SUPREME COURT OF QUEENSLAND

CITATION:	*Keating v Morris & Ors; Leck v Morris & Ors* [2005] QSC 243
PARTIES:	**DARREN WILLIAM KEATING** (applicant) v **ANTHONY JOHN MORRIS QC** **SIR LLEWELLYN EDWARDS AC** **MARGARET VIDER** (first respondents) **THE HONOURABLE THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (second respondent) **THE BUNDABERG HOSPITAL PATIENT SUPPORT GROUP** (third respondent) **PETER NICKLIN LECK** (applicant) v **ANTHONY JOHN MORRIS QC** **SIR LLEWELLYN EDWARDS AC** **MARGARET VIDER** (first respondents) **THE HONOURABLE THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (second respondent) **THE BUNDABERG HOSPITAL PATIENT SUPPORT GROUP** (third respondent)
FILE NO/S:	BS 5511 of 2005 BS 5896 of 2005
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	1 September 2005
DELIVERED AT:	Brisbane
HEARING DATE:	2, 3 & 4 August 2005
JUDGE:	Moynihan J

ORDER: **To await submissions**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS FOR REVIEW – PROCEDUAL FAIRNESS – BIAS – APPREHENSION OF BIAS – where the applicants seek a declaration that the first respondents are disqualified from further proceeding with the Bundaberg Commission of Inquiry on the grounds of apprehended bias – where the applicants seek a declaration that the first respondents are disqualified on the grounds of apprehended bias from proceeding to make findings or recommendations or to further call the applicants as a witness – alternatively, the applicants seek a declaration and injunction on the grounds of apprehended bias pursuant to s 43 of the *Judicial Review Act* 1991.

Commissions of Inquiry Act 1950 (Qld), s 5(1)(a), s 5(1)(b), s 14A, s 14 (1A), s 17, s 19A, 27(2), s 28(1)(a), s 28(1)(b), s 28(1)(c),
Judicial Review Act 1991 (Qld), s 43

Briginshaw v Briginshaw (1938) 60 CLR 336;
Burwood, Council of the Municipality of v Harvey (1995) 86 LGERA 389;
Carruthers v Connolly [1998] 1 Qd R 339*;*
Dale v NSW Trotting Club (1978) 1 NSWLR 551;
Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337;
Glynn v ICAC (1990) 20 ALD 214;
Johnson v Johnson (2000) 201 CLR 488;
Livesey v NSW Bar Association (1983) 151 CLR 288;
Mahon v Air New Zealand [1984] AC 808;
National Companies & Securities Commission v News Corporation Ltd (1984) 156 CLR 296;
Parramatta Design and Developments Pty Ltd v Concrete Pty Ltd [2005] FCAFC 138;
Raybos Australia v Tectran Corporation (1986) 6 NSWLR 272;
R v Carter and the Attorney-General FC SC Tasmanian (unreported BC 91000X0);
R v Commonwealth Conciliation & Arbitration Commission; Ex parte Angliss Group (1969) 122 CLR 546;
R v Lusink; Ex parte Shaw (1980) 32 ALR 47;
R v Masters (1992) 26 NSWLR 450;
Re Colina & Anor; Ex parte Torney (1999) 200 CLR 386;
Re JRL; Ex parte CJL (1986) 161 CLR 342;
Russell v Duke of Norfolk [1949] All ER 109;
The Queen v Watson; Ex parte Armstrong (1976) 136 CLR 248;
Vakauta v Kelly (1989) 167 CLR 568;
Webb v The Queen (1993) 181 CLR 41.

COUNSEL: Mr R Mulholland with Mr G Diehm for the applicant (BS

5511 of 2005)
Mr D Jackson QC with Mr R Ashton for the applicant (BS 5896 of 2005)
Mr W Sofronoff QC SG with Mr P Flanagan SC & Mr J Horton for the first respondents
Mr J Fenton for the second respondent
Mr G Mullins with Mr J Harper for the third respondent

SOLICITORS: Flower & Hart Lawyers for the applicant (BS 5511 of 2005)
Hunt & Hunt for the applicant (BS 5896 of 2005)
Crown Law for the first and second respondents
Carter Capner Lawyers for the third respondent

CONTENTS

Exhibit 3 is : **DVD (A) *Leck's* evidence;**
DVD (B) *Keating's* evidence;
DVD (C) excerpts of proceedings;
DVD (D) excerpts of proceedings together with an index referable to the transcript

Exhibit 4 is a collection of relevant material agreed to by the parties and tendered by consent.

Introduction

[1] The principal issue in these applications is whether the proceedings of what is conveniently referred to as the Bundaberg Hospital Inquiry (the *Inquiry*) are tainted by apprehended bias.

[2] The *Inquiry* was announced by the Premier on 26 April 2005. A parallel Queensland Health Services Review directed to issues giving rise to the *Inquiry*, from what is conveniently referred to as an administrative or a systems perspective[1], was also instituted. The Crime and Misconduct Commission (*CMC*) also manifested an interest in the events which gave rise to the *Inquiry* as raising matters coming within its jurisdiction.

[3] By *Commissions of Inquiry Order* (No 1) 2005[2], made under the *Commissions of Inquiry Act* 1950 (the *Act*) on 26 April 2005, Mr Anthony John Hunter Morris QC (the *Commissioner*) was appointed "to make full and careful inquiry in an open and independent manner with respect to" a number of specified matters and report on them.

[4] On 28 April 2005 the *Commissioner*, acting pursuant to the provisions of s 27(2) of the *Act*, appointed the Honourable Sir Llewellyn Edwards AC and Ms Margaret Vider RN as his Deputies (the *Deputy Commissioners*).

[5] A *Deputy Commissioner* may sit with the *Commissioner* but without any power to decide or participate by vote in relation to any matter arising for decision at those sittings[3].

[6] A *Deputy Commissioner* may conduct sittings approved by the *Commissioner* and report or make recommendations to the *Commissioner*[4]. A *Deputy Commissioner* may also assist the *Commissioner* in such manner and to such extent as the *Commissioner* decides[5].

[7] In the circumstances arising for consideration here, the *Deputy Commissioners* sat with the *Commissioner*, not alone. There was no delegation or direction relevant to the events I am concerned with.

[8] The *Inquiry's* terms of reference are wide ranging[6]. Significantly for present purposes they include the circumstances of the appointment of Dr Jayant Patel (*Patel*) to the Bundaberg Base Hospital (the *Hospital*) and his treatment of patients at the *Hospital* and the consequences of that treatment for patients.

[9] The *Inquiry* was also directed to deal with any substantive allegations, complaints or concerns relating to the clinical practices of, and procedures conducted by, *Patel* or other medical practitioners at the *Hospital* and the appropriateness, adequacy and timeliness of action taken to deal with any such complaint within the *Hospital* or more generally.

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[1] The terms of reference and a project plan for this inquiry are at Exhibit (Ex) 4 p 320
[2] Ex 4, p 11
[3] The *Act*, s 28(1)(a)
[4] The *Act*, s 28(1)(b)
[5] The *Act*, s 28(1)(c)
[6] See Ex 4, p 11

[10] The terms of reference went on to require inquiry as to whether there was sufficient evidence, in relation to issues coming under the terms of reference, to justify referral to the police or the *CMC* for investigation, prosecution, further action or the bringing of disciplinary proceedings or some other action.

[11] Peter Nicklin Leck (*Leck*), the applicant in Application 5896 of 2005 was the District Manager responsible for the *Hospital* at times relevant to matters with which the *Inquiry* was concerned.

[12] Darren William Keating (*Keating*), the applicant in Application 5511 of 2005, was the Director of Medical Services at the *Hospital* at times relevant to matters with which the *Inquiry* was concerned.

[13] The heads of various medical departments in the *Hospital*, including *Patel*, reported to the Director of Medical Services (*Keating*). The Director of Medical Services reported to the District Manager (*Leck*).

[14] On 7 July 2005 Keating filed an originating application in this court naming the *Commissioner* and the *Deputy Commissioners* as respondents. He sought a declaration that they were disqualified from further proceeding with the *Inquiry* or, alternatively, from making findings or recommendations in respect of him on the common law ground of apprehended bias.

[15] There was an alternative claim for relief in essentially the same terms in reliance on s 43 of the *Judicial Review Act* 1991. It was accepted that the outcome of an application founded on that ground turned on the same considerations as those applying under the common law rule and it is therefore unnecessary to deal with that ground as a separate consideration.

[16] On 11 July 2005 I ordered, by consent, that the Attorney-General for the State of Queensland (the *Attorney-General*) and the Bundaberg Hospital Patient Support Group (the *Support Group*) be joined as respondents to *Keating's* application and gave directions relating to the conduct of the hearing. I note that a number of *Patel's* former patients are seeking relief by complaint to the Health Rights Commission or court action.

[17] The *Commissioner* and the *Deputy Commissioners* appeared at the hearing of 11 July 2005 by a solicitor. Their position, quite properly, was that they did not intend to take an active part in the proceedings, except as to costs submissions; otherwise they would abide the outcome. That was the course followed.

[18] On 20 July 2005 *Leck* filed an originating application claiming similar, but not identical, relief to that claimed by *Keating* on the ground of apprehended bias. When the hearing of these applications commenced on 2 August 2005 orders were made by consent joining the *Attorney-General* and the *Support Group* as parties to *Leck's* application.

[19] It was agreed that the applications be heard together. It was also agreed that the evidence in one was evidence in the other. The transcript[7] of the *Inquiry's* public hearings up to the date of the hearing of these applicants, the exhibits[8] tendered at

[7] Ex 5 (8 of volumes of transcript)
[8] Ex 6 (14 volumes of exhibits)

those hearings and DVDs[9] recording the proceedings together with an agreed bundle of documents[10] were received by consent as evidence in this application.

[20] Although it was sensible for the applications to be heard together, it has to be borne in mind that the situation of the applicants is not necessarily identical; the applications could have a different outcome as between the applicants. On the other hand, since the evidence in each application overlaps, or is relied on by each applicant to make out his case, it is frequently convenient to refer to the "applicants" when dealing with submissions or evidence.

[21] The *Attorney-General* appeared by counsel to controvert the applicants' case; a proper and necessary role. The *Support Group*, represented by counsel, opposed the relief sought. Its major concerns were the consequences, for patients or relatives of patients who had given evidence in the *Inquiry*, of it being stopped and to see that the investigation into the affairs the subject of the terms of reference continued.

The *Inquiry*

[22] The *Inquiry* was constituted under the *Commissions of Inquiry Act* 1950. The *Act* gives the *Commissioner* coercive powers to summon witnesses[11], require the production of books and other documents[12] and powers of search and seizure.[13]

[23] The *Inquiry* is not bound by the rules or the practice of any court or tribunal as to procedure or evidence. It may conduct its proceedings and inform itself as it thinks proper[14].

[24] A witness before the *Inquiry* is not entitled to refuse to give evidence, answer questions when required or refuse to comply with a summons to produce on the ground that it would or might tend to incriminate the witness[15]. A statement or disclosure obtained under those circumstances is not admissible against the witness in any civil or criminal proceedings, subject to exceptions of no concern here[16].

[25] The *Inquiry* has staff to provide administrative support. Counsel and solicitors were appointed to collect and present evidence. A Practice Direction was issued under the hand of the *Commissioner* with respect to the conduct of proceedings[17]**.** It dealt with leave to appear, witness statements and other matters.

[26] The *Commissioner* could direct that the application of the Practice Direction did not apply, or its application be modified[18].

[27] Relevantly for present purposes the Practice Direction provided that, unless the *Commissioner* otherwise directed, all evidence of each witness called was to be

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[9] Part of Exhibit 3 is an index to those parts of the DVD particularly relied on by the applicants to support their case.
[10] Ex 4
[11] The *Act*, s 5(1)(a)
[12] The *Act*, s 5(1)(b)
[13] The *Act*, s 19A
[14] The *Act*, s 17
[15] The *Act*, s 14(1A)
[16] The *Act*, s 14A
[17] Ex 4, p 171
[18] Ex 4, p 121, para 4

produced in the form of a written statement verified and furnished to the *Inquiry* secretary.

[28] A witness statement was to contain only factual evidence of matters: within the direct knowledge of the witness; based on information from an identified source; or within the understanding or belief of the witness if the basis for the understanding or belief was set out.

[29] If the witness was represented the representative was to prepare the statement. "In accordance with the usual practice of Royal Commissions"; a witness giving oral testimony was to be examined first by counsel assisting[19].

[30] Pursuant to a ruling of the *Commissioner*, the *Inquiry's* public hearings were broadcast by radio and television.[20] It is pertinent to note that events concerning *Patel* and the *Hospital* were the subject of considerable parliamentary, media and public attention, agitation and comment prior to 26 April 2005. That attention has continued as the public hearings commenced and as they have progressed.

[31] The *Inquiry*, as such inquiries commonly do, chose to adopt aspects of a court for its public hearings. The room was furnished as a courtroom in terms of bench, witness box, bar table and public area and there was a "court attendant". Witnesses swore or affirmed evidence which was generally led by counsel assisting[21].

Procedural Fairness – A Fair Hearing and Apprehended Bias

[32] These applications are founded on common law rules of procedural fairness which require a fair hearing for those likely to be adversely affected by a decision, report or recommendation and impartiality on the part of an inquirer.

[33] There was no issue that the rules applied to the *Inquiry's* activities. It is now well established that the application of the rules to investigative bodies such as the *Inquiry* differs from their application to litigation; see for example: *National Companies & Securities Commission v News Corporation*[22]; *Mahon v Air New Zealand*[23]; *Carruthers v Connolly*[24] and *Ebner v Official Trustee in Bankruptcy*[25].

[34] The point is developed in *Mahon v Air New Zealand*[26]:

> "An investigative inquiry into facts by a tribunal of inquiry is in marked contrast to ordinary civil litigation. …. Where facts are in dispute in civil litigation … the judge has to decide where, on the balance of probabilities, he thinks that the truth lies as between the evidence which the parties to the litigation have thought it to be in

[19] Ex 4, p 171, paras 17, 21
[20] Ruling No 3, 19.05.05, Ex 4, pp 185-197.
[21] The role of counsel assisting allows an inquirer to stand aside from involvement in the collection and presentation of evidence and to focus on its impartial evaluation. The other arrangements emphasise the impartiality of the adjudication; see *Burwood, Council of the Municipality of v Harvey* (1995) 86 LGERA 389 at 396 per Kirby J.
[22] (1984) 156 CLR 296 at 314
[23] [1984] AC 808
[24] [1998] 1 Qd R 339 at 371
[25] (2001) 205 CLR 337
[26] [1984] AC 808

> their respective interests to adduce before him. He has no right to travel outside that evidence on an independent search on his own part for the truth; and if the parties' own evidence is so inconclusive so as to leave him uncertain where the balance between the conflicting probabilities lies, he must decide the case by applying the rules as to the onus of proof … In an investigative inquiry, on the other hand, … the commissioner who conducts it is required … to inquire into and report upon (the matter the subject of the terms of reference) … (I)t is inevitable … that the emergence of facts … and the realisation of what part, if any, they played … and of their relative importance, should be more elusive and less orderly, (than in litigation) as one unanticipated piece of evidence suggests … some new line of investigation … to explore."[27]

[35] The court is concerned with the fairness of the treatment of applicants[28]. The governing consideration is that justice is, and is seen to be, done with the decision maker reasonably open to persuasion[29].

[36] It is of "fundamental importance" that parties and the general public have full confidence in the fairness of decisions and the impartiality of decision makers to whom the rules of procedural fairness apply. Condemnation without a proper hearing or by an apparently biased tribunal is unacceptable; exoneration by such a tribunal may be worthless[30]**.**

[37] The issue is not whether the decision maker is in fact biased but whether a fair minded observer might reasonably apprehend that the decision maker might not bring an impartial or unprejudiced mind to bear on the task[31].

[38] The basis of the principle and of its application is stated by the High Court in *Ebner v Official Trustee in Bankruptcy*[32] in the joint judgment of Gleeson CJ, McHugh, Gummow and Hayne JJ:-

> "[6] Where, in the absence of any suggestion of actual bias, a question arises as to the independence or impartiality of a judge (or other judicial officer or juror), … the governing principle is (subject to qualifications not presently relevant) … if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. That principle gives effect to the requirement that justice should both be done and be seen to be done, a requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial. ...

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[27] [1984] AC 808 at 814-815
[28] *Re JRL; Ex parte CJL* (1986) 161 CLR 342 at 350
[29] *Carruthers v Connolly* [1998] 1 Qd R 339 at 356
[30] *Carruthers v Connolly* [1998] 1 Qd R at 339 at 371. See also *Webb v The Queen* (1993) 181 CLR 41 at 50-52, 68
[31] *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 344, 350; *Livesey v NSW Bar Association* (1983) 151 CLR 288 at 293-4; *Re JRL; Ex parte CJL* (1986) 161 CLR 342 at 349, 351, 355, 359, 368; *Vakauta v Kelly* (1989) 167 CLR 568; *Webb v The Queen* (1993) 181 CLR 41; *Johnson v Johnson* (2000) 201 CLR 488 at 492-493; *Re Colina & Anor; Ex parte Torney* (1999) 200 CLR 386 at 397
[32] *Ebner v Official Trustee in Bankruptcy* (2001) 205 CLR 337

> [7] The apprehension of bias principle may be thought to find its justification in the importance of the basic principle, that the tribunal be independent and impartial. So important is the principle that even the appearance of departure from it is prohibited lest the integrity of the judicial system be undermined. There are, however, some other aspects of the apprehension of bias principle which should be recognised. Deciding whether a judicial officer (or juror) *might* not bring an impartial mind to the resolution of a question that has not been determined requires no prediction about how the judge or juror will in fact approach the matter. The question is one of possibility (real and not remote), not probability. Similarly, if the matter has already been decided, the test is one which requires no conclusion about what factors *actually* influenced the outcome. No attempt need be made to inquire into the actual thought processes of the judge or juror.
>
> [8] The apprehension of bias principle admits of the possibility of human frailty. Its application is as diverse as human frailty. Its application requires two steps. First, it requires the identification of what it is said might lead a judge (or juror) to decide a case other than on its legal and factual merits. The second step is no less important. There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits. The bare assertion that a judge (or juror) has an "interest" in litigation, or an interest in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial decision making, is articulated. Only then can the reasonableness of the asserted apprehension of bias be assessed."[33]

[39] As I have already said it was accepted that these considerations applied to the *Inquiry* as adjusted to reflect the differences between litigation between parties, on issues they determined, conducted according to rules of procedure on the one hand, and a body with the function to inquire and report and which is freed from the constraints of procedure and evidence rules which apply to courts on the other.

[40] It is however to be emphasised that the differentiation does not have the result of dispensing with the application of rules of procedural fairness to the *Inquiry* and it was not submitted it does[34].

[41] The applicants' principal contention is that the cumulative effect of the evidence was that aspects of the procedures, processes and conduct of the *Inquiry* and of the conduct of the *Commissioner* founded a conclusion of apprehended bias.

[42] The court's task is to determine an observer's view based on the evidence rather than to reach its own view[35]. The test is an objective one and has been varyingly expressed

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[33] *Ebner v Official Trustee in Bankruptcy* (2001) 205 CLR 337 at 344

[34] *Carruthers v Connolly* [1998] 1 Qd R 339 at 371 per Thomas J; *Burwood Council of the Municipality of v Harvey* (1995) 86 LGERA 389 at 409 per Mahoney J

[35] *Webb v The Queen* (1994) 181 CLR 41 at 50-52

in the many cases which have canvassed its content and application to particular circumstances[36]. The subjective apprehension by a party or individual is irrelevant[37].

[43] It comes down to whether the court is satisfied that the circumstances are such as to give rise, in the mind of a fair minded and informed member of the public, or party, to a reasonable apprehension that the decision maker's mind is so prejudiced by conclusions already formed that the conclusion will not be altered irrespective of the evidence or arguments put forward.

[44] The relevant consideration is that the decision will not be seen to be impartial rather than that it will be adverse to a party[38]. The test recognises that decision makers might expose provisional views for debate[39] and takes into account the personality and disposition of the investigator[40]- some may be more robust than others.

[45] The application of the rule to the proceedings of an inquiry takes into account the nature of the inquiry, and the circumstances in which the hearings take place and which give rise to the consideration[41].

[46] Recognition of the *Inquiry's* inquisitorial and reporting function and its powers allowed the *Commissioner* to take a more active, interventionary and robust role in ascertaining the facts and a less constrained role in reaching conclusions than applies in litigation. It does not however, dilute or diminish the expectation that an impartial and unprejudiced mind will be applied to the resolution of any question[42].

[47] Apprehended bias is a serious allegation to be made in respect of an inquirer and the considerations canvassed by the High Court in *Briginshaw v Briginshaw*[43] are relevant. The application of that principle means that the gravity of the issue necessarily is reflected in the weight of the proof required to establish the facts founding the conclusion. See also *R v Lusink; Ex parte Shaw*[44] where Gibbs CJ spoke of the need that apprehended bias be "firmly established"[45].

The Applicants' Case of Apprehended Bias

Some General Considerations

[48] I turn now to the matters relied on by the applicants to make out their respective case in the context of the framework provided by the preceding sections of these reasons.

[49] Each applicant submits that the combined weight of the circumstances in which they were called to give evidence, the nature of their examination by the *Commissioner*, the

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[36] See the cases cited in paras [37] and [44]
[37] *Raybos Australia v Tectran Corporation* (1986) 6 NSWLR 272 at 275
[38] *Re JRL; Ex parte CJL* (1986) 161 CLR 342 at 352; *R v Masters* (1992) 26 NSWLR 450 at 471
[39] *Glynn v ICAC* (1990) 20 ALD 214 at 219
[40] *Burwood, Council of the Municipality of v Harvey* (1995) 86 LGERA 389 per Kirby P at 395
[41] *Russell v Duke of Norfolk* [1949] All ER 109 at 118; *Dale v NSW Trotting Club* (1978) 1 NSWLR 551; *R v Carter and the Attorney-General* FC SC Tasmanian (unreported BC 91000X0)
[42] *Carruthers v Connolly* [1998] 1 Qd R 339
[43] (1938) 60 CLR 336
[44] (1980) 32 ALR 47 at 50
[45] Citing *R v Commonwealth Conciliation & Arbitration Commission; Ex parte Angliss Group* (1969) 122 CLR 546 at 553-4 quoted in *The Queen v Watson; Ex parte Armstrong* (1976) 136 CLR at 262.

way in which they were treated by comparison to other witnesses, and other factors combine to make out apprehended bias.

[50] The primary facts relied on by the applicants are not contentious. The *Inquiry's* proceedings and the relevant documents are matters of public record. There are audio and visual recordings of the public hearings. I have viewed extracts from them; the words and images round out the impressions left by a reading of the transcript and add a tone and colour not apparent from the printed word. What is contentious are the inferences to be drawn from the primary facts.

[51] I am conscious that the matters the applicants complain of take their place in a much larger picture and of the need to be careful not to take a distorted view based on the selected facts, the subject of complaint, out of the overall context of the *Inquiry's* proceedings.

[52] It is not feasible to deal exhaustively with the detail and implication of each of the numerous occasions or occurrences relied on by the applicants to make out their case of apparent bias. I will refer to a number of illustrative occasions, some of more significance than others but each contributing, with the evidence overall, to the whole picture.

[53] It is convenient to deal with the applicants' case in terms of these subheadings:

- The applicants are called to give evidence;
- The *Commissioner* examines the applicants;
- Differential treatment of witnesses;
- An incident in cross-examination;
- An Interim Report;
- Private meetings;

The allocation of an event to a category is somewhat arbitrary, not least because the same events relate to matters dealt with under a number of categories. As I have said it is the overall weight of evidence which is decisive.

[54] Before turning to the categories it is necessary to deal with some more general considerations. Annexure B to these reasons is a chronology based on one produced by counsel for *Keating*. The purpose of the annexure is to provide some background context for the events which are at the heart of the applicants' complaints. The chronology is intended to be indicative of sequence. It is neither comprehensive nor is it exhaustive in respect of the events it identifies. To the extent to which it may deal with contentious matters it is not intended to resolve them.

[55] *Leck* and *Keating* had retained lawyers who had been given leave to appear before the *Commission* in their interest.

[56] On 20 May 2005 *Leck's* solicitor had a telephone conversation with a solicitor working for the *Inquiry* and asked him to identify in writing the matters it wanted her client to address in his statement of evidence which, inferentially, was being prepared.

[57] That evening *Leck's* solicitor received a letter from the *Inquiry* stating that it was interested in obtaining a statement from him dealing with "all the matters" within his knowledge dealing directly with the terms of reference, particularly Terms of

Reference 1, 2, 3 and 4[46]. It seems also that there was communication with *Keating's* legal advisers as to what he might be expected to address when he was called before the *Inquiry*. Such a statement would necessarily canvas a wide range of topics and events, a substantial undertaking.

[58] Although work was being done by *Leck* and *Keating's* lawyers to prepare a statement by their client, one does not seem to have been finalised when they were called to give evidence.

[59] At this stage it is useful to mention the Crime and Misconduct Commission's (*CMC's*) role in the events surrounding the *Inquiry*. It had embarked on an inquiry within the terms of its powers following the public agitation of matters in relation to *Patel*, his activities at the *Hospital* and related matters[47].

[60] On 10 May 2005 the *CMC* had written to *Leck's* solicitors notifying them that he was to be interviewed and was likely to be required to give evidence before it[48]**.** An exchange of correspondence followed by which *Leck's* solicitors sought to obtain particulars of what might be alleged against him and expressing concern about the two parallel inquiries and the potential for complications flowing from this.

[61] On the sixth day of the *Inquiry*, 31 May[49], the *Commissioner* announced that "at a very early stage" he had had a meeting with the chair of the *CMC* to put in place arrangements designed to reduce "duplication and a potential for public resources to be wasted". One of the components of this arrangement was that senior counsel assisting the *Commission* would also be senior counsel assisting the *CMC* inquiry. Information sharing arrangements were put in place and witnesses being considered by the *CMC* in relation to allegations of official misconduct would not be exposed to cross-examination in the *Inquiry*.

[62] As a consequence of the arrangement between the *Commissioner* and the Chair of the *CMC Leck* and *Keating* were not cross examined when they first gave evidence before the *Inquiry,* nor were the witnesses before them.

[63] It was anticipated *Keating* and *Leck* would be called before the *CMC* Inquiry shortly after they were called before the *Inquiry*. This, it seems to have been thought, would give them an opportunity to deal with any adverse consequences which might have emerged from their appearance before the *Inquiry*. In the event, the CMC inquiry was postponed which caused a change in approach.

[64] That led to a statement by the *Commissioner*[50]. He referred to the postponement of the *CMC* hearing and proposed that anyone who felt they had been mentioned in an adverse or critical way during the week would have an opportunity to make a statement to the *Inquiry* giving their side to the story. He stated that he knew that this was not a complete answer but it seemed the best that could be done in the circumstances. He then spoke of his having anticipated that, when the applicants had been called, they

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[46] Ex 4, p 164
[47] This was separate from the *Inquiry* and the Health Services Review referred to in para [2]
[48] Ex 4, p 205
[49] After *Leck* and *Keating* had been called by the *Commissioner* in the circumstances dealt with later in these reasons.
[50] Inquiry Transcript (IT) 404

would have the opportunity "next week to fully defend any allegations against themselves": a reference to the *CMC* proceedings.

[65] The *Commissioner* went on to say that he and the *Deputy Commissioners* were of the view at that stage that nothing had emerged in respect of either applicant which would "excite our interest" in relation to criminal conduct or official misconduct under the terms of reference with the possible exception of the payment of *Patel's* airfare to return to the United States.

[66] The Commissioner said that any witness who had been called prior to the postponement could make a statement to correct any adverse effects of their being called. The applicants did not take up the opportunity, choosing to follow a different course.

[67] More generally, on a number of occasions the *Commissioner* made statements to the effect that anyone, including the applicants, who faced adverse findings or outcomes would be given notice and the opportunity to deal with them before the *Inquiry* finished sitting.

[68] The *Inquiry* commenced its public hearings on 25 May 2005. The first witness called was Toni Ellen Hoffman (*Hoffman*) the Nurse Unit Manager of the Intensive Care Unit of the *Hospital.* The second was Mr Robert Messenger MLA (*Messenger*) who had raised matters about the *Hospital* and *Patel* in Parliament; *Hoffman* seems to have been the prime source of this information. The third witness was Dr John Miach *(Miach*), a renal physician and Director of Medicine at Bundaberg Base Hospital.

[69] The evidence of these witnesses had not been tested by cross-examination when *Leck* and *Keating* were first called to give evidence because of the arrangements I mentioned earlier. A deal of the information, notably *Hoffman's* was based on second or third hand information passed on to her by others.

[70] When the applicants were called, the public hearings had proceeded in the glare of intense media attention. The information before the *Inquiry* at the time they were called raised concerns about *Patel*'s qualifications, registration and entitlement to practice, his treatment of patients, whether patients had died or had severe adverse outcomes as a consequence of *Patel's* actions or neglect and his relations with staff and colleagues. As I have indicated this information was largely untested.

[71] There was also occasion for concern about issues relating to the renewal of *Patel's* contract, the circumstances of his leaving Australia and the payment of his airfares to do so and other matters within the *Inquiry's* terms of reference. This was in the context that *Patel* reported to *Keating*, as Director of Surgery, and he in turn reported to *Leck*, as District Manager, as did *Miach. Hoffman* reported to the Director of Nursing who in turn reported to *Leck*.

[72] The material also gave rise to concern about the nature and extent of *Leck's* and *Keating's* involvement in, and knowledge of, the events concerning *Patel* and steps that either had, or ought to have, been taken in respect of any knowledge gained, or complaints which might have become known to them or were made to them.

[73] It was foreseeable in the light of the considerations I have canvassed that adverse findings might be open against either or both *Leck* and *Keating* which could be

damaging to their reputation or which might lead to proceedings being taken against them when the *Inquiry* reported.

[74] It was also foreseeable that much of the material put forward, from the perspective of *Leck* and *Keating*, would be contentious and that they would wish to test or challenge it and be heard as to its credibility and effect.

Leck and *Keating* are called to give evidence

[75] As the Inquiry was adjourning for lunch on the fourth day of the public hearing (26 May 2005) the Commissioner, after a short conference with the Deputy Commissioners and senior counsel assisting, advised counsel for Leck that his client would be required to give evidence after lunch for (what was stated, after lunch, to be) "the purpose of ascertaining some information relevant to the Inquiry's ongoing investigations."[51]

[76] When the Commissioner made the decision and whether, as was submitted, counsel assisting the *Inquiry* (and perhaps the *Deputy Commissioners*) were taken by surprise is speculation but those matters are, in any event, of little consequence in my view.

[77] The circumstances of the applicants being called was a departure from the *Inquiry's* Practice Direction[52] and the course of events usually followed with witnesses at the *Inquiry*.

[78] It is the fact that each applicant was given short notice which meant, in practical terms, they had little option but to accede to the proposal. Each gave evidence without the assistance of prepared statements or access to documents. It was pointed out that *Leck* did not have the opportunity to object to his evidence being televised in terms of the Practice Direction because of the short notice.

[79] There is no basis for concluding that *Leck* was deliberately deprived of the opportunity to object to his evidence being televised or that he was deliberately put to any disadvantage through wearing casual clothing, if that could be described as a disadvantage.

[80] Each of the applicants were represented by counsel at their interrogation by the *Commissioner* and did not ask for access to documents. There is no occasion to think that this would not have been allowed if requested and it is not demonstrated that the witnesses suffered any disadvantage because they did not have access.

[81] When *Leck's* counsel raised that his client was disadvantaged because of those considerations the *Commissioner* acknowledged it and said *Leck* would have a chance to give comprehensive evidence later.

[82] Five hearing days later (3 June 2005) counsel for *Leck* raised the circumstances of his client having been called and submitted that the fact that there was no dissent about the *Commissioner's* authority or power to call him should not be thought of as "acquiescence in the implementation and the content" of *Leck's* questioning which was "unfair, unnecessary and unexplained"[53].

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[51] A similar requirement in respect to *Keating* was communicated to his lawyers.
[52] Exhibit 4, p 171
[53] IT 866.36

[83] Insofar as the *Commissioner's* interrogation can be described as seeking information in terms of the stated intention it was focussed and about matters in *Leck* and *Keating's* direct personal knowledge. As will emerge, in my view, the interrogation went beyond that**.**

[84] Counsel for the *Attorney-General* submitted that the course of action taken was justified. Given information the *Inquiry* had received about *Patel's* activities and *Leck's* and *Keating's* position in the *Hospital* hierarchy, the *Commissioner* acted with a view to obtaining a spontaneous version of each applicant's involvement in matters being investigated by the Inquiry. That is a reasonable proposition.

[85] The course followed, however, placed a premium on maintaining and being seen to maintain an open mind to the whole of the evidence: Particularly those parts of it potentially adverse to *Leck* or *Keating* were to be tested.

The *Commissioner* Interrogates the Applicants

[86] The *Commissioner*, not counsel assisting, interrogated the applicants when they were called to give evidence. It was in his power to do so but was a departure from the Practice Direction and the normal course followed at hearings.

[87] Each of *Leck's* and *Keating's* points of claim, outline of argument and oral submissions identify passages of evidence relied on as supporting their case of apprehended bias. The references have been consolidated and organised to minimise repetition and overlap and are found in Attachment C. The DVD of the audio and visual evidence[54] can be accessed to view and hear specified passages. I have reviewed the specified passages.

[88] Exhibit 8 tendered by counsel for the *Attorney-General* is a collection of transcript references relied on as indicating that the *Commissioner* maintained an open mind. His written outline also identifies a number of passages[55] as indicative of a more even-handed approach than that which appears from references relied on by the applicants. I have reviewed those references. That is a fair description but the passages have to be evaluated in the context of all the evidence.

[89] Something of the flavour of the *Commissioner's* interrogation is given by the following exchanges which took place at various stages during the *Commissioner's* interrogation of *Leck.* By and large the examples speak for themselves.

> "(a) 'sneaked Dr Patel past the Medical Board', [56]
> (b) 'You're just far too busy, are you, to trouble yourself with whether or not people being held out as surgeons at your hospital are actually qualified?'; [57]
>
> 'What, were you sort of wrapping the wounds or helping out these patients?'; [58]

[54] Ex 3
[55] See Attachment C
[56] IT 360.28
[57] IT 361.04
[58] IT 367.08

(This related to *Leck's* explanation that the effect of an accident involving the tilt train had delayed finding an investigation into complaints about *Patel*. *Leck* had stated that in hindsight he regretted the delay).

'It doesn't worry you that patients might be dying or 15-year-old boys might be losing their legs?'; [59]

(e) 'Do you write gushy letters saying how good someone is whilst they're under investigation?'; [60]

(f) 'April Fools Day'[61] **(***Patel's* contract commenced on 1 April 2003)

(The approach manifest in these statements is not one of gaining information or clarification of evidence in hand. They are put aggressively and are sarcastic and belittling of the witness.)

(g) 'You were quite comfortable for the Premier and the Minister for Health and the Director to state in good faith facts that you knew to be wrong?'[62]

(Those people had said *Patel's* airfare for leaving for the States was not paid out of public funds. It later emerged it was. Leck was involved. Nevertheless the statement apparently implies that *Leck* knew of the statements and ought to have intervened. The statement was unfair and hostile.)

(h) 'Can you explain why he wasn't given the powers of an investigator?' [63]

(This relates to Dr Fitzgerald's investigation. The *Commissioner* asserted that Dr Fitzgerald "wasn't given the powers of an investigator but merely allowed to conduct a so called fact finding mission.". *Leck* however said he was under the impression that Dr Fitzgerald had come to investigate with the powers of an investigator[64]. As it turns out Dr Fitzgerald had the powers of an investigator by virtue of his office. The statement and manifest attitude of the maker seems unfair, and accusatory in the context of the examination.)

(i) 'I am just wondering whether the people of Bundaberg might not have been better off with three more clinicians actually working in the hospital rather than three people in offices sending memos back and forth to one another. Do

[59] IT 369.55
[60] IT 368.20
[61] IT 375.08
[62] IT 365.27
[63] IT 369.10
[64] IT 369.19

you think that's a fair comment? - No, I don't. Why not, what have you done, since you were first told about this problem in October, to achieve anything to save the lives of the patients who are being killed by Dr Patel?'

MR ASHTON: With respect, Commissioner, can I say, with the greatest respect, rhetorical questions of that kind are unfair to the witness. I was in the process of eliciting from him the chain of activity.

(Mr Ashton's intervention was justified. The *Commissioner* went on)

COMMISSIONER: Yes, yes, all the bureaucratic clap trap goes back and forth, Mr Ashton.[65]

(This may, as was submitted, manifest understandable frustration if it was an isolated instance, it however fits into an overall pattern).

(j) 'So you know there is a bureaucratic answer to a bureaucratic problem … but you just couldn't do anything could you?... when was that going to take place, 2015?' [66]

(k) '… Is there some reason why public hospitals need to have more pen pushers than doctors?' [67]

(l) '… the executive part of the hospital … that's a glassed off area; the public has no access to it and medical staff and clinical staff have no access to it.'[68]

(m) 'No, when did the investigation start? I'm not interested in bureaucratic correspondence going back and forth. When did anyone actually start investigating?'[69]

(n) 'So, you know, there is a bureaucratic answer to a bureaucratic problem, that you as the man in charge of the entire hospital couldn't get out of your office to go down to the ward or to the ICU or to the surgery, or wherever, and actually sort out the problem. You had to have meetings about it, you had to have mediation, you had to have memos flying back and forth, and inquiries and investigations, but you just couldn't do anything, could you?'[70]

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[65] IT 380.01-18
[66] IT 379.25
[67] IT 384.40
[68] *Commissioner, Hoffman's* evidence IT 126
[69] *Commissioner, Leck's* evidence IT 366.50
[70] *Commissioner, Leck's* evidence IT 379.25

(o) 'Looking at the letter it says, "I have received a complaint concerning your alleged behaviour from a client." I assume "client" was bureaucratic speak for "patient"?'[71]

(p) 'Doctor, this comment isn't aimed at you, because I know you're not a bureaucrat at heart ….' [72]

(q) 'Well, as a clinician, as a doctor who actually deals with patients, not a bureaucrat, I'm not asking about that sort of qualification, but as a clinician, he's in an entirely different realm from you, isn't he?'[73]

(r**)** The *Commissioner* made derogatory remarks about the effectiveness of the *Hospital* Executive, of which both *Leck* and *Keating* were members, in the course of their evidence and otherwise.[74]

(s) When informed that *Keating* intended to make this application the *Commissioner* remarked that the *Inquiry* was not about "the bureaucracy".[75]

[90] These references are illustrative of a pervasive disdain for, or contempt towards, "bureaucrats", and doctors who administer but do not treat patients, manifested by the *Commissioner.*

[91] Counsel for the applicants in their submissions placed various characterisations (to use a neutral term) on the *Commissioner's* intervention. They largely speak for themselves. They did not come across as seeking information or inviting discussion but as aggressive assertions, contemptuous or dismissive of "bureaucrats" and non-treating doctors who administer. *Leck* is in the first category and *Keating* is in the second.

[92] Passages such as those canvassed are not fairly described as an exploratory or tentative statement of issues with a view to testing their correctness or to giving the witnesses an opportunity to respond to a provisional view. c.f. *The Queen v Watson, Ex parte Armstrong.*[76]

[93] The effect of interventions of this kind has been considered in a number of cases. In *Vakauta v Kelly*[77] the trial judge made statements critical of the defendant's medical witnesses based on their evidence in previous cases and of the insurer who had retained them anticipating that they would give evidence favourable to its case.

[94] In the joint judgment of Brennan, Deane and Gaudron JJ[78] it was said there was an "ill defined line" beyond which expressions by a trial judge of his views of the reliability

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[71] *Commissioner, Hoffman's* evidence IT 122.10
[72] *Commissioner*, Fitzgerald's evidence IT 3229.31
[73] *Commissioner, Keating's* evidence – referring to *Miach* IT 395.47
[74] IT 126.20, 127.40 and following 129.20, 136.1-10, 157.10, 162.01, 229.20-30, 300.60- 301.1-20, 317.65, 60.50, 1191.10, 1292.45.60, 1562.15, 1600.05, 1674.35
[75] IT 2032.15
[76] (1976) 136 CLR 248 per Barwick CJ, Gibbs, Steven, Mason JJ
[77] (1989) 167 CLR 568
[78] (1989) 167 CLR 568 at 571

of a particular medical witness could threaten the appearance of impartial justice. It was remarked that a judge's confidence in his integrity could lead to a failure to appreciate that comments might wrongly convey to an observer an impression of bias. Nevertheless it was found bias was made out.

[95] Insofar as the judge in *Vakauta v Kelly*[79] expressed views critical of the insurer's retaining doctors predisposed to favour an outcome in the insurer's interests, there are parallels to this case and the *Commissioner's* references to "bureaucrats" and doctors who administer but never treat patients.

[96] In *Parramatta Design and Developments Pty Ltd v Concrete Pty Ltd* [80] the Full Court of the Federal Court considered that statements, open to be understood as meaning that the trial judge considered the plaintiff's claim to be legally unmeritorious, constituted ostensible bias in the context of that case.

Differential Treatment

[97] It was submitted for the applicants that the *Commissioner's* favourable treatment of witnesses, notably but not restricted to *Hoffman* and *Miach*, was in stark contrast to his treatment of the applicants and supported a conclusion of apprehended bias.

[98] The *Commissioner's* treatment of the applicants is dealt with under preceding subheadings and it is unnecessary to repeat what has been said here. (See also the subheadings which follow). Transcript references supplied by the applicants under this particular heading are to be found in Attachment C.

[99] The first three witnesses called were *Hoffman*, *Messenger* and *Miach*, who gave evidence which, if accepted, was fraught with potential adverse consequences for the applicants and likely to be challenged by them. The *Commissioner's* effusive endorsement of their untested evidence early in the proceedings is of particular concern.

[100] When *Hoffman* completed giving her evidence on her first appearance before the *Commissioner*, prior to the applicants being called, the *Commissioner* thanked her for "the thoughtful and careful and helpful way" she gave her evidence. As he was leaving the bench he diverted, went down and shook *Hoffman's* hand before leaving the room.[81]

[101] The *Commissioner*, although ultimately acknowledging that *Hoffman's* evidence was based on second or third-hand information, endorsed her as a witness on other occasions:

> **"**We appreciate very much your coming to give your evidence and the way in which you have given your evidence, the thoughtful and careful and helpful way in which you responded to all of the questions asked of you. We appreciate it very much?-- Thank you." [82]

[79] (1989) 167 CLR 568
[80] [2005] FCAFC 138
[81] IT 194.40
[82] IT 194.34

[102] The culmination of this was when *Messenger* had finally concluded his evidence on 25 May. The *Commissioner* said:

> "When Nurse Hoffman finished her evidence earlier this week I referred to the fact that she's regarded by many people in the local community as a hero, … at that stage I was a little constrained as to what I could or should say given we had no hard evidence. Now we are in a position that we have the report from Queensland Health indicating … Patel was negligent in connection with eight deaths.
>
> What that makes clear to me at least is that three individuals in particular have brought to light a situation which would not have come to light but for their courage and their tenacity, and those three individuals I will identify as being Ms Hoffman, yourself and, also I have to say, Mr Hedley Thomas from The Courier-Mail.
>
> … Now in saying that I'm not, of course, announcing any findings in relation to any aspects of the evidence." [83]

[103] Other illustrations of endorsement of a witness are:

Michael Steven Demy-Geroe, Deputy Registrar of the Office of the Health Practitioner Registration Board (who gave evidence about *Patel's* registration which the interim report considered fraudulent):

> "Thank you very much for making your time available to come along. It hasn't escaped our attention that you have obviously put a lot of work into preparing your evidence … it is particularly important to note … that you … have acknowledged that there are things that should have been done better, and expressed a preparedness to ensure these problems don't occur in the future …" [84]

[104] Gail Margaret Aylmer, the Infection Control Clinical Nurse consultant at the *Hospital*:

> "It's greatly appreciated and it has been tremendously helpful and useful evidence and we thank you for that."[85]

[105] Dr John Hugh Bethell, Director of Wavelength Consulting Pty Ltd (medical recruitment firm specialising in the recruitment of doctors for placement throughout New Zealand, Australia and the UK):

> "We thoroughly appreciate your assistance. It has been tremendously helpful … both in relation to your recollection … but also the assistance you have provided to us about the resolution of some of these issues, and I am especially grateful that you have provided that assistance in a way that may be contrary to your own personal

[83] IT 1711.30
[84] IT 496.01
[85] IT 1097.57

> professional interests which, at least, demonstrate the sincerity of the evidence you have given."[86]

[106] On 26 May 2005 the *Commissioner* addressed *Miach* in these terms (T 346):

> "Dr Miach I don't say this out of flattery, but I think it would be a fair observation that a town of the size of Bundaberg and a hospital the size of Bundaberg Hospital is very lucky to have attracted a doctor of your seniority and experience; that would be quite uncommon, wouldn't it?"[87]

[107] The treatment of such witnesses can be justifiably said to be in stark contrast with the treatment of the applicants and seen as having an inference that they were more favoured by the *Commissioner*. It is not a question of the court considering whether the commendations were deserved, the question is whether they go to, as I find they do, supporting a conclusion of apprehended bias.

[108] From a more general perspective, as I have already said, witnesses who were not bureaucrats or non-treating doctors were apparently viewed more favourably by the *Commissioner* than witnesses who were. Some witnesses who gave evidence potentially adverse to the applicants were in the first category; the applicants are in the second.

An Issue about Cross Examination

[109] On 29 June 2005 (the 15th day of public hearings) counsel for *Keating* was cross-examining *Miach*. It will be recalled that *Miach* was a renal physician, Director of Medicine at the *Hospital* and the third witness called by the *Commission*. He had given evidence, aspects of which might be fairly described as critical of administration of the *Hospital* and of *Leck's* and *Keating's* role in that administration, particularly with respect to *Patel* and his activities.

[110] The cross examination was quite properly exploring issues of the accuracy and reliability of *Miach's* previous evidence in relation to what was described as the "catheter audit". Had counsel not done so, his client might well have been taken as accepting *Miach's* account.

[111] The document and its implications had been the subject of a vigorous, at least on the *Commissioner's* part, exchange with *Keating* when the *Commissioner* interrogated him when he was first called. The vehemence of the *Commissioner's* interrogation is somewhat in contrast with the cross examination of *Miach*.

[112] The *Commissioner* intervened on an aggressive note and the following exchange took place**:-**

> "MR DIEHM: Doctor, I think I can help you, in answer to my question. What you did is you sent P19 to Dr Patel to have another catheter put in.

[86] IT 766.20
[87] IT 346.06

COMMISSIONER: Mr Diehm, I think it only fair for me to say that at this stage the trend of your questions is obvious. I would expect from a counsel of your experience that you would not be attacking Dr Miach in this way, except on explicit instructions. It's, therefore, right, is it, for us to assume that Dr Keating has instructed you to launch this attack on Dr Miach?

MR DIEHM: Commissioner -----

COMMISSIONER: Is that right?

MR DIEHM: Commissioner, I can answer that question this way.

COMMISSIONER: Please do.

MR DIEHM: I have as counsel, as you known, Commissioner, a reasonably broad discretion as to the way in which I ask questions and what questions I ask, and in fact it's not for my client to tell me what questions to ask.

COMMISSIONER: Indeed. But by the same token, it's not for you to launch such an attack without your client's instructions.

MR DIEHM: Commissioner, I don't have instructions and I have not been – I have not been acting outside the scope of my instructions in asking the questions I am asking.

COMMISSIONER: Well, I am going to adjourn for five minutes so you can take appropriate instructions, but I want everyone at the Bar table to understand that one of the issues that's clearly being raised is this shoot the messenger attitude, and if it comes to our attention that anyone from the Director-General of Queensland health down has given instructions for a witness like Dr Miach to be attacked, then that will be an appropriate foundation for us to make findings at the end of the proceedings.

MR DIEHM: Commissioner -----

COMMISSIONER: I will give you a five minute break to get instructions.

MR DIEHM: May I raise something before we do rise, Commissioner?

COMMISSIONER: Say whatever you like.

MR DIEHM: Thank you. Commissioner, this is not – my questions are not a shoot the messenger situation and, with respect, that is not a fair observation about this situation.

The second thing I wish to raise about the matter is that my client was subjected in Brisbane to a rather gruelling and vigorous series of questioning -----

COMMISSIONER: yes.

MR DIEHM: ----- no less than what I have just been asking of Dr Miach, in my respectful submission, and the situation must be that parties who are the subject of allegations at this Inquiry are entitled to defend themselves.

COMMISSIONER: And to throw some mud at other people and you have every right to throw mud at Dr Miach if those are your instructions and I'll give you the opportunity to confirm whether those are Dr Keating's instructions ~~Of course, you will have every opportunity to put to Dr Miach your instructions. I will give you the opportunity to confirm those are your instructions~~ since you say you don't have specific instructions to do that.[88]

MR DIEHM: Thank you, Commissioner.

THE COURT ADJOURNED AT 4.05 P.M.

…

THE COMMISSION RESUMED AT 4.20 P.M.

Commissioner: Yes, Mr Diehm?

MR DIEHM : My instructions would be to ask the questions that I'm asking.

COMMISSIONER: That's fine, then. There's no need to explain. You have got your instructions, so you can continue.

MR DIEHM: Commissioner, though, it is a matter of concern to my client that it appears, from what you have said, that there will be some adverse consequence for him if he persists through me in asking those questions.

COMMISSIONER: Well, he gives you instructions, what consequences from that is a matter for us.

MR DIEHM: It is a matter for him, Commissioner, in the sense, with respect, that what you have said gives rise to an inference, in my respectful submission, that if he seeks to challenge the evidence of those who make accusations against him, that he will have some sanction visited upon him.

COMMISSIONER: Not at all. That's, with respect, a completely inaccurate statement of the situation. You have been going now for – what is it, about three hours? There has been no

[88] What is set out is agreed by the parties to be a correct transcription of the audio record.
The deleted portion appeared in the transcript but was not said. The discrepancy has been explained and there is no inference to be drawn.

> attempt to prevent you from challenging adverse evidence, and you have unrestricted right to do that. The question is whether there's any merit in the line of cross-examination which is taking place now which seems to be – involve the implication that Dr Miach is somehow personally responsible for referring patients to Dr Patel for surgery in light of the previous adverse outcomes. If your instructions are to do more than merely protect your client's interests and to suggest that Dr Miach is somehow culpable, then that's a matter for you. You pursue those instructions if they are the instructions you have.
>
> MR DIEHM: Commissioner, that's not the purpose of my questions.
>
> COMMISSIONER: If that's not the purpose, then I'm gratified to hear that.
>
> MR DIEHM: Dr Miach, the question that I asked you was whether what you did with the knowledge of the outcomes for those four patients was – and, indeed, four out of four that you could know the outcomes for at that point in time – was to send another patient, the last one on the 3rd of December, to Dr Patel for the procedure to be performed?-- I don't think, with all due respect – I don't think it works like that.…"[89]

[113] The *Commissioner* was not explicit as to the consequences he contemplated. Clearly they would not be favourable to the cross examiner's client. Presumably he was adverting to the situation that if a client instructs counsel to make an unfounded attack on a witness an adverse inference may be drawn against the client who gave the instructions.

[114] There was no apparent reason for thinking *Keating's* counsel was acting other than in accord with his instructions when the *Commissioner* interrupted his cross-examination of *Miach* or for not accepting counsel's statement that he was not acting outside the scope of his instructions.

[115] The intervention was unjustified and was, at best, intemperate. Its implications were expressed so as not to be restricted to the immediate situation. It referred to all parties (specifically "anyone from the Director-General of Queensland Health down" who gave instructions to attack "a witness like Dr Miach"). It might reasonably be concluded that witnesses "like" *Miach* did not include *Keating*, or for that matter *Leck* and perhaps others, but included *Miach, Hoffman* and others who had been commended by the *Commissioner* and who had given evidence adverse to the applicants.

[116] The Commissioner's demeanour was hostile. The intervention was expressed to deter cross examination of *Miach.* Its terms imposed an unacceptable constraint on -cross-examination of such a witness. It might well be proper for counsel to have properly founded instructions involving attacking a witness "like" *Miach* or properly required that to be done.

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[89] T 1638-1640

[117] Counsel for the *Attorney-General* submitted by way of explanation that the *Commissioner* simply got it wrong and misapprehended the cross examiner's purpose. The *Commissioner's* words and attitude throughout the incident do not suggest that was the case.

[118] The intervention may reasonably be seen as a telling insight into the *Commissioner's* attitude towards witnesses in the two categories he refers to in the intervention. It may reasonably be inferred that the intervention was to protect *Miach* and signify that cross-examination challenging him or other witnesses like him, particularly by the applicants or others associated with Queensland Health, was not welcome, rather than have some benign purpose.

Interim Report

[119] The *Inquiry* issued an interim report on 10 June[90]**.** The *Commissioner* and the *Deputy Commissioners* signed it. The report came out in the interval between the second and third weeks of the hearings. Its express purpose was "solely" to bring to the attention of the Governor in Council matters which had come to the *Inquiry's* attention during the first two weeks of evidence.

[120] The *Inquiry* had power to issue an interim report and to do so without informing the applicants; subject to the consideration of procedural fairness.

[121] The report dealt with a number of matters. Relevantly for present purposes it recommended that *Patel* be charged with false representation, fraud, a negligent act, murder and manslaughter in respect of patients.

[122] It is noteworthy that the recommendations made in respect of *Patel* were not made for investigation by investigative agencies and consideration by prosecuting agencies, as such recommendations frequently are, but were made on the basis that there was an existing *prima facie* case for prosecution.

[123] The report expressly stated that it did not address the question of whether there was a case against anyone other than *Patel* in respect of criminal charges, official misconduct or breach of discipline. It noted that if any individual "may potentially have a case to answer" natural justice would require they be notified and given an opportunity to meet the charges. *Patel* was excepted from this for reasons the report canvassed and so the recommendations were made.

[124] Paragraph 68 of the report referred to evidence from a variety of sources supporting a conclusion that a *prima facie* case existed against *Patel* in respect of the offences the subject of the recommendation. It went on to say that the principal sources of the evidence were *Hoffman*, "a highly trained and experienced intensive care nurse", and *Miach*, "a highly qualified and experienced general physician and nephrologist".

[125] There was an implied acceptance of *Miach* and *Hoffman's* evidence which was untested and inadmissible in a criminal trial. In the event, much of it, notably in *Hoffman's* case, was acknowledged by the *Commissioner*[91] as of little weight.

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[90] Ex 4, p 250
[91] IT 1454.34

[126] It was submitted on the applicants' behalf that it was not only *Patel* who was affected by the interim report. *Leck* and *Keating* were in circumstances where the report manifested a prejudgment, particularly of the evidence of *Hoffman* and *Miach.*

[127] The interim report had also concluded that *Patel* committed fraud by continuing to practice as a medical practitioner in the capacity of Director of Surgery at the *Hospital.*

[128] The report was published in the context of the *Commissioner* having interrogated *Leck* on the basis of such matters as *Leck* failing to save lives of patients killed by *Patel* after *Leck* had received information from him[92] and the negative characterisation of *Leck* as a bureaucrat and the other matters canvassed earlier in these reasons.

[129] On 15 June 2005 the *Inquiry* issued a press release under the hand of the secretary dealing with inquiries from journalists as to the role the *Commissioner*, or the *Inquiry*, might be taking with respect to discussions with *Patel's* lawyers.

[130] It made a number of points: one of the report's purposes was to "flush out" *Patel* and his legal representative and the *Inquiry* was "gratified" that the purpose had been successfully achieved – lawyers acting for him had contacted the *Commissioner* although there is no suggestion that charges have been laid against *Patel.*

[131] It is submitted for the applicants, with some justification, that that is not a proper purpose for the publication of an interim report which gave, what might be thought to be, premature endorsement to *Miach* and *Hoffman.*

[132] Given those considerations, the circumstances of its being delivered and its terms mean it properly falls for consideration as supporting *Leck's* and *Keating's* case of perceived bias.

Private Meetings

[133] This topic is conveniently dealt with in terms of the complaint having two components. The first is general and the second relates to two specific meetings, one with Dr Gerry Fitzgerald and the other with medical practitioners in Bundaberg.

[134] The general component came to the attention of the applicants in this way. At a hearing of the *Commission* on 2 June 2005 the *Commissioner*, referring to a press report,[93] said that a comment had been made by a "former senior officer of Queensland Health" who had "chosen apparently to make it his business to put about a story" about the *Commissioner* and perhaps *Deputy Commissioners* "wining and dining" people who the former officer "perceives as being the enemies of Queensland Health, with a view, apparently to get them" to give evidence and "say bad things about Queensland Health"[94].

[135] The "former senior officer" was a former Director General and the recipient of the confidence was the mother of one of the counsel assisting the *Inquiry* so the matter came to the *Commissioner's* attention and he raised it at a public hearing.

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[92] T 380.10
[93] Ex 141, p 142
[94] IT 711.15 - 713.12

[136] The *Commissioner* went on to speak of a journalist who had emailed him seeking details of "the matter". He went on to make "three things clear to" the journalist. One was that neither he nor anyone else associated with the *Inquiry* had anything to hide and that he would "describe exactly what the situation is". Secondly that the person was "not going to succeed in bullying me or bullying anyone else associated with the Inquiry." Thirdly that the (former senior officer) would have "every opportunity to say from the witness box why he feels that it is either necessary or desirable not only to attempt to derail this Inquiry but also to attempt to derail the Premier's and Government's stated intention to support the Inquiry to the utmost".

[137] The Commissioner went on:-

> "It is the case that I have met with a number of potential witnesses. Those meetings have invariably taken place in a public venue so that there can be no suggestion that I am getting together with people behind closed doors with a view to colluding with them in relation to their evidence or anything of that nature. One of the counsel assisting has been present at those meetings.
>
> … More importantly, that the purpose of the meeting has been solely to assure those who are reluctant to come forward and to give evidence that (the *Inquiry*) will provide complete and unreserved support to anyone who has relevant information…."[95]

[138] The *Commissioner* then went on to refer to meeting with "not less than four extremely, extremely senior medical practitioners"[96] who had wanted reassurances about the *Inquiry's* sincerity in protecting them from retribution[97] and who inferentially received it.[98] No further detail was forthcoming.

[139] The *Commissioner* went on to say that "there have been several" meetings and that he understood that the *Deputy Commissioners* had spoken to "people from the community". Each person he had spoken to had been given the opportunity to speak off the record and he did not intend to breach that confidence.

[140] The *Commissioner* concluded with the remark "the only concern arising out of any of that is why a former senior officer of Queensland Health would feel that it is in anyone's interest to be peddling this story, not only to journalists but also to people he meets on aircraft…."

[141] On 3 June 2005 counsel for *Keating* submitted that if information affecting any party had been received, the party was entitled to be informed of the substance and effect of the information and potentially its source.[99] The *Commissioner* responded by saying that neither *Leck's* nor *Keating's* name had been mentioned, a recollection which he had confirmed by senior counsel assisting.

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[95] IT 712.03
[96] IT 712.16
[97] From who and what was not canvassed
[98] This might be considered is an intriguing revelation given the *Commissioner's* views about "bureaucrats", doctors who administrate but do not treat patients, and hospital administrators, canvassed in the interrogation of the applicants.
[99] IT 868.18

[142] The *Commissioner* went on to re-iterate that the primary purpose of the meetings were to "reassure witnesses" but that one of the side benefits was that fresh lines of inquiry and support had opened up. If any of those persons who he met were called to give evidence they "could be dealt with in the usual way".[100]

[143] The Weekend Australian newspaper, on 4 June, contained a report about what were referred to as "secret background talks outside the Inquiry" and made reference to a meeting between the *Commissioner* and Dr Gerry Fitzgerald, Chief Health Officer of the Queensland Department of Health.

[144] At *Leck's* request Dr Fitzgerald undertook an investigation of complaints about *Patel's* performance and the *Commissioner* interrogated *Leck* about these events when he was first called. It will be recalled that *Leck* was aggressively interrogated by the *Commissioner* who asserted he had "hobbled" Dr Fitzgerald's investigation.

[145] Following this report, on 14 June *Leck's* solicitor wrote to senior counsel assisting the *Inquiry* referring to the *Commissioner's* statements and seeking an assurance that the *Commissioner* had not spoken privately to any person whose evidence affected her client's interest. On 15 June he received a reply (dated 14 June)[101].

[146] This stated[102] that the *Commissioner* could give his assurance that he had had no discussions with a past or potential witness in which *Leck's* name had been mentioned and that there had been no discussions touching on "any aspect of the witness's evidence that may be relevant to *Leck's* interest"[103].

[147] The letter went on to say that the *Commissioner* was unable to give an assurance that he had not:-

> "Spoken privately with anyone whose evidence affects (*Leck's* interests)."

This was said to be because the person spoken to might be called on to give evidence on matters not privately discussed, which might affect *Leck's* interests.

[148] Although the letter by *Leck's* solicitor of 14 June raised specific queries about Dr Fitzgerald as being one of the witnesses spoken to, the reply did not address them; it made no mention of Dr Fitzgerald.

[149] In the course of his submissions counsel spoke of the private meetings not having been adequately explained. Counsel referred to the risk of apprehension of bias if private meetings took place. The following exchange then took place:

> "COMMISSIONER: Are you challenging the truth of what (senior counsel assisting) says.
>
> MR ASHTON: I don't want to say anything more than that, Commissioner.

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[100] IT 869.08
[101] Ex 4, pp 224-5
[102] Ex 4, p 226
[103] It is convenient to note that, as Ex 7 shows, *Keating* was mentioned in a private discussion.

COMMISSIONER: (Senior Counsel Assisting the Commission) Do you mind going to the witness box and we will clarify this through evidence?

MR AHTON: I am not challenging what (senior counsel assisting) says

COMMISSIONER: You are not?

MR ASHTON: No

COMMISSIONER: Alright. Either here or in any other place?

MR ASHTON: Well I don't know what he might say in another place. I am not challenging what he says here, what he has just said then."

This might reasonably be seen as an intimidating over-reaction to the expression of a legitimate concern. The reason for it is not obvious.

[150] After a further exchange counsel said in respect of the letter of reply of 14 June, previously referred to, that there was no mention of Dr Fitzgerald and that Leck's advisers were "left, lastly, none the wiser". There was then a further series of exchanges in which he and the *Commissioner* adhered to their respective positions. *Leck's* solicitor deposes that statements from Dr Fitzgerald had come to hand but did not address the issue raised by the letter.

[151] On Day 30 of the *Inquiry* the *Commissioner* interrupted senior counsel assisting during his examination of Dr Fitzgerald and said:-

> "Mr Diehm, I've been thinking further about the matter you raised earlier. I did mention the conversation with Dr Kees Nydam outside the meeting in Bundaberg where he said, about Mr Leck, that he was a good fellow and he hoped he wouldn't become a scapegoat and so on. When I referred to that I said that Dr Keating's name wasn't mentioned.
>
> Having thought about it some more, I do recall that Dr Keating's name was mentioned. It's not something that I regard as important, but I – in fact the remark was a slightly offensive one, but I'm happy to put it on the record if you wish me to do so.
>
> MR DIEHM: Commissioner, might I ask that it be disclosed to Dr Keating via correspondence from the Commission to my instructing solicitors?
>
> COMMISSIONER: I'll write it down now on a piece of paper and have it handed to you, and if you wish to say anything more about it we can take it from there."[104]

[104] IT 3182

[152] It appears that the *Commissioner* attended a meeting of the local branch of the Australian Medical Association in Bundaberg on the evening of 29 June 2005 while the *Inquiry* was sitting there.

[153] The invitation to attend was canvassed on 21 June 2005[105] and it was explained that if the members attended there would not be "discussion of matters of substance at the meeting". No objection was taken in those circumstances.

[154] On 30 June 2005 some of the matters discussed at the previous night's meeting were canvassed[106]. They were not matters of substance so far as the terms of reference were concerned and implicitly such matters had not been discussed. It appeared, subsequently,[107] that matters of substance had been discussed.

[155] It may be accepted as a general proposition that the *Commissioner* might have "a private meeting". The *Inquiry* may inform itself as it sees fit and the collection of information may be advanced by "private" meetings. The risk the *Commissioner* takes in doing so is the activities might contribute to or found a perception of bias.

[156] It is a "fundamental principle" that a judge must not hear evidence or receive representations from one side behind the back of another; *Re JRL; Ex parte CJL*[108]; *Kanda v Government of Malaya*[109]; *R v Magistrates Court at Lilydale; Ex parte Ciccone*[110].

[157] *Leck's* and *Keating's* complaint (particularly *Leck's*) is not simply that the meetings took place. It is rather, accepting that they did, they came to notice because of the press report and the concerns the applicants raised were responded to as they were, rather than comprehensively addressed. That is a legitimate concern in the circumstances. The risk of a perception of bias was heightened by these and other aspects and by the climate in which the *Inquiry* was being conducted.

Summary of Principal Findings

[158] I am satisfied that each of the applicants has made out a case of ostensible bias in respect of matters arising under the *Inquiry's* terms of reference.

[159] The circumstances established by the accumulated weight of evidence would give rise, in the mind of a fair minded and informed member of the community, to a reasonable apprehension of lack of impartiality on the *Commissioner's* part in dealing with issues relating to each of the applicants. Similar considerations arise with respect to persons in the position of an applicant.

[160] It is not feasible to disentangle the evidence bearing directly on a particular applicant from the whole body of evidence. In any event, evidence bearing directly on one also bears on the other in many instances.

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[105] IT 1193.30
[106] IT 1688
[107] IT 2875.40 and IT 2968.40; 26 and 27 July
[108] (1986) 161 CLR 342 at 346
[109] [1962] AC 322 at 337
[110] [1973] VR 122 at 127

[161] In view of the intense interest in the *Inquiry* and its activities it was particularly important that it be seen to be impartial in arriving at any conclusion affecting *Leck* or *Keating.*

[162] Neither applicant is precluded by acquiescence from obtaining relief. This is not a situation of parties being aware of bias or the facts constituting it and choosing to proceed. This is a case of an inquiry with coercive powers investigating events in which the applicants were involved with others, canvassing a wide range of events.

[163] The *Deputy Commissioners* appear to have been closely involved with the *Commissioner* in the work of the *Inquiry* prior to, and during, the public hearings. They sat with him during the hearings giving rise to these applications and did not disassociate themselves from his conduct.

[164] I will hear submissions as to the form of relief and costs.

ATTACHMENT A – GLOSSARY

The *Inquiry*	The Bundaberg Hospital Inquiry conducted under *Commissions of Inquiry Order* (No 1) 2005 made on 26 April 2005
The *CMC*	The Crime and Misconduct Commission
The *Commissioner*	Mr Anthony John Hunter Morris QC
The *Deputy Commissioners*	The Honourable Sir Llewellyn Edwards AC and Ms Margaret Vider RN
Patel	Dr Jayant Patel
The *Hospital*	Bundaberg Base Hospital
Keating	Darren William Keating, Director of Medical Services, Bundaberg Base Hospital
Leck	Peter Nicklin Leck, District Manager, Bundaberg Base Hospital
The *Attorney-General*	Attorney-General for the State of Queensland
The *Support Group*	Bundaberg Hospital Patient Support Group
Hoffman	Ms Toni Ellen Hoffman, Nurse Unit Manager of the Intensive Care Unit at Bundaberg Base Hospital
Miach	Dr Peter John Miach, Renal Physician and Director of Medicine, Bundaberg Base Hospital
Messenger	Mr Robert Messenger, MLA

ATTACHMENT B - CHRONOLOGY

01.04.2003	*Dr Patel* commences employment at the *Hospital*.
14.04.2003	*Dr Keating* commences employment.
19.06.2003	*Ms Hoffman* sends email to *Dr Keating* about concerns bearing on *Patel* "…working outside scope of practice…"
Feb/March 2004	*Ms Hoffman* meets with *Mr Leck* and gives him a document re ICU issues with ventilated patients but tells him not to take any action.
09.03.2004	Letter from Medical Board of Queensland to *Patel* granting "Special purpose registration as a Medical Practitioner in Queensland" pursuant to section 135 of the *Medical Practitioners Registration Act 2001* (practice in area of need) valid 1.4.2004-31.3.2005. States in bold (again) that *Patel* is not registered as a specialist.
May 2004	According to *Dr Miach* (and Pollock), the completed catheter audit (Exhibit 18) is given to *Dr Keating*.
May/June 2004	*Dr Keating* is given exhibit 69 by a person unidentified (1130.30).
20.10.2004	Meeting between Ms Mulligan and *Ms Hoffman* when *Ms Hoffman* makes allegations about *Dr Patel's* clinical skill. Meeting between *Ms Hoffman*, Ms Mulligan and *Mr Leck* regarding *Ms Hoffman's* allegations.
21.10.2004	*Dr Keating* given Exhibit 18 by *Dr Miach*. *Dr Miach* states that he talks to *Dr Keating* re catheter audit and *Dr Keating* asserts he was not earlier given audit *Dr Miach* forwards further copy of catheter audit to *Dr Keating*.
22.10.2004	*Ms Hoffman* emails her written complaint which *Mr Leck* forwards to *Dr Keating*.
25.10.2004	Hard copy of *Ms Hoffman's* written complaint arrives with complaints from Ms Karen Stumer, Ms Karen Fox, Ms Vivian Tapiolas, Ms Kay Boison and Ms Karen Jenner.
15.11.2004	*Mr Leck* at Zonal Forum; discusses investigation of *Patel's* activities.
17.12.2004	Email saying Dr Gerry Fitzgerald, Chief Health Officer, should conduct investigation. *Mr Leck* telephones Dr Fitzgerald's office regarding review.
24.12.2004	*Mr Leck* on annual leave. *Dr Keating* offers *Dr Patel* extension of contract from 01.04.05 to 31.03.09.
Jan 2005	*Dr Keating* seeks *Mr Leck's* approval to extend *Dr Patel's* contract to June/July 2005 and *Mr Leck* agrees.

04.01.2005	*Mr Leck* returns from annual leave.
14.01.2005	*Dr Patel* forwards letter to *Dr Keating* stating he will not be renewing his contract as Director of Surgery beginning April 2005. Letter signed by Dr Kariyawasam, Gupta Boyd, Dobinson and Athanasiov to *Dr Keating* concerning *Dr Patel's* non-renewal of contract.
19.01.2005	*Mr Leck* sends brief to Dr Fitzgerald. Letter from *Dr Keating* to Dr Athanasiov confirming *Dr Patel's* very positive approach to patient care whilst employed by the hospital.
31.01.05	Letter from *Dr Keating* to Medical Board of Queensland re: *Dr Patel's* contract being extended to 31.03.09 and an application for registration stating that *Dr Patel's* contract had been extended to 31.03.09.
14.02.2005	Dr Fitzgerald and Mrs Sue Jenkins in Bundaberg to interview staff for investigation.
March 2005	Clinical audit of general surgical services at the *Hospital*. Confidential audit report prepared by Dr Gerry Fitzgerald, Chief Health Officer, Mrs Susan Jenkins, Manager Clinical Quality Unit.
22.03.2005	*Mr Rob Messenger* tables *Ms Hoffman's* letter of 22.10.05 in Parliament and questions raised in relation to it.
23.03.2005	First press in relation to "Dr Death". *Mr Leck* and Mrs Deanne Walls (Acting Director of Nursing) have meetings with ICU staff (1.30 to 2.30 pm) and Level 3 Nurses (2.30 to 3.30 pm) regarding breach of Code of Conduct.
01.04.2004	*Mr Leck* approves reimbursement of *Dr Patel's* airfare to US. *Mr Leck* writes to the Medical Board of Queensland advising that *Dr Patel* no longer working and leaving country.
26.04.2005	Premier announces the *Inquiry* and Forster Inquiry.
10.05.2005	Letter from *CMC* to *Mr Leck's* lawyers (Hunt & Hunt) advising of investigation.
11.05.2005	Phone call by Ms Feeney of Hunt & Hunt to Mr Andrews advising she is acting for *Mr Leck*. Letter by Hunt & Hunt to *CMC* requesting particulars of complaints against *Mr Leck*. *Mr Leck* summoned to give evidence at the *Inquiry*.
17.05.2005	Demy Geroe's statement indicates *Patel's* registration was bogus.
18.05.2005 to 20.05.2005	Discussions between *Inquiry* staff and *Dr Keating's* solicitors regarding proposed interview overtaken by commencement of public hearings of *Inquiry*.

20.05.2005	Letter by Hunt & Hunt to *CMC* responding to theirs of 13 May 2005. Telephone conversation between Ms Feeney & Mr Tony Stella. Ms Feeney advised *Ms Hoffman* would be first witness and asked for outline of what was required in statement. Letter from the *Inquiry* to Hunt & Hunt providing details of matters to cover in *Mr Leck's* statement.
23.05.2005	Public Hearings in the *Inquiry* commence with later evidence from *Ms Hoffman.*

ATTACHMENT C

(a) ***Leck***

First and last page references and particularly, 357.30-371.20; 375.50; 375.59; 376.10; 376.18; 379.01; 379.10-35; 379.40-380.11; 380.20; 384.10-385.10; 385.40; 392.01-.10.

(b) ***Keating***

First and last page references and particularly 126.20; 127.40; 127.50; 129.20; 136.01-10; 157.10; 162.01; 299.20-30; 300.60-301.01; 301.20; 317.35; 317.40; 325.40; 393.03; 394.44; 399.18; 401-402; 404.22; 430.30; 430.50; 450.55; 451.40-452.01; 459.40-461.50; 607.50; 1191.10; 1292.45-.60; 1344.25-40; 1562.15; 1600.05; 1674.35; 2032.15; 2310.25-2313.40; 2508.01

(c) ***Attorney-General***

Inquiry Transcript pp 404-405, 460-461, 511-512 and 1344