Ex 444 (1 of 6)

BUNDABERG HOSPITAL COMMISSION OF INQUIRY

STATEMENT OF DR TERENCE MICHAEL HANELT

1. I, **Terrence Michael Hanelt**, Director of Medical Services, Fraser Coast Health District c/- Hervey Bay Hospital, Cnr Nissen Street and Urraween Road, Pialba, in the State of Queensland, acknowledge that this written statement is true to the best of my knowledge and belief.

2. This statement is made without prior knowledge of any evidence of information held by the Commission of Inquiry which is potentially adverse to me (other than the Australian Orthopaedic Association document *"A Review of Orthopaedic Health Care in the Fraser Coast Health Region"*), and in the expectation that I will be afforded procedural fairness should any adverse allegation be raised against me.

3. Briefly my background is as follows. I am a fully qualified and registered Medical Practitioner in the State of Queensland. I hold a MB, BS degree from the University of Queensland and I am a Fellow of the Australian College of Rural and Remote Medicine. I am currently the Director of Medical Services for the Fraser Coast Health Service District. I have held this position since 29 August 1994. A copy of my CV is attachment **TMH1**.

4. The Commission has received and published a report prepared by Dr North and Dr Giblin submitted by the Australian Orthopaedic Association. There are multiple issues raised in the report that require clarification and inaccuracies that require correction. Some of the concerns raised in the report are recognised as accurate and were the principal reason the report was requested. Other matters raised in the report are inaccurate.

5. This statement is addressed in a format that basically follows the format of the report. Direct quotes from the AOA report are within quotation marks and in italics.

Summary of Statement.

6. Some concerns became evident to Medical Administration in the Fraser Coast Health Service District in relation to supervision of the Senior Medical Officers, assessed level of competence of the Senior Medical Officers, a small number of adverse outcomes and the audit processes within the Orthopaedic Unit. As there was disagreement between the orthopaedic surgeons employed by the District an external review with expertise to provide independent recommendations on these matters was requested. After a significant period of negotiation the review took place. After a further period the report became available.

7. The report makes extensive claims that documentation was not delivered prior to the review. No documentation has been able to be located in relation to a commitment to provide any such documentation or of requested documentation other than those outlined in the details of this statement. In addition, an attached copy of an e-mail documents that I asked Dr North for details of required documentation and Dr North replied that this could be discussed and clarified at the time of the review.

8. The list of staff interviewed by the Investigators is incomplete and is misleading. One person, who was stated as not presenting for an interview with no reason provided, has stated that she was actually interviewed by telephone and a reason for not attendance for an in-person interview was provided as documented in an attached e-mail. Another person was interviewed but not listed in the report.

9. There are multiple errors in relation to service arrangements and staffing arrangements within the District contained in the AOA report.

10. Statements in relation to "generous" entitlements for Dr Naidoo imply some special conditions for Dr Naidoo. The entitlements for Dr Naidoo are exactly the same as are available to all Queensland Health full-time staff specialists employed in regional Queensland. Details of these entitlements are available to any person wishing to enquire, including the Investigators.

11. The report questions Dr Naidoo's clinical ability without providing detailed evidence to support the assertions. The case cited in relation to arthroplasty presented is shown to be inaccurate in the details of this statement and contrary opinion in relation to ability is provided.

12. The report raises questions in relation to Dr Naidoo and leave, billing practices and possible inducements from prosthetic companies. To date no evidence of inappropriate practices have been identified.

13. It seems that Dr Mullen was aware of at least part of the contents of the AOA report at a time prior to the report becoming available.

14. Concerns raised in relation to Dr Mullen and Dr Khursandi are described as "animosity" or "lack of respect". Concerns relating to Drs Naidoo, Sharma and Krishna are not described by the Investigators in denigrating terms but presented unqualified.

15. The Investigators were highly critical of the competence of Dr Krishna and Dr Sharma. The do not state how this opinion was formed. The Investigators failed to ask either of the two specialist Orthopaedic Surgeons who have worked with these doctors in relation to their clinical competence. Dr Mullen is highly praised in the report and any adequate investigation process would have included the assessment of Dr Mullen as to the Orthopaedic SMOs' clinical skills.

16. The AOA would seem to have held the view that training provided under their name and resulting in a Diploma under their seal was adequate to treat people in Fiji but not in Australia.

17. The Investigators demonstrated a lack of understanding of the role of nurse initiated x-rays in the Emergency Department. They also demonstrated a lack of understanding that there

is no relationship of nurse initiated x-rays to orthopaedic service availability. The Investigators reported this matter and made no comment to the obvious inaccuracy of the statement. Either the Investigators lacked an understanding of the work practices associated with nurse initiated x-rays or chose to not comment on the inaccuracy of this apparent criticism.

18. The Investigators demonstrate in the report a lack of understanding of the financial implications of local treatment as opposed to the transfer of patients for care. Conclusions and recommendations were based on these incorrect beliefs.

19. The Investigators statements in relation to failure to act in relation to identified or reported problems, lack of understanding of the Clinical Privileging processes and inaction relating to doctors not registered as specialists in Queensland being referred to as specialists are refuted in the details of this statement.

20. The Investigators make multiple references to certain patient outcomes and procedures without provision of any evidence to support these references. They then provide adverse opinions based on these unsupported alleged outcomes. The lack of citation of references makes validation of these claims difficult and refuting them equally difficult.

21. The report makes statements in relation to lack of professional development activities by Drs Naidoo, Sharma and Krishna and then contradicts these statements within the same report with respect to Dr Naidoo and Dr Sharma.

22. Quality assurance activities within the Orthopaedic service were inadequate. The necessary resources have subsequently been made available to remedy that situation.

23. The Terms of Reference were heavily weighted in relation to methods of assessment of levels of clinical assessment of the Senior Medical Officers to assist in ensuring patient safety. No guidelines for this assessment were provided. The intent of the Investigators to

address the Terms of Reference is not evident from the report.

24. The Investigators state that *"the Investigators' view that the people of the Fraser Coast District are in very unsafe hands from the point of view of Drs Naidoo, Sharma and Krishna in view of the shortcomings in clinical assessment, simple communication and basic surgical skills."* This opinion must have been reached prior to the completion of the written report and have been evident at the completion of the on-site review. The Investigators provided no interim report relating to these serious concerns to the Director-General and no advice to the Director of Medical Services prior to delivery of the completed report some 10 months after the review took place. If an Interim report had been delivered, avoidable patient injury could have been prevented during this 10 month period, if in fact any occurred.

25. The review was requested to assist in addressing certain issues that had been raised. Instead of assisting in determining if these issues were genuine and providing expert assistance in resolution of any such issues, the report simply repeated the hearsay reports rather than determining their validity and criticised management for not resolving these issues rather than providing the requested assistance.

26. The huge amount of factual errors, demonstrated lack of understanding of basic procedural and financial arrangements, failure to obtain information from the most relevant staff, failure to use valid investigation techniques, contradictions within the report, failure to reference any alleged adverse clinical outcomes and selective reporting of information must cast doubt on the validity of the report.

27. The AOA failed to ascertain if the perceived deficiencies in the service were still present at the time of release of the report. If they had made these enquiries, they would have been aware that the clinical concerns they raised had been resolved by the time the report was released.

28. The Fraser Coast Health Service District will continue to work towards resumption of a

quality service for orthopaedic patients within the District.

DETAILS OF STATEMENT.

The AOA Report.

Inspection Documentation

29. i) There are statements made on Pages 3 and 4 of the AOA report relating to the provision of Inspection Documentation and alleging that pre-agreed timeframes and commitments were not complied with by the Fraser Coast Health Service District. The range of documentation that it is alleged was requested and either provided late or not provided is then listed in the AOA report. Page 3 of the AOA report: *"Queensland Health had undertaken that all documentation relating to the inspection would be available to the investigators seven days prior to the inspection date. Although four weeks notice of the inspection was given, almost none of the documentation was provided prior to the inspection date."*

ii) I have been unable to find any documentation of an agreement to provide requested documents four weeks prior to the review. I have been unable to find any document stating the actual documentation requested. Administrative staff have also been unable to find any such documentation. Central Office and Central Zone have also been unable to locate any documentation supporting this statement in the AOA report.

iii) I have located an e-mail from Dr Giblin dated 27 May 2004 requesting that the terms of reference be made available two weeks prior to the actual review (attachment **TMH2**). The Terms of Reference were forwarded on 28 May 2004 (attachments **TMH3** and **TMH3A**). I have also found a copy of an e-mail from Dr North stating **"I won't burden you with what documents we need just yet, but talk more about that tomorrow."** This e-mail was sent by Dr North on 1 July 2004, the day before

the actual on-site review (attachment **TMH4**). On the same date (1 July 2004) Dr North again e-mailed requesting certain patient charts and x-rays to be available during the review the next day (attachment **TMH5**). The actual on-site AOA review occurred the following day on 2 July 2004.

iv) During the review on 2 July 2004 some or all interviewees were provided with a sheet of paper by Drs North and Giblin requesting certain documentation and/or information be provided. I received such a document. The requested documentation was supplied as it was accumulated. On 8 September 2004 Dr North sent an e-mail acknowledging receipt of additional information requested on 5 September 2004. Some of the requested information related to events subsequent to the review (attachment **TMH6**). On 6 October 2004 the final information requested from me by the Investigators was forwarded to Dr North (attachment **TMH7**).

v) Information was requested of other individuals and I am not in a position to make a statement as to their responses to the requests for the information.

Interviews

30. i) Pages 5 and 6 of the AOA report lists the staff the Investigators allege were interviewed and one staff member stated as not being interviewed. The statement "*The Investigators interviewed the following people as part of the review process:*" is incorrect. The list is both inaccurate and incomplete.

ii) I am aware that the review team also spoke to at least one person not included on the list. Mr Rod Stubbs, an RN from the operating theatre at Hervey Bay Hospital was interviewed by the Investigators but his name does not appear on the list of claimed interviewees. I personally located Mr Stubbs and escorted him to the Interview room for the pre-arranged interview.

31. Page 6 of the AOA report: *"Ms Theresa Winstone was asked to attend for interview but was unavailable. No reason was provided for her absence."* The team was informed that Ms Winston was away when the review was to be conducted. Thus a reason for her unavailability was provided. This was provided to Dr North via an e-mail dated on 30 June 2004. Dr North responded to this e-mail which confirms he received the e-mail and advice, which is denied in the AOA report. (attachments **TMH4**, **TMH8**, **TMH8A** and **TMH8B**). In addition Ms Winston has stated to me that she had a telephone interview with the Investigators. It is improper and misleading to omit the name of any staff interviewed during an official investigation. The statement about the failure to provide the reason for the unavailability of Ms Winston is inaccurate.

General Information on Hervey Bay Hospital

32. Page 11 of the AOA report: *"From a professional and personal perspective, the on-call component of this hospital is impossibly heavy, with only two registered orthopaedic specialists."* The AOA report has acknowledged in this section of the report that it is an impossibly heavy workload for two orthopaedic specialists to maintain a specialist on-call service. This is of relevance as the report later is critical for having non-specialists on-call for orthopaedic patients. When it is not possible to recruit an adequate number of specialists to provide a continuous specialist service, as has been the case in the Fraser Coast Health Service District, other models of service delivery must be utilised. One of the reasons the review was requested was to assist in the development of a framework of Clinical Governance to ensure the alternative model of service delivery was compliant with patient safety obligations.

33. i) Page 9 of the AOA report: *"Dr Sean Mullen is employed as a Visiting Medical Officer (Specialist Orthopaedic Surgeon) at Hervey Bay Hospital."* The same page further states: *"He attends Hervey Bay Hospital for three sessions per week and has an on call commitment. His private medical activities occur at St Stephen's Private Hospital in Maryborough."*

ii) This statement is incorrect. Dr Mullen has never been appointed for three sessions per week at the Hervey Bay Hospital. His appointment was for two sessions per week (attachment **TMH9**). However for much of the time he has been employed he has provided either no sessions per week or the equivalent of one session per week. The reasons provided for the reduction of sessions was family commitments in a facsimile on 22 March 2002 and a letter dated 4 September 2002 (attachments **TMH10** and **THM11**). This altered arrangement was for no elective work from 30 September 2002. This was agreed to by the District (attachments **TMH12** and **TMH13**). Dr Mullen recommenced sessional work in February 2004 (attachments **TMH14**, **TMH14A** and **TMH14B**).

iii) Dr Mullen performed private cases in the Hervey Bay Hospital as well as the St Stephens Private Hospital at Maryborough. Dr Mullen has private consultation rooms in Boat Harbour Drive in Hervey Bay where he performs the majority of his private medical activities. He did not perform all his private medical activities at St Stephens as stated in the AOA report.

iv) The information relating to Dr Mullen's activities, both in relation to his public and private medical activities, was either supplied incorrectly to the Investigators or the Investigators recorded the information incorrectly.

General Information on Maryborough Hospital

34. Page 12 of the AOA report: *"There are several orthopaedic beds available at Maryborough Hospital, with a public/private mix. Outpatient facilities, including a hand clinic, are available. The hospital does not have an Accident and Emergency Department and cases are taken to Hervey Bay."* There is an Accident and Emergency department at Maryborough Hospital contrary to the statement in the report. This department operated on a 24 hours a day, 7 days a week basis at the time of the review, and continues to do so to this day. There was no after-hours operating theatre availability at Maryborough Hospital. Emergency theatre cases during after hours periods were transferred to Hervey Bay

Hospital. During in-hours periods emergency theatre cases were transferred to Hervey Bay Hospital if they could not be performed on the elective theatre lists at Maryborough Hospital without requiring cancellation of elective cases. The statement about there being no Accident and Emergency department at Maryborough Hospital is incorrect.

35. Page 11 of the AOA report: *"It was also not possible to establish the number of orthopaedic and fracture clinics at Hervey Bay Hospital. These clinics, however, were not always supervised by a registered orthopaedic specialist and much of the work was done by the SMOs, Dr Krishna and Dr Sharma."* Page 13 of the AOA report: *"Orthopaedic, fracture and hand clinics are conducted at Maryborough Hospital. These clinics are supervised by Dr Khursandi and the work is mainly done by the SMO, Dr Padayachey"* These statements indicate that the Fracture Clinics at Maryborough Hospital are supervised by Dr Khursandi but the Fracture Clinics at Hervey Bay Hospital are not always supervised by Dr Naidoo. The true situation is that the Fracture Clinics at Hervey Bay Hospital were normally done in conjunction with an Orthopaedic Clinic being conducted by Dr Naidoo or with Dr Naidoo performing other duties on campus; whilst at Maryborough Hospital Dr Khursandi was off campus for the majority of the Fracture Clinics. It is unclear if false information was provided to the Investigators or whether they reported erroneously.

Section 3: Investigators' Report on the Medical Staff of the Fraser Coast Health District

Dr Morgan Naidoo

36. Page 15 of the AOA report states in relation to the operating lists of Dr Naidoo: *"The Investigators were unable to ascertain the mix of private and public during these sessions."* There were no dedicated public or private operating sessions at Hervey Bay Hospital for full-time specialist staff. Patient allocation to a theatre list was not dependent upon insurance status. Allocation was based on clinical need irrespective of whether the patient was intending to be admitted publicly or privately. This is a responsible management strategy to best meet the patients' needs rather than a negative or irregular factor as seems portrayed in the report.

37. i) Page 15 of the AOA report: *"Dr Naidoo had negotiated extremely generous study leave arrangements upon his appointment and was frequently absent from the hospital because of this and also took frequent sick leave."* This statement is misleading.

ii) Dr Naidoo was entitled to the same study leave arrangements as every other full-time staff specialist employed by Queensland Health. These entitlements are clearly articulated in the relevant Industrial Award and the associated Human Resource Management policies of Queensland Health. There was no negotiation of special deals in relation to these legitimate and normal entitlements.

iii) Periods of sick leave are approved in accordance with the relevant Award. There is provision for enforced retirement on grounds of ill health. Medical certificates to verify illness were received where industrially required from Dr Naidoo's treating doctors. Periods of sick leave did create some difficulties with cancellation of clinics and theatre sessions. The majority of sick leave, except for the purpose of undergoing elective treatment, is emergent and thus it is not possible to plan for it and prevent late cancellations.

38. Page 16 of the AOA report: *"Although Dr Naidoo felt that he was somewhat of an expert in this field of total joint arthroplasty, serious concern was expressed from a number of quarters about Dr Naidoo's ability to undertake this procedure."* I have not previously heard concerns in relation to Dr Naidoo's ability or competence to perform total joint arthroplasties. To the contrary, I have only heard good reports in relation to this aspect of his work. The Investigators fail to quantify the *"number of quarters"* that expressed concerns in relation to this aspect. This "number" may have been as low as one. Since publication of the AOA report I have received an unsolicited e-mail from the former Nurse Unit Manager for the operating theatres at Hervey Bay Hospital in relation to her opinion on the competence of Dr Naidoo. The e-mail supports his competence as an operative surgeon (attachment **TMH16**).

39. Page 16 of the AOA report: *"A case was described to the Investigators where it was claimed that Dr Naidoo had taken five hours to undertake a total hip replacement as a consequence of surgical incompetence."* An audit has been conducted on the time taken for all elective surgery cases performed by Dr Naidoo within the Fraser Coast Health Service District. There were no cases that took five hours or more to complete. There was one case where the operating time was 4¾ hours and this was a revision of a previous hemiarthroplasty to a total hip replacement. This is a complex procedure and no particular operative problems are documented in the notes (attachment **TMH15**). The operating time for this revision arthroplasty is not out of the normal range for the procedure. The predicted operating time on the theatre form for this procedure is normally 4½ hours. I have grave reservations in relation to the alleged opinion(s) related in this part of the report. The person relating the information to the Investigators supplied inaccurate information. If the Investigators were informed this was a revision arthroplasty (if it was this case that was referred to) they would know the operative time was not unusual.

40. i) Page 16 of the AOA report: *"It was claimed that Dr Naidoo undertook the care of many Work Cover patients in the Operating Theatre although the Investigators were unable to establish if there was any unreasonable practice outside the employment envelope."* Orthopaedic care undertaken in the Operating Theatre is on admitted inpatients. The District is able to determine whether patients admitted privately (including Work Cover and DVA patients) within the Districts hospitals have had appropriate accounts submitted through the Hospitals Private Practice billing Agency. The private practice clerical officer routinely checks for all private admissions and ensures that appropriate accounts, payable to the District have been submitted for all these patients. No discrepancies have been discovered in relation to these patients.

ii) A doctor could potentially attempt to bill for medical services provided to a publicly admitted patient. The HIC (Medicare) and the DVA would reject these claims as they have access to the admission status of patients. I am unaware of whether Work Cover has similar access.

41. i) Page 17 of the AOA report recommends an immediate investigation into: *"the extent of the leave undertaken by Dr Naidoo from Hervey Bay Hospital and whether the leave has been approved by the relevant authorities;"* A review of leave approvals for Dr Naidoo has being undertaken since receipt of the report. An audit to attempt to identify any periods of absence for which no leave application/approval exists has being undertaken. I have not been informed of any discrepancies.

ii) The District is also undertaking a process of reconciling fuel docket locations for Dr Naidoo's Health Service vehicle with rostered duties. As an example, if his car was refuelled in Brisbane on a Sunday and again in Brisbane on a Friday and the odometer readings showed the car had travelled less than 600km during that period then the vehicle could not have done a return trip to Hervey Bay during that period. If Dr Naidoo was not on leave during that period, this would be considered a discrepancy and an explanation required as it would appear he could not have been at work during that period. This process is not yet completed as it is very labour intensive.

42. i) Page 17 of the AOA report recommends an immediate investigation into: *"the specialist surgical care provided by Dr Naidoo with respect to the use of total joint arthroplasty implants and the possible provision of any inducements to Dr Naidoo by prosthetic devices suppliers to implant a particular prosthesis;"* The matter relating to possible inducements is outside the scope of access to documentation of the District and requires referral to relevant authorities. This has been recommended by the District.

ii) An analysis is being conducted of the prosthetic type utilisation of all the orthopaedic surgeons. It is usual that orthopaedic surgeons preferentially use limited brands of prostheses to ensure familiarity with the individual characteristics of the prostheses being used. This is safe clinical practice. The Districts Finance Committee reviewed the usage of various types of prostheses. Submissions from all the orthopaedic surgeons were that this was a matter of clinical choice and autonomy. Principally Dr Khursandi preferentially uses Smith and Nephew prostheses, Dr Mullen uses Depuy

prostheses and Dr Naidoo used Sulzer prior to 2003 and Stryker for 2003 - 2005 at Hervey Bay Hospital and Link for 2003 in Maryborough Hospital. The reasoning for use of the Link prostheses at Maryborough Hospital was that the Link supplier provided a full arthroplasty set at Maryborough Hospital free of charge to the District. This prevented the need for repeated transport of the set between the hospitals or alternatively, the District having to fund a second arthroplasty set.

iii) The Investigators suggest that Dr Naidoo be investigated in relation to prosthetic usage and possible inducement but failed to raise these same concerns related to other orthopaedic surgeons who also have a specific brand preference and actually were more specific in their supplier/manufacturer preference. This is targeting a particular individual surgeon whilst ignoring the same or even more pronounced activity by other surgeons.

43. Page 15 of the AOA report recommends an immediate investigation into: *"the rate of cancellation of orthopaedic procedures by Dr Naidoo and the reasons for same"* An audit of usage and cancellations for all clinic sessions, theatre sessions and individual Orthopaedic patients operations is being conducted but will not be available for a considerable period as it requires manual collation of data from individual patient records.

44. Page 17 of the AOA report recommends an immediate investigation into: *"the reported photocopying of outpatient notes, the reason for this activity and whether privacy concerns have been breached by this practice."* Details of photocopying of clinical notes have been requested from Clinic staff and Dr Naidoo has been required to provide an explanation of any such activities. To date no evidence has been found of photocopying of records other than of consent forms to provide to the patients and of records of Option B Right of Private Practice patients. Under Option B the specialist has ownership of the notes and has the right to retain copies.

<u>Dr Sean Mullen</u>

45. i) Page 17 of the AOA report: *"Both Dr Hanelt, the Director of Medical Services for the Fraser Coast Health District, and Mr Allsop, the District Manager, revealed animosity toward Dr Mullen although the reasons for the feeling were not clear to the Investigators."* The reviewers were able to clearly document the concerns raised by other staff members interviewed but were apparently unable to articulate the concerns raised by me for some reason.

ii) Other staff interviewed must have made significant allegations in relation to Drs Naidoo, Sharma and Krishna (because of the content of the report) but none of these staff members had allegations attributed to them personally or were described as having animosity towards those doctors. Concerns relating to Dr Mullen have been labelled as animosity but those concerning Drs Naidoo, Sharma and Krishna are not labelled as bias but were presented as being quasi-factual.

46. i) Page 17 of the AOA report: *"Reference was made to "problems" with Dr Mullen's duties as a consultant, which appeared to relate to the fact that Dr Mullen had withdrawn his services the previous year when he had felt that patient care and safety was being compromised, and to the perception that Dr Mullen's practice manager (Mrs Mullen) "made all the practice decisions". Beyond this, however, the Investigators were unable to elicit clear and detailed statements of the "problems" perceived by Dr Hanelt and Mr Allsop."* The report states that *"Dr Mullen had withdrawn his services the previous year when he had felt that patient care and safety was being compromised"*. Documentation clearly shows that Dr Mullen withdrew his services due to personal matters relating to his wife having an additional child and the increasing family commitments (attachments **TMH10**, **TMH11**, **TMH12** and **TMH13**).

ii) The issue of Joanne Kelly ("Mrs Mullen") directly communicating with various clerical staff to alter arrangements was also raised.

iii) During the interview with the Investigators, the issue of Dr Mullen offering to do on-

call in a ratio of up 1 in 2 but then consistently making himself only available for one night per week and one weekend in four for the on-call roster and then also frequently making himself unavailability to fulfil this commitment was raised. I consider these as clear and detailed concerns that were provided to the Investigators.

47. Page 17 of the AOA report: *"Dr Mullen is aware that he does not have the support of either Dr Hanelt or Mr Mullen."* It is presumed that the above statement should have actually read *"Dr Mullen is aware that he does not have the support of either Dr Hanelt or Mr Allsopp."*

48. Page 18 of the AOA report: *"the Investigators recommend that a solid effort be made by Queensland Health to encourage Dr Mullen and that the Administration seek his assistance in attracting young and fully qualified orthopaedic surgeons to the Fraser Coast District."* The District has for several years attempted recruitment in conjunction with St Stephens Private Hospital and the private specialists in the District. Whilst involvement of the private specialists may have been counterproductive in some specialities ("turf protection"), this has not been evident in Orthopaedics. Mail outs to all registered Orthopaedic surgeons in Australia, in attempts to recruit, have been done in conjunction with St Stephens Private Hospital. Dr Mullen was originally recruited to the District by joint recruitment of the District and St Stephens Private Hospital. In addition assurances have been given to Dr Mullen that the District would employ as a VMO any partner/associate he managed to attract to the District who had the appropriate credentials and skills.

49. i) After receipt of Dr Mullen's resignation from the District I had a discussion with Dr Mullen on 10 or 11 May 2005 (during his operating list at Hervey Bay Hospital) prior to the release of the report and by telephone on 16 May 2005, subsequent to the release of the report. Several matters were discussed and these included –

- The after care of current inpatients under the care of Dr Mullen in Hervey Bay Hospital. Dr Mullen stated during the meeting that he would continue to provide this care until the patients were discharged. The subsequent telephone call was to

negotiate continuation of appointment for a further period of one week to ensure Queensland Health indemnity cover for Dr Mullen in relation to care of these patients or to organise transfer to an alternate facility.

- The possibility of Dr Mullen's future involvement in the provision of public patient care at Hervey Bay Hospital was discussed. An assurance was received from Dr Mullen of his desire to again provide clinical services and be involved in the recruitment of staff and other non-clinical roles within the District once the issues raised in the AOA report had been resolved.

- The withdrawal of services of the locum Orthopaedic Surgeon was also discussed during the telephone call of 16 May 2005 and that this withdrawal was considered necessary by the locum as his professional body (the AOA) had recommended all orthopaedic surgical health care activity in the public sector in the Fraser Coast Health Service District cease immediately. Dr Mullen stated during that telephone call of the 16 May that he had felt it was necessary to resign due to that recommendation.

ii) This clearly demonstrates the opportunity for Dr Mullen to be involved in the service organisation within the District as well as recruitment and ongoing service planning.

iii) It is of interest that Dr Mullen could state in our telephone conversation that he had felt his resignation was necessary because of the AOA recommendation when at the time his resignation was submitted, the AOA report (and recommendations) had not been released by the Director General of Queensland Health or by the Bundaberg Hospital Commission of Inquiry. Copies of the letters and the notes made after the telephone call are attachments **TMH17**, **TMH18** and **TMH19**.

Dr Dinesh Sharma

50. 1) Page 18 of the AOA report: *"Staff reported that Dr Sharma's clinical and surgical*

skills were poor, as were his communication skills. There were no favourable reports of the work or attitude of Dr Sharma and staff reported that it was always very hard to find the orthopaedic SMOs for consultation in the Emergency Department and they were often not on the hospital campus." I find it unusual that there were no favourable reports of the work of Dr Sharma. Dr Mullen has previously spoken of the ability of Dr Sharma. Subsequent to the AOA report I spoke to Dr Mullen on 27 June 2005 in relation to assisting in the Clinical Privileging process for another Orthopaedic Surgeon. During that conversation the clinical ability of Dr Sharma was discussed. Dr Mullen praised the clinical skills of Dr Sharma. He also stated that the AOA Investigators had not asked him in relation to Dr Sharma's clinical skills during his interview. Since recruitment, the only Orthopaedic Surgeons Dr Sharma had worked with were Dr Naidoo and Dr Mullen. An adequate investigation that commented on his skills would require the Investigators to obtain the opinions of the Orthopaedic Surgeons that had worked with Dr Sharma.

ii) Dr David Morgan, a private orthopaedic surgeon from Brisbane has worked with Dr Sharma for four days subsequent to the AOA report release. Dr Morgan has written a letter to Dr Sharma that contains significant praise (attachment **TMH39**). This sharply contrasts with the AOA report in relation to Dr Sharma.

Dr Damodaran Krishna

51. i) Page 19 of the AOA report: *"Staff Interviews elicited uniformly poor reports of the performance of Dr Krishna."* This statement is difficult to accept as factual. Orthopaedic patient records demonstrate that some patients were admitted to the Hervey Bay Hospital under the care of Dr Mullen, were discussed with Dr Mullen and then booked for operative procedures on his advice. The operations were performed by Dr Krishna without supervision by Dr Mullen. Cases under the care of Dr Mullen that had unsupervised procedures performed by Dr Krishna included open reductions and internal fixations of fractures involving the neck of femur, shaft of femur and forearm/wrist fractures (attachment **TMH20**). It is difficult to understand uniformly poor reports of performance when Dr Mullen, who is strongly praised by

the Investigators, was prepared to allow Dr Krishna to perform such procedures whilst unsupervised on patients for whom Dr Mullen was clinically responsible.

ii) As with Dr Sharma's performance assessment, both Dr Mullen and Dr Naidoo have stated to me that the Investigators did not ask them about Dr Krishna's clinical performance. It appears the Investigators again chose to take opinions from people less competent to provide an opinion and not to ask the two staff most able to provide an expert opinion of Dr Krishna's ability.

Dr H ("Jim") Khursandi

52. Page 20 of the AOA report: *"Dr Khursandi stated that, at one stage, pressure had been brought to bear to close Maryborough Hospital and he fought to have it maintained as an orthopaedic centre for those people who lived in Maryborough and regarded it as their local hospital."* It is factually incorrect that "*pressure had been brought to bear to close Maryborough Hospital*". There had been a plan to reduce some services at Maryborough Hospital in or about 1998 but there were no plans to close the hospital.

53. i) Page 20 of the AOA report states in relation to Dr Khursandi: *"Although he had never been attached to Hervey Bay Hospital, when the Emergency Department moved from Maryborough Hospital to Hervey Bay Hospital he felt he could not offer emergency department cover at Hervey Bay. He stated that this decision resulted in antagonism with the area administration which has never been resolved."* This statement is incorrect. The Emergency Department at Maryborough Hospital remained functional and has never been moved to Hervey Bay Hospital.

ii) In addition, Dr Khursandi did for a period participate in the Orthopaedic on-call roster for the District based Orthopaedic emergency service which was based at Hervey Bay Hospital. Dr Khursandi provided on-call cover for 61 week-day nights and one weekend on this basis. Participation in this on-call roster was discontinued due to the unwillingness to provide any physical presence for supervision of subordinate staff.

iii) I have met with Dr Khursandi on multiple occasions since this occurred in relation to orthopaedic services matters and other matters and I am of the opinion that our relationship continues in a fruitful and productive manner.

iv) In my most recent meeting with Dr Khursandi, he stated he was willing to resume provision of public orthopaedic surgical service within the Fraser Coast Health Service District, contrary to the AOA report recommendation. He has subsequently resumed service provision in orthopaedics.

Nursing Staff

54. Page 21 of the AOA report: *"Despite being given reasonable notice. The nurse unit manager for the surgical unit (Ms Theresa Winston) was unavailable for interview. No reason was given for her unavailability. A delegate (Ms Gail Plint) was interviewed in her place. The Investigators were concerned that some coercive behaviour may have occurred that led to her decision. The culture of the unit (clearly delineated in many interviews;) would strongly support this possibility."* As stated previously in this document, Dr North was advised by e-mail that Ms Winston would be away at the time of the review (attachment **TMH4**). No further clarification of the form of leave was requested by the Investigators. The e-mails show if anything my desire to get good representation for the review by stressing the importance of staff presenting for interviews (attachment **TMH8B**). Ms Winston has stated that she had a telephone interview with the Investigators. The Investigators chose to omit this detail from the report, assuming Ms Winston's statement to me is true and correct.

55. Page 21 of the AOA report: *"It was clear to the Investigators that the nursing staff had concerns about the performance of some medical staff and some of the processes in place at these hospitals, that they had expressed these concerns to those who were in a position to address the problems, but that their complaints usually fell on deaf ears."* The only documentation that has been found in relation to allegations of dysfunctional medical

officers working in the Orthopaedic unit, other than single issue minor matters, were submitted on 17 June 2004 and 18 June 2004. These were submitted after it became known to staff that the review was to take place (attachments **TMH21** and **TMH22**). As these were submitted approximately two weeks prior to the review, it was logical to not investigate the complaints as the review would cover the issues and another investigation so close prior could be perceived as tainting the official investigation.

56. i) Page 21 of the AOA report: *"It is recommended that, as part of a quality assurance process at the District Hospitals, nursing staff be encouraged to submit documented concerns to the medical officer in charge of a unit or to the hospital administration, that these concerns be registered and a letter forwarded to the complainant after the matter has been considered and/or addressed."* It has been recognised that there is a culture of not reporting concerns relating to "near misses", adverse incidents, medication errors, perceived poor performance etc within Queensland Health. This also exists in many other organisations. This has been raised in many staff forums and the philosophy of a "no blame culture" promoted in attempts to encourage appropriate reporting of concerns. The District has made changes to incident report forms to facilitate reporting. Promotion of incident reporting will continue by medical administration within the District.

ii) The only aspect of reporting perceived adverse events within the District (other than failure to report) that I have been critical of is judgemental reporting rather than factual reporting. Staff who have concerns relating to incidents in which they do not have the qualifications/experience to provide expert opinion should limit reports to the facts and not make statements on matters such as knowledge/skill/ability of the involved practitioner. This is in line with a no blame culture.

iii) The District has defined policies in relation to reporting incidents including patient safety concerns. These can be provided upon request and are readily accessible to all staff.

Section 4: Investigators' Report on the Administration of Orthopaedic Services in the Fraser Coast Health District

57. Page 22 of the AOA report: *"Having read the documentation provided by staff of the Hospital and listened to interviews, the Investigators formed the opinion that the structure of the orthopaedic unit at Hervey Bay Hospital is inherently unsafe in terms of patient care and safety."* If an Investigator believed *"the orthopaedic unit at Hervey Bay Hospital is inherently unsafe in terms of patient care and safety"* I would expect an Investigator to provide an immediate interim report to the Director General of Queensland Health to cause an end to the patients being put at risk. To fail to provide such a report allowed services to continue and patients to be placed in a position of perceived risk with the potential to suffer damage as a result. The reported claimed allegations and assertions in the review should have been sufficient for the Investigators to form the opinion as to the necessity to terminate services immediately at the completion of the on-site review, if this was a valid recommendation. Additional information subsequently provided to the Investigators, as listed at the start of the report, was administrative type information and would not be necessary to draw the conclusions or validate the opinion in relation to the clinical safety of the service. Any avoidable adverse outcomes after the date of the review could have been avoided by an immediate interim report if in fact the recommendation to cease service was valid. It is common practice and a responsibility to produce an Interim Report when the matter is considered of immediate urgency and of major significance.

58. Page 22 of the AOA report: *"From time to time, RMOs from Royal Brisbane Hospital attended at Hervey Bay Hospital and it was reported that these doctors worked well in the orthopaedic unit. It is apparent that, at times, these practitioners may have been the only 'life savers' in the unit. In the absence of RMOs from Royal Brisbane, overseas practitioners, purportedly undergoing "supervision", worked in the orthopaedic unit at Hervey Bay, adding to the already unsatisfactory and unsafe staffing situation within the unit."* The rosters for medical staff show that there was no RMO from the Royal Brisbane Hospital allocated to the Orthopaedic Unit at Hervey Bay Hospital during the period since Dr Krishna was employed other than occasional weekend on-call coverage. As Dr Krishna was employed prior to Dr Sharma, this also applies to the period of Dr Sharma's

employment. Thus the statement made in relation to the RMO's from Royal Brisbane Hospital working well in the Unit and being the only "*life savers*" cannot be correct. Any statements relating to the comparison of the functioning of the Unit when there was RMO's from Royal Brisbane Hospital present compared to when there was not RMO's from Royal Brisbane Hospital present are obviously invalid as such comparison could never have been made.

59. Page 23 of the AOA report: *"Administrative personnel also appeared to be aware of many of the problems relating to the performance of the orthopaedic medical staff and with the delivery of orthopaedic services, although steps had not been taken to address these problems."* Medical Administration was aware of certain allegations in relation to supervision of the Senior Medical Officers in Orthopaedics. There were also concerns in relation to some specific clinical cases. These matters were discussed with Dr Mullen and Dr Naidoo. There was disagreement between these local orthopaedic surgeons in relation to these matters. The review by the Investigators was requested by me in response to these concerns. It is inappropriate to make judgements and decisions relating to matters in which one does not have the required expertise. The AOA review was the opportunity to have orthopaedic surgeons independent from the District review the situation and provide expert advice to allow for decisions to be made on the basis of independent opinion. The alternate option of deciding which of the local service providers' opinions to accept and implement change on that basis would be a dangerous administrative process. The Investigators point out that Medical Administration perceived that problems may be present. They also report that the review was instigated at the request of Medical Administration due to these possible problems. To then state that *"steps had not been taken to address these problems"* discounts the Investigators review being a step that was taken to address the perceived problems. Clearly Medical Administration reacted to concerns raised by conducting local investigations and then requesting an expert investigation when the issue was unable to be resolved locally (attachment **TMH14B**).

60. i) Page 23 of the AOA report: *"For example, in recognition of the difficulties faced by the shortage of qualified orthopaedic specialists in the area, Dr Mullen had offered to do a one-in-two on-call with Dr Naidoo. It was claimed that Dr Hanelt, the Director of Medical Services for the Fraser Coast had stated that this would be too costly and*

Dr Mullen then offered the service pro bono. This was not acceptable to the Director of Medical Services and the problem remained unresolved, with unqualified orthopaedic staff rostered on call." The offer by Dr Mullen to do a one-in-two on-call was not unconditional. The condition included a requirement that Dr Naidoo also do on-call on a one-in-two basis. Acceptance of an offer to do one-in-two on-call in light of previous non-compliance with a one-in-four on-call frequency by Dr Mullen seemed an exercise in futility. This is especially relevant taking into account the prolonged periods that Dr Mullen made himself unavailable for any sessional work or on-call duties. The additional cost of Dr Mullen providing on-call on week nights instead of a SMO would have amounted to an additional cost of approximately $12,000 per annum which would have been significant but was not the only or primary determinant in the decision.

ii) A review of the orthopaedic rosters from January 2002 (prior to the appointment of either Dr Krishna or Dr Sharma) has been conducted. If one counts a night on call as one on-call session and a weekend as four on-call sessions, the commitment of Dr Naidoo to the on-call roster is significantly greater than either of the other Orthopaedic surgeons (224 on-call periods for Dr Naidoo, 170 on-call periods for Dr Mullen and 65 on-call periods for Dr Khursandi).

iii) Once the roster with a consultant on-call at all times where possible was commenced, Dr Mullen did 4% of the nights and 17% of the weekends whilst the locum did 87% of the nights and 76% of the weekends. Details of the roster analysis are shown later in this statement (Paragraph 106).

61. Page 23 of the AOA report: *"Dr Hanelt reported that he was aware of problems of leadership in the Orthopaedic Department at Hervey Bay Hospital and that Dr Naidoo's living arrangements were less than ideal for someone in his position."* Specialists that are not local residents cannot provide the level of care that can be provided by a local resident specialist. Whilst Dr Naidoo's living arrangements were recognised as less than ideal, the Award under which staff specialists are employed does not allow a staff specialist to be directed to reside in any particular location.

62. i) Page 23 of the AOA report states in relation to me: *"He also reported that he was aware Dr Naidoo only spent part of his time in Hervey Bay and was frequently on leave or absent from the hospital."* Dr Naidoo took significant periods of leave for a combination of sick leave, recreation leave, conference leave and study leave. These leave periods were approved based on the advice of eligibility from the Human Resource Department. The leave was an entitlement.

ii) In relation to being frequently "absent from the hospital", I am unaware if it was frequent. Senior staff often work overtime for which they do not claim. In recognition of this fact some flexibility is allowed in taking time off in lieu of payment for this overtime. This is done on the basis that there is alternate coverage provided during these periods when they flex off.

iii) I have been contacted from time to time when staff stated they were unable to contact Dr Naidoo. On these occasions I was able to locate him via his pager or mobile telephone or identify that he was performing duties and unable to respond to calls (e.g. scrubbed in theatre). Unfortunately urban myths can develop with little of no basis.

iv) The administrative arrangements for the payroll system work as an impediment to monitoring work attendance rather than facilitating the process. Staff are not required to complete a timesheet for work attendance. Report of variations only is required. Thus if a staff member does not attend work and fails to notify the payroll section or Medical Administration, this absence remains undetected unless staff report the matter for some reason or the absence is noted due to inability to contact the staff member. The system is highly reliant on the memory and honesty of the individual employee. I have raised this concern with Queensland Health previously.

v) The situation of having two distinct campuses exacerbates the problem of identifying staff absences. Staff who work over two campuses and have no consistent

requirements for campus attendance for each and every session can be difficult to locate due to not knowing which campus they will be attending at a particular time or whether they are in transit between campuses.

63. Page 23 of the AOA report states in relation to me: *"He was unable to advise whether he had approved all leave taken by Dr Naidoo and suggested that there may be honesty problems with VMOs and time sheets."* I was unable to advise whether I had approved all the leave at the time of the review. Documentation was not immediately available, leave may have been approved by other people acting in my position during periods of my own leave and there is the potential for staff to fail to present for work and not submit appropriate forms for approval.

64. Page 23 of the AOA report: *"Dr Hanelt also reported his suspicions about a VMO taking sick leave from a hospital in the Fraser Coast Region, suggesting that the leave might be taken to enable the VMO to do Work Cover tribunals in Brisbane on hospital time."* The allegation relating to leave for Dr Naidoo was highlighted by the report and further investigation recommended. The concern raised in relation to possible tribunal work being performed by a VMO whilst on sick leave was simply recorded but with no recommendation. It would appear that the Investigators did not pursue the issue of the VMO leave with other staff. If this had been done I would have expected this concern to have been reinforced as it was initially raised to me by another employee who was also interviewed by the Investigators. I have difficulty understanding why concerns relating to leave by one employee rates recommendation for investigation but there is no similar recommendation for another staff member similarly implicated.

65. Page 23 of the AOA report: *"During the interview Dr Hanelt expressed criticism of each member of the orthopaedic staff at both Hervey Bay and Maryborough Hospital."* I had no reason to doubt the integrity of the Investigators at the time of the review. I provided information on the basis that an honest and unbiased review would be conducted in line with the Terms of Reference. Every member of society could accurately be criticised for some aspect of their work practices. To do other than provide honest opinion and facts in relation to all the orthopaedic staff would have been a demonstration of bias on my behalf.

66. i) Page 23 of the AOA report: *"Dr Hanelt also expressed the view that credentialing and reaccreditation procedures, such as those offered by the Royal Australasian College of Surgeons and the Australian Orthopaedic Association were "a joke". The Investigators interpreted this comment to mean that the credentials of orthopaedic applicants had not been independently checked by accrediting bodies prior to appointment because the Director of Medical Services believed that such a process was not worthwhile in terms of protecting the quality of orthopaedic health care in the region."* The District has been attempting to get the Royal Australasian College of Surgeons to nominate their representative on the Credentials and Clinical Privileges Committee. To date the RACS has not provided a nominee despite repeated requests. The Australian Orthopaedic Association was also requested for a nominee in a letter dated 14 July 2003 (attachment **TMH23**) and no response was received by me.

ii) When a College/Association fails to nominate a representative, it is not possible to carry out the process in accordance with the Queensland Health policy and certainly not within the expectations of the College/Association. The District was left with no alternative other than to determine clinical competencies for the SMO's as an internal process which was done by direct observational assessment by the Director of Orthopaedics.

iii) It is absolutely rejected that the value of the appropriately applied process is considered not worthwhile. The problems with the process rather than the outcome were and still continue to be the perceived problem until appropriate co-operation and participation of the Colleges/Associations is forthcoming.

iv) Since the release of the AOA report the new Queensland AOA Chairperson has provided a representative to participate in the Clinical Privileges process.

67. i) Page 23 of the AOA report: *"Upon questioning, it became clear that Dr Hanelt had*

no understanding of the processes in place and had made no attempt to ask for advice prior to the lead up to this investigation." This related to the process of determining Clinical Privileges. To state that I had no understanding of the process in place is challenged. I wrote the District policy in relation to the process of Clinical Privilege assessment and recommendation for medical practitioners (attachment **TMH35**). I have also served on the Clinical Privileges Committees for the local District as well as for two other Districts in Queensland. Thus it is not accepted that I would have no understanding of the process that I had authored, documented and continue to be involved with actively.

ii) It is questionable what, if any role, the AOA has in credentialing non-specialist SMO's. The Queensland Health Policy recommends the RACGP (Royal Australian College of General Practitioners) or the ACRRM (Australian College of Rural and Remote Medicine) or various Joint Committees of Colleges are the professional bodies to be used in determining Clinical Privileges for non-specialists undertaking procedures (such as Dr Sharma and Dr Krishna). Thus the AOA has a defined role in determination of Clinical Privileges for specialist orthopaedic surgeons such as Dr Naidoo, Dr Mullen and Dr Khursandi but does not have a specified role in determining the Clinical Privileges for SMO's such as Dr Sharma, Dr Krishna or Dr Padayachey. Despite this, the Terms of Reference for the AOA review included provision of some framework for assessing relevant clinical privileges for SMO's. The AOA report failed to deliver on this Term of Reference.

68. Page 23 of the AOA report: *"Reports from medical staff indicated that the lack of respect shown to them by the administrators was returned in full measure."* The report does not articulate the number of medical staff providing these opinions. Other than me, the review document lists six doctors as being interviewed (it has been previously documented that the review failed to provide an accurate list of interviewees so it is possible others were interviewed). The District employs in excess of 75 doctors. A sample of this size is far from a reliable basis for stating the opinion of the medical staff. It would have been more accurate and less misleading to report that a small sample of the medical staff expressed certain reported opinions. This demonstrates an apparent lack of understanding by the

Investigators of appropriate and valid investigation techniques, including valid sample sizes. The Investigators expertise in relation to Orthopaedic Surgery is accepted. The Investigators degree of expertise in relation to investigation or research of other matters appears deficient from the content of this report.

69. i) Page 24 of the AOA report: *"Concern was expressed that the administration had not taken steps to counter the less than honest approach taken to the presentation of the two SMOs at Hervey Bay Hospital to the public and to staff within the hospital. Despite the fact that neither was ever registered as a specialist in Australia, both SMOs were placed on the "consultant roster" for the Fraser Coast District."* The internal on-call roster for orthopaedics had a heading of "Consultant" for a column containing the names of the two SMO's in Orthopaedics. When I became aware of this discrepancy, the staff responsible for production of this roster were directed to produce the roster with correct nomenclature.

ii) Several other Medical Department rosters also used this same notation. When this has been noted it has been pointed out to those responsible that this is a contravention of the law in Queensland, specifically Section 158 and/or Section 159 of the *Medical Practitioners Registration Act 2001* or the previous relevant act, *The Medical Act (1939).*

iii) The use of this notation is believed to be to try to reduce confusion amongst staff reading the roster to determine who is on-call rather than being any attempt to deceive staff into believing the non-specialist SMO's are in fact registered specialists in Queensland.

iv) The rosters are in-house documents and thus are not able to deceive the general community. This is hardly *"misleading advertising"* as stated in the AOA report.

v) There is documentation dating back to 1999 in which I advised administrative and medical staff not to produce documentation that would infer or possibly be interpreted

as meaning medical practitioners not eligible to be denoted as Specialists in Queensland were actually specialists (attachments **TMH24**, **TMH24A** and **TMH24B**).

vi) I have also been active in attempting to prevent the portraying of non-specialists as specialists in AUSLAB, the pathology result system, whereby the field named "Consultant" is often filled by a non-specialist doctor's name thus potentially misleading staff/patients and contravening the Act. I am unable to locate documents relating to this action but have attached an e-mail supporting that this action has occurred (attachment **TMH25**). Unfortunately this practice in AUSLAB continues even to the time of making this statement. This is not within my control or that of the District.

vii) I have also reported to the Medical Board of Queensland an incident where a person not registered as a medical practitioner in Queensland portrayed himself to be a medical practitioner and a surgeon whilst in Queensland. Documentation supporting this report can be produced if required.

viii) Thus I have a documented history of attempting to prevent the portrayal of non-specialists as specialists or consultants over a prolonged period of time. This could have been clarified to the Investigators if they believed this was a genuine concern.

ix) The placement of medical practitioners on a roster under the column headed "Consultant" is not restricted to the Fraser Coast alone. Copies of rosters from Rockhampton Hospital are (attachments **TMH34** and **TMH34A**). These show the names of Dr Hohmann and Dr Rau in the "Consultant" column. Both of these doctors are currently registered in Queensland as non-specialist SMO's in Orthopaedics.

70. Page 24 of the AOA report: *"In media releases initiated by the administration, these appointees were subsequently referred to as "consultant" staff appointed to deal with "the long waiting lists" in the area. Reference to these two doctors as specialists in*

orthopaedics continued until the inspection of Hervey Bay Hospital and this misleading advertising may not have been corrected at this date." I am unaware of any media releases relating to the two Orthopaedic SMO's being specialists. I am aware of one article in the media in which the two non-specialist orthopaedic SMO's were referred to as Orthopaedic Specialists. This error was addressed. I do not remember any further such publications in the media. The media is notorious for reporting matters in an incomplete and/or ambiguous manner. Having spoken to the media on a regular basis I am aware of frequent misquotes. To attribute an erroneous publication in the media to a District employee and not raise the possibility of a media misquote is unfair or naive.

71. i) Page 24 of the AOA report states the Investigators formed the view that health care delivery in the Fraser Coast Health District is budget driven for crisis management and that this was manifested: *"by the appointment of persons, who by virtue of the nature of their training and the level of expertise, cost less to employ but were clearly unsafe in terms of their level of medical practice;"* Appointments are not made on the basis of the salary level of applicants. Recruitment is limited by the availability of staff to employ.

ii) No overseas trained doctor is employed if there is an appropriately trained Australian doctor available. It is the norm rather than the exception to have the option of providing no service or employing a staff member without relevant Australian qualifications.

iii) The possession of the relevant Australian qualifications is no guarantee of competence. The AOA investigators report significant criticism of the clinical performance of Dr Naidoo. The AOA is the body with the responsibility for assessing clinical competence of Orthopaedic Surgeons. Dr Naidoo is a Fellow of the AOA. The AOA investigators criticise the District for not employing staff accredited by the AOA and in the same report raise concerns about a fellow of the AOA in relation to competence.

iv) It would seem the AOA are recommending employing only their accredited people. At the same time there is no guarantee that their accredited people are competent. In

this situation it is quite valid to question the adequacy of the processes of some specialist colleges and in particular the AOA to accredit their Members and Fellows.

72. i) Page 24 of the AOA report states the Investigators formed the view that health care delivery in the Fraser Coast Health District is budget driven for crisis management and that this was manifested: *"by the rostering of non-specialists on consultant rosters for orthopaedics without supervision"* The Fraser Coast Health Service District has never been able to provide a 24 hour a day 7 day a week specialist orthopaedic service. The Fraser Coast Health Service District is also unable to provide a 24 hour a day 7 day a week specialist services in other medical disciplines including but not limited to General Surgery, all surgical sub-specialties, Obstetrics and Gynaecology, Paediatrics, Ophthalmology, all Physician sub-specialities, Radiology, Oncology and Emergency Medicine. In Orthopaedics, the District provides an on-call Senior Medical Officer service, not an on-call consultant roster. At times the senior officer on-call for Orthopaedics is a specialist Orthopaedic Surgeon. This coverage is at a level higher than that delivered in the Emergency Department where there is never specialist Emergency Medicine coverage.

ii) Many hospitals do not have specialist coverage in any specialities and all procedural work is performed by non-specialists. Some of these non-specialists have advanced procedural skills and provide anaesthetic, general surgical, orthopaedic, obstetric and other services. Delays in access to specialist treatment in emergency situations can result in a worse outcome than having that service provided by competent medical practitioners who are non-specialists. This is easily demonstrated in an example of a woman in labour who develops severe foetal distress in a rural hospital such as Kingaroy or Emerald. Accessing a specialist service would take in excess of two hours and probably result in a stillbirth. These centres provide a caesarean section service without specialists in Obstetrics, Anaesthetics or Paediatrics. Whilst continuous specialist coverage would be ideal, it is simply not possible to provide this level of services in each and every hospital. This opinion is based on my personal expertise and experience developed during my significant career in rural and remote medical practice as detailed in my CV. This opinion is supported by the Colleges of Anaesthetics, O&G and Surgery who support training and clinical privileges in

procedural work for medical practitioners who are not registered specialists. Unfortunately the AOA Investigators seem to not grasp this concept.

73. i) Page 24 of the AOA report states the Investigators formed the view that health care delivery in the Fraser Coast Health District is budget driven for crisis management and that this was manifested: *"by the avoidance of patient transfer to larger institutions where acceptable care would be available;"* This statement demonstrates a lack of understanding of the financial arrangements in Queensland Health and Queensland Emergency Services.

ii) It actually saves a District money to transfer patients to other facilities. The District does not pay for the transport of a patient to an alternate hospital and makes no financial contribution to that patient's care at the destination hospital. As an example a patient is admitted with a fractured hip requiring a prosthesis. The patient could be transferred to the Royal Brisbane and Women's Hospital and the cost to the Fraser Coast would be limited to the service provided in the Emergency Department within the Fraser Coast Health Service District. To treat the patient on the Fraser Coast would involve the additional cost of the expense of the theatre time, the cost of the prosthesis, the cost of the post-operative inpatient care and the associated Allied Health Care. This would equate to at least an additional $6,000 cost to the District as compared to the cost to the District if the patient had been transferred. Thus providing care for patients locally is far more expensive that transferring them to an alternate facility.

iii) The lack of this simple financial understanding of health care management by the Investigators is a significant concern.

74. i) Page 24 of the AOA report states the Investigators formed the view that health care delivery in the Fraser Coast Health District is budget driven for crisis management and that this was manifested: *"by the persistent failure of the hospital and district administrators to address serious clinical concerns reported to them by staff*

associated with the orthopaedic unit." Due to the lack of specialists applying for positions, it is necessary to attempt to provide a service with non-specialists to manage patients who would potentially have their outcome adversely affected by treatment delays. The provision of services by this model needs to be moderated by limiting scope of practice to that in which competence is demonstrated.

ii) The three Orthopaedic SMO's on the Fraser Coast have been assessed by local Orthopaedic specialists and in the cases of Dr Krishna and Dr Sharma that assessment was by Dr Naidoo. Their scope of practice was restricted to that in which Dr Naidoo considered them to be competent.

iii) Concerns were raised by Dr Mullen in that he did not share the same opinion as to the range of procedures that could be undertaken by the SMO's without supervision. This concern was tempered by the knowledge that at times Dr Mullen was prepared to allow these same SMO's to perform at least some of these procedures on patients under his care without supervision as documented previously in this statement (Paragraph 51(i)) and attachment **TMH20**.

iv) This was one of the integral reasons that the review was requested. The Terms of Reference for the AOA review included the provision of a model to assist in this assessment process. The review failed to provide any recommendations in this extremely important area. The review was in itself an attempt by me to assess the range and degree of problems within the Orthopaedic Unit by utilising the expertise of independent Orthopaedic Surgeons to provide an independent opinion.

v) These actions do not equate with administration ignoring the perceived problems.

vi) It is true that health care delivery is to a degree budget driven. Queensland Health places a high priority on budget integrity. Throughput is also a high priority with potential financial penalties to Districts that do not achieve activity targets. It is the responsibility of staff to deliver health care in the most efficient and safe manner that

is possible within the budget constraints that exist.

75. Page 24 of the AOA report: *"Also of concern was the observation that the administrators believed certain irregular practices were occurring in relation to doctors employed within the hospital system, yet no action was taken to investigate any of these matters to establish the facts of the situation"* I was aware of possible irregularities in the time sheets of one VMO. The Human Resources personnel were consulted in relation to the issue and potential management options. The matter was also discussed with the VMO involved and assurance was provided that no improper actions were occurring. The matter was also raised with the Investigators who had significantly more power (as officially appointed Queensland Health Investigators) to obtain information in relation to this matter. To state that no follow up action was taken is incorrect. If I had been asked what action had been taken in relation to this matter, the Investigators would have been informed of the facts.

76. i) Page 24 of the AOA report: *"Administration changed the roster title for the District in the first six months of 2004 (possibly after hearing that an investigation was to be undertaken). The word "Consultant" was removed from that title."* I cannot understand how the Investigators could contemplate that I heard of the investigation occurring when I requested the investigation. The AOA report states that the investigation was at my request so the Investigators had to be aware that suggesting I could act after "hearing that an investigation was to be undertaken" is illogical.

ii) The removal of the word "Consultant" from the column for the SMO or Specialist senior on-call roster occurred in October 2003 with the change appearing on the roster from November 2003. Attachments **TMH36** and **TMH37** show the old and new roster formats. This demonstrates that the statement in the AOA report that the roster changed *"in the first six months of 2004"* is factually incorrect.

iii) The timing of the alteration of the format and nomenclature of the orthopaedic roster is directly related to when I became aware of the discrepancy in the column titles. This again demonstrates that I took prompt action when I became aware of this

nomenclature problem.

77. Page 25 of the AOA report: *"Administration must adopt a support role, rather than one of control, and must recognise that the practitioner serves the patient while the function of the administration is to expedite that service delivery by supporting the practitioner in every way possible. To this end, the practitioner must be a significant part of the budget dispersal and an integral part of the decision making process in what can, or cannot, be achieved/delivered in the region."* There is a Surgical Services Management Advisory Group that includes Orthopaedic services. This group is multi-disciplinary and contains primarily clinical staff. The group has the responsibility for considering and recommending service delivery models as well as resolving clinical priorities. This involvement provides clinicians integral involvement in the decision making of how the service runs.

Section 5: Investigators' Report on the Processes Related to the Provision of Orthopaedic Services in the Fraser Coast Health District

Staff Appointments

78. Page 26 of the AOA report: *"The procedure for the appointment of staff to the Orthopaedic Unit appears to be ill-defined and ill-documented."* Recruitment practices within the Fraser Coast Health Service District are in line with the requirements for public sector recruitment in Queensland. These requirements are clearly documented in the relevant Industrial Relations publications.

79. Page 26 of the AOA report: *"In the case of the appointment of the Director of Orthopaedics, it would appear that there was no check on the conditions under which Dr Naidoo had left his appointment at Ipswich Hospital or on his level of performance at that hospital. It is not clear whether the appropriateness of his chosen referees for a position as an orthopaedic specialist was ever questioned or independent information sought on his competence as an orthopaedic surgeon."* Dr Naidoo was recruited whilst I was on

recreational leave and the process was completed whilst I was still on leave. I am thus unable to provide comment on the process carried out by the Selection Committee. Documents relating to the recruitment process for Dr Naidoo are attachments **TMH26** and **TMH26A**.

80. i) Page 26 of the AOA report: *"In the case of the two SMOs at Hervey Bay Hospital, there appeared to have been no independent check of the status of the "diploma" held out by both doctors as a qualification in orthopaedic surgery. The District administration supported the appointment of these two overseas trained doctors who claimed that they were orthopaedic specialists in their country of origin, and adequate checks on the level of their competence in orthopaedics in terms of Australian standards were not carried out."* The Diploma of Orthopaedics held by Dr Krishna and Dr Sharma were awarded by the AOA. This diploma is evidence of completion of a program of training conducted by the AOA and is aimed at facilitating provision of certain orthopaedic surgical services in some Pacific nations including Fiji. Documents showing that both of these doctors had been awarded this Diploma and that both were registered as specialists in orthopaedics in Fiji were obtained (attachments **TMH27** and **TNH28**).

ii) That the AOA would provide training to facilitate Fiji doctors to perform certain orthopaedic services in Fiji but seem to hold the view that this training is inadequate to perform the same procedures in Australia is a concern. It indicates the AOA's apparent involvement in promoting and facilitating apparent differential quality of care for different communities. Appropriate treatment of a fracture does not vary according to ethnicity.

iii) It was known that the Diploma of Orthopaedics is not recognised in Australia. Australia fails to recognise many overseas degrees. Irrespective of which country a person obtains a primary medical degree (except Australia or New Zealand) that degree is not recognised for unconditional registration purposes in Australia. Specialist certification other than that from the relevant Australian or Australasian College/Association does not normally suffice for specialist recognition in Australia.

However these credentials are used in the process of determining the prior training and experience of International Medical Graduates for the purpose of some form of conditional or special purpose registration.

81. Page 26 of the AOA report recommends: *"decisions on staffing be made in conjunction with stakeholders"* Decisions relating to staffing are discussed with the Director and other staff within the Unit as appropriate.

82. Page 26 of the AOA report recommends: *"advertising copy and information to applicants be discussed with unit staff before release;* Advertising copy is produced in line with the guidelines imposed by Queensland Health.

83. Page 26 of the AOA report recommends: *"that the senior orthopaedic consultant from the employing hospital should sit on the selection committee;"* The Director of Orthopaedics is on any panel for recruitment of orthopaedic senior staff unless the position being recruited is the Director.

84. Page 26 of the AOA report recommends: *"that at least two orthopaedic surgeons from outside the employing hospital should be recruited to the selection committee;"* The utilisation of orthopaedic surgeons from outside the District in appointment processes and performance management will be considered in line with Queensland Health policy.

85. Page 27 of the AOA report recommends: *"It is further recommended that any media comment be checked by senior members of the medical staff of the orthopaedic unit before release."* Media releases are cleared with the relevant services prior to release. It is obviously not possible to have prior clearance for comments made during a media interview.

Patient Care

86. i) Page 27 of the AOA report: *"At interview, it was stated that the lack of availability of medical staff in orthopaedics resulted in registered nurses performing medical officer work in the Emergency Department. Nursing initiated x-rays were common in orthopaedic patients simply because the medical officers could not be found or brought to the Emergency Department."* Nurse initiated x-rays in the Emergency Department are unrelated to access to orthopaedic staff. This statement demonstrates a clear lack of knowledge of the role of nurse initiated x-rays.

ii) Patients that present to the Triage Nurse in an Emergency Department with symptoms and/or signs that comply with a predefined protocol, can have certain x-rays ordered by the nurse. These x-rays are performed prior to the patient being seen by an Emergency Department doctor.

iii) These x-rays are performed to streamline the operation of Emergency Departments. Patients undergoing nurse initiated x-rays are then reviewed by the Emergency Department doctor. It is only after review by an Emergency Department doctor that a decision is made as to the need to call an orthopaedic doctor.

iv) This initiative was introduced into various hospitals to reduce the waiting time in Emergency Departments. Without nurse initiated x-rays a patient waits to be seen by an Emergency Department doctor. They then have a further wait to get an x-ray performed and then another wait until they are called again to see the Emergency Department doctor. Thus nurse initiated x-rays eliminate two of these three periods of waiting for the patient.

v) Thus it is simply untrue that nurse initiated x-rays are in any way related to the ability to gain access to Orthopaedic medical staff in the Emergency Department.

vi) It is surprising that the Investigators chose to report this matter without challenge to its validity. Any orthopaedic surgeon who has knowledge or insight into the function of orthopaedic service provision to an Emergency Department would be aware that

this allegation is both illogical and inaccurate.

87. i) Page 27 of the AOA report: *"Older patients with medical problems who were not fit to undergo surgery on admission but could be improved from a medical point of view were deemed verbally by non-medical administration as cases who did not need to be done on weekends, despite documented specialist medical evidence that the weekend was the safe window for surgery for that particular patient."* This would seem to apply to cases where the Operating Theatre nursing staff or the Nurse Manager questioned the necessity for certain operations to be performed out of hours rather than during normal hours.

ii) Nursing staff have a responsibility for the efficient use of the theatre resources. It is appropriate to question apparent (to them) cases where the clinical problems would not seem to correlate to the proposed timing of operative intervention. It is unfortunate that some medical practitioners may determine the timing of operations dependent on their own convenience rather than genuine clinical need. In cases where there is concern about clinical management, the issue should be raised. Concerns are normally raised first with the treating doctor and if not resolved, the Director of Medical Services is informed who then attempts to make an appropriate decision in consultation with the involved clinician(s). No clinician should be above being asked to justify their decisions.

iii) There have been numerous occasions when Nurse Managers or theatre staff have contacted me when they were concerned cases were being deemed as after-hours emergencies when this seemed to be based on proceduralist or anaesthetist convenience rather than clinical needs. When this has occurred the matter has been negotiated with the involved clinicians to determine the matter in the best interest of the patient. There is little documentation of this process as it, by its very nature, normally happens by telephone during after-hours periods. One example where the concerns have been raised in concern to Dr Mullen is attachment **TMH29**.

88. i) Page 27 of the AOA report: *"The Investigators noted an amputation that resulted from unsafe clinical decision making by the Director of Orthopaedics at Hervey Bay Hospital and SMOs, and clear evidence of unsupervised SMO surgery going wrong and causing substantial and prolonged morbidity for the patient. The Investigators also noted some major problems occurring with patients of Dr Naidoo in their post-operative phase when he was absent from the Fraser Coast and unable to be contacted, as well as unsafe practices with over-the-phone advice from him on other occasions."* The case of amputation of a limb has been identified. After review of the clinical notes I am of the opinion that the case was a particularly difficult management problem. The treatment options in this demented patient who continually removed her casts, dressings and external fixateurs were discussed with me at the time. One could justify a decision to manage the patient in any one of several ways. The ultimate need for amputation could have been the end result with any of the treatment options. Using the ultimate outcome to claim inappropriate management when that outcome may well have resulted from any of the valid treatment options is not appropriate. Hindsight judgement is fraught with error and bias.

ii) I am unaware of the other alleged problems with the Dr Naidoo patients. Adequate details were not provided in the report or independent of the report to identify the patients referred to in this section.

iii) I was aware of cases of unsupervised SMO surgery having complications. There was conflicting advice from local orthopaedic surgeons as to whether these complications were due to a competence issue or due to the fact that problems do occur in surgery irrespective of competence. Every surgeon has adverse outcomes. It is illogical to assume that adverse outcomes automatically reflect lack of competence. As a result of these concerns and the conflicting opinions, the review was requested to assist in determining the root cause of the complications.

89. Page 27 of the AOA report: *"Clinical pathways were not mandatory and were not used."* Clinical pathways have been under development and implementation processes in

Queensland Health for a number of years. The use is being progressively expanded and will continue.

90. Page 27 of the AOA report: *"As well, serious concerns and complaints were made by nursing staff regarding limb blocks (regional anaesthesia) performed by SMOs in the Emergency Department."* The report does not specify if these concerns were in respect to these blocks being performed by the Emergency Department SMO's or the Orthopaedic SMO's. I was unaware of any concerns raised in relation to these issues prior reading to the AOA report. Subsequent to the report, I have been unable to identify any concerns from Emergency Department staff or any evidence that any such concerns, if they existed, were reported. The use of a Bier's Block (arm block) is a legitimate practice within an Emergency Department and clarification of the allegations in relation to this matter would be welcomed to enable any issues to be addressed.

91. Page 27 of the AOA report: *"A summary of the cases noted would confirm the Investigators' view that the people of the Fraser Coast District are in very unsafe hands from the point of view of Drs Naidoo, Sharma and Krishna in view of the shortcomings in clinical assessment, simple communication and basic surgical skills."* A summary of the cases noted is not possible at present as they have not been identified to Medical Administration by the Investigators. Thus confirmation of the basis of the Investigators views has not been possible. The five cases for which the Investigators requested notes and x-rays have been reviewed. These case were –

- The case of the amputated limb mentioned above.

- A patient who sustained a circular saw injury to his wrist severing all tendons and major nerves on the palmar surface. Dr Krishna discussed this patient with a Hand Registrar in Brisbane and transferred him as advised.

- A patient who sustained a fracture of his neck of femur whilst Dr Krishna was internally fixing his fractured femur (iatrogenic fracture).

- A patient who had a fractured tibia internally fixed by Dr Sharma who is now awaiting removal of the metal work after healing.

- A patient with a fractured wrist that was manipulated by Dr Mullen and had aftercare provided by Dr Mullen until the fracture had united.

These records would not appear to support the claim made by the Investigators. Of these patients reviewed, the only one that has been otherwise brought to the notice of the District due to complaint or litigation is the patient who suffered the iatrogenic fracture.

92. Page 27 of the AOA report recommends: *"that doctors be informed that failure to attend within reasonable time when on-call constitutes unsatisfactory performance."* The Award for Senior Medical Officers (including specialists) does not specify any time frames for availability when on-call. Time frames are specified for Resident Medical Officers. This matter needs to be defined industrially and is beyond the scope of an individual District. Industrial clarification of this issue would be welcome and instituted.

Record Keeping

93. Page 29 of the AOA report: *"It seems that poor documentation extended to inadequate medication write-up with patients self-medicating within the ward."* Some patients do self medicate in the wards. This is normally confined to patients with conditions such as asthma, diabetes and the like that prefer to and are able to self manage these co-existent conditions. This is consistent with good modern medical practice.

94. Page 29 of the AOA report: *"The Investigators were told that the Administration was aware of the poor documentation procedures but had not attempted to address the problem."* Concern relating to documentation in inpatient charts was reported to Medical Administration in an e-mail two weeks prior to the review (attachment **TMH22**). This report was made after staff were aware that the review was to take place. Investigation of this allegation was appropriate for inclusion in the Investigators review.

95. Page 29 of the AOA report: *"The lack of direct entry documentation at Hervey Bay Hospital is indefensible and places at risk the health of patients and the legal liability of the hospital."* The direct entry of documentation in relation to outpatient clinic patients and operation notes of Dr Naidoo needs clarification. Dr Naidoo tapes details of the consultation and operation immediately after conclusion of the consultation or operation. These are then typed and placed in the patient's medical record. The operation record also includes brief handwritten notes of the procedure, findings and care plan. This typed form of documentation is superior to often illegible hand written notes. I have been aware of this practice for some time and condone the practice. I do not believe this practice is detrimental to patient care or is a medico-legal liability. Indeed it assists in both processes in ensuring the details can be read and instructions followed.

Quality Assurance Procedures

96. Page 29 of the AOA report: *"The Investigators were unable to elicit information from interviewees that any reasonable quality assurance procedures were in place at Hervey Bay Hospital."* Quality Assurance activities in Orthopaedics have been deficient. This has been to a degree due to lack of man hours. The large workload issues for the Orthopaedic surgeons were identified in the report by the Investigators. Additional support for quality assurance activities has been organised in the form of a computerised audit program and clerical assistance. The Investigators were asked to provide recommendations related to appropriate Quality Assurance activities. The report did not deliver on this Term of Reference but simply criticised the lack of such activity.

97. i) Page 30 of the AOA report: *"The SMOs and Director of Orthopaedics at Hervey Bay Hospital do not undertake continuing education to maintain and improve their surgical and medical skills."* The report makes frequent reference to Dr Naidoo being away on leave and the "generous" study and conference leave provisions. However the report, in this section, states that Dr Naidoo does not undertake continuing education. Stating Dr Naidoo is away too much because of leave, including study/conference leave, and then stating he does no ongoing education is

contradictory.

ii) Page 18 of the AOA report states: *"The Investigators were informed that Dr Sharma has attempted to improve his skills since his appointment at Hervey Bay Hospital by attending a number of educational and professional development activities."* To then state he does not *"undertake continuing education"* is contradiction within the same report.

iii) I believe the AOA maintains a database on attendance at AOA conferences/workshops etc. If this is correct the AOA has information relating to some of Dr Naidoo's participation in professional development. A competent Investigator would access this database prior to stating a Fellow of the AOA does not undertake continuing education.

iv) There is ample evidence that Dr Naidoo, Dr Krishna and Dr Sharma do undertake continuing medical education activities available from the Human Resources section of the District Health Service.

General Comments in relation to the report and relevant matters not from the AOA report

98. The recommendation that *"The Director-General take steps to ensure that all orthopaedic surgical health care activity in the public sector in the Fraser Coast Health Service District cease immediately."* was delivered 10 months after the review was conducted. There is no evidence to show that the Investigators determined if the deemed adverse findings were still relevant at the time of the delivery of the report. There was also no rider that this recommendation may be invalid due to possible changes made to the service delivery during the long time period between the review and the report. The view is strongly held personally that the concerns identified in the report, that were valid and related to patient safety issues, had been addressed prior to the release of the report and the recommendation was not valid at the time of delivery of the report, if it was ever valid.

99. The Fraser Coast Health Service District had consultant cover at all times in the months prior to the report being made available (attachments **TMH38**, **TMH38A**, **TMH38B**, **TMH38C** and **TMH38D**). This coverage was provided by local consultants and on the rare occasions this was not possible there was supervision provided by Orthopaedic Surgeons at either Nambour or Bundaberg Hospitals. This enhanced aspect of patient care had been instituted prior to the release of the report and invalidated the applicability of the report to the situation when the report was released.

100. The changes in the model of orthopaedic service delivery within the Fraser Coast Health Service District were not communicated to the Investigators when instituted. I did not see any reason to inform the Investigators of the changes as the Investigators did not indicate to me any need to modify the service model or that they considered patient safety was compromised by the model in existence at the time of the investigation.

101. The report is deficient in that it contains no mechanism for resumption of the service. There is no recommendation for a further review of the service cessation recommendation once certain perceived problems were addressed as would be expected in any thorough review report.

102. The issue of coercive behaviour in Queensland Health was raised in the report. The two orthopaedic surgeons who were providing services to public patients in the Fraser Coast Health Service District withdrew their services after reading the report. To be willing to provide these services the day before the report becoming available and to then withdraw their services due to the recommendation raises concerns as to why these orthopaedic surgeons felt obliged to withdraw their services.

103. The issue of coercive behaviour is alleged against Queensland Health. A letter from the Queensland Chairman of the AOA (attachment **TMH30**) would seem to be an attempt to coerce Queensland Health to relieve Mr Allsopp, me and Dr Naidoo from our positions.

104. There has been a statement made by a representative of the Medical Board that International Medical Graduates are registered as SMO's in Areas of Need positions on the basis that they are supervised. The Medical Board was aware of the position to be occupied by both Dr Krishna and Dr Sharma. Attached is a document supplied to the Board in relation to the clinical duties and skills as well as the supervision to be provided to Dr Krishna. The attachment has the date 21/05 visible on it. The date referred to is 21 May 2002 when registration of Dr Krishna was first supported by the District. The form specifies in relation to the position requirements: *"Orthopaedics – provide management of wide range of conditions with minimal supervision."*; and that *"Orthopaedic procedural skills."* were required and that consultant advice was available *"Normal working hours + weekday nights. Not all weekends on-site but remotely always."* (attachment **TMH31**). This clearly demonstrates the Medical Board was aware of the requirements of the position.

105. Litigation records (attachment **TMH32**) for the District in relation to orthopaedics show that there are currently seven active claims. One claim relates to treatment by Dr Naidoo for which the plaintiff has been unable to get supporting expert opinion. One relates to Dr Krishna and is the case mentioned earlier in the report. (Paragraph 91). One is related to treatment in the Emergency Department by one of the Emergency Department staff. Two relate to treatment by Dr Padayachey and two relate to treatment by Dr Khursandi. Of the completed claims (three in total) one had Judgement entered in favour of the District, one case was settled involving Dr Khursandi and one was settled involving Dr Padayachey. Thus there is little litigation in relation to the doctors adversely named in the report and more litigation in relation to two of the three doctors praised in the report. The litigation history does not support the reports statements in relation to competence and communication of Drs Naidoo, Sharma or Krishna.

106. i) A review of the orthopaedic rosters from January 2002 (prior to the appointment of either Dr Krishna or Dr Sharma) has been conducted. Relevant matters are outlined below. It must be noted that minor inaccuracies may be contained in the data due to late swaps on the on-call roster or changes due to unplanned sick leave that were not recorded on the primary rosters. These would be of no real significance to the overall picture.

ii) During January 2002 there was acute services offered at both hospitals on a 24 hour a day basis. Dr Khursandi provided on-call services at Maryborough hospital except whilst on leave. At Hervey Bay Hospital Dr Naidoo did the on-call on 14 weekday nights, Dr Mullen did on-call on 6 weekday nights and Dr Khursandi did on-call on 2 week day nights. Dr Naidoo did on-call on two weekends and Dr Mullen and Dr Khursandi did one weekend each.

iii) From February acute orthopaedics was centred at Hervey Bay Hospital due to lack of after-hours anaesthetic services at Maryborough Hospital. During the 5 months with this service delivery model, prior to the commencement of Dr Krishna the following on-call commitment was rostered –

Doctor	Week nights on-call	Weekends on-call
Dr Naidoo	37 (34%)	7 (33%)
Dr Mullen	23 (21%)	5 (24%)
Dr Khursandi	26 (24%)	1 (5%)
Dr Padayachey	22 (20%)	8 (38%)
Totals	108	21

iv) The roster from July 2002 to Feb 2003 summary is below. Dr Krishna commenced in July 2002 and Dr Sharma commenced in March 2003.

Doctor	Week nights on-call	Weekends on-call
Dr Naidoo	27 (15%)	4 (12%)
Dr Mullen	32 (18%)	8 (24%)
Dr Khursandi	35 (20%)	0 (0%)
Dr Padayachey	26 (15%)	7 (21%)
Dr Krishna	58 (33%)	15 (44%)
Total	178	34

v) The roster from March 2003 to 16 January 2005 summary is below. On 17 January 2005 a locum Orthopaedic surgeon commenced and Dr Naidoo has been on leave almost continuously since that time.

Doctor	Week nights on-call	Weekends on-call
Dr Naidoo	84 (17%)	8 (8%)
Dr Mullen	21 (4%)	18 (17%)
Dr Khursandi	0 (0%)	0 (0%)
Dr Padayachey	123 (25%)	23 (23%)
Dr Sharma	128 (26%)	27 (26%)
Dr Gupta	17 (3%)	3 (3%)
Dr Krishna	117 (24%)	23 (23%)
Total	490	102

v) The roster from 17 January 2005 summary to 16 May 2005 (when the specialist orthopaedic service ceased) is below.

Doctor	Week nights on-call	Weekends on-call
Dr Naidoo	2 (2%)	0 (0%)
Dr Mullen	3 (4%)	3 (17%)
Dr Khursandi	0 (0%)	0 (0%)
Dr Padayachey	3 (4%)	0 (0%)
Dr Gupta	0 (0%)	0 (0%)
Locum	74 (87%)	13 (76%)
Dr Sharma	0 (0%)	0 (0%)
Dr Krishna	3 (4%)	1 (6%)
Total	85	17

vi) Summary of the on-call commitments for each consultant prior to 17 January 2005 when the on-call roster was altered to have a consultant on-call at all times.

Doctor	Week nights on-call	Weekends on-call
Dr Naidoo	148 (19%)	19 (18%)
Dr Mullen	56 (7%)	31 (29%)
Dr Khursandi	61 (8%)	1 (1%)
Total	776	107

vii) Even if one counts a weekend as equivalent to four nights on-call, the commitment of Dr Naidoo to the on-call roster is significantly greater than either of the other Orthopaedic surgeons during the period prior to commencement of a consultant on-call at all times where possible. (224 on-call periods for Dr Naidoo; 170 on-call periods for Dr Mullen and 65 on-call periods for Dr Khursandi). Once the roster with a consultant on-call at all times where possible was commenced, Dr Mullen did 4% of the nights and 17% of the weekends whilst the locum did 87% of the nights and 76% of the weekends.

107. The attached Appendix A is the AOA "MINIMUM REQUIREMENTS FOR THE PRACTICE OF ORTHOPAEDIC SURGERY" document. The Fraser Coast Health Service District meets all of the recommended conditions with the exception of –

- There is no target of 2 prosthetic joints per surgeon per week. Joint replacement targets are subject to elective surgery fund allocation. However the District targets have been above the AOA recommendation for some time.

- The District has no quarantined beds for any speciality. Beds are allocated according to clinical need. Rarely elective orthopaedic procedures are cancelled due to lack of available staffed beds. This typically occurs during the Winter when

there is a combination of additional admissions of patients with respiratory infections and higher staff sick leave from the same cause. Provincial centres have limited casual staff available to provide additional staff during these times of need and occasional cancellations are necessary. There is no simple solution to this problem.

- An Orthopaedic Department budget does not exist primarily due to the small size of the District. Devolution of budgets to each and every Unit is counterproductive to dynamic management in an environment of continual change.

108. At the completion of the review, I had significant concerns in relation to my perception of bias of the Investigators and the review process and a feeling of a preconceived agenda by the Investigators. This perception is documented in an e-mail sent during the week after completion of the review, well prior to the release of the report (attachment **TMH33**). This perception of the final report is also supported by attachment **TMH16**.

109. The issue of determining Clinical Privileges for non-specialist SMO's in orthopaedics was not addressed by the report as requested in the Terms of Reference. Thus this major issue which was the predominant reason the review was requested, remains without clarification. This Clinical Privileging process is integral to patient safety. Further negotiations will need to be undertaken with Colleges/Associations to try to determine a suitable framework for this determination to promote access to safe and effective health care delivery to patients who reside in communities where it is not possible to provide access to specialist services within optimal timeframes.

110. Since the release of the AOA report the orthopaedic service within Maryborough and Hervey Bay Hospitals ceased due to the withdrawal of services or the resignation of the specialist Orthopaedic Surgeons employed by the District. This has resulted in treatment delays for many patients. This has the potential to result in adverse outcomes due to these delays.

111. Dr Khursandi has since recommenced the provision of limited Orthopaedic services at Maryborough Hospital. This service will not cater for after-hours emergency orthopaedic cases. There patients remain at risk due to lack of availability of local services.

112. Page 28 of the AOA review states *"The Investigators noted that these SMOs are missing basic complications such as DVTs and superficial infections"* The AOA has facilitated several Orthopaedic Surgeons visiting Hervey Bay Hospital. Some local surgery has been performed by these surgeons. Some patients have been transferred to other facilities for surgery. Despite the AOA report in relation to after-care by the SMO's and indeed with the apparent sanction of the AOA, local cases and cases transferred back to Hervey Bay Hospital have been provided with after-care by these same SMO's.

113. Since the release of the AOA report the District has set up a "Hotline" for patients with concerns relating to their orthopaedic treatment. Many of the calls were related to services other than orthopaedics. Many of the calls were related to how to access services subsequent to the suspension of the orthopaedic service. There have been 82 patients requiring further medical review. Of these 82 patients reviewed there were 11 assessed as requiring further treatment. Sudden cessation of a service will leave patients needing further operations to be organised to complete their treatment. Thus these 11 patients requiring further treatment are not evidence of inappropriate treatment. A review of the 82 patients treatment by an orthopaedic surgeon independent of Queensland Health is being organised to determine how many, if any, of these patients treatment was inappropriate. This audit will be performed when an independent reviewer's contract is finalised.

114. Dr Chris Blenkin has made a submission to the BHCI on behalf of the Queensland AOA. Attached to his submission is "Addendum 1". This is stated to be a copy of a roster for orthopaedics on the Fraser Coast. This document is inaccurate and was replaced by attachment **TMH37**. A roster that was superseded is not relevant and is not evidence of the roster that applied in November 2003.

115. The District is attempting to rebuild a specialist Orthopaedic service by appropriate

recruitment. This process may take a considerable time to meet the requirements to provide an acceptable service.

Signed at Hervey Bay on 18TH August 2005.

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Dr Terrence Michael Hanelt
Director of Medical Services
Fraser Coast Health District