



Bundaberg Hospital *Commission of Inquiry*

Interim Report of 10 June, 2005

Commissioner: *Anthony Morris QC* **Deputy Commissioners:** *Sir Llewellyn Edwards AC, Margaret Vider RN*

Counsel Assisting: *David Andrews SC, Errol Morzone, Damien Atkinson* **Secretary:** *David Groth*

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SCOPE OF THIS INTERIM REPORT

1. This Interim Report is made pursuant to section 31 of the *Commissions of Inquiry Act 1950*, which provides:

A commission may, at the discretion of the chairperson, make any separate reports, whether interim or final, and any separate recommendations concerning any of the subject matters of its inquiry.

2. The purpose of this Interim Report is solely to bring to the attention of the Governor in Council, through the Honourable the Premier and Minister for Trade, in accordance with the Terms of Reference (“**ToR**”), matters which have come to the attention of the Commission during the course of evidence in the period of 2 weeks commencing 23 May 2005, with reference to:

- 2.1 recommended legislative changes in relation to the *Medical Practitioners Registration Act 2001* (“**the Registration Act**”);

- 2.2 recommended administrative changes regarding the process for declaring “areas of need” under section 135 of the Registration Act; and

- 2.3 potential grounds for the prosecution of JAYANT MUKUNDRAY PATEL (“**Patel**”) for certain offences under the *Criminal Code* in connection with his registration as a medical practitioner by the Medical Board of Queensland (“**the Board**”) under the Registration Act, his employment at the Bundaberg Base Hospital (“**BBH**”), and surgery performed by him at BBH.

3. It should also be noted that this Interim Report does not address the question whether there is a case against any person, apart from Patel, in respect of:

- 3.1 criminal charges; or

- 3.2 official misconduct; or

- 3.3 a breach of discipline.

4. If it were to be that any individual may potentially have a case to answer, natural justice would require that the individual be given notice of the relevant allegations, an opportunity to adduce evidence in respect of the allegations, and an opportunity to address submissions to the Commission of Inquiry in relation to the allegations.

5. The situation regarding Patel is quite different:

- 5.1 Given the extent of media coverage, not only in Australia but also overseas (including the United States and India), there can be little doubt that Patel is aware of this Commission of Inquiry, wherever in the world he may be presently situated.
- 5.2 Patel has been explicitly urged by the Premier of Queensland to “return to Queensland as soon as possible to explain [his] actions in relation to the treatment received by patients at the Bundaberg Base Hospital”¹.
- 5.3 The Chairman of the Commission of Inquiry has had communications relayed to a lawyer² reported to be representing Patel in Portland, Oregon, USA, directed specifically to establishing whether Patel is prepared to return to Queensland to participate in the Inquiry, and, if so, what conditions (such as payment of travelling and accommodation expenses, or even an indemnity from prosecution³) might be required by Patel in order secure his return. Those communications have attracted no response whatsoever, although several media reports⁴ attributed to Mr Houze statements that he “declined [to] comment while the investigation in Australia is proceeding”.
- 5.4 Prior to the commencement of the Inquiry’s public sittings, the Chairman was contacted by an Australian Queen’s Counsel⁵ who had been approached

¹ see “Open Letter to Dr Jayant M. Patel” on the Queensland Government website at:
<http://www.thepremier.qld.gov.au/library/office/patelleter.doc>

² Stephen A. Houze, esq., Attorney-at-Law.

³ It should be noted that it is not within the authority of this Commission of Inquiry to grant to Patel any form of indemnity from prosecution – that is entirely a matter for the Honourable the Attorney-General. The Chairman has made preliminary enquiries with the office of the Attorney-General regarding the Attorney’s likely attitude in the event that an application is made for such an indemnity; and the Attorney-General has responded, setting out the (appropriately rigorous) criteria which would be applied in considering any such application. In the absence of any response from Mr Houze, this matter has not been taken any further.

⁴ see, for example, *KGW Northwest Newschannel 8*, Oregon, USA, 19 May 2005; *Seattle Post-Intelligencer*, Washington State, USA, 20 May 2005; *Houston Chronicle*, Texas, USA, 20 May 2005; *Canoe.ca* (Quebecor Media), Canada, 20 May 2005; *India Daily*, India, 21 May 2005; *Khaleej Times*, United Arab Emirates, 21 May 2005.

⁵ Mr Tom Percy QC of the Perth Bar. It should be emphasised that no criticism, whatsoever, is implied in relation to Mr Percy’s conduct. It may reasonably be assumed that, following his contact with the Chairman, Mr Percy did not in fact receive instructions to appear for Patel at the Inquiry. Subsequent media reports indicate that Mr Percy is the most senior of three Perth barristers who have travelled to Bali – with the support of the Australian Government, but without charge – to assist with Schapelle Corby’s appeal, and who are also providing legal assistance to the “Bali Nine”.

(presumably by Mr Houze) with a view to representing Patel before the Commission of Inquiry. The Chairman provided to that Queen's Counsel all necessary and appropriate information to facilitate his appearing on behalf of Patel, in the event that such instructions were forthcoming. However, nothing further has been heard from that quarter.

6. In these circumstances, the Commission of Inquiry can fairly proceed on the assumption that Patel – unlike other individuals who may potentially have a case to answer – has chosen not to avail himself of the opportunity to participate in the Inquiry. He has therefore effectively waived any entitlement, in accordance with the principles of natural justice, either to challenge the evidence of his accusers, or to make submissions to the Inquiry. Accordingly, there is no impediment to the Commission's expressing findings in relation to Patel, based on the evidence received to date.

APPLICABLE PROVISIONS OF TERMS OF REFERENCE

7. Item (1) of ToR relevantly refers to:

The role and conduct of the Medical Board of Queensland in relation to the assessment, registration and monitoring of overseas-trained medical practitioners, with particular reference to Dr Jayant Patel

8. Item (2) of the ToR refers to:

The circumstances of:

- a. the employment of Dr Patel by Queensland Health; and*
- b. the appointment of Dr Patel to the Bundaberg Base Hospital.*

9. Item (5) of the ToR relevantly refers to:

In relation to (1) to (4) above, whether there is sufficient evidence to justify:

- a. referral of any matter to the Commissioner of the Police Service for investigation or prosecution*

10. Item (6) of the ToR relevantly refers to:

The arrangements between the Federal and State Governments for the allocation of overseas-trained doctors to provide clinical services, with particular reference to the declaration of 'areas of need'

I. RECOMMENDED LEGISLATIVE CHANGES

11. To procure his registration as a medical practitioner in Queensland, Patel submitted to the Board an application form⁶ which specifically asked questions – questions which Patel answered in the negative – in these terms:

*3. Have ... you been registered under a corresponding law applying, or that applied, in ... a foreign country, **and** the registration was affected either by an undertaking, the imposition of a condition, suspension or cancellation, or in any other way ? ...*

*4. Has your registration as a **health practitioner** ever been cancelled or suspended or is your registration currently cancelled or suspended as a result of disciplinary action in ... another country ?*

12. The application was signed by Patel beneath the words:

I declare that the above statements are true and correct ..., and that all documents and supporting material lodged with this application are true and correct.

13. In support of the application, Patel also supplied to the Board a document which purported to be a "Verification of Licensure" certificate issued by the Oregon Board of Medical Examiners in the United States of America. In fact, the document submitted by Patel was not what it purported to be: it comprised only a part of the certificate issued by the Oregon Board of Medical Examiners, omitting an attachment which would have disclosed that:

An amended stipulated order was entered on 12 September 2000. The order restricted licensee from performing surgeries involving the pancreas, liver resections, and ileoanal reconstructions.

⁶ Exhibit 24 (Statement of Michael Steven Deny-Geroe), annexure "MDG-14".

14. Apart from his concealment of the disciplinary outcome in Oregon, Patel also failed to disclose that⁷:
- 14.1 In 1984, Patel was disciplined by the New York State Board for Professional Medical Conduct (BPMC) for entering patient histories and physicals without examining patients, failing to maintain patient records and harassing a patient for cooperating with the New York board's investigation, with the BPMC ordering a six-month licence suspension with a stay, three years probation and a fine on each charge.
- 14.2 On 10 May 2001, Patel's New York licence was surrendered due to disciplinary action which he did not contest, arising from the September 2000 proceedings in Oregon, and by consent his name was struck from the roster of physicians for New York State.
15. There can be no doubt that Patel's conduct, in connection with his registration in Queensland as a medical practitioner, was false and fraudulent. What are the consequences of this under criminal law ?
16. Patel clearly contravened section 273 of the Registration Act, which materially provides:

273 False or misleading information or documents

(1) A person must not give information to the board the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) A person must not give the board a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

17. However, a maximum fine of 50 penalty units – \$3,750.00⁸ – seems hardly to constitute an appropriate sanction for falsely obtaining registration as a medical practitioner. By contrast, the maximum fine for a person who is lawfully registered, but who contravenes a condition of the registration, is 100 penalty units (or \$7,500.00)⁹, as is the maximum penalty for a registrant who misrepresents his or her

⁷ Exhibit 24 (Statement of Michael Steven Deny-Geroe), annexure "MDG-3".

⁸ A penalty unit is currently valued at \$75.00: *Penalties and Sentences Act 1992*, section 5.

⁹ *Medical Practitioners Registration Act 2001*, sections 60, 122, 142, 150H.

status as a registrant¹⁰; whilst a maximum fine of 1,000 penalty units (or \$75,000.00) is provided for an unregistered person who uses the title of a medical practitioner or specialist¹¹, or who claims to be a registrant under the Act¹².

18. We are of the view that these penalties are disproportionate – and that the penalties under section 273 are plainly inadequate – given the risks to the public constituted by a person who obtains registration as a medical practitioner (or a specialist) by providing false information or documentation to the Board. Indeed, the tragic history of Patel’s career at BBH amply demonstrates why a much more substantial penalty is appropriate.
19. The contrast with the case of an unregistered person who pretends to be a registered medical practitioner is, in our view, particularly acute. No doubt such a person is a substantial risk to the community, but the risk should not be overstated. Amongst the Australian medical profession, it would be virtually impossible for an impostor to pass himself or herself off as a registered medical practitioner. This is due, at least in part, to the difficulties which such an impostor would encounter in obtaining the necessary accoutrements for practice as a medical practitioner in this country’s highly regulated health sector, including –
 - 19.1 A “provider number” from the (Federal) Health Insurance Commission;
 - 19.2 The facilities to process charges to either public or private health insurance systems;
 - 19.3 Access to the Pharmaceutical Benefits System, including prescription forms;
 - 19.4 Employment in either the public or the private sector; or
 - 19.5 Visiting rights at any public or private hospital or clinic.
20. This point is best demonstrated by the fact that, to our knowledge, not a single instance can be identified, in recent years, of an impostor who has been successfully passed off as a registered medical practitioner – as contrasted with the several cases (of which Patel is only one) which have come to the attention of the Commission of

¹⁰ *Medical Practitioners Registration Act 2001*, sections 163, 164, 165.

¹¹ *Medical Practitioners Registration Act 2001*, sections 157, 158.

¹² *Medical Practitioners Registration Act 2001*, sections 161, 162.

Inquiry, involving registrants who have obtained registration through the concealment of their disciplinary histories in other parts of the world.

21. Having said that, we are of the opinion that Queensland law does not currently provide sufficient penalties, for either:

21.1 unregistered persons who pretend to be medical practitioners; or

21.2 persons who obtain registration as medical practitioners fraudulently.

22. Moreover, the provisions of the Registration Act which are designed to prevent and punish attempts to obtain registration fraudulently are, in our view, insufficiently comprehensive. For example, sub-section 273(2) makes it an offence to provide documentation to the Board *containing information the person knows is false or misleading in a material particular*. But, as the Patel case demonstrates, there are other possibilities which are equally inimical to the security of the registration system, such as the provision of a copy of a document which:

22.1 was accurate at the time when it was created, but has ceased to be accurate due to supervening events; or

22.2 is incomplete, in that the copy omits a part of the original document (including an attachment to the original, or the like) which qualifies any statement contained in the copy, or is otherwise relevant for the purpose for which the copy was provided to the Board; or

22.3 is misleading, in that statements contained in the copy – whilst literally true – convey a false impression regarding the relevant matters under consideration by the Board.

23. Accordingly, we make recommendations A, B, C and D set out below, by way of amendments to the Registration Act. Amongst other things, these proposed amendments would provide for a maximum penalty of 3 years imprisonment – consistently with the penalty provided in section 502 of the Criminal Code¹³ – for a person who:

23.1 provides false information or documentation to the Board in connection with the person's own, or another person's, application for registration; or

¹³ see para.59, below.

- 23.2 acts or practises as a medical practitioner without being duly registered.
24. However, whilst these recommended amendments to the Registration Act are considered by us to be critical, they are not critically urgent.
25. The Inquiry has heard evidence from three representatives of the Medical Board¹⁴, and from that evidence – including documentary exhibits tendered in the course of that evidence – we are fully satisfied that the Board has not only recognised the mistakes and oversights which led to the registration of Patel, but has also taken prompt, appropriate and rigorous steps to ensure that such mistakes and oversights do not happen again. In particular, since the circumstances of Patel’s registration came to light, the Board has adopted the course of sourcing documentation directly from the relevant registration authorities in the jurisdiction where an applicant last practised, rather than relying on applicants to supply complete and accurate copies of such documentation.
26. The initiatives taken by the Board are to be commended, and we are satisfied that they will very significantly reduce (if not eliminate) the risk of “another Patel”. Nonetheless, we believe that the legislative foundations on which the Board operates require to be substantially strengthened, not because we doubt the efficacy of the procedural improvements already adopted by the Board, but to provide further support for those procedural improvements in the form of appropriately severe criminal sanctions in cases where false information or documents are supplied to the Board.
27. It is not at all unlikely that the final report of the Commission of Inquiry will recommend more far-reaching changes to the Registration Act. It is a matter for the Government – and, ultimately, for the Parliament – whether the amendments which we are recommending should be adopted immediately, or should await a more comprehensive revision of the Registration Act.

¹⁴ The Deputy Registrar of the Office of the Health Practitioner Registration Boards, Mr Michael Steven Deny-Geroe, commencing at Transcript, p.409 line 42; the Executive Officer of the Office of Health Practitioner Registration Boards, Mr James Patrick O’Dempsey, commencing at Transcript, p.497 line 1; and the Chair of the Medical Board, Dr Erica Mary Cohn, commencing at Transcript, p.541 line 1.

II. RECOMMENDED CHANGES TO ADMINISTRATIVE PRACTICES

“AREAS OF NEED” – THE LEGISLATIVE FRAMEWORK

28. Section 135 of the Registration Act provides:

135. Practice in area of need

(1) The purpose of registration under this section is to enable a person to practise the profession in an area the Minister has decided, under subsection (3), is an area of need for a medical service.

(2) A person is qualified for special purpose registration to practise the profession in an area of need if the person has a medical qualification and experience the board considers suitable for practising the profession in the area.

(3) The Minister may decide there is an area of need for a medical service if the Minister considers there are insufficient medical practitioners practising in the State, or a part of the State, to provide the service at a level that meets the needs of people living in the State or the part of the State.

(4) If the Minister decides there is an area of need for a medical service, the Minister must give the board written notice of the decision.

29. Section 140 of the Registration Act provides:

140. Period of special purpose registration

If the board decides to register the applicant as a special purpose registrant, the registration remains in force for the period, not more than 1 year, decided by the board when deciding to register the applicant as a special purpose registrant.

30. Section 145 of the Registration Act provides:

145. Matters that may be considered in deciding applications for renewal of special purpose registrations

In deciding whether to renew a special purpose registration, the board may have regard to the matters to which the board may have regard in deciding whether a proposed special purpose registrant is eligible for special purpose registration.

31. There is some ambiguity in section 135, as to whether the word “area” means a geographic area (locality) or an area of medical practice (specialisation). In the past, the Minister and ministerial delegates appear to have taken the view that the word “area” comprehends both meanings – that an “area” of need may be declared, both for a certain locality and for a certain specialisation within that locality. This interpretation receives some support from the other words comprised in section 135: the words *for a medical service* apparently refer to a specific type of medical service, rather than medical services generally; the words *in the State, or a part of the State* appear to suggest that an “area of need” may be either State-wide or localised. In any event, this interpretation is a sensible and pragmatic one, and would seem to us to accord with the legislative policies underpinning the section.
32. That being the case, we see no objection to the practice, which seems to have developed, of declaring “areas of need” by reference to both locality and specialisation. The locality may be defined by reference to a city or town, or a local government area, or a health services district, or by some other appropriate criteria. The specialisation may be defined by reference to one of the traditional fields of specialisation in the health sector, such as dermatology, or psychiatry, or radiology – or by reference to a traditional sub-specialisation, such as vascular surgery or gastroenterology – or by some other appropriate criteria.
33. At the same time, the language of section 135 is wide enough to allow a “declaration of need” which is unlimited as to locality, or unlimited as to specialisation. Thus, it would not be improper to declare that the entire State is an “area of need” for (say) anaesthetics, or obstetrics and gynaecology; nor would it be improper to declare that a specified locality is an “area of need” for all medical services.
34. It follows that section 135 allows a considerable – and desirable – measure of flexibility in declaring “areas of need”. But this very flexibility may tend to distract attention from the central criterion which must be satisfied before an “area of need” is declared, and which must therefore govern the terms (whether as to locality or as to

specialisation) by which an “area of need” is defined: namely, that *there are insufficient medical practitioners practising in the State, or a part of the State, to provide the service at a level that meets the needs of people living in the State or the part of the State.*

DETERMINING AN “AREA OF NEED”

35. The words *insufficient medical practitioners practising* mean precisely what they say. This test requires a consideration of the number of medical practitioners practising in the relevant locality and specialisation, and poses the question whether that number is sufficient *to provide the service at a level that meets the needs of people living in the State or the part of the State.* An “area of need” may only properly be declared if the answer to that question is in the negative.
36. Implicit in section 135 is a consideration of the practical – rather than the merely theoretical – sufficiency of the number of medical practitioners practising in the relevant locality and specialisation. To take an extreme example: It may be the case that, in a locality which is popular amongst retirees, there are numerous medical specialists living in semi-retirement, and perhaps working for one or two days per week – in such a situation, even though the actual number of medical practitioners practising in the relevant locality and specialisation could theoretically suffice to *meet the needs of people living in the locality*, the practical reality is that they are insufficient. Or, to take a more typical example: it may well happen that a sufficient number of medical specialists are engaged in private practice in the relevant locality, but are unwilling to accept appointments at public hospitals – again, in such a case, the practical reality is that, whilst total numbers may be adequate, they are insufficient to *meet the needs of people living in the locality*. Indeed, it has been suggested on behalf of Queensland Health that such a situation exists as regards a variety of fields of specialisation – including “obstetrics and gynaecology, general surgery, orthopaedic surgery, medicine, anaesthetics, ED/FACEM, ENT, urology, paediatrics, psychiatry and radiology” – in the Mackay area¹⁵: if that is so, it might be open to conclude that the number of specialists is insufficient to *meet the needs of people living in Mackay*, even though the same number would suffice if all of the available specialists were willing to accept appointments at public hospitals.

¹⁵ see the cross-examination of Dr Molloy by Mr Farr of counsel, representing Queensland Health: Transcript, p.848 line 7 to p.850 line 18. It should be noted that there is (as yet) no direct evidence to support these claims, beyond allegations put by Mr Farr to Dr Molloy, although it may be confidently assumed that Mr Farr’s questions accord with his instructions from the Director-General. At this stage, no findings have been or can be made in relation to these matters, including the reasons why private specialists in Mackay may have declined to accept appointments as Visiting Medical Officers (VMOs).

37. A question has also been raised¹⁶ as to whether section 135 implicitly allows financial considerations to be taken into account in determining whether *there are insufficient medical practitioners practising in the State, or a part of the State, to provide the service at a level that meets the needs of people living in the State or the part of the State*. The answer, in our view, is that the section must sensibly allow some regard to be given to financial considerations. If that were not the case, it could never be said that there is an “area of need” so long as, by offering more money, increased numbers of medical practitioners (including specialists) could be attracted to the locality from elsewhere in Australia. In our view, in applying section 135, the Minister (or the Minister’s delegate) is entitled to take account of the prospect of attracting medical practitioners (including specialists) to the relevant locality, having regard to the scales of medical salaries, sessional rates, fees and conditions provided for in the applicable Award or Certified Agreement¹⁷.
38. At the same time, we are not convinced that section 135 allows for an “area of need” to be declared, based solely on a particular hospital’s desire to employ a medical practitioner at a predetermined pay scale or level of seniority. There may (for example) be a vacancy for a medical practitioner to work in the surgery department at a particular hospital, and the hospital may desire to appoint a medical practitioner to fill that vacancy in the capacity of a Junior Medical Officer (JMO). It may transpire, following advertising of the vacancy, that nobody in Australia who holds appropriate qualifications is willing to accept the position as a JMO – but there may be medical practitioners in the locality, or willing to relocate from other parts of Australia, who are qualified and would be prepared to accept such a position in the capacity of a Senior Medical Officer (SMO), a Visiting Medical Officer (VMO), or a staff specialist, or as director of surgery. In such circumstances, it could not be concluded that *there are insufficient medical practitioners practising in the State, or a part of the State, to provide the service at a level that meets the needs of people living in the State or the part of the State*. In particular, we are firmly of the view that the hospital would need to exhaust the possibilities for filling the vacancy by offering VMO positions to local private sector specialists, before it could properly be concluded that the conditions of section 135 are satisfied.

¹⁶ see the examination of Dr Huxley by Mr Andrews SC, senior counsel assisting the Inquiry: Transcript, p.960 lines 29 to 52.

¹⁷ see Exhibit 37.

39. This raises the further possibility – of which the current situation in Mackay may perhaps be an example¹⁸ - that a medical practitioner in the relevant locality is qualified and would be willing to accept such a position as a VMO, but is not prepared to do so for reasons other than the level of remuneration on offer. Dr Molloy's evidence¹⁹ suggests that, at least in some instances, local specialists would be willing to accept VMO positions at public hospitals, but have been driven away by "policies they felt were designed to drive them out of the public sector" – policies such as "scheduling times for operating theatres, changing of sessions, cancellation of sessions, a whole lot of ways you can get rid of a VMO just by being a little bit difficult". It would be premature, at this stage, to make any finding (even on a preliminary basis) regarding the truth of these suggestions. For present purposes, it suffices to make the point that an appropriately rigorous application of the criteria contained in section 135 would require that consideration be given to the possibility of attracting local specialists – or even specialists willing to relocate from other parts of Australia – to act as VMOs, at prevailing sessional rates of remuneration, if steps were taken to address the reasonable expectations and requirements of such specialists regarding the scheduling of sessions, and the other factors alluded to by Dr Molloy.
40. Finally, if a position cannot be filled from amongst qualified medical practitioners available in the locality – whether as staff or visiting appointees – reasonable efforts must be made to fill the vacancy from within Australia. It would not be sufficient merely to advertise the position and then infer, from the absence of any suitable applicants, that the position cannot be filled from within Australia. Section 135 calls for a genuine attempt to recruit within Australia before an "area of need" is declared and the position is opened up to applicants who may be recruited from overseas.
41. What this entails will depend on the circumstances of the particular case: recruiting for a position as a general practitioner at the Coen Primary Health Care Centre is likely to involve very different considerations as compared with recruiting for a neurosurgeon at the Royal Brisbane Hospital. But, regardless of the particular vacancy in question, a genuine attempt to recruit within Australia will necessarily entail some degree of flexibility – for example, it may not be good enough merely to advertise a position as an SMO, without exploring the possibility that a suitable appointee may be attracted to the position as a staff specialist, or that two or more suitable appointees may be attracted if they are offered the opportunity of being

¹⁸ see Dr Molloy's answers to the questions put to him by Mr Farr of counsel, representing Queensland Health: Transcript, p.848 line 7 to p.850 line 18.

¹⁹ Transcript, p.848 lines 29 to 40 (Molloy).

appointed as VMOs with a right of private practice. Whilst it is impossible to prescribe what is necessary or sufficient in every case, it is clearly the responsibility of the Minister (or the Minister's delegate) to be satisfied that the steps taken in each case are sufficient to demonstrate that the "need" constituting the "area of need" is the genuine result of a shortage of Australian medical practitioners, rather than the consequence of a lack of flexibility on the part of the employing authority.

42. It follows that, at least in a case where the vacancy sought to be filled exists in the public sector, the process of determining whether an "area of need" exists, in accordance with section 135 of the Registration Act, involves – at a minimum – these steps:
- 42.1 First, the relevant "area" must be defined, in terms of both locality and specialisation.
 - 42.2 Secondly, once the relevant "area" has been defined, it is necessary to assess the availability of medical practitioners in the locality who are qualified to provide *service at a level that meets the needs of people living in the locality*.
 - 42.3 Thirdly, if the number of medical practitioners in the locality who are qualified to provide the medical services needed is theoretically sufficient, it is essential to canvass whether they are willing to accept either staff or visiting appointments.
 - 42.4 Fourthly, if qualified medical practitioners already in the locality are not willing to accept such appointments, consideration must be given as to whether their reluctance is based on factors which the employing authority cannot change (such as salaries, sessional rates, fees and conditions), or whether it is based on factors which the employing authority has the capacity to change (such as the scheduling of sessions) – and, in the latter event, whether it is reasonable and practicable for the employing authority to accommodate their expectations and requirements.
 - 42.5 Fifthly, if the vacancy cannot be filled from amongst the qualified medical practitioners already in the locality – whether as staff or visiting appointees – reasonable efforts must be made to fill the vacancy from within Australia. This requires a measure of flexibility on the part of the employing authority, and (depending on the circumstances of the particular case) may not be satisfied merely by advertising the position and failing to attract any suitable applicants.

- 42.6 Only once the preceding four steps have been undertaken in good faith, and have produced a negative result, is it reasonably open to conclude that *there are insufficient medical practitioners practising in the State, or a part of the State, to provide the service at a level that meets the needs of people living in the State or the part of the State* – and to declare an “area of need” accordingly.
43. Needless to say, situations may sometimes occur in which it is permissible to adopt a more abbreviated approach to declaring an “area of need”. For instance, if the process outlined above has only recently been undertaken with a view to filling a vacancy for an obstetrician and gynaecologist at Warwick, the Minister (or the Minister’s delegate) may fairly infer that a repeat of the process is unnecessary in relation to a similar position at Stanthorpe. But in saying that, we should not wish to be taken as suggesting that such “short cuts” ought to become the rule, rather than the (very rare) exception.

RENEWING “AREA OF NEED” REGISTRATION

44. The Registration Act, by section 140, required that registration as a *special purpose registrant* must be reviewed at intervals of not more than 12 months. It may be inferred that the legislature contemplated that 12 months should be sufficient for a *special purpose registrant* to qualify for either general or specialist registration, in which event there should be no need to grant a further period of registration as a *special purpose registrant*. But, from evidence received to date, it would appear that this is in fact quite uncommon, and many a *special purpose registrant* – including Patel – has continued to hold that status from year to year, with his or her registration being renewed annually.
45. Under section 145, the matters to be considered by the Medical Board in relation to an application for renewal of special purpose registration are *the matters to which the board may have regard in deciding whether a proposed special purpose registrant is eligible for special purpose registration*. In other words, the question whether or not to renew the registration is to be considered as if it were a fresh application – the only difference being that the Medical Board can consider the applicant’s performance since he or she became a *special purpose registrant* to assist the Board in determining whether the application for renewal should be granted.

46. What this necessarily requires is that the “area” previously determined to be an “area of need” must still justify that status. And that, in turn, requires that the Minister (or the Minister’s delegate) must address, anew, the question whether the “area of need” declaration should stand.
47. Whether or not this necessitates a full re-enactment of the steps taken²⁰ when declaring the “area of need” in the first instance will, again, depend on the circumstances of the case. The Minister (or the Minister’s delegate) may – for example – be satisfied that there has been no significant improvement in the availability of Australian medical practitioners, either generally or in the relevant locality, such as would justify attempts to fill the position otherwise than by reappointment of the incumbent. But, once again, we should not wish to be taken as suggesting that such “short cuts” ought to become the rule, rather than the (very rare) exception. In any event, the Registration Act requires that the question be addressed in good faith, rather than with a predisposition towards maintaining the *status quo*.

IDENTIFIED PROBLEMS

48. Although the evidence received to date is incomplete, and it would be premature to reach any final conclusions, there is already a body of evidence which strongly suggests several deficiencies in the process for granting and renewing “area of need” declarations. We are comfortable in giving weight to that body of evidence, since the relevant witness (Dr Huxley²¹) is represented by the same counsel and solicitors as are representing Queensland Health – indicating that her testimony does not materially conflict with the instructions given on behalf of Queensland Health by the Director-General – and her evidence on this subject was not challenged by the representatives for any other party granted leave to appear. Nothing received to date, in the evidence or the submissions of any party, suggests any reason to doubt the material parts of the evidence given by Dr Huxley.
49. Dr Huxley is currently one of three officers of Queensland Health who hold delegations from the Minister to make “area of need” declarations²². She was not involved in making the “area of need” declaration which preceded Patel’s

²⁰ see paragraph 42, above.

²¹ Transcript, p.937 line 1 to p.962, line 10 (Huxley).

²² Transcript, p.957 lines 19 to 21 (Huxley).

appointment to Bundaberg²³, but she was the responsible delegate in respect of the renewal of Patel's registration in November 2003²⁴.

50. From Dr Huxley's statement²⁵ and her oral testimony²⁶, the following areas of concern emerge regarding the processes adopted within Queensland Health in making "areas of need" declarations, at least in relation to vacancies at public hospitals:
- 50.1 Queensland Health currently works with a policy issued in July 1996, based on the *Medical Act 1939*, rather than the Registration Act which was enacted in 2001²⁷ - in other words, the policy document currently in use by Queensland Health is based on legislation repealed some 4 years ago.
- 50.2 Since at least August 2003, Queensland Health has supposedly been working on a new policy²⁸, but that is yet to be produced (and Queensland Health has not even produced a draft to the Commission of Inquiry), even though the existing policy – which deals with "area of need" applications in both the public and private sectors, albeit based on repealed legislation – is just over 5 pages in length²⁹.
- 50.3 Queensland Health has no "protocols to assist" in making a determination under section 135 "with respect to the public sector", because – according to Dr Huxley's evidence – "our data is not good enough"³⁰.
- 50.4 Queensland Health has, in the past, required no proof that a public sector employer has been unable to fill a vacancy, merely assuming that the hospital has been unable to find a suitable applicant with the appropriate qualifications³¹.
- 50.5 Even now, when Queensland Health receives an application from a public hospital, Dr Huxley and the other two delegates "simply accept each and every application from a regional hospital for an Area of Need position ... under the

²³ Transcript, p.940 lines 16 to 18 (Huxley).

²⁴ Transcript, p.946 lines 53 to 56 (Huxley).

²⁵ Exhibit 58 (Statement of Huxley).

²⁶ Transcript, p.937 line 1 to p.962, line 10 (Huxley).

²⁷ Exhibit 58 (Statement of Huxley), para.15 and attachment 6.

²⁸ Transcript, p.942 line 54 to p.943 line 10 (Huxley).

²⁹ Exhibit 58 (Statement of Huxley), attachment 6.

³⁰ Transcript, p.957 lines 52 to 55 (Huxley).

³¹ Exhibit 58 (Statement of Huxley), para.14.

assumption that they have gone through the correct process"³². Indeed, it was the evidence of Dr Huxley that she has "never rejected an application by [a] public hospital"³³.

- 50.6 Queensland Health makes no assessment regarding the clinical competence of an applicant for a "area of need" position – as Dr Huxley said in answer to a question from Senior Counsel representing Queensland Health (Mr Boddice SC)³⁴:

The issue for my office when we're processing Area of Need - we don't undertake any form of clinical assessment. Frequently we will only get our Area of Need form. The CV and other information often goes straight to the Medical Board - so the Form 1, the Form 2, which were discussed this week. The CV and other information on the doctor may never come to our office. We're purely assessing an Area of Need.

- 50.7 Similarly, Queensland Health undertakes no on-going monitoring or assessment of a *special purpose registrant* – as appears from Dr Huxley's answers to questions from Deputy Commissioner Vider RN³⁵:

Does your office oversee any sort of ongoing monitoring?-- No, no.

Is it intended that it ever would? I'm thinking of the fact that if you get someone who comes in on a temporary arrangement, [if] they want to renew their registration for a further 12 months, it wouldn't be your office that would remain at local level?-- The ongoing monitoring, so the reporting back on conditions of registration is the responsibility of the Medical Board. So the hospital would ensure that those conditions are met and then that would be reported to the Board.

If those conditions were not being met, as in for some other reason the supervision that you had put in place was no longer available, you would expect the hospital then to notify your office?-- We don't put the supervision conditions in place. That's put in place by the Board.

I know the Medical Board does, but it then has to see that the supervision that is available - is that totally up to the local authority, the direct employer, or does your office have any role in that?-- We have no role in that at the moment. I imagine that things will change, and whether that is my office or whether that's the Chief Health Officer's office or some other area - with the project that's being undertaken at the Centre for International Medical Graduates, that may form part of what that project delves into.

³² Transcript, p.958 lines 8 to 12 (Huxley).

³³ Transcript, p.960 lines 6 to 7 (Huxley).

³⁴ Transcript, p.941 lines 15 to 21 (Huxley); see also p.950 line 51 to p.951 line 5.

³⁵ Transcript, p.941 line 32 to p.942 line 1 (Huxley); see also p.951 lines 7 to 9.

- 50.8 When the position of a *special purpose registrant* comes up for renewal, no attempt is made to assess whether the “area of need” declaration should continue in force – as appears from Dr Huxley’s answer to a question from Deputy Commissioner Sir Llew Edwards³⁶:

Dr Huxley, is the Area of Need, once it's filled by, say, an overseas doctor, the appointment is made in that position as an Area of Need for six months, 12 months, and a review done as to how many applicants may be around at that time, or is it a permanent - they could stay there for five years in that hospital?-- They'd stay there, yes. We wouldn't put someone out of a job. If we have given an individual Area of Need status we would not say after a year, "Sorry, you have to move on." If they leave that position then that would be reviewed if someone else came in, and the position should be advertised.

- 50.9 Nor has it been the practice for Queensland Health to enforce the policy requirement that a person should not continue to hold a position as a *special purpose registrant* for more than four years without progressing to general or specialist registration – as appears from Dr Huxley’s answer to a question from the Chairman³⁷:

It seems to me that defeats the whole purpose of the legislation. When parliament allowed for these Areas of Need, the whole idea was that it would be temporary for 12 months and every 12 months Queensland Health would ascertain afresh whether it still remains an Area of Need. What you seem to be telling us is that Queensland Health totally ignores parliament's intention and would allow something to go on as an Area of Need for 20 years if that's how long the doctor wanted to stay there?-- At the moment, yes, that's the case, and again, as I said, it's likely through all this that it will be assessed. One of the issues that we have is that under the Medical Act, after four years someone should progress to either general or specialist registration. Up until recently that wasn't enforced. So it was very difficult - for example, you could give someone an Area of Need, renew it each year for four years, and at that time they should have progressed to general or specialist registration, and would not require Area of Need.

51. To the extent that there have been any improvements in the handling of “Area of Need” applications by Queensland Health in recent times, Dr Huxley candidly admitted that “The major reform for this year took place after the Dr Patel issue”³⁸. Even so, the adoption of a new form showing “what efforts were made to fill a vacancy and what other medical practitioners there are providing a similar service in the area” has so far been adopted “for private practice only” – Queensland Health “will be instituting that for public sector as well but at the moment it is for people

³⁶ Transcript, p.942 lines 22 to 32 (Huxley); see also p.945 line 57 to p.946 line 2.

³⁷ Transcript, p.942 lines 34 to 52 (Huxley); see also p.951 lines 11 to 24.

³⁸ Transcript, p.939 lines 55 to 56 (Huxley).

going into private practice only”³⁹. This degree of lassitude bears a marked and disturbing contrast with the prompt and wide-ranging reforms put in place by the Medical Board and the Office of the Health Practitioner Registration Boards to address problems identified in the wake of “the Dr Patel issue”⁴⁰.

MATTERS REQUIRING IMMEDIATE ATTENTION

52. Based on the evidence of Dr Huxley, we are left in no doubt that several matters require immediate attention.
53. First, it is nothing short of scandalous that, four years after the Registration Act came into operation, Queensland Health is still using a policy document created nine years ago, based on the 1939 legislation – and that this situation has been permitted to continue, despite the “Dr Patel issue”. A new policy, accompanied by appropriate forms and protocols, must be implemented as a matter of the utmost urgency.
54. In developing such a policy, Queensland Health should have appropriate regard to the observations set out in paragraphs 31 to 47, above.
55. Secondly, it is extremely unsatisfactory that statutory powers vested in the Minister by section 135 of the Registration Act are being exercised, in the Minister’s name, by delegates who do not seem to apprehend the significance of the duties which arise in exercising such powers. It goes without saying that the Minister cannot be expected to exercise personal supervision over every decision called for under section 135, and it is necessary and appropriate that the Minister’s powers are delegated to responsible officers within Queensland Health; no criticism of the Minister is made or implied. But Queensland Health – on behalf of the Minister – must ensure that the holders of Ministerial delegations are fully apprised of their responsibilities in turning their minds to the considerations identified in section 135, and exercising in good faith the powers vested by section 135 in the Minister; or, if the current delegates cannot do so, they must be replaced with delegates who can and will.
56. Thirdly, unless the Minister is satisfied that these important responsibilities can be safely entrusted to staff of Queensland Health – without a continuing risk that such staff will merely “rubber stamp” applications received from public hospitals, whether for new “area of need” declarations, or in relation to renewals of registration of

³⁹ Transcript, p.957 lines 30 to 36 (Huxley).

⁴⁰ see para.25, above.

existing *special purpose registrants* – the Minister might consider whether it is more appropriate that, in future, such delegations be given to staff in the Office of the Health Practitioner Registration Boards.

57. Accordingly, we make recommendation E, set out below.

III. POTENTIAL GROUNDS FOR THE PROSECUTION OF PATEL

OFFENCES ARISING FROM PATEL'S REGISTRATION

58. As previously noted⁴¹, Patel clearly contravened section 273 of the Registration Act, for which he is liable to a maximum fine of 50 penalty units (\$3,750.00).
59. More significantly, Patel's conduct would appear to fall squarely within the terms of section 502 of the *Criminal Code*, which provides as follows:

502. Attempts to procure unauthorised status

Any person who—

(a) by any false representation procures any authority authorised by any statute to issue certificates testifying that the holders thereof are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself, herself or any other person any such certificate; or

(b) falsely represents to any person that the person has obtained any certificate issued by any such authority; or

(c) by any false representation procures himself, herself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to any right or privilege, or to enjoy any rank or status;

is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

⁴¹ see para.16, above.

60. Although section 502 has formed a part of the *Criminal Code* since it was first drafted by Sir Samuel Griffith and enacted more than a century ago⁴², we have not been able to locate a single instance of a prosecution under the section. Yet it is as if Sir Samuel Griffith foresaw the circumstances in which Patel came to be registered by the Board, insofar as paragraph (c) refers to a “*person who ... by any false representation procures himself ... to be registered on any register kept by lawful authority as a person entitled to ... any right or privilege, or to enjoy any rank or status*”. That language fits precisely with the circumstances disclosed in evidence before the Commission of Inquiry in relation to Patel.
61. The evidence also discloses a *prima facie* case that Patel is guilty of fraud, as defined (relevantly) in section 408C of the *Criminal Code* in the following terms:

408C Fraud

(1) *A person who dishonestly—*

...

(b) obtains property from any person; or

(c) induces any person to deliver property to any person; or

(d) gains a benefit or advantage, pecuniary or otherwise, for any person; or

...

(f) induces any person to do any act which the person is lawfully entitled to abstain from doing; or

(g) induces any person to abstain from doing any act which that person is lawfully entitled to do; or

...

commits the crime of fraud.

(2) *An offender guilty of the crime of fraud is liable to imprisonment for 5 years save in any of the following cases when the offender is liable to imprisonment for 10 years, that is to say—*

...

(d) if the property, or the yield to the offender from the dishonesty, is of a value of \$5000 or more.

⁴² the section was amended in 1988, but the 1988 amendments are of no particular relevance in the present context.

- (3) *For the purposes of this section—*
- (a) *property, without limiting the definition of property in section 1, includes credit, service, any benefit or advantage, anything evidencing a right to incur a debt or to recover or receive a benefit, and releases of obligations; and*
 - (b) *a person’s act or omission in relation to property may be dishonest even though—*
 - ...
 - (iii) *an owner or other person consents to doing any act or to making any omission; or*
 - (iv) *a mistake is made by another person; and*
 - ...
 - (e) *obtain includes to get, gain, receive or acquire in any way; ...*

62. We are of the view that very serious offences⁴³ under section 408C are made out against Patel, in that he:

62.1 *dishonestly gained a pecuniary benefit or advantage for himself, namely registration (and renewal of registration) by the Board as a medical practitioner (section 408C(1)(d) of the Criminal Code);*

62.2 *dishonestly induced a person – namely the Medical Board – to do an act which the Medical Board was lawfully entitled to abstain from doing, namely registering him as a special purpose registrant⁴⁴, and renewing such registration (section 408C(1)(f) of the Criminal Code);*

62.3 *dishonestly induced a person – namely the Medical Board – to abstain from doing an act which the Medical Board was lawfully entitled to do, namely to impose conditions on his registration (and the renewal of his registration) as a special purpose registrant⁴⁵ (section 408C(1)(g) of the Criminal Code);*

⁴³ see *R. v. Black and Sutton*, [2004] QCA 369, referred to in para.64, below.

⁴⁴ the relevant discretion of the Medical Board regarding the registration of Patel arises from section 45(1)(d) of the Registration Act, which applies to registration as a *special purpose registrant* pursuant to section 139(1), and allows the Medical Board to take into account, for the purpose of determining whether an applicant is “fit to practise the profession”:

(d) if the applicant ... is, or has been, registered under a corresponding law and the registration was affected—

(i) by the imposition of a condition—the nature of the condition and the reason for its imposition; or

(ii) by its suspension or cancellation—the reason for its suspension or cancellation; or

(iii) in another way—the way it was affected and the reason for it being affected

⁴⁵ the power to impose such conditions arises from section 141 of the Registration Act.

- 62.4 *dishonestly* gained a pecuniary *benefit or advantage* for himself, namely a salaried position as a senior medical officer, and director of surgery, at BBH (section 408C(1)(d) of the *Criminal Code*);
- 62.5 *dishonestly* induced a person – namely Queensland Health – *to do an act* which Queensland Health was *lawfully entitled to abstain from doing*, namely employing him (and continuing to employ him) as an SMO⁴⁶, and giving him the position of Director of Surgery at BBH (section 408C(1)(f) of the *Criminal Code*); and
- 62.6 *dishonestly* induced a person – namely Queensland Health – *to abstain from doing an act* which Queensland Health was *lawfully entitled to do*, namely to place restrictions on and/or require supervision of operations performed by him at BBH (section 408C(1)(g) of the *Criminal Code*).
63. It is clear that, but for the falsehoods contained in his application to the Board, Patel:
- 63.1 would not have been registered under the Registration Act; or, if he had been registered, appropriate conditions would have been imposed, including a condition requiring supervision⁴⁷;
- 63.2 would not have been employed at BBH in a position for which the “POSITION DESCRIPTION”⁴⁸ expressly prescribed “Possession of qualifications appropriate for registration as a medical practitioner in Queensland”; and
- 63.3 would not have been appointed to the position of “Director of Surgery” where he could operate without supervision.
64. A recent comparable case is *R. v. Black and Sutton*⁴⁹, in which the relevant facts were summarised by McPherson JA and Holmes J as follows⁵⁰:

⁴⁶ as noted below (see para.63.2), the “POSITION DESCRIPTION” for the position in which Patel was employed as an SMO expressly prescribed “Possession of **qualifications appropriate for registration** as a medical practitioner in Queensland” (emphasis added) – not merely that he obtain such registration: Exhibit 40.

⁴⁷ Mr. Demy-Geroe, whom we accept as a totally reliable witness, was of the opinion that, had Patel’s disciplinary history been brought to the attention of the Medical Board, his “registration is unlikely to have been approved, at least in an unsupervised setting”: Exhibit 24 (Statement of Statement of Michael Steven Deny-Geroe), attachment “MDG-3”, para.5.3.

⁴⁸ Exhibit 40.

⁴⁹ [2004] QCA 369.

⁵⁰ [2004] QCA 369 at para.[2].

Count 1 charged both applicants with committing a fraud under s 408C(1)(f) of the Criminal Code on the Queensland Building Services Authority. The fraud was committed in the course of applying to and in 1998 obtaining from the Authority under the Queensland Building Services Authority Act 1991 the issue of a building licence in favour of Designer Steel Homes Ltd. Ms Sutton was dishonestly represented to the Authority to be the director of Designer Steel Homes, whereas in fact it was Black who was the effective moving and controlling force behind that company and, as such, the director of it. Black's association with it was concealed because he had been a director of the failed Nu-Steel Homes company, which in 1998 had recently gone into liquidation. Had the Authority known of this, it would before issuing the licence to Designer Steel have investigated the matter much more thoroughly and would probably in the end not have issued a building licence to it.

In that case, the Court of Appeal imposed a sentence of three years imprisonment, suspended after 12 months for an operational period of four years. As Jerrard JA remarked⁵¹:

The learned sentencing judge was correct in considering that a deterrent sentence was required in Mr Black's case, and that a period of imprisonment actually served was appropriate. ... Mr Black's conduct was extremely serious because of its capacity to undermine public confidence in the Authority's ability to regulate operators in the building industry in accordance with its statutory obligations.

In our view, the “extreme seriousness” which the Court of Appeal attributed to a case in which a person fraudulently obtained a building licence – and thereby undermined public confidence in the [Building Services] Authority's ability to regulate operators in the building industry in accordance with its statutory obligations – only serves to emphasise the even greater seriousness of a case in which a person fraudulently obtained registration as a medical practitioner, and thereby undermined public confidence in the Medical Board's ability to regulate operators in the health sector in accordance with its statutory obligations.

65. It is noted that Patel was appointed to a position with an initial base salary in excess of \$90,000 per year, and a total package worth substantially more than that. Upon his appointment as Director of Surgery, both his base salary and the total value of his package increased. On any view, the *yield to the offender from the dishonesty* was well in excess of \$5,000, such that the maximum penalty for his fraud is 10 years imprisonment.

⁵¹ [2004] QCA 369 at para.[30].

66. Accordingly, we make recommendations F and G set out below.

OFFENCES ARISING FROM PATEL'S SURGERY AT BBH

67. It should be noted that this Interim Report does not purport to contain an exhaustive statement of the potential grounds for prosecuting Patel. At this time, the evidence is far from complete, and, in particular, the Commission does not yet have the benefit of detailed evidence of an expert nature from medical practitioners in respect of a number of deaths.

68. To date, evidence from a variety of sources would support a conclusion that a *prima facie* case exists against Patel in respect of a number of offences against the person. The principal sources of such evidence are:

68.1 Registered Nurse Toni Ellen Hoffman⁵², a highly trained and experienced intensive care nurse who (at all relevant times) held the position of nurse unit manager in the Intensive Care/Coronary Care Unit at BBH⁵³; and

68.2 Dr Peter John Miach⁵⁴, a highly qualified and experienced general physician and nephrologist (renal specialist)⁵⁵, who (at all relevant times) was the Director of Medicine at BBH.

69. In some instances, patients survived surgery conducted by Patel, although with significant adverse consequences. The evidence received to date mentions two such cases:

69.1 A boy⁵⁶, aged 15, whose leg was amputated, apparently as a result of Patel's negligence.

69.2 An indigenous lady⁵⁷ in respect of whom, following an amputation of her leg below the knee: "there was no follow-up, the stitches in the stump were left there for six weeks There were areas of infection, areas of gangrene, areas of

⁵² Transcript, p.27 line 1 to p.194 line 22 (Hoffman).

⁵³ Transcript, p.27 line 8 to p.29 line 3 (Hoffman).

⁵⁴ Transcript, p.262 line 11 to p.355 line 14 (Miach).

⁵⁵ Transcript, p.262 lines 37 to 53 (Miach).

⁵⁶ Patient P26: see Transcript, p.177 lines 1 to 25 (Hoffman); Exhibit 4 (Statement of Hoffman), pp.48-49, para. 142, sub-para. 7.

⁵⁷ Patient P52, Marilyn Daisy: see Transcript, p.286 line 25 to p.287 line 55 (Miach); Exhibit 17 (letter from Dr Jason Jenkins, Vascular Surgeon, to Dr Miach dated 2 November 2004).

necrosis and, in fact, ... there was quite a concern whether ... this lady might lose a little bit more of her leg”

70. In relation to patients who survived, it becomes relevant to consider whether charges are available under section 328 of the *Criminal Code*, which relevantly provides:

Any person who unlawfully does any act, or omits to do any act which it is the person's duty to do, by which act or omission bodily harm is actually caused to any person, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.

71. In our view, a charge under section 328 is sustainable, at least in relation to Patient P52. There can be no doubt that it was Patel's duty to provide appropriate care to this patient following the amputation, including removal of the stitches in her stump, and the taking of appropriate measures to prevent gangrene or infection. The letter from Dr Jenkins⁵⁸, combined with the evidence of Dr Miach⁵⁹, establishes, not merely an omission on the part of Patel to perform those duties, but indeed a complete abnegation of his duties to the patient.

72. “Bodily harm”, for the purposes of section 328, means “any bodily injury which interferes with health or comfort”⁶⁰. The letter from Dr Jenkins confirms that, amongst other consequences of Patel's neglect, the patient's “sutures were heavily buried within the tissue and very difficult and painful to remove”. That, in our view, suffices to constitute an interference with the patient's *health or comfort*; although, in fact, Dr Jenkins's letter indicates that there were other adverse consequences which may well have had a more severe impact on the *health or comfort* of this patient.

73. Accordingly, we make recommendation H set out below.

⁵⁸ Exhibit 17 (letter from Dr Jason Jenkins, Vascular Surgeon, to Dr Miach dated 2 November 2004).

⁵⁹ Transcript, p.286 line 25 to p.287 line 55 (Miach).

⁶⁰ *Criminal Code*, section 1 (definition of “bodily harm”).

HOMICIDE CHARGES

74. Turning to those patients who did not survive, one issue required to be addressed is whether Patel performed surgery in contravention of section 288 of the *Criminal Code*, which materially provides:

It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, ... to have reasonable skill and to use reasonable care in doing such act, and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

75. In order to sustain a homicide case against Patel, it will be necessary also to exclude the operation of section 282 of the *Criminal Code*⁶¹, which materially provides:

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for the patient's benefit ... if the performance of the operation is reasonable, having regard to the patient's state at the time and to all circumstances of the case.

76. It will be apparent that sections 282 and 288 raise a number of issues, each of which warrants the most careful consideration in relation to each patient who died during or following an operation by Patel:

76.1 Whether Patel possessed and exercised *reasonable skill*;

76.2 Whether Patel exercised *reasonable care*;

76.3 Whether Patel acted *in good faith ... for the patient's benefit* – rather than, for example, in order to generate more revenue for BBH by undertaking surgery classified as “elective”, or in order to increase his own standing and influence amongst management at BBH; and

76.4 Whether the surgical operations performed by Patel were *reasonable ... having regard to the patient's state at the time and to all circumstances of the case*.

⁶¹ see also section 282A of the *Criminal Code*, dealing with “palliative care”.

MANSLAUGHTER

77. Much of the evidence to date relevant to these issues concerns a particular surgical operation known as an “oesophagectomy” – essentially, an operation to remove all or part of the oesophagus of a patient (usually) suffering from oesophageal cancer. A number of patients are said to have died whilst undergoing oesophagectomies performed by Patel, or shortly after⁶².
78. There is evidence that one patient⁶³ was operated on by Patel, despite the patient’s having been “refused surgery in Brisbane because they thought that it wouldn’t be in his best [interests] to have the surgery [a]nd that he wouldn’t do well afterwards”⁶⁴. The patient had a number of comorbid conditions, including kidney failure⁶⁵, such that Dr Miach – a renal specialist – considered that the proposed oesophagectomy was “fraught with danger”⁶⁶; he testified that “I wouldn’t even have thought of sending [the patient] to Brisbane because in fact there were so many other issues with this man that in fact no-one would have operated on him, but he was operated on in Bundaberg”⁶⁷. The patient died 5 days later⁶⁸. Dr Miach testified that:
- 78.1 There were no circumstances of urgency which necessitated the operation⁶⁹; and
- 78.2 He was not surprised at the outcome – in fact, he “would have been very surprised if [the patient] would have survived”⁷⁰.
79. In this instance, and in a number of other instances referred to in the evidence of Nurse Hoffman and Dr Miach, the evidence is capable of supporting a conclusion that, regardless of the oesophagectomies and other surgical operations carried out by Patel, the patient was already terminally ill; arguably, therefore, Patel merely accelerated death, rather than causing it. That may be a valid consideration in a civil action for damages, since the result of Patel’s negligence was merely to precipitate a death that was already imminent, and any award of damages would therefore be minimal. But, in a homicide case, s.296 of the *Criminal Code* provides that:

⁶² Transcript, p.179, line 45 (Hoffman).

⁶³ patient P34, James Edward Phillips; see Transcript, p.39, lines 12 *et seq.* (Hoffman); p.283, lines 7 *et seq.* (Miach).

⁶⁴ Transcript, p.39, lines 22 to 25 (Hoffman).

⁶⁵ Transcript, p.283, lines 11 to 28 (Miach).

⁶⁶ Transcript, p.283, line 28 (Miach).

⁶⁷ Transcript, p.284, lines 4 to 6 (Miach).

⁶⁸ Transcript, p.47, line 13 (Hoffman); cf. p.284, lines 36 to 40 (Miach).

⁶⁹ Transcript, p.285, lines 20 to 32 (Miach).

⁷⁰ Transcript, p.284, lines 45 to 48 (Miach).

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

80. We consider that a *prima facie* case of manslaughter (at least) is made out in relation to Patient P34 (JAMES EDWARD PHILLIPS), and we therefore make recommendation I set out below.

MURDER

81. Under section 302(1)(b) of the *Criminal Code*, a homicide which would otherwise be classified as manslaughter is deemed to constitute murder, if the death:

"... is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life ..."

82. This species of murder is known in some jurisdictions as "felony murder", and is occasionally referred to in Queensland by that expression⁷¹. It has traditionally been applied where death results from an act of violence or negligence committed in the course of a violent offence, such as a rape or an armed robbery. A well-known example is the case of *Stuart v The Queen*⁷² – the *Whiskey-Au-Go-Go* case – in which the accused, in the prosecution of the unlawful purpose of extortion, set fire to a crowded nightclub resulting in the deaths of many of the people who were inside it.
83. However, at least in Queensland, any *unlawful purpose* suffices, so long as the act done in prosecution of that purpose is *likely to endanger human life*; the purpose (as distinct from the act done in the course of its prosecution) does not have to be one which is inherently dangerous. If a pedestrian is knocked down and killed by the reckless driving of a "getaway car" used by bank-robbers, a fatality which might otherwise support a charge of dangerous driving causing death – or, at worst, a charge of manslaughter – is transmogrified into murder. But that is because the relevant act – namely, the reckless driving of the vehicle – was *likely to endanger human life*. It is immaterial that the relevant *unlawful purpose* involved the commission of a violent offence; in fact, the same legal conclusion would follow if the reckless driving had

⁷¹ eg. *R v Previte* [2005] QCA 95, para. [3] per de Jersey CJ. In *R v Fitzgerald* [1999] QCA 109, para. 17, McPherson JA described s302(1)(b) as "a relic of the old felony-murder rule at common law".

⁷² (1974) 134 CLR 426.

occurred in the course of a non-violent *unlawful purpose*, such as the distribution of illegal drugs, or the receipt of stolen property⁷³.

84. The philosophy behind section 302(1)(b) is apparently grounded on two considerations:

84.1 On the one hand, the law's traditional clemency towards accidental (as opposed to deliberate) acts – reflected in the historical situation in Anglo-Australian law, that wilful murder attracted a mandatory capital sentence, whereas manslaughter did not – is intended to benefit those who commit acts of negligence (even if the consequences are fatal) whilst going about their lawful business; no such lenience is extended to those who acted negligently whilst engaged in a felonious enterprise.

84.2 On the other hand, the “felony murder” rule reflected the practical reality that, in the absence of the strongest disincentive, persons acting with felonious intent would be tempted to run significant risks – with potentially fatal consequences to innocent bystanders – either to achieve their unlawful purposes, or to avoid detection and apprehension.

85. For present purposes, however, the significant point is this: under Queensland law, the “felony murder” rule – as reflected in section 302(1)(b) of the *Criminal Code* – is not limited to deaths caused by negligence in the prosecution of a “felony” in the historic sense of that term; it applied wherever the perpetrator is engaged in an *unlawful purpose*, if, whilst embarked on that purpose, the perpetrator commits an act *likely to endanger human life*.

86. Ordinarily, even the grossest negligence on the part of a medical practitioner would not attract a murder conviction, unless the jury could be satisfied (beyond a reasonable doubt) that the degree of negligence was inconsistent with any state of mind other than a positive intention to kill. But very different considerations apply where, for example, an impostor pretends to be a medical practitioner, and kills a patient whilst attempting to perform a surgical procedure. Thus, for example, section 302(1)(b) was applied in two Queensland cases – one in 1915⁷⁴ and one in 1960⁷⁵ – where deaths occurred as a result of attempts by a person, who (in each case) held no medical qualifications, to procure an abortion: the *unlawful purpose* comprised the

⁷³ see, for example, *Hughes v. R.*, (1951) 84 CLR 170.

⁷⁴ *R. v. Walker*, [1915] St.R.Qd. 115.

⁷⁵ *R. v. Gould & Barnes*, [1960] Qd.R. 283.

attempt unlawfully to procure an abortion; it was then a matter of evidence whether the jury could be satisfied that the steps taken by the abortionist were, objectively, *likely to endanger human life*⁷⁶.

87. Patel was not, of course, without medical training and qualifications. But, for the purposes of section 302(1)(b), we are of the opinion that it would be open for a criminal jury to conclude that he was engaged in an *unlawful purpose*: namely, practising as a medical practitioner in circumstances where his registration had been obtained by conduct which contravened section 273 of the Registration Act⁷⁷ and section 502 of the *Criminal Code*⁷⁸; and in circumstances where, by continuing to practise as a medical practitioner in the capacity of Director of Surgery at BBH, he was committing fraud within the meaning of section 408C of the *Criminal Code*⁷⁹.
88. Nor, in our view, is there any scope to doubt that the surgical procedure undertaken by Patel – an oesophagectomy – was, objectively, *likely to endanger human life*. The evidence of Dr Miach in relation to patient P34 was that, “It’s a significant operation for anybody, even if you’re sort of fit and well, but if you’ve got kidney failure, if you’ve got a number of other complications, then it’s fraught with danger”⁸⁰; that “in fact no-one would have operated on him”⁸¹; and that he “would have been very surprised if [the patient] would have survived”⁸².
89. Of course, under Queensland law, where a person is charged with murder, the jury is entitled to return an alternative verdict of manslaughter⁸³. In that sense, there is no disadvantage in charging Patel with the murder of Patient P34, with the prospect that – if the jury is not satisfied in relation to the elements of section 302(1)(b) of the *Criminal Code* – Patel can still be convicted of manslaughter. We therefore make recommendation I set out below.

⁷⁶ Thus, in *R. v. Gould & Barnes*, evidence was adduced from two medical practitioners to the effect that the steps taken by the accused – involving the use of a liquid produced by boiling a mixture of glycerin, Detol (a disinfectant product) and Surf (a laundry powder) – were *likely to endanger human life*.

⁷⁷ see para.16, above.

⁷⁸ see para.59, above.

⁷⁹ see para.61, above.

⁸⁰ Transcript, p.283, line 28 (Miach).

⁸¹ Transcript, p.284, lines 4 to 6 (Miach).

⁸² Transcript, p.284, lines 45 to 48 (Miach).

⁸³ *Criminal Code*, sub-section 576(1).

EXTRADITION

90. The Commission of Inquiry has no knowledge regarding Patel's present whereabouts. The fact that he is (apparently) represented by a lawyer based in Portland, Oregon – and the fact that, at least according to media reports, he owns a house in the vicinity of that city, occupied by his wife and a daughter who is a medical student – would suggest that he is most probably in the United States of America. But some media reports have also suggested that he may be in India, his country of birth.
91. Assuming that Patel is still in the United States, extradition should not be problematic. Extradition from the United States to Australia is governed by:
- 91.1 The *Treaty on extradition between Australia and the United States of America* dated 14 May 1974; and
- 91.2 The *Protocol amending the treaty on extradition between Australia and the United States of America of May 14, 1974*, dated 4 September 1990.
92. The Treaty, as amended by the Protocol, materially provides⁸⁴:
- 92.1 Extradition is available in respect of any offence if it is punishable under the laws in both Australia and the US by imprisonment for more than one year⁸⁵, regardless of whether Australian and US law place the offence within the same category of offences or describe the offence by the same terminology⁸⁶.
- 92.2 The request for extradition must be supported by documents, statements, or other types of information which describe the identity and probable location of the person sought, a description of the conduct constituting the offence, a statement of the law describing the essential elements of the offence for which extradition is requested, and a statement of the law describing the punishment for the offence and the law relating to the limitation of legal proceedings⁸⁷, and also by a copy of the warrant or order of arrest issued in Australia, a copy of the charging document, if any, and a description of the facts, by way of affidavit, statement, or declaration, setting forth reasonable grounds for

⁸⁴ The Treaty and the Protocol are both Schedules to the *Extradition (United States of America) Regulations* (Commonwealth).

⁸⁵ Article II(1).

⁸⁶ Article II(3)(a).

⁸⁷ Article XI(2).

believing that an offence has been committed and that the person sought committed it⁸⁸.

- 92.3 If the appropriate documents are furnished, the authorities in the United States are not concerned to determine if the evidence is sufficient to justify the person's trial or committal for trial⁸⁹.
- 92.4 In urgent cases, Australia may request the provisional arrest of the person sought, either through diplomatic channels or directly between the Department of Justice in the United States and the Attorney-General's Department in Australia, or by using Interpol⁹⁰.
- 92.5 A person extradited from the United States to Australia may only be tried for and convicted of the offence for which extradition is granted – or another offence of which the person could be convicted on proof of the conduct constituting the extradition offence, and which carries the same or a lesser punishment – except with the consent of the United States⁹¹.
93. The only risk potentially arising from the extradition of Patel from the United States to Australia, at this time, is that further evidence may arise, implicating Patel in other offences, including offences of murder or manslaughter, or offences under section 328 of the *Criminal Code*. However, there is no obvious reason to apprehend that, in such circumstances, US authorities would withhold consent to Patel's being tried in respect of such charges.
94. If Patel is in the Republic of India, no extradition treaty is applicable. However, under the *Extradition (Commonwealth Countries) Regulations 1998* (Commonwealth), India is listed as an "extradition country" in the Schedule, and an "extradition arrangement" exists between India and Australia.

⁸⁸ Article XI(3).

⁸⁹ Such a requirement was formerly contained in Article VI of the Treaty, which was repealed by the Protocol.

⁹⁰ Article XII(1).

⁹¹ Article XIV(1).

95. Extradition from India to Australia pursuant to the extradition arrangement is governed by the *Extradition Act, 1962* of India⁹², which materially provides:
- 95.1 Extradition is available in respect of any offence if it is punishable under the laws in either Australia or India by imprisonment for more than one year⁹³.
- 95.2 The request for extradition must be supported by a warrant issued in Australia, which, once endorsed by the Central Government in India, automatically becomes “sufficient authority to apprehend the person named in the warrant and to bring him before any magistrate” in India⁹⁴.
- 95.3 When a person is brought before a magistrate under an endorsed warrant, the magistrate’s only functions are to determine if the person arrested is the person named in the warrant, and if the offence specified in the warrant is an extradition offence: if satisfied of those matters, the magistrate must “commit the fugitive criminal to prison to await his return”⁹⁵; the Central Government in India may then issue a warrant “for the custody and removal to the commonwealth country concerned of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant”⁹⁶.
- 95.4 In urgent cases, a magistrate in India may issue a provisional warrant⁹⁷.
- 95.5 A person extradited from India to Australia may only be tried for and convicted of the offence for which extradition is granted – or another offence of which the person could be convicted on proof of the conduct constituting the extradition offence, and which carries the same or a lesser punishment – except with the consent of the Central Government of India⁹⁸.
96. Once again, the only risk potentially arising from the extradition of Patel from India to Australia, at this time, is that further evidence may arise, implicating Patel in other offences, including offences of murder or manslaughter, or offences under section 328 of the *Criminal Code*. But, again, there is no obvious reason to apprehend that, in such

⁹² A copy of this legislation is available from the *India Code Information System* website at:

<http://indiacode.nic.in/>

⁹³ *Extradition Act, 1962* of India, section 3(c).

⁹⁴ *Extradition Act, 1962* of India, section 15.

⁹⁵ *Extradition Act, 1962* of India, section 17.

⁹⁶ *Extradition Act, 1962* of India, section 18.

⁹⁷ *Extradition Act, 1962* of India, section 16.

⁹⁸ *Extradition Act, 1962* of India, section 21. See also *Extradition Act 1988* (Commonwealth), section 42.

circumstances, the Central Government of India would withhold consent to Patel's being tried in respect of such charges.

97. For the reasons stated, we make recommendation J set out below.

NON-PUBLICATION ORDERS

98. Given the charges which we have recommended against Patel, non-publication orders previously made in respect of the names of the following patients, pursuant to section 16 of the *Commissions of Inquiry Act 1950*, are hereby revoked:

98.1 Patient P34 – James Edward Phillips; and

98.2 Patient P52 – Marilyn Daisy.

99. Staff of the Commission of Inquiry have attempted to contact Ms Daisy, and the family of the late Mr Phillips, to seek their consent in advance of the release of this Interim Report. We apologise if those attempts were unsuccessful prior to the release of this Interim Report.

100. Needless to say, all other non-publication orders previously made by the Commission of Inquiry – including non-publication orders in relation to the names of other patients who were treated by Dr Patel, except with the permission of the patient or (in the case of deceased patients) the patient's next-of-kin or family – remain on foot. In cases of doubt, journalists are invited to contact the Secretary to the Commission of Inquiry to seek clarification.

RECOMMENDATIONS

THE COMMISSION OF INQUIRY MAKES THE FOLLOWING RECOMMENDATIONS:

I. RECOMMENDED LEGISLATIVE CHANGES

A. That each of paragraph 84(a), paragraph 149(e), and paragraph 150J(d) of the *Medical Practitioners Registration Act 2001* be amended to provide to the following effect:

that the registration happened because the board was given information or a document which was materially false within the meaning of section 273, whether the information or document was given to the board by:

- (i) the registrant; or*
- (ii) another person.*

B. That section 161 of the *Medical Practitioners Registration Act 2001* be amended to provide to the following effect:

161. Claims by persons as to registration

(1) *A person who is not a registrant must not—*

- (a) claim, or hold himself or herself out, to be registered under this Act; or*
- (b) allow himself or herself to be held out as being registered under this Act; or*
- (c) claim, or hold himself or herself out, to be eligible to be registered under this Act; or*
- (d) allow himself or herself to be held out as being eligible to be registered under this Act.*

Maximum penalty—1000 penalty units.

(2) *A person who is not a registrant must not, by means of any conduct in contravention of subsection (1)—*

- (a) under colour or pretence of being registered under this Act, or being eligible to be registered under this Act:*
 - (i) obtain any employment; or*
 - (ii) obtain access to any hospital, clinic, medical practice or other place; or*
 - (iii) carry out any surgical operation, procedure or treatment, or purport to do so; or*
 - (iv) conduct any medical consultation with or any medical examination of any person, or purport to do so; or*

- (v) diagnose or purport to diagnose any actual or supposed physical or mental illness, or the absence thereof, or consult with or examine any person with a view to making such a diagnosis; or*
 - (vi) prescribe or recommend any drug, vitamin, herb, or other medication, substance, treatment, remedy or cure for any actual or supposed physical or mental illness; or*
 - (vii) perform or provide any medical or surgical service, including (without limitation) any gynaecological or obstetric service, any psychiatric service, any radiological or nuclear medicine service, or any pathology service, or purport to perform or provide any such service; or*
 - (viii) sign or furnish to any person any document which is, or which purports to be, a pharmaceutical prescription, a referral to a medical practitioner, a birth certificate, a death certificate, a certificate that life is extinct, or any other certificate or document purporting to be issued by or with the authority of a medical practitioner; or*
 - (ix) conduct any autopsy or post mortem examination, or otherwise diagnose or determine a cause of death or other circumstances relating to the death of any person, or purport to do so; or*
 - (b) offer, promise or agree to do any of the things mentioned in paragraph (a); or*
 - (c) charge, recover or retain any fee or other consideration for doing or purporting to do, or for promising or agreeing to do, any of the things mentioned in paragraph (a); or*
 - (d) claim, recover or retain payment of any fee or other consideration from any health insurance fund or other person for doing or purporting to do, or for promising or agreeing to do, any of the things mentioned in paragraph (a).*
- Maximum penalty—2000 penalty units or 3 years imprisonment.*

C. That sub-section 246(1) of the *Medical Practitioners Registration Act 2001* be amended to provide to the following effect:

- (1) An offence against each of the following sections is an indictable offence:*
 - (a) section 174; and*
 - (b) subsection (2) of section 161; and*
 - (c) subsection (3) of section 273; and*
 - (d) subsection (5) of section 273.*

D. That section 273 of the *Medical Practitioners Registration Act 2001* be amended to provide to the following effect:

273. False or misleading information or documents

(1) For the purposes of this section:

(a) information is taken to be materially false if:

- (i) the information is false or misleading in a material particular; or
- (ii) regardless of the literal truth of the information, it has a propensity to mislead or deceive the board in a material particular, including through the omission of other material information; and

(b) a document is taken to be materially false if the document:

- (i) contains or conveys information which is materially false; or
- (ii) contains or conveys information which, by the time that the document is given to the board, has become materially false; or
- (iii) is or purports to be a copy of an original document, and is not, in a material particular, a true, accurate and complete copy of the original; or
- (iv) is or purports to be an extract from or summary of an original document, and fails, in a material particular, to convey a true, accurate and complete representation of the information contained in the original.

(2) A person must not give to the board:

- (a) information which is materially false to the knowledge of the person; or
- (b) a document which is materially false to the knowledge of the person.

Maximum penalty—200 penalty units.

(3) A person must not contravene subsection (2) in connection with an application for registration by:

- (a) the person; or
- (b) another person.

Maximum penalty—2000 penalty units or 3 years imprisonment.

(4) A person must convey the relevant facts to the board as soon as reasonably practicable after the person:

(a) being a registrant, becomes aware that information or a document which was given to the board in connection with the person's registration:

- (i) was materially false at the time when it was given to the board; or
- (ii) has since become materially false; or

(b) being a person who previously provided information or a document to the board, becomes aware that the information or document:

(i) was materially false at the time when it was given to the board; or

(ii) has since become materially false.

Maximum penalty—200 penalty units.

(5) A registrant must not act or practise as a registrant, or continue to do so, if:

(a) the registrant committed a contravention of subsection (3) in connection with the registrant's application for registration; or

(b) the registrant was knowingly concerned in or a party to a contravention of subsection (3) in connection with the registrant's application for registration; or

(c) the registrant has failed to convey the relevant facts to the board as soon as reasonably practicable after becoming aware that information or a document which was given to the board in connection with the registrant's registration:

(i) was materially false at the time when it was given to the board; or

(ii) has since become materially false.

Maximum penalty—2000 penalty units or 3 years imprisonment.

(6) To avoid doubt, in this section:

(a) "registrant" means a person registered as a registrant under Part 3, including a general registrant, a provisional general registrant, a specialist registrant, a special purpose registrant, or a non-practising registrant, whether or not the registration is on conditions or probationary conditions;

(b) "registration" includes:

(i) registration as a registrant; or

(ii) renewal of such registration; or

(iii) reinstatement of such registration; and

(c) a "material particular", in relation to an application for registration, is not limited to a particular which would have been determinative of the application, but includes any particular which (had it been known to the board at the relevant time) might have influenced the board, or any member or officer of the board, in:

(i) granting or refusing the application; or

(ii) determining the capacity in which the applicant may be granted registration, whether as a general registrant, a provisional general registrant, a specialist registrant, a special purpose registrant, or a non-practising registrant; or

(iii) imposing any condition, qualification, restriction or probationary condition in respect of any registration granted to the applicant; or

(iv) fixing the period for which the applicant is granted registration; or

(v) making further enquiries or conducting further investigations in connexion with the application for registration.

II. RECOMMENDED ADMINISTRATIVE CHANGES

E. In relation to the Minister's power under section 135(3) of the *Medical Practitioners Registration Act 2001* to declare an "area of need", that:

- (1) A new policy, accompanied by appropriate forms and protocols, be implemented as a matter of the utmost urgency, having appropriate regard to the observations set out in paragraphs 31 to 47, above.
- (2) Queensland Health take steps to ensure that the holders of Ministerial delegations are fully apprised of their responsibilities in turning their minds to the considerations identified in section 135, and exercising in good faith the powers vested by section 135 in the Minister, or replaced with delegates who can and will do so.
- (3) The Minister consider whether it is more appropriate that, in future, such delegations be given to staff in the Office of the Health Practitioner Registration Boards.

III. RECOMMENDED CHARGES

F. In relation to Patel's registration as a medical practitioner by the Medical Board of Queensland pursuant to the *Medical Practitioners Registration Act 2001*, that he be charged with making false representations under section 502(c) of the *Criminal Code*.

G. In relation to Patel's registration as a medical practitioner by the Medical Board of Queensland pursuant to the *Medical Practitioners Registration Act 2001*, and his employment at the Bundaberg Base Hospital, that he be charged with fraud under section 408C of the *Criminal Code*.

H. In relation to MARILYN DAISY, that Patel be charged with a negligent act causing harm under section 328 of the *Criminal Code*.

I. In relation to JAMES EDWARD PHILLIPS, that Patel be charged with:

- (1) murder under section 302(1)(b) of the *Criminal Code*;
- (2) alternatively, unlawful killing (manslaughter) under section 303 of the *Criminal Code*.

J. That the appropriate steps be taken to procure:

- (1) Patel's extradition to Australia to answer the charges mentioned in the four preceding recommendations; and

(2) The provisional arrest of Patel pending his extradition, if that is considered appropriate having regard to police intelligence available at the time.

DATED at Brisbane the 10th day of June, 2005.

Anthony Morris QC
Chairman

Sir Llew Edwards AC
Deputy Commissioner

Margaret Vider RN
Deputy Commissioner