report on the AOA letter head. I wish to remind you that the Hervey Bay report has been prepared by Peter Giblin and John North and it has been done so because Queensland Health and the Hervey Bay Medical Superintendent sought assistance from the AOA in their provision of orthopaedic services into their community.

In short I consider it mandatory that the report be released and that it should be done so on the AOA letter head. If the report contains criticisms these must be aired in the public interest. Regardless of what legal opinion may be in this matter, the AOA has sought to act for the public good by performing this inspection and I believe the report should be forwarded to both the Queensland Health Minister and the Medical Superintendent of the Hervey Bay Hospital.

Thank you for your forbearance in this matter.

Yours sincerely

CHRIS BLENKIN
CHAIRMAN



AUSTRALIAN ORTHOPAEDIC ASSOCIATION

From the Chief Executive Officer: Dr Helen C Beh BA (Hons) LLB (Hons) MSc PhD FASP FACSM

9th December 2004

Drs J B North and P E Giblin

BY FAX

Dear John and Peter

I enclose the TressCox advice on the Hervey Bay indemnity.

John Harrison has asked me to contact you to find out whether you are prepared to provide a report on the inspection of Hervey Bay Hospital to Queensland Health and, if so, when the report could be completed.

He would like to contact Queensland Health next week and get this matter sorted once and for all.

Please ring, email or fax to let me know where you stand on this matter.

Yours sincerely

HELEN C BEH
Chief Executive Officer

Thu, 19 May 2005 9:30 AM

Subject: AOA inspection report for Hervey Bay

Date: Friday, 25 February 2005 12:16 PM

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>

To: Paul Long <Paul_Long@health.qld.gov.au>

Cc: <ceo@aoa.org.au>

Paul,

I have had contact with the AOA again. They have been sitting in abeyance trying to sort out a way to provide the report on Orthopaedic services at Hervey Bay Hospital and the Fraser Coast. The report is finished and only needs some final formatting done to make it appropriate quality.

The indemnity issue persists. They have presented two options -

The Director General provides a new indemnity cover to cover the report that could be released in March so cover for March would be required.

The second suggestion is that the report be provided as a "Report in Confidence" to the DG in which case it would be for the DG's eyes only and indemnity issues would not arise. The DG could then read and direct that certain measures be investigated internally or certain changes instituted etc.

Either option would be acceptable to the District. The first would be preferable but past experience in extension applications indicate this is not terribly likely. The second option would prevent me analysing the report but is far better than no report. Could you please pursue through the appropriate channels through Zonal/Central Office to see if we can resolve the matter.

Sorry about the renewed hassle but the matter needs resolution or the implications are likely to come back and bite the District on an exposed posterior.

Terry H

Dr Terry Hanelt

Director of Medical Services

Fraser Coast Health Service District

PO Box 592,

Hervey Bay. Qld. 4655.

Ph 07 41206859

Fax 07 41206799

e-mail: Terry_Hanelt@health.qld.gov.au

>>> Helen Beh <ceo@aoa.org.au> 22/03/2005 2:45:00 pm >>>
Dear Terry

Is anything happening?

Regards

Helen Beh

Thu, 19 May 2005 9:30 AM

Subject: Re: Update

Date: Tuesday, 22 March 2005 4:41 PM

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>

To: Paul Long <Paul_Long@health.qld.gov.au>

Cc: <ceo@aoa.org.au>

Paul,

Have you heard anything about the AOA report indemnity vs release to the DG fdrom QH?

Terry H

>>> Helen Beh <ceo@aoa.org.au> 04/13/05 09:05am >>>

Dear Terry

I attach a press cutting that is not only alarming if true, but creates some urgency for Queensland Health to do something about getting the AOA report on Hervey Bay.

Have you heard anything?

Regards

Helen



The Courier-Mail

QUEENSLAND NEWS

Police open file on Dr Death's alleged killing

Hedley Thomas

09apr05

A POLICE probe into the alleged unlawful killing of a Bundaberg Base Hospital patient began yesterday as the dead man's grieving widow and son demanded full disclosure from Health Minister Gordon Nuttall.

Des Bramich, 56, was one of at least 14 patients whose treatment by the overseas-trained Dr Jayant Patel alarmed hospital doctors and staff, prompting a top-level investigation by Queensland Health.

But the sudden resignation and departure from Australia of Dr Patel, dubbed Dr Death by colleagues and traumatised nurses who tried to hide patients from him, prompted Mr Nuttall to tell hospital staff the inquiry and report could not be completed or released.

Dr Patel worked at the hospital for more than two years until Easter this year.

Mark Bramich, whose father died in June last year after a chest injury and allegedly botched treatment at the Bundaberg hospital, went with his father's wife, Tess, to make a formal police complaint yesterday.

"He did not die because of the accident. He died because of what happened at the hospital," Mr Bramich said. "Dr Patel needs to answer a lot of questions. We would like to see the Queensland Health report. If there is nothing to hide and nothing has gone wrong, they don't need to keep it secret."

Mr Bramich said police had assured him they were taking the matter seriously and would do whatever possible to investigate the issue.

Health professionals and heads of the Australian Medical Association and the Royal Australasian College of Surgeons called on Queensland Health to openly deal with the preliminary findings of chief health officer Dr Gerry Fitzgerald.

Their calls came as Mr Nuttall revealed he was told by Dr Fitzgerald that the issues surrounding Dr Patel were serious and warranted referral and further inquiry by the Medical Board of Queensland, which prosecutes doctors.

"These are matters of great concern," Mr Nuttall said. "We are trying to be open and accountable, but we are in a dilemma. We have a doctor who is not able to respond because he has left the country."

Mr Nuttall, who is deciding whether to seek the release of the preliminary findings, said he would consider an offer by the College of Surgeons for investigators to perform a comprehensive clinical audit of the surgery and outcomes for patients of Dr Patel.

Dr Peter Woodruff, vice-president of the Royal Australasian College of Surgeons, said: "We should be a party to investigating anything that smacks of substandard surgery in this country so that it can be addressed and corrected."

Dr Woodruff said there was no justification for the preliminary findings of the chief health officer to be concealed from the public.

The AMA's Queensland president, Dr David Molloy, said: "It is in the public interest that the truth is told here. If there is a bad doctor in the system, we have to wear that. We strongly support the findings being made public.

"The fact that the doctor has left Australia is not a reason to not have these issues addressed openly. To try to bury this is just so wrong. We want transparency."

Thu, 19 May 2005 9:29 AM

Subject: Re: AOA Report

Date: Wednesday, 13 April 2005 11:43 AM

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>

To: <ceo@aoa.org.au>

Helen,

On 23/03/2005 I sent the following e-mail to you -

Our District Manager sees no point in going back to the DG for an extension and that we would have to run with the AOA suggestion of doing a report in confidence to the DG.

Any further thoughts?

I have been awaiting further advice from you as to whether the report would be delivered to the DG in confidence or the AOA wished to pursue another course.

What is the intention of the AOA?

Terry H

Thu, 19 May 2005 9:29 AM

Subject: Re: AOA Report

Date: Wednesday, 13 April 2005 1:29 PM

From: Terry Hanelt <Terry_Hanelt@health.qld.gov.au>

To: Paul Long <Paul_Long@health.qld.gov.au>

Cc: <ceo@aoa.org.au>

Paul,

It seems the AOA require us to approach the DG to see whether he is willing to accept the report as a privileged document.

Can you please negotiate the required path for me.

Terry H

>>> Helen Beh <ceo@aoa.org.au> 04/13/05 10:39am >>>

Dear Terry

I did get the email but I have been waiting for a formal response from the DG's department that they would be pleased to receive the report as a privileged document. I can do nothing till we have this in writing from them.

Regards

Helen



Queensland
Government

RECEIVED

26 APR 2005

Queensland Health

Enquiries to: Peter Brockett - Lawyer
Legal and Administrative Law Unit
Telephone: (07)
Facsimile: (07)
Our Ref: 0201-3000-1101

Dr Helen C Beh
Chief Executive Officer
Australian Orthopaedic Association
The William Bland Centre
229 Macquarie St
Sydney NSW 2000

Facsimile 02 9221 8301

Dear Dr Beh

Re: Review of orthopaedic services at the Fraser Coast Health Service District

Further to our discussions via telephone of 15 April 2005, I want to resolve any outstanding issues between the Australian Orthopaedic Association ("AOA") and Queensland Health ("QH") to enable the report to be provided.

Background

I understand that the report has been finalised but has not been signed off by the investigators. The AOA is keen to provide the report, however there are a number of concerns that need to be addressed by QH principally the extent of our indemnity. The major concern of the AOA is the potentially defamatory content of the report.

Indemnity to Dr North and Dr Giblin

The indemnity granted by QH to Doctors John North and Peter Giblin (the investigators), was as representatives of the AOA, to investigate matters relating to "the management, administration and delivery of public sector health service" in accordance with instruments of appointment made by the then Acting Director-General, Dr Steve Buckland. **Enclosed** are copies of those instruments for your information.

It appears from the correspondence I have reviewed that there is a misunderstanding concerning the tenure of the extension sought by the investigators - was the extension to provide their report or to extend the indemnity, or whether it was both?

The investigators were originally required to provide their report by 30 June 2004. They were not able to meet this deadline so QH granted an extension until 31 October 2004. The wording in the

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BRISBANE Q 4000

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GPO Box 48
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(07) 323 40302.

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(07) 323 41977

letters to the investigators was a little unclear because it refers to extending the appointment when really it was the provision of the report that was in issue. I understand that QH refused a further request to extend the deadline for providing the report. This issue will obviously need to be re-considered and rectified (if necessary) by QH.

Under the conditions of appointment, the appointment ends when the report is delivered. More importantly, one of the other conditions of appointment is that both investigators are indemnified against any claims made against them arising out of their exercising their functions under the instrument of appointment. This indemnity is open-ended and is not contingent either on delivery of the report or the instrument of appointment ending. Naturally, this is required in order that, should any future claims arise out of matters raised in the report by the doctors, then that indemnity will continue to apply.

Therefore, QH considers that the indemnity under the instruments continues to apply to the investigators and the report.

AOA Indemnity

On a number of occasions the AOA has corresponded with QH seeking an extension of the indemnity to the AOA. In our discussions you raised a number of specific concerns where you consider that the AOA could face legal exposure. I now have a copy of your e-mail to Terry Hanelt dated 22 June 2004 giving a general indication of your concerns and providing suggested wording for the indemnity. However would you precisely identify where the AOA considers it could face legal exposure (eg defamation). This will assist me to present your concerns to the Director-General, as well as helping to define the parameters of any indemnity that may be granted.

The report as a confidential and privileged document

In discussions with Mr Brockett you suggested that an alternative proposal was that the AOA would be prepared to release the report if QH could give a written assurance that the report would be treated as confidential and a privileged document. I appreciate the endeavours by the AOA to reach a mutually suitable outcome. Regrettably, QH is not able to provide an assurance that the report will be protected from statutory access processes (such as under the *Freedom of Information Act*) as Queensland legal authority clearly indicates that privilege in this situation cannot be relied upon to exclude the report.

I await your reply.

Yours sincerely



Peter Crofts
Director
Legal and Administrative Law Unit
22/ 4/ 2005

HOSPITAL INSPECTION 2004

Hervey Bay Hospital

Terms of Reference:

The Director of Medical Services has requested the Australian Orthopaedic Association to undertake an inspection and advise him with respect to the commissioning of the Orthopaedic Department at this hospital.

The Inspectors have been chosen by the President of the Australian Orthopaedic Association and his executive. They will report in (confidence) to him, and he will forward the report to all stakeholders including Queensland Health and the Director of Medical Services of the hospital.

In particular, the inspectors will consider the facilities available in the region, the staffing of those facilities and the process of orthopaedic healthcare delivery in the region and in the central hospital. They will also consider any impediments to healthcare delivery to patients in the region and advise with respect to possible improvements in the delivery and/or referral to appropriate hospitals.

Timing of the Inspection:

It is proposed that the inspection be undertaken in late April, 2004 (or thereabouts) on a date convenient to all parties so that all those to be interviewed by the inspection team will be available for interview and discussion.

Prior to the inspection, documentation will be required and forwarded to the Sydney office of the AOA, so that it may be considered by the inspection team prior to their visit. That required documentation is listed below.

Prerequisite Documentation for Inspectors to View:

The following documentation should be in the hands of the President of the Australian Orthopaedic Association seven days prior to the inspection date. It must include:

1. Written overview of the departmental structure
Names and CVs of all medical staff involved in the Orthopaedic Department
 - a) Director
 - b) SMOs
 - c) RMOs (who have or are doing orthopaedic terms 16/1/04 -30/4/04)
 - d) VMOs

Written evidence of continuing professional development activities from all these medical staff is requested.

Departmental structure overview should include extent of secretarial services for orthopaedics, nursing services in:

- a) Wards
 - b) Outpatient Department
 - c) Operating Theatre, (both in normal hours and after hours)
2. The inspection team requires a summary overview of outpatient numbers undertaken by each of the medical staff from 30/6/03 to 31/3/04.
The inspection team requires a summary overview of operating theatre cases numbers undertaken by each medical staff from 30/6/03 to 31/3/04. This should include both elective and emergency procedures.
This list should include 'unplanned returns to operating theatre' as well as cases passing through the operating theatre referred to another centre within 24 hours.
3. Mortality, Morbidity and Audit

A list of all cases in the Orthopaedic Department with files and X-rays to be available of all cases of mortality or morbidity associated with orthopaedic treatment in the facility 30/6/03 to 31/3/04. Audit meeting reports with respect to these are requested.

A list of all patients referred to major hospitals from 30/6/03 to 31/3/04. (Files and X-rays of all those cases referred to major hospitals 30/6/03 to 31/3/04 should be available for the inspectors to view on the date of inspection.)
4. HRM Timesheets for All Medical Officers including the Director of Orthopaedics, Senior Medical Officers, Visiting Medical Officers and Resident Medical Officers from 30/6/03 to 30/4/04 are requested. Lists of recreation leave, sick leave, conference leave, professional development leave and/or special leave for each of these is also requested over the period mentioned.

Reporting procedure:

Inspectors will prepare a confidential report and forward it to the President of the AOA who will forward it the Director of Medical Services and Queensland Health. This will be undertaken and forwarded to those parties within 30 days of the inspection having taken place.

The Inspectors will be:

1. Treasurer of the Australian Orthopaedic Association
2. Senior Examiner Royal Australasian College of Surgeons

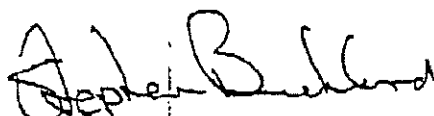
The Director of Medical Services will confirm with the national office of the Australian Orthopaedic Association on the day prior to the inspection that all parties will be available and will attend on the day in question for interview and discussion. Particular times will be allocated for particular persons when the information with respect to departmental structure has been received. It is requested that confirmation that all parties will attend be passed to the AOA prior to 1600 hours EST on the day prior to the inspection.

INSTRUMENT OF APPOINTMENT

I, STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, appoint, pursuant to Division 1, Part 6 of the *Health Services Act 1991*, Dr Peter Giblin, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to the management, administration or delivery of public sector health services as set out in the Terms of Reference contained in Schedule 1, and provide a written report to me by 30 June 2004 or such other date as agreed by me.

Conditions of appointment

1. The appointment commences on the date of this Instrument and will end on delivery of the required report.
2. The appointee will be indemnified against any claims made against the appointee arising out of the performance of the appointee of his functions under this Instrument.
3. The appointee may only exercise the powers specified in section 56 of the Health Services Act 1991 where the appointee is satisfied the use of the power is necessary to carry out the terms of reference contained in Schedule 1.



(DR) S M BUCKLAND
ACTING DIRECTOR-GENERAL

06/06/2004

SCHEDULE 1

TERMS OF REFERENCE

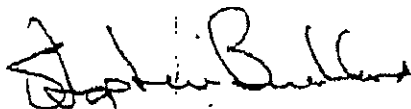
1. The appointee is to undertake a review of, and report on, the provision of Orthopaedic service in the public sector in the Fraser Coast Health Service District. The appointee is to review the following Queensland Health facilities:
 - Hervey Bay Hospital
 - Maryborough Hospital
2. The review is to include advice to assist the Fraser Coast Health Service District to define some guidelines for the Senior Medical Officers in relation to -
 - Conditions that -
 - The management of a patient does not require discussion with an Orthopaedic Surgeon prior to commencing a treatment plan.
 - The management of a patient must be discussed with an Orthopaedic Surgeon prior to commencing a treatment plan.
 - Appropriate assessment processes for determining the procedures that each of the Senior Medical Officer's is assessed as -
 - Competent to perform independently without reference to an Orthopaedic Surgeon.
 - Requiring discussion with an Orthopaedic Surgeon prior to commencing treatment.
 - Requiring direct supervision of an Orthopaedic Surgeon whilst treating.
 - Complications that must be discussed with an Orthopaedic Surgeon prior to continuing treatment.
 - The level of direct and indirect supervision required from Consultants.
 - Clinical Audit / Quality Assurance recommendations.
 - Requirements for registrar training accreditation
 - Any other matters that the Australian Orthopaedic Association feels irrelevant that have been omitted.
3. The review is to produce a report in relation to these matters and relevant recommendations. An electronic form of report is preferable.

INSTRUMENT OF APPOINTMENT

I, STEPHEN MICHAEL BUCKLAND, Acting Director-General, Queensland Department of Health, appoint, pursuant to Division 1, Part 6 of the *Health Services Act 1991*, Dr John North, representative of the Australian Orthopaedic Association, ("the appointee"), as an investigator to investigate matters relating to the management, administration or delivery of public sector health services as set out in the Terms of Reference contained in Schedule 1, and provide a written report to me by 30 June 2004 or such other date as agreed by me.

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1. The appointment commences on the date of this Instrument and will end on delivery of the required report.
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3. The appointee may only exercise the powers specified in section 56 of the Health Services Act 1991 where the appointee is satisfied the use of the power is necessary to carry out the terms of reference contained in Schedule 1.



(DR) S M BUCKLAND
ACTING DIRECTOR-GENERAL

06 08 /2004



AUSTRALIAN ORTHOPAEDIC ASSOCIATION

From the Chief Executive Officer: Dr Helen C Beh BA (Hons) LLB (Hons) MSc PhD FASP FACSM

3rd May 2005

Dr S M Buckland
Director General
Queensland Health
147-163 Charlotte Street
BRISBANE QLD 4000

Dear Dr Buckland

Re: Report on Orthopaedic Services on the Fraser Coast, Queensland

I have been asked by the investigators, Dr Peter Giblin and Dr John North, to submit the attached report to you under the terms and conditions agreed in their original appointment in 2004.

A tax invoice for services rendered is attached.

Yours sincerely

HELEN C BEH
Chief Executive Officer