Submissions

Ms Wendy EDMOND

SUBMISSIONS ON BEHALF OF MRS. WENDY EDMOND

PREAMBLE

1. Mrs. Edmond has received Notice informing her that the Commission is considering whether its report should make adverse findings about her conduct.

2. The Commission is, of course, in a very powerful position. The contents of the report could severely harm Mrs. Edmond's reputation.

3. At the outset, I respectfully remind the Commission that its power to inquire and report is not unlimited. The power is circumscribed by the Terms of Reference.

4. The Terms of Reference clearly do not extend to Mrs. Edmond. Term of Reference (f), the clarification of Term of Reference (c), makes that plain. It follows that the only basis upon which it is thought that Mrs. Edmond could be adversely mentioned in the report is as a corollary of or incidental to adverse findings in respect of persons who do come within the Terms of Reference.

5. Mrs. Edmond is now in retirement. No-one who saw her give evidence before Mr. Morris QC could fail to appreciate that she gave years of industrious and dedicated service to the State.

6. I intend to meet each possible adverse finding in respect of Mrs. Edmond on the merits and urge that no adverse criticism could fairly be made in respect of any of Mrs. Edmond's conduct. However, even if I were unsuccessful in persuading the Commission of this, it remains of critical importance that the Commission only comment adversely in respect of Mrs. Edmond if it is essential to do so within the proper purview of the Terms of Reference. This may involve careful report-writing, but that is part of the Commission's task.

POSSIBLE ADVERSE FINDINGS

The possible adverse findings are dealt with seriatim.

> *"(a) During the period 19 June 1998 to February 2004 when elective surgery waiting lists were published, at your behest as Minister, you took no steps to publicise the specialists' outpatients surgical waiting lists, the outcome being misleading and not reflecting the true nature of surgical waiting time in Queensland public hospitals".*

1. (i) This possible finding is not within the Terms of Reference. This, and all possible adverse findings alleged in respect of Mrs. Edmond, are said to be with respect to Terms of Reference 2(c) and (f).

(ii) Term of Reference (f) is a clarification of Term of Reference (c). Term of Reference (f) pertains to "*current and former employees of the Queensland Department of Health*". Mrs. Edmond was an elected representative and Minister of State.

(iii) This possible finding is a direct allegation against Mrs. Edmond personally: that she took no steps to publicise the anterior waiting lists. It is a potential finding that is not only outside the Terms of Reference, but also it could not conceivably arise as a corollary of or incidental to findings against employees of the Department.

2. (i) The allegation that Mrs. Edmond "*took no steps to publicise*" the anterior lists fails to countenance the full picture disclosed by the evidence.

(ii) Shortly after Mrs. Edmond became Minister, an investigation team was appointed within Queensland Health to assist with management of anterior waiting lists (T4875 L50 – 4883 L10). Mrs. Edmond pointed out in her evidence that collecting data for anterior waiting lists proved far more complex than anyone thought. The data was able to be utilised for problem solving in respect of discrete facilities and the data improved over time (T4877 L40 – 4878 L10). However, the data was never of sufficient quality to enable general publication of anterior waiting lists.

(iii) The allegation that Mrs. Edmond took no steps to publish the anterior lists is ill-founded. The Commission is well aware from the evidence of Mrs. Edmond and, in particular, Mr. Walker, that the data for the anterior lists never reached sufficient quality to permit publication.

(iv) Mr. Walker, who seemed to have been treated by the Commission as a very reliable witness, was repeatedly urged by Counsel Assisting to agree to the proposition that there was no sensible reason not to publish the anterior lists data. Mr. Walker refuted the proposition on no fewer than four occasions (T6181 L1 – 10; L18 – 25; L25 – 32; T6183 L15 - 20), stating:

- that he "*personally would have difficulty in releasing that data …*";

- "*... I would put the rider on it that we need to actually make sure that the data was actually accurate*";

- "*I would suggest that it's*" (surgical waiting list data) "*is much more accurate ...My belief is that that*" (surgical waiting list data) "*is a far more robust data collection than what we're looking at here*";

- "*It could have been*" (disseminated if his "*political masters*" directed him to) "*although once again, I have to say that I would be most concerned about the quality of the data ...*". (emphasis added).

(v) Mr. Walker agreed that a lack of funding stymied improvement of data collection. However, before there is to be any criticism that millions of dollars were not poured into improving this data collection system, priorities for funding must be considered. Everyone agrees that funding was scarce. This Commission is in no position to determine that millions of dollars would have been better spent in this area as opposed to any other area. In addition, Mr. Walker pointed out further difficulties to improving the data collection system at that time. See T6181 L50 – 6182 L35.

(vi) Immediately after Mr. Walker had refuted the proposition by Counsel Assisting that the anterior list data ought to have been published, Counsel Assisting suggested to Mr. Walker that "*Some information is better than no information*". Mr. Walker agreed. One does not know what Counsel Assisting was referring to in this suggestion, nor, more importantly, what Mr. Walker made of the suggestion.

However, clearly, the Commission cannot treat this as some sort of acceptance by Mr. Walker that the anterior list data ought to have been published. Such an acceptance by Mr. Walker would be amazing, he having argued so assiduously as to why the data ought not be published. Further, it would be surprising if Counsel Assisting were advancing the proposition that data, even though it may well be misleading, ought be published to the Public.

It is far more likely that Mr. Walker understood Counsel Assisting's question as relating to the publication of the surgical waiting list.

3. (i) Possible adverse finding (a) further alleges that the outcome of taking no steps to publish the anterior lists was that it was "*misleading and not reflecting the true nature of surgical waiting time in Queensland public hospitals*".

(ii) The allegation does not suggest who might have been misled as to the true nature of surgical waiting time in Queensland public hospitals.

(iii) Term of Reference (f) empowers inquiry into the acts and omissions by current and former employees of the Department "*which relate to clinical practices or procedures conducted by medical practitioners ...including acts or omissions relating to waiting lists ...*".

(iv) Leaving aside my earlier objection that Mrs. Edmond does not fall within this Term of Reference in any event, the Commission's investigation is into acts and omissions which relate to clinical practices or procedures of doctors.

(v) It follows that this allegation of misleading must relate to medical practitioners being misled as to the true nature of the surgical waiting time, and thereby affecting, or potentially affecting, their clinical practices and procedures.

(vi) That this is the correct interpretation of the allegation is fortified by the questioning by Counsel Assisting – see for example T6183 L25 – 32:

> "*Q:* "*You've no doubt read on the net or perhaps read in the newspapers a number of propositions put to witnesses in these proceedings. You would agree that a referring general practitioner is better armed to advise his or her patient who may have to undergo surgery and needs referral for that purpose?*
>
> *A:* *Mmm*
>
> Q: *If he or she knows not just the length of the elective surgery waiting list but the length of the anterior lists?*
>
> *A:* *Yes.*"

(vii) Presumably, this proposition by Counsel Assisting was meant to imply that the publication of anterior lists would assist general practitioners in their practices in advising patients, although, that was not what was raised with the witness.

(viii) With respect to the proposition being put, it is fundamental that every general practitioner would have been well aware that the surgical waiting list did not reflect a patient's waiting time between seeing a general practitioner and having surgery.

(ix) If a patient is on the surgical waiting list, it must mean that the patient has been assessed as needing surgery. That cannot be done until the patient actually sees the Outpatients specialist.

(x) If there is any general practitioner who believed that there was no waiting time to see a specialist, whether at Outpatients or privately, there is something dramatically wrong with that medical practitioner.

(xi) It follows that the allegation that medical practitioners were misled by the publication of the surgical waiting list and the non-publication of anterior list data, is entirely erroneous.

(xii) As a matter of commonsense, all general practitioners have a good idea of the waiting time to see specialists, both at Outpatients and privately, within their area or region. Their general interaction with the specialists concerned, the hospitals and other general practitioners would inevitably keep them informed of waiting times. It is the same for lawyers. Barristers and solicitors involved in litigation are always aware of the waiting time for a trial, in the civil and criminal jurisdictions, in all Courts.

Further, and importantly, general practitioners are obliged to indicate the priority for patients in respect of the elective surgery waiting list. For example, a general practitioner is obliged to indicate if a patient ought be seen by an Outpatients specialist urgently. Interaction between general practitioners and the hospitals and Outpatients specialists is an inevitable part of the prioritising process. The prioritising of patients is, of course, very beneficial, if not essential, but it is one of the many reasons why the anterior lists may change.

(xiii) If, for whatever reason, a general practitioner is uncertain as to the waiting time for a patient to obtain a specialist's Outpatients' appointment, a phone call from the surgery to the hospital or hospitals would immediately cure that problem. See evidence of Dr. Buckland at T5589 L35 – 40:

> "*Q: Do you understand if there is any inhibition on a general practitioner contacting hospital A and hospital B and finding out the raw numbers and the other information they need?*

A: Not at all. In fact, that happens quite frequently, particularly in regional Queensland. GPs they have a close liaison with the specialists at the hospitals so they tend to know what they are waiting for."

(emphasis added).

(xiv) It is for the general practitioner to inform the patient how long he/she will wait before appointment and there is absolutely no inhibition from finding out the waiting time.

(xv) Again, as a matter of commonsense, general practitioners often have preferred specialists. A general practitioner may give a patient options as to waiting times in seeing specialists at Outpatients. A general practitioner may advise a patient of a shorter waiting time to be seen at hospital A, but that hospital B has the preferred specialist.

"(b) Your press release of 11 November 1999 headed 'Health Minister says opposition campaign to discredit the waiting lists data is desperate and dishonest', in light of the previous press release of 3 (sic) July 1998 entitled 'Health Minister lifts the Lid on Waiting Lists' and a further press release of 16 October 1998 entitled 'Labour Plan reveals Hidden Waiting Lists', was misleading in not reflecting the true nature of surgical waiting time in Queensland public hospitals."

1. (i) This possible finding is not within the Terms of Reference.

(ii) Term of Reference (f) is a clarification of Term of Reference (c). Term of Reference (f) pertains to "*current and former employees of the Queensland Department of Health*". Mrs Edmond was an elected representative and Minister of State.

(iii) This possible adverse finding is a direct allegation against Mrs. Edmond personally. It is a potential finding that is not only outside the Terms of Reference, but also it could not conceivably arise as a corollary of or incidental to findings against employees of the Department.

2. (i) The allegation that the press release of 11 November 1999, in light of the earlier press releases, is misleading and not reflecting the true nature of surgical waiting time in Queensland public hospitals, is ill-founded and must result from a misunderstanding of the contents of the press releases.

(ii) The press release of 30 July 1998 announced the publication of the elective surgical waiting lists.

It must be understood that when Mrs. Edmond became Minister the whole focus – political, public and media – was on surgical waiting lists (T4903 L10). Mrs. Edmond initiated the publication of these surgical waiting lists.

The press release of 30 July 1998 also referred to the untold story of patients waiting for specialist Outpatient appointments and the concern that surgical waiting lists did not represent the whole picture.

The press release publicly revealed the existence of substantial numbers of patients without appointments.

The press release in no way suggested that it was intended to publish the anterior lists.

(iii) The press release of 16 October 1998 highlighted the untold story of the waiting lists to get an appointment with a specialist at Outpatients and, further, emphasized that the data collected so far showed roughly the same number of people waiting to see a specialist as patients on the surgical waiting lists.

The press release in no way suggested that it was intended to publish the anterior waiting lists.

This press release again emphasized the existence of anterior waiting lists:

> "*Patients referred to public hospitals by their doctors have to wait to be allocated appointments to see a specialist at an outpatient clinics. The specialist assesses the patient and it is only then that the patient is placed on a hospital elective surgery waiting list.*"

This press release made it perfectly clear that tackling the anterior waiting lists was part of the overall strategy in dealing with surgical waiting times.

This is precisely what was done. The anterior lists data was collected and used for problem-solving in respect of the various health facilities.

(iv) The press release of 11 November 1999 was in response to an attack by the Opposition that the surgical waiting lists that were published were dishonest because they did not include the anterior lists.

The surgical waiting lists never purported to include the anterior lists. Further, and most importantly, the media, the Opposition and the Public at large must have known, and certainly ought to have known, that the surgical waiting lists did not include anterior lists. The press releases of 30 July 1998 and 16 October 1998 made it abundantly clear that the anterior lists were not part of the surgical waiting lists.

Importantly, this press release of 11 November 1999 again made it patently clear that people waiting for specialists' Outpatient appointments were not included in the surgical waiting lists:

> "*The pathetic attempts of the Opposition to claim that specialists' Outpatient appointment waiting times would provide the 'real picture' of elective surgery waiting times shows a complete misunderstanding of the hospital system.*
>
> *People waiting for specialists' Outpatient appointments do not necessarily need surgery.*"

It is impossible to read this press release as indicating anything other than that there is a waiting time to get to see specialists at Outpatients and, therefore, necessarily, a waiting time before being placed on the surgical waiting list.

(v) The relevant evidence by Mrs. Edmond on this point is as follows:

> "*Q:* *It is correct to say that by this press release (11 November 1999) you were dismissing the claim – as it transpires, it came from the Opposition – that specialists' Outpatient appointment waiting times would provide the real picture of elective surgery waiting times?*
>
> *A:* *No.*
>
> *Q:* *You were dismissing that?*
>
> *A:* *No, I was dismissing the claim – if you will excuse me, I was dismissing the claim that the waiting lists that we were publishing were dishonest because they didn't include them, and I would say that here and now, that they were exactly the same, they were not dishonest, they - never pretended to include the Outpatient appointments.*" (emphasis added).

(vi) Not only did the surgical waiting lists never pretend to include patients waiting for specialist Outpatients appointments, each of the press releases referred to, including that of 11 November 1999, made that patently obvious. The allegation against Mrs. Edmond is demonstrably wrong.

"(c) With respect to the measured quality programme developed by Queensland Health directed to improvement of patients' safety in medical standards, following a presentation by Mr. Justin Collins of Queensland Health on 13 August 2002, in which you were informed that use and dissemination of hospital reports was proposed to be left to District Managers, you directed that the measured quality programme hospital reports be taken to Cabinet for noting."

It is further alleged in paragraph (e) that as a result of this direction Mrs. Edmond *knew or believed that the measured quality hospital reports would not or may not be available to the Public, and further that access by hospital staff thereto would be delayed, and use thereof restricted in a manner deleterious to the effective implementation of the policy.*

It is further alleged that the direction in paragraph (c) and the outcome in paragraph (e), *were contrary to the public interest.*

1. (i) These possible findings are not within the Terms of Reference.

(ii) Term of Reference (f) is a clarification of Term of Reference (c). Term of Reference (f) pertains to "*current and former employees of the Queensland Department of Health*". Mrs Edmond was an elected representative and Minister of State.

(iii) These possible findings are direct allegations against Mrs. Edmond personally. They are potential findings that are not only outside the Terms of Reference, but also they could not conceivably arise as the corollary of or incidental to findings against employees of the Department.

2. (i) Possible adverse finding (c) states that in the presentation of 13 August 2002, Mrs. Edmond was "*informed that use and dissemination of hospital reports was proposed to be left to District Managers*".

The allegations go on to say:

(A) Mrs. Edmond directed that the measured quality programme hospital reports be taken to Cabinet for noting (possible adverse finding (c));

(B) As a result of that direction Mrs. Edmond knew or believed that the measured quality reports would not or may not be available to the Public (possible adverse finding (e));

(C) And further, that access by hospital staff thereto would be delayed (possible adverse finding (e));

(D) And use thereof restricted in a manner deleterious to the effective implementation of the policy (possible adverse finding (e));

(E) The direction in (c) and the outcome in (e), were contrary to the public interest (possible adverse finding (f)).

(ii) Mrs. Edmond's allegedly being informed on 13 August 2002 that the use and dissemination of hospital reports was proposed to be left to District Managers, is the factual premise for the further allegations in (c), (e) and (f) of the Notice.

(iii) To give any sense of significance to allegations (A) and (B) above, the factual premise in (c) must be meant to convey that Mrs. Edmond was informed that the use and dissemination of hospital reports, <u>including to the Public</u>, was proposed to be left to District Managers.

If that is the factual premise alleged, it is entirely inaccurate. There was no proposal by Mr. Collins to Mrs. Edmond that the District Managers determine whether the hospital reports be disseminated to the Public. The proposal by Mr. Collins at the presentation was that a decision needed to be made whether to leave dissemination of the reports to the Public to District Managers or to leave it only to FOI applications.
See Exhibit JEC 30 Handout 8 "*Issues*" and T5915 L40 – 5916 L30. See also T5920 L45 – 5921 L42.

The author of the Notice seems to have confused what Mr. Collins and his team "*considered*", as opposed to the proposal advanced to Mrs. Edmond. See paragraph 9 of Mr. Collins' second Statement.

(iv) It seems likely, given the Cabinet Submission in November 2002 (Exhibit JEC 9) that in the presentation on 13 August 2002 Mrs. Edmond was informed that use and dissemination of hospital reports to key staff was proposed to be left to District Managers.

(v) It follows that the implication that Mrs. Edmond directed that the hospital reports be taken to Cabinet because she was informed that use and dissemination of hospital reports was proposed to be left to District Managers, is entirely ill-founded.

(vi) That Mrs. Edmond knew that taking the hospital reports (or, for that matter any document, including the draft Public report) to Cabinet may result in their not being available to the Public, cannot be a basis for an adverse finding against Mrs. Edmond. The allegation is meaningless. Ministers are obliged to report to Cabinet. By way of example: "... *Every three months I had to provide to Cabinet a report on how we were going on waiting lists and other matters on a regular basis* ...". (Mrs. Edmond at T4883 L55). Of course, notwithstanding that the data in respect of the surgical waiting list was taken to Cabinet for its consideration, the surgical waiting lists continued to be released to the Public.

The fact that Mrs. Edmond had expressed concern in relation to publication of the hospital reports is unsurprising. One has only to look at the concerns expressed in the expert literature in relation to the potential for the media to misuse this type of material to understand Mrs. Edmond's concerns. Mrs. Edmond's expression of concern does not make illegitimate the taking of the hospital reports to Cabinet. Quite the contrary, concerns in publication would be one of the matters to be considered by Cabinet.

Mr. Collins and his team had such concern that the media would misuse the contents of the hospital reports if they received them that he and his team devised media plans.

The expert literature relied upon and referred to by Mr. Collins set out the fundamental criticisms of programmes of this type, including, that "*the media would misuse* them" (the data). The literature stated that such arguments were not sustainable "*if public disclosure is introduced properly.*" See article by Marshall and Brook. (emphasis added).

Dr. Cuffe, a witness who seemed to be regarded as reliable by the Commission, gave evidence as follows:

"*Q:* *Is it correct or incorrect that prior to the Minister making that decision, that your knowledge no-one from Queensland Health suggested to the Minister, or any of her staff that the MQP report or draft reports be taken to Cabinet?*

A: *Not to my recollection. The presentation was given. Minister Edmond seemed quite, you know, excited or enthralled about what the outcome was, and suggested that she would like to take it to Cabinet to inform Cabinet colleagues about the work that had been done.*" (T6538 L5 – 15).

At T6539 L8:

"*Q:* *Was that*" (submitting the MQP and reports to Cabinet) "*a matter of some concern to you?*

A: *It was a concern that whilst it was legitimate for the Minister to take the reports to Cabinet to inform Cabinet, once having done so the potential outcomes of what might happen to those reports was a matter for Cabinet and the Cabinet's choice ...*". (emphasis added).

(vii) In relation to allegation (E) above, with respect, this Commission is in no position to properly allege that the taking of these reports to Cabinet was not in the public interest. By what benchmark does the Commission purport to judge which major new initiative (as this was) is appropriate or not appropriate for Ministers to take to Cabinet?

The measured quality programme was a major new initiative, not only for the Queensland Government, but within Australia. It must be understood that Mrs. Edmond was entirely supportive of this programme throughout. (T6558 L20). Mrs. Edmond wanted the programme introduced and for it to be a success. There is an obvious incongruity in the attack being made upon her in the Notice. Mrs. Edmond is, potentially, being criticized in respect of the implementation of a programme which she did not have to introduce but wanted to introduce in an attempt to improve health care in this State.

It being such a major new initiative, as a matter of commonsense, it would be an obvious matter to go to Cabinet. Further, Cabinet would not be expected to judge the value of the programme and determine whether to continue with the programme, let alone

understand what the programme entailed, without reviewing the contents of the hospital reports.

If the object was to prevent the hospital reports from being available publicly, there was no need to have the reports physically taken to Cabinet, nor "*To inform Cabinet of the content*" of the hospital reports. See Exhibit JEC 9.

(viii) The allegations set out in (C) and (D) above are demonstrably wrong.

Mrs. Edmond would have had no reason to believe that Cabinet would restrict dissemination of the hospital reports, as Cabinet did.

Mrs. Edmonds' Cabinet Submission dated 7 November 2002 relevantly proposed:

> "*The 60 measured quality hospital reports will be released to each of the relevant District Managers and Zonal Managers within Queensland Health for dissemination and action where necessary.*" See Exhibit JEC 9. (emphasis added).

"(d) Further with respect to the measured quality programme, following a Ministerial briefing to you dated 10 March 2003, and a presentation to you by Mr. Collins on 10 May 2003, in each of which you were informed of the deleterious effect which the Cabinet restriction of 12 November 2002 had on the use of the measured quality hospital reports, you directed the phrase (sic) two reports be taken to Cabinet for noting and failed to include the aforesaid deleterious effect in the Cabinet submissions."

It is further alleged in paragraph (e) that as a result of this direction Mrs. Edmond *knew or believed that the measured quality hospital reports would not or may not be available to the Public, and further that access by hospital staff thereto would be delayed, and use thereof restricted in a manner deleterious to the effective implementation of the policy.*

It is further alleged that the direction in paragraph (c) and the outcome in paragraph (e), *were contrary to the public interest.*

1. (i) These possible findings are not within the Terms of Reference.

(ii) Term of Reference (f) is a clarification of Term of Reference (c). Term of Reference (f) pertains to "*current and former employees of the Queensland Department of Health*". Mrs. Edmond was an elected representative and Minister of State.

(iii) These possible findings are direct allegations against Mrs. Edmond personally. They are potential findings that are not only outside the Terms of Reference, but also they could not conceivably arise as the corollary of or incidental to findings against employees of the Department.

2. (i) The factual premise for these allegations is inaccurate.

(ii) The Ministerial briefing dated 10 March 2003 contained, relevantly, the following:

> "*Due to the restricted distribution of the measured quality hospital reports (District Managers only), difficulty may be encountered in the dissemination of the results within the hospital environment. This may impact on the usefulness of the hospital reports and limit the engagement of traditions and Managers to whom change is to be delivered.*" (emphasis added).
>
> The Ministerial briefing contained no information that there had been a deleterious effect on the use of the hospital reports. The author of the Notice has exaggerated the language of the Ministerial briefing in a manner adverse to Mrs. Edmond.

(iii) Nonetheless, the Minister's briefing of 10 March 2003 did raise the possibility of difficulties due to the restricted distribution of the reports.

(iv) However, what followed the briefing of 10 March 2003 was that Mr. Collins and his team travelled to give a presentation to each selected hospital.

Mr. Collins notes in his first Statement that his research "*revealed that direct communication, that is, face to face oral communication, of findings was more effective than simply delivering written reports to the hospital.* (emphasis added).

The first Statement of Mr. Collins continues:

> "... *As a result, MQS project officers travelled to each selected HSD to present and report to the executive and nominated key staff (generally the District Manager/s and key clinicians and management) the findings of the hospital report/s for their HSD. During this presentation, MQS project officers explained the content of the*

reports, the results and the context around the indicated development and the indicators which have been identified for each hospital as being significant, otherwise known as 'outlier indicators'. Generally the presentation is done in conjunction with representatives from the Zonal Management Unit." (emphasis added).

(v) After those face to face presentations to the hospitals, Mr. Collins provided a presentation to Mrs. Edmond on 10 May 2003.

The presentation is reflected in the written words in Exhibit JEC 14.

The section of the presentation entitled "*Strategy developed*" contains the relevant information passed to Mrs. Edmond during this presentation.

It points out the measures taken to accommodate the restriction on distribution of the hospital reports, namely, the presentations to the hospitals as described in (iv) above. Mr. Collins actually refers to what he needed to do "*To obtain the serious attention of clinicians and managers*" in the absence of physically distributing the reports. Nothing said there suggests other than an ability by Mr. Collins and his team to obtain the serious attention of the relevant personnel.

The presentation goes on to identify the manner in which security of the hospital reports has been managed.

The presentation then reports that attendees have varied from "*as little as the District Executive to the involvement of nearly twenty staff with majority being clinicians across the areas of medicine, surgery and O & G*".

It speaks of the "*eagerness*" to benchmark with peer groups. (emphasis added)

It speaks of the smaller hospitals "*enthusiastically*" greeting the data and the opportunity to compare their performance but that they raise concerns over the ability to action due to limited resources. (emphasis added).

The only negativity referred to in the presentation is as follows:

"*Some negativity has been expressed about the restriction on the distribution as nearly all have shown a great eagerness to discuss with staff further about ways to*

improve or identify reasons for good performance in particular areas (so as to share with peers)." (emphasis added).

There was no suggestion in the presentation that the negativity was widespread or significant. In context, it is no more than an expression of inconvenience. However, most importantly, the presentation contains absolutely no suggestion that the restriction on the distribution of the hospital reports was having any deleterious impact. There is absolutely no suggestion in the presentation that those who expressed negativity about the restriction on distribution of the reports were also claiming that it had a deleterious effect on the use of the reports.

The presentation goes on to inform Mrs. Edmond the explanation given by Mr. Collins and his team in respect of the restricted distribution.

It then speaks about "*a lot of hospitals expressing great delight in receiving data back in a useful way* ...". (emphasis added).

The presentation to Mrs. Edmond concludes by informing her "*Good first step but need to go beyond the Inpatient services*". (emphasis added).

(vi) A mere perusal of the presentation in Exhibit JEC 14 discloses an up-beat, optimistic and "*good first step*" introduction of the programme.

(vii) For the author of the Notice to interpret the content of the presentation of 10 May 2003 in such a way as to allege as the factual premise: "*you were informed of the deleterious effect which the Cabinet restriction of 12 November 2002 had on the use of the measured quality hospital reports ...* ", is staggering.

(viii) The factual premise for the allegations clearly does not exist and it follows that the allegations fail.

(ix) If these allegations are meant to include a criticism, isolated from the factual premise, merely because Mrs. Edmond directed phase 2 reports to Cabinet, the submissions above at page 11 and the relevant parts of the submissions under (vi) are relied upon. Further, directing phase 2 reports to Cabinet would be the natural consequence of this major new initiative still under consideration by Cabinet. It should not be overlooked that the public report still had not been released at that time.

The allegations against Cabinet that it acted contrary to the public interest relate to:

a. The decision not to publish the anterior waiting lists; and

b. The decision to restrict distribution of the hospital reports in the measured quality programme.

a. (i) This potential finding is not within the Terms of Reference for the reasons advanced above.

(ii) Relevant parts of the submissions above, particularly at pp.2 – 9 inclusive, are relied upon.

(iii) In light of Mr. Walker's evidence, it would not have been in the public interest, and Cabinet would have been deserving of criticism, if it had decided to publish data which the Department and the Minister and therefore, presumably, Cabinet, knew to be of insufficient quality for publication. Cabinet would have been responsible for having published misleading data.

(iv) With respect, this potential adverse finding is contrary to the evidence.

b. (i) This potential finding is not within the Terms of Reference for the reasons advanced above.

(ii) Relevant parts of the submissions above, particularly the submissions at p.12 referring to Mrs. Edmond's support for the programme, and p.13 (viii) referring to Mrs. Edmond's submission to Cabinet dated 7 November 2002, are relied upon. Further, the Premier's letter to the Commission dated 20 September 2005, particularly at p.2 L18 – 30, is relied upon.

(iii) In any event, there must be serious doubt that the restriction in dissemination of the hospital reports adversely affected the implementation of the programme to any significant extent, if at all, let alone to an extent contrary to the public interest.

(iv) Given Mr. Collins' evidence, the most effective implementation of the programme involved face to face communication – it was "*more effective than simply delivering written reports to the hospital*". It follows that anything short of face to face oral

communications by MQS project officers with the key personnel of the hospitals, would be deleterious to the effective implementation of the programme.

(v) With respect, this potential adverse finding would be contrary to the evidence.

T.D. MARTIN SC
Chambers

26 October 2005

FURTHER SUBMISSIONS ON BEHALF OF MRS. WENDY EDMOND

RE: SUBMISSIONS ON BEHALF OF QUEENSLAND CLINICIAN SCIENTISTS' ASSOCIATION AND DR. CON ARONEY

1. At paragraph 47 of the QCSA Submission, the following appears:

   "*Further, Mrs. Edmond did not explain what staff it was in what office who fell about laughing when 'they read that in the paper', given that she had retired the year before, a point she made repeatedly in her evidence*".

2. Counsel for the QCSA elected not to seek any clarification of the evidence.

3. The staff referred to was, as Mrs. Edmond stated in her evidence, the staff in her office. Should anyone be in any doubt, it was her Ministerial staff.

4. In case it is thought that there is an incongruity in Mrs. Edmond's evidence because it refers to her staff laughing at the bullying allegation in the paper, the reference was to an allegation of bullying made against Dr. Scott and published in "*The Courier Mail*" in about January 2004, before Mrs. Edmond retired.

T.D. MARTIN SC
Counsel on behalf of Mrs. Edmond
31 October 2005