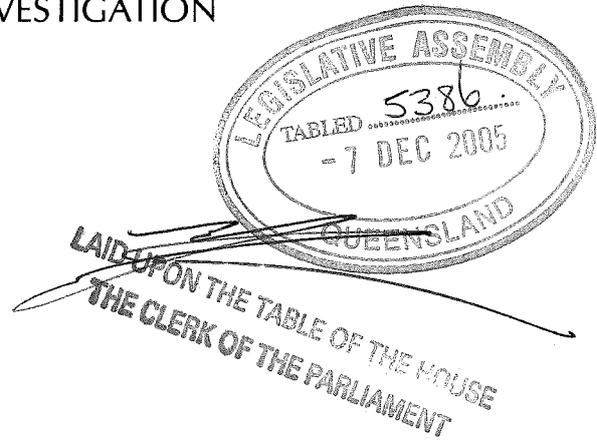


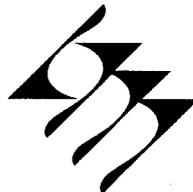
Allegations concerning the Honourable Gordon Nuttall MP

REPORT OF A CMC INVESTIGATION



December 2005

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

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Abbreviations

AHMAC	Australian Health Minister's Advisory Committee
AMA	Australian Medical Association
AMAQ	Australian Medical Association of Queensland
ASMOFQ	Australian Salaried Medical Officers Federation, Queensland
COTD	Centre for Overseas Trained Doctors
OTD	overseas-trained doctors
QH	Queensland Health
RACGP	Royal Australian College of General Practitioners
RDAQ	Rural Doctors Association of Queensland
TRD	temporary resident doctors

Introduction

This report details an investigation conducted by the Crime and Misconduct Commission (CMC) into a complaint made by the Leader of the Opposition concerning the possibility that the Honourable Gordon Nuttall MP, Minister for Health, gave false answers to questions asked of him by a member of an estimates committee of the Legislative Assembly.

It is common ground that the minister provided answers to questions asked of him during his appearance before a committee of the Legislative Assembly on 8 July 2005.

The 'live issues' therefore, are whether the minister knowingly gave a false answer; and whether such an answer was in response to a question that was both 'lawful and relevant'.

The law

If a minister were to knowingly give false answers while appearing before an estimates committee, such conduct would amount to an offence against section 57 of the Criminal Code. The false answer must be to a question that was both lawful and relevant to the examination.

Equally, such conduct would support a finding that the minister committed contempt of parliament (within the meaning of section 37 of the *Parliament of Queensland Act 2001*).

The CMC's position

On the basis of the evidence identified in the investigation, the CMC has decided that prosecution proceedings within the meaning of section 49(1) of the *Crime and Misconduct Act 2001* should be considered.¹

In accordance with legal advice accepted by the CMC, this report is therefore furnished to the Attorney-General for her to bring it before parliament for its decision as to the course that should be followed.

Parliament may direct the Attorney-General to prosecute the minister for the offence created by section 57 of the Criminal Code. Alternatively, if parliament concludes that the more appropriate course is to deal with the matter as a contempt of parliament, it may direct that the matter be dealt with in accordance with Part 2 of Chapter 3 of the *Parliament of Queensland Act*.

¹ 49(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.

Legal opinions

A number of legal opinions have been produced during the course of this investigation; copies of opinions obtained by, or provided to, the CMC can be found in Appendix 5 of this report.

In the first instance, the CMC obtained a joint opinion, dated 12 August 2005, from Messrs J.A. Logan SC and S.J. Gageler SC as to whether (a) the investigation or (b) the prosecution of a member of the Queensland Parliament for an alleged breach of section 57 of the Criminal Code offended parliamentary privilege. *Counsel answered 'no' to both questions.*

Messrs Logan SC and Gageler SC were then asked two further questions:

1. Were the questions put to Gordon Nuttall — the answering of which has been alleged to give rise to the commission of an offence by Mr Nuttall against section 57 of the Criminal Code — 'lawful and relevant' within the meaning of that section? *Counsel answered 'yes'.*
2. Having regard to section 47 of the Parliament of Queensland Act, would it be appropriate for the CMC to refer its report directly to the Director of Public Prosecutions or should the report be directed in the first instance to the Attorney-General for consideration by parliament? *Counsel advised 'to the Attorney for consideration by parliament'.*

Apart from the two opinions sought from Messrs Logan SC and Gageler SC, the CMC has also been provided with:

- a letter from the Clerk of Parliament to Mr H. Fraser QC, dated 29 August 2005, obtained by the Speaker of the Legislative Assembly and provided to the CMC by the Speaker on 26 September 2005
- the opinion of Mr H. Fraser QC, dated 9 September 2005, obtained by the Speaker of the Legislative Assembly and provided to the CMC by the Speaker on 26 September 2005
- the opinion of Messrs R.W. Gotterson QC and M.T. O'Sullivan, dated 27 September 2005, obtained on behalf of Minister Nuttall and provided to the CMC by the minister's legal representatives on the same date
- a further opinion by Mr H. Fraser QC, dated 6 October 2005, obtained by the Speaker and provided to the CMC by the Premier on 14 October 2005.

Copies of these documents are attached to this report — see Appendix 5.

As appears from these opinions, some are contrary in certain respects to those of Messrs Logan and Gageler. Some refer to an opinion by Mr W. Sofronoff QC, dated 5 October 2005, apparently obtained by the Department of the Premier and Cabinet. The CMC has not been provided with a copy of that opinion.

This report does not canvass the various opinions; the contents of each speaks for itself. Suffice to say that the CMC, after careful consideration, has accepted, and relies on, the opinions of Logan and Gageler.

Reporting

So far as is relevant to this case, section 49 of the *Crime and Misconduct Act 2001* provides:

49. Reports about complaints dealt with by the commission

- (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate —
 - (a) the director of public prosecutions or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted; ...

A supplementary joint opinion, dated 17 October 2005, was obtained from Messrs Logan SC and Gageler SC about the question of whether the CMC ought to direct its report in this matter to the Director of Public Prosecutions or to the Attorney-General. That joint opinion recommended that any report prepared by the CMC concerning the complaint must be handed to the Attorney-General for tabling in parliament:

In this instance, the decision as to whether a prosecution is warranted is consigned by s. 47(2) of the Parliament of Queensland Act to the House. If the House is of that view, it directs the Attorney-General to prosecute the person concerned. If the House is of the view that the more appropriate course is to deal with the matter as a contempt, we should expect that the appropriate course would be for the House to refer the matter to the Members' Ethics and Privileges Committee for examination, investigation and report.

It is because it falls to the Attorney to implement the wishes of the parliament, if prosecution is the course that commends itself, that she is the appropriate person not just to whom to furnish the report but also to bring the report to the attention of the parliament and to seek the parliament's direction.

The Commission has accepted this advice on this point, notwithstanding contrary advice from Mr Hugh Fraser QC.

While parliament might choose to seek advice as to the merits and prospects of a criminal prosecution from the Director of Public Prosecutions, that is not a relevant matter in determining to whom the CMC ought furnish this report.

Background

The events giving rise to this investigation relate to an issue that has itself been the subject of considerable public attention and media coverage within Queensland.

In the Queensland Parliament on 22 March 2005, the Member for Burnett, Mr Robert Messenger MP, raised allegations concerning the competency of Dr Jayant Patel, who had for a number of years been engaged by Queensland Health as a surgeon at the Bundaberg Base Hospital.

Dr Patel is a citizen of the United States. He had initially qualified to practice medicine in India, before emigrating to the United States.

As a result of Mr Messenger's statement and other allegations publicly aired concerning Dr Patel, the Queensland Government established a Commission of Inquiry to investigate and report on those matters.²

Criticisms surrounding the practice of engaging overseas-trained doctors to work within Queensland's public health system had previously been the subject of internal investigation by Queensland Health and of public comment.

The Lennox report

On 3 November 2003, the *Courier-Mail* newspaper published a series of articles exposing concerns over the number and competency of overseas-trained doctors recruited to work in Queensland. One article referred to a 'leaked Government report' — otherwise referred to as 'the Lennox report' — that had been produced by a Queensland Health officer, Dr Denis Lennox, and examined the competency, assessment and training of overseas-trained doctors employed within the state's public health system. The newspaper article, written by journalist Mr Hedley Thomas and headed 'Alarm at vetting of overseas doctors', read in part:

A growing number of overseas doctors rushed into Queensland public hospitals and private medical centres lack 'medical competence and capability', according to a leaked Government report.

The lack of competence of overseas-trained doctors was putting patients, employers and the community at risk, the report said.

Senior doctors in the public and private sector have told The *Courier-Mail* that Queensland Health, the Federal Government

² The Bundaberg Hospital Commission of Inquiry ('the Morris Inquiry') was established on 26 April 2005. On 2 September 2005 the Supreme Court of Queensland restrained the Commissioners of the Bundaberg Hospital Commission of Inquiry from further proceeding with the inquiry. On 2 September the Premier announced plans to deal with the information gathered by the former Commission of Inquiry. On 6 September 2005, the Queensland Government appointed the Honourable Geoffrey Davies AO to inquire into and report on a range of medico-legal issues, the genesis of which was the appointment of Dr Patel to the Bundaberg Hospital and the allegations, complaints and concerns arising from clinical practice and procedures by him and others at Bundaberg Hospital. The Davies Inquiry reported on 30 November 2005.

and the Medical Board of Queensland were compromising public safety by failing to check the clinical skills of imported doctors.

Health Minister Wendy Edmond and the Medical Board of Queensland have rejected the charges. They say the report, written by Queensland Health's medical adviser for rural health services, Dr Denis Lennox, has no official status with the Government.

The complete text of the article, and others published by the *Courier-Mail* in November 2003, is attached.³

The Minister for Health at the time of the publication of Mr Thomas's article was the Honourable Wendy Edmonds MP, who retired from public office at the general election held in February 2004. In her place, Mr Gordon Nuttall was sworn in as Minister for Health on 12 February 2004.

Queensland Health records reveal that the minister was briefed by senior departmental officers a short time after assuming his portfolio responsibilities. Those initial (and subsequent) briefings touched upon issues pertaining to the engagement of overseas-trained doctors.

In what appears to have been the very first brief delivered to the minister (dated 5 February 2004) entitled 'Briefings folder for the Incoming Minister for Health', the following entry appears (at page 28 of its 223 pages):

The competence of some international graduates is questionable.

...

Queensland Health will fund and manage the Centre for Overseas Trained Doctors from July 2004 to facilitate the process of screening, recruiting and preparing OTDs for employment in Queensland Health Public Hospitals.

A written briefing dated 16 February 2004 was provided to the minister before his first meeting, as Health Minister, with the Australian Medical Association of Queensland (AMAQ). That briefing included the following passage:

Media coverage last year highlighted a number of issues pertaining to overseas-trained doctors (OTDs) ... including a perceived lack of ... competence [and] assessment prior to employment.

...

Key issues

The Royal Australasian College of General Practitioners has convened a group of key stakeholders to address public concern regarding quality clinical care and OTDs.

The various briefings prepared for and on behalf of the minister are canvassed in greater detail below.

³ See Appendix 4 — the relevant *Courier-Mail* articles appear as attachments to Mr Thomas's statement.

On 8 April 2005 Hedley Thomas interviewed the minister and asked him about the Lennox report. The minister, who was not the Health Minister in November 2003 when the articles relating to the Lennox report were first published, seemed surprised at what Mr Thomas told him concerning the Lennox report. Mr Thomas recalls the minister saying that he did not know about it.

On 27 April 2005 — shortly after the creation of the Bundaberg Hospital Commission of Inquiry ('the Morris Inquiry') — the minister travelled on a government aircraft from Brisbane to Rockhampton on unrelated Queensland Health business. At the time, he was accompanied by Hedley Thomas, who interviewed the minister for a newspaper article he was then planning. The relevant part of Mr Thomas's notes of what Minister Nuttall said during the interview says:

In all my briefs given to me when I became minister, all the briefs were by way of senior management coming in and talking to me about their issues, and this issue over OTDs was never raised. Never ever raised.

There was always the issue about how we had to import so many doctors because we did not have enough. It's why we have a Medical Board. That's its charter and job. It's there to assess these things.

I have to say that I really believe that people were too reliant on the Medical Board. I think that because of the way the mechanism was in place, with this other body separate from my own department. So in fairness to my department, I think that's why.

When I took over in '04, nobody said to me 'we have a report here from '03 about problems with OTDs'.

Nobody did that.

And that Medical Board and that process has been in place for a number of [years] ...

On 30 April 2005, the *Courier-Mail* published an article by Mr Thomas that, in part, touched upon comments Minister Nuttall had apparently made to Thomas about his (Nuttall's) knowledge of concerns about the proficiency of overseas-trained doctors. The article read in part:

Nuttall's position is that he did not know about the widely held concerns over the proficiency of overseas-trained doctors streaming into Queensland, nor did he know, he says, about the worries over the lack of screening of their qualifications because he said nobody, not his director-general, Dr Steve Buckland, his Head of Health Services, Dr John Scott, nor any of their underlings had told him. 'In all the briefings given to me when I became minister, all the briefs were by way of senior management coming in and talking to me about their issues. This issue of overseas-trained doctors was never raised — never ever raised.'

But the issue of overseas-trained doctors was a time bomb which had been brought to the attention of the former health minister Edmond by senior bureaucrat Dr Denis Lennox in a formal report. When the report was leaked in late 2003 to *The Courier-Mail*,

Edmond, her then director-general Rob Stable and his successor Buckland dismissed it as having 'no standing'.

Nuttall, reminded of this, insists he cannot respond to things not brought to him. He says that after spending much of 2004 visiting regional hospitals and urging district managers and medical superintendents to come forward with problems, he felt let down at not being made aware of both the broad issues relating to concerns about overseas-trained doctors and the critical concerns over Patel.

Implicit in the article is that Dr Lennox's report and issues raised therein were central to the earlier discussion between Mr Thomas and the minister that had provided the basis for Thomas's article.

Mr Thomas's notes of his interview with the minister indicate that while much of their discussion concerned matters affecting Dr Patel and the Bundaberg Base Hospital, the discussion also specifically focused on the issue of Dr Lennox's report — hence the direct reference to that report in the newspaper article. That Dr Lennox's report was discussed is supported by the minister's statement to the Morris Inquiry dated 30 August 2005.

I received a copy of the Lennox report on about 18 April 2005 when I requested it following media attention this year. I had not received any prior briefing about the Lennox report.

On Friday 8 July 2005, the minister appeared before a public hearing of a Queensland parliamentary estimates committee: 'Estimates Committee D — Health'. At the time, the minister was accompanied by senior officers of Queensland Health, including the then Director-General of Queensland Health (Dr Buckland) and the then Senior Executive Director, Health Services (Dr Scott).

The minister was questioned at some length about the comments attributed to him in Mr Thomas's article of 30 April 2005.

The following is an extract from the Hansard record of proceedings:

Copeland: Minister, I refer to your statement about the process of recruiting overseas-trained doctors. It was reported in the *Courier-Mail* on 30 April this year that —

Nuttall's position is that he did not know about the widely held concerns over the proficiency of overseas-trained doctors streaming into Queensland, nor did he know, he says, about the worries over the lack of screening of their qualifications because he said nobody, not his director-general, Dr Steve Buckland, his Head of Health Services, Dr John Scott, nor any of their underlings had told him. 'In all the briefings given to me when I became minister, all the briefs were by way of senior management coming in and talking to me about their issues. This issue of overseas-trained doctors was never raised — never ever raised.

Minister, do you stand by that statement that you were never ever advised by your department of the issues relating to overseas-trained doctors?

Nuttall: What issues are you referring to?

Copeland: About the training, the concerns over proficiencies, the registration of those doctors coming into Queensland or any of those issues regarding OTDs as you were quoted as saying?

Nuttall: I stand by the statement I made.

Copeland: You were never ever briefed?

Nuttall: I stand by the statement I made.

Copeland: Minister, could I ask Dr Buckland and Dr Scott whether they agree that you were never ever briefed on the issues of OTDs?

Nuttall: I am happy for them to answer that, but let us get it very clear when we talk about the issues of overseas-trained doctors. The question is around the competency of overseas-trained doctors. Is that what you are getting at?

Copeland: Widely held concerns about the proficiencies of overseas-trained doctors, which is what you said. There has been a whole range of issues that have been raised over the proficiencies of overseas-trained doctors for 18 months, and you said that you were never ever briefed about any of those widely held concerns.

Nuttall: I will let Dr Buckland answer and Dr Scott can answer.

Scott: Certainly, my understanding is that in discussions that I had had with the minister's office and with the minister in the past, either on the basis of one to one or in concert with other officers of Queensland Health, the issues had been raised. But I think also that there have been other meetings in the past with outside agencies like the AMA or the Rural Doctors where I understood that those issues had been raised as well.

Chair: I just remind honourable members that it is one question.

Copeland: I was clarifying with the minister.

Chair: It was previous to that. Thank you. Your question?

Copeland: The minister has advised that Dr Buckland would be able to speak as well.

Chair: That is it. Thank you. Your question?

Copeland: Dr Scott, thank you for that clarification, because that would have been, I think, everyone's expectation that the minister had been advised, particularly —

Nuttall: Hang on. I am going to clarify this. Try to clarify for me exactly what you are saying. Are you saying to me that I have said that the issue around the competencies of overseas-trained doctors was never raised with me by Dr Scott? Is that right? The issue around the competencies of overseas-trained doctors was never

brought to my attention. It was never brought to my attention that there were problems around the competencies of overseas-trained doctors by anyone, and, as I said to you, I stand by that statement.

Copeland: Thank you, Minister. Dr Scott has just said that his belief was that they indeed were raised with you.

Nuttall: And I'm telling you they were not.

...

A complete copy of the Hansard for the proceedings on 8 July 2005 is attached.⁴

Later that morning, during a short break for morning tea, the minister spoke with his senior ministerial media advisers and Queensland Health's Executive Director of Public Affairs. The latter said that she told the minister that he had, in fact, received general briefings concerning overseas-trained doctors.

Upon the resumption of the Estimates Committee hearing, the minister was asked further questions concerning Mr Thomas's newspaper article of 30 April 2005.

At this point, the minister said his responses to earlier questions should be read in the context of briefings concerning Dr Patel. He said it had not been his position that he had 'never, ever, ever, ever, ever' been briefed about overseas-trained doctors, but that there had been no briefings about overseas-trained doctors on the scale of the Bundaberg Base Hospital issue. The following extract is taken from Hansard:

Copeland: (*Having read an extract of Mr Thomas's article of 30 April 2005*). It is the issue of your knowledge of the overseas-trained doctors that we are questioning.

Nuttall: I am glad we have clarified that. Because what you have got there and what you have said there is this: the article referred to by you this morning appeared in the *Courier-Mail* earlier this year following issues in Bundaberg being raised publicly. That is where it initially came from. My comments in that article related to the situation at the Bundaberg Base Hospital, although they were reported in a broader fashion. When I became the Minister for Health I undertook an extensive amount of travel around the state, talking to our staff in hospitals, learning the portfolio and identifying issues for our staff. I want to make it very clear — very clear — at no stage was I briefed about the competency of any overseas trained doctor at the Bundaberg Base Hospital and, as I outlined today, I stand by these comments. If you look at that article it says 'when I first became minister.' If you ever reach the dizzy heights of being a minister, what will happen to you is that your new department will brief you — give you briefings on all areas of your

⁴ See Appendix 1 — in addition to the written transcript, an audio-recording of the proceeding before the Estimates Committee had been created to aid Hansard reports. On request, that recording was made available to the CMC by the Clerk of Parliament on 19 September 2005.

department. My comment in that article says that in those briefings, at no time in those briefings, at no time was I advised about overseas-trained doctors and the problems around those overseas-trained doctors and their training. That is what that article refers to; is that right?

Copeland: Well --

Nuttall: That is right, that is what it says.

Copeland: Minister, you have just said two different things.

Nuttall: No, I did not.

Copeland: You did. In the context of that quotation — which was reported more broadly than you actually said — you said that you were not briefed about overseas-trained doctors at Bundaberg Base Hospital and that that is what the quotation pertains to. You have now just said again, reiterating what you said earlier, that the issue of OTDs was never raised with you.

Nuttall: Listen to what I said.

Copeland: I am trying my best, Minister. It would be very easy to clarify it if you would allow Dr Buckland to answer.

Nuttall: If you are prepared to listen you will understand. What I said in that article, and you quoted it, is that when I became the minister — is that what it says?

Copeland: It says that when you became the minister, in all the briefings given to you --

Nuttall: That is right.

Copeland: In all the briefings --

Nuttall: That is right. So when you become the minister --

Copeland: So when did the briefings stop after you became minister?

Chair: Order! Member for Cunningham, the minister should be allowed to answer the question uninterrupted.

Nuttall: I am trying to. The interview with the journalist — that was the context in which that comment was made. I said to the journalist, when I first became the minister, all the briefings that came in to me when I first became the minister, at no stage in those briefings was I advised about problems around the qualifications of OTDs in those briefings. That is the context in which that article was written. You have now broadened it to say, 'So, you have never, ever, ever, ever, ever been briefed about overseas-trained doctors' incompetence.' That is your version of events. It is not my version of events.

Copeland: You said it this morning. We will get the Hansard.

Nuttall: Do you want to let me finish? One step at a time — just one step at a time. So, in terms of that article, that was the comment I made. In relation to when I first became minister, the briefs that came into me, there was no briefing specifically to me about the difficulties

around overseas-trained doctors. Subsequent to that as a minister I have made statements in the parliament and I have made statements publicly and I stand by those statements that I have made.

- Copeland: So if, Minister, it was only at those initial briefings that you were not made aware of the concerns about the OTDs, when were you made aware about those concerns?
- Nuttall: About what concerns?
- Copeland: About the concerns about the proficiency and the lack of screening of qualifications of OTDs.
- Nuttall: That obviously all arose as a matter of the Bundaberg issue.
- Copeland: So you knew nothing about it until the Bundaberg issue was raised?
- Nuttall: Not on the scale — no. Not on that scale. There are always issues that come to you about individual doctors from time to time. Not around the issue of, 'We have a significant problem in relation to the certificate of competencies; we have a significant problem in relation to the skills assessment of the overseas-trained doctors; we have a significant problem in relation to X,Y and Z.' No.
- Copeland: Minister, if you were not aware until the issues around the Bundaberg Base Hospital arose in March of this year, then you stand by your statement that you were not briefed on the issue of concerns about OTDs between when you became minister in February of last year until March of this year?
- Nuttall: Again, you need to clarify to me what you mean by concerns.
- Copeland: I will again quote to you. 'The lack of screening of their qualifications and the proficiency of the overseas-trained doctors.' Now, that changes nothing from the statement you made this morning when you said you did not receive briefings, but which Dr Scott contradicted in his response when he said he believes that you were.
- Nuttall: As I have said to the committee, Madam Chair, Dr Scott and I meet — I cannot recall the number of times that Dr Scott and I have met over the last 18 months. There are numerous times. We have numerous meetings — numerous briefings. Dr Scott and I simply have a different recollection on this particular point. There is nothing sinister in that. As I said to the committee, I meet on a regular basis with all my senior management. I travel the state and talk to numerous staff. We have numerous meetings and numerous briefings. It is human to think that, from time to time, people have a different recollection of things. There is nothing sinister about that. It is simply the case. That is simply what happened.

At the conclusion of the Estimates Committee hearing, the minister returned to his office, and sought from Queensland Health details of the briefings he had received. Some information was provided to the minister at about 6.30 pm that evening.

Early on the morning of Saturday 9 July 2005, Minister Nuttall's senior ministerial media advisers met at the private residence of the Deputy Director of the Government Media Unit, and read the material provided by Queensland Health, together with the transcript of the proceedings before the Estimates Committee.

At a media conference held later that day, the minister published details of some of the relevant ministerial briefings, and acknowledged that documents produced to him (the previous evening) by Queensland Health confirmed that he had been previously briefed 'generally' about overseas-trained doctors. The minister explained that he thought the questions asked of him by Mr Copeland the previous day had specifically focused on Dr Patel, rather than issues pertaining to the employment of overseas-trained doctors generally.

The minister gave a similar explanation in an interview broadcast on ABC Radio on the morning of Monday 11 July 2005.

Details of the minister's comments are set out below. (The full transcript is an attachment to the statement of Mr David Potter, which forms part of Appendix 4.)

Later that day, Minister Nuttall wrote to the Chair of the Estimates Committee, confirming his position.⁵ The minister wrote, in part:

The statements attributed to me by Hedley Thomas and published in the *Courier-Mail* on 30 April 2005 were made clearly in the context of my knowledge of Dr Patel at the Bundaberg Hospital. I regret that my political opponents are unwilling to accept that explanation and by twisting my words and taking comments out of context, continue to assert that I have not been advised on general issues relating to the medical workforce.

I am aware that Queensland Health staff has been involved with professional organisations for some years to identify and act on issues arising from the gross shortage of medical staff in an effort to maintain services to the public. On Saturday I conducted a media conference at which I released documents provided to me by the department, in regard to overseas-trained doctors in an effort to set the record straight. I wish the members of Estimates Committee D to be likewise advised.

At the press conference on Saturday, again yesterday and today, I emphasised clearly that my comments made at Estimates were in relation to 'Patel-like issues'.

In a witness statement the minister later provided to the Morris Inquiry, he again acknowledged having been briefed about issues relevant to overseas-trained doctors.

⁵ See Appendix 2 — The letter from the minister to the Chair of Estimates Committee D, dated 11 July 2005.

Complaint

On Friday 15 July 2005 the Leader of the Opposition wrote to the Officer in Charge of the Brisbane City Central Police Station requesting that an investigation be conducted to ascertain whether, by his answers to questions posed during the Estimates Committee hearing, the minister had committed an offence against section 57 of the Criminal Code.

Section 57 makes it an offence to give false evidence before the parliament. The section reads:

57 False evidence before parliament

- (1) Any person who in the course of an examination before the Legislative Assembly, or before a committee of the Legislative Assembly, knowingly gives a false answer to any lawful and relevant question put to the person in the course of the examination is guilty of a crime, and is liable to imprisonment for 7 years.
- (2) The offender cannot be arrested without warrant.
- (3) A person cannot be convicted of the offence defined in this section upon the uncorroborated testimony of 1 witness.

The letter from the Leader of the Opposition concluded:

In view of recent media comments by Commissioner Atkinson I wish to make it clear that this complaint is clearly a complaint of a breach of the Criminal Code of Queensland over which the QPS has direct and clear jurisdiction and not a complaint about matters covered by the *Crime and Misconduct Act 2001*.

The CMC has jurisdiction to investigate possible official misconduct. For a person to commit official misconduct, the conduct in question must amount to either a criminal offence or a disciplinary breach providing reasonable grounds for the person's dismissal. Because there is no regime for the removal of a member of parliament for a disciplinary breach, for the conduct of a member of parliament to constitute official misconduct, the conduct in question must be capable of amounting to a criminal offence. In the case of a member of parliament, anything less than a suspected criminal offence would not be investigated by the CMC.

Given that the complaint involves an allegation that a member of parliament had committed a criminal offence in the course of the member's functions as a member of the Legislative Assembly and minister, it follows that the alleged conduct was capable of amounting to 'official misconduct' within the meaning of the *Crime and Misconduct Act 2001* — thus enabling the CMC to conduct an investigation.⁶

On 28 July 2005 the QPS referred the Leader of the Opposition's complaint to the CMC.

⁶ The CMC's ability to take action of any matter is governed by the provisions of the Crime and Misconduct Act. Under section 33, one of the CMC's misconduct functions is to 'ensure that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way'. The dictionary provisions contained within the Act define the term 'misconduct' as including 'official misconduct', and the expression 'is dealt with' as including the conduct of an investigation.

Extent of the investigation

Having considered the complaint, the CMC sought advice from senior counsel as to what impact parliamentary privilege might have on the ability of the two agencies to conduct an investigation. Advice was received that the matter fell within the jurisdiction of the CMC and could be investigated. This was confirmed by legal advice obtained by the Speaker of the House, though the minister obtained a contrary opinion.

Initial enquiries centred on establishing precisely what briefings the minister had been accorded by officers of Queensland Health.

On 5 September 2005 the CMC served the Director-General of Queensland Health with a notice issued under section 75 of the Crime and Misconduct Act, requiring production of departmental records evidencing relevant briefings. The CMC received the last of the records on 21 October 2005.

At a media conference conducted on Saturday 9 July 2005, the minister released a bundle of documents (by inference drawn from the documents provided to him the previous evening by Queensland Health), which he later claimed evidenced 'all the briefs that were provided to me by my department since the time I became the minister.'⁷

A copy of the bundle of documents released to the media was, in turn, given to the QPS by the Office of the Leader of the Opposition and forwarded to the CMC.

One document not included in the bundle produced by the minister on 9 July 2005 was the relevant part of the 'Briefings folder for the Incoming Minister for Health', dated 5 February 2004. This document, which Queensland Health later gave the Morris Inquiry, comprises some 223 pages. It was prepared by the department to facilitate the initial briefing of the minister upon his assumption to the Health portfolio. The document, which contains a short — but relevant — passage concerning overseas-trained doctors, will be addressed below. (It is not contended that the minister consciously failed to publish the document as part of the bundle of documents he released on 9 July 2005.)

Elsewhere in this report, some of the occasions on which briefings are known to have been prepared for the minister are identified.

Some of the papers prepared in support of, or to supplement, the various briefings bear the minister's signature. However, other papers do not bear his signature and the minister's staff suggest that some of the documentation may not necessarily have been read by the minister.

As the minister declined an offer to be interviewed about the matter, it is not possible to ascertain with certainty precisely what documentation was provided to him in support of briefings. It is noted, however, that since the Estimates Committee hearing, the minister has made several public statements (including his statement to the Morris Inquiry) acknowledging that he had been briefed about general issues relevant to overseas-trained doctors.

⁷ The transcript of interview conducted with the minister by ABC journalist Steve Austin (broadcast 11 July 2005) is attached to the statement of Mr David Potter in Appendix 4.

As well as identifying what information the minister may have been apprised of prior to his appearance before the Estimates Committee on 8 July 2005, efforts were also directed to confirming the statements he had made afterwards. To this end, electronic recordings were obtained of statements made by the minister to the Australian Broadcasting Corporation.

Further, as many of the questions posed during the Estimates Committee hearing focused on what the minister had said at an earlier time to Mr Hedley Thomas, the CMC obtained a copy of the journalist's contemporaneous handwritten notes of his conversation with the minister.

Finally, the CMC conducted interviews with the following people:

- Dr Stephen Buckland (formerly Director-General, Queensland Health)
- Dr John Scott (formerly Senior Executive Director, Health Services, Queensland Health)
- Mr David Potter (Senior Ministerial Media Adviser to Minister Nuttall)
- Ms Julie Dahl (Senior Ministerial Policy Adviser to Minister Nuttall)
- Mr Cameron Milliner (formerly Senior Ministerial Media Adviser to Minister Nuttall)
- Ms Leisa Elder (formerly Executive Director, Public Affairs, Queensland Health)

In each case, a written witness statement has been prepared based upon responses made during the interview process. In some cases the interview or statement (or both) were provided only after notices under section 75 of the Crime and Misconduct Act were served on the witness.

Additionally, Mr Hedley Thomas provided CMC investigators with a written witness statement.⁸

Delays

Delay in the investigation occurred because some witnesses were scheduled to appear before the Morris Inquiry (and its successor, 'the Davies Inquiry') and could not assist investigators until their appearances were completed. Delay was also occasioned by some witnesses awaiting advice on whether they were to be granted legal assistance by Queensland Health.

As part of its investigation, and with a view to ascertaining what briefings the minister had received on issues pertaining to overseas-trained doctors, investigators sought access to the minister's diaries and notebooks. Inquiries ascertained that the relevant documents are in the minister's personal possession. The advice of senior counsel is that the CMC is unable to use its coercive processes to compel production of these documents. These documents were requested but have not been made available to the Commission.

⁸ All statements obtained are attached as part of Appendix 4.

The minister's explanation

On 24 October 2005 the CMC wrote to Minister Nuttall's legal representatives seeking to interview the minister.

A reply dated 27 October 2005 drew attention to the transcript of an interview between Minister Nuttall and radio journalist Steve Austin that had been broadcast on ABC Radio 612 on the morning of Monday 11 July, and enclosed notes said to have been used by the minister during the media conference conducted on Saturday 9 July.⁹

The reply concluded:

Lastly, our client desires the CMC investigation be brought to a speedy conclusion. We see no purpose to be served by his volunteering for an interview and thereby prolonging the investigation.

In the course of the 11 July interview between the minister and ABC radio journalist Steve Austin, the following was said:

Nuttall: ... I did ask Mr Copeland on a number of occasions what he was referring to when he said 'issues'. He was referring to, in my view, to an article ... he continually referred, in my view, to an article in the *Courier-Mail*, written by Hedley Thomas. That article was specific around Dr Patel, and on Saturday, I released all the briefs that were provided to me by my department, and all those briefs clearly show that Patel-like issues were never, ever raised with me. So my position hasn't changed. And those --

Austin: You mean issues relating to Dr Patel? Or problems with overseas-trained doctors?

Nuttall: No, no. The issues relating to Dr Patel and the issues around Dr Patel, the Patel-like issues, you know.

Austin: And what are the Patel-like issues?

Nuttall: Well, the Patel-like issues are dodgy registration as a doctor. Um ... getting promoted above his competency at the Bundaberg Base Hospital. And doing surgery beyond his scope and beyond his capacity.

Austin: So you did mislead the Committee; you had been told about that.

Nuttall: No, not at all.

Austin: You had been briefed about that.

Nuttall: No, no. That's what I'm saying. I had not been briefed about that. And the documents I released on Saturday clearly show that. And they are all the briefs that were provided to me by my department since the time I became the minister. So, my position hasn't changed, it's been consistent. And obviously ... um ... obviously

⁹ See Appendix 4 — attached to statement by Mr David Potter.

... I'm not changed on that, you know, and the documents that I released clearly show that.

Austin: How many times did they have to rephrase their question for you, Gordon Nuttall? It was somewhere between twenty and thirty times.

Nuttall: And, Steve, if you look at the Hansard, I continually asked Mr Copeland what he was referring to when he said 'issues'. And he continued to refer to that article in the *Courier-Mail*. And I continued to say to him ... and as I said, my answers were consistent. I continued to say to him that the issues around Dr Patel were not raised with me by my department, and the documents that I released on Saturday clearly show that.

...

Austin: But if you're asked between twenty to thirty times by the Opposition, it's quite clear what they're trying to find out. It's not rocket science. They want to know what you knew about problems with overseas-trained doctors.

Nuttall: No, Steve, no. Look, there was a deliberate attempt by them to muddy the waters. And ... you need ...

Austin: I think it looks the other way around.

Nuttall: Yeah, I know that, Steve, I know that. But if you look at Hansard, and you will see that I asked Mr Copeland ... Mr Copeland continued to refer to the article that was written by Hedley Thomas in the *Courier-Mail*.

Austin: If that was the problem though, Gordon Nuttall ... then why is it your adviser, Dr John Scott, had no problem at all understanding the question and was able to answer it with one answer?

Nuttall: Well, I'm ... I'm ... look Steve. That's a matter for Dr Scott. And ... but I am very clear, and very confident about what I said.

Austin: Minister, I must say, this sounds like a pretty quick rewriting of the events. Your adviser, your senior adviser, Dr John Scott, was very, very clear. And he seemed to have none of the difficulties answering the question that you're now saying you did.

Nuttall: No Steve. He ... he was ... he was interrupted in his question ... in his answer. And then he was asked, did you ... oh look, I haven't got the Hansard with me, but he was asked, did you raise issues around overseas-trained doctors with the minister? And then when they came back to the question ...

Austin: And that's clear. That's the English language. It's a pretty clear question and answer.

Nuttall: Yeah that's right, that's right. And ... and ... and I have said, and I have said, were issues raised with me around overseas-trained doctors? Yes there were. And that's why I released the documents on Saturday. Were there issues raised with me around Dr Patel?

Were there issues raised with me around dodgy registration? About doctors being promoted above their competency to conduct surgery? No there wasn't. And those documents clearly showed that.

Austin: Well, other documents clearly show that you were asked in parliament ... Dr Bruce Flegg, the Deputy Liberal Party leader has released a statement showing that you were asked about competency, qualification, and language skills of overseas-trained doctors not once, not twice, not three times, but at least four times between April and August last year.

Nuttall: Hmm.

Austin: You misled parliament or did you misunderstand the question?

Nuttall: No, not at all. Not at all. My position ...

Austin: Did you misunderstand the questions Dr Bruce Flegg put to you in parliament?

Nuttall: Not at all. My position with that was very consistent and I, I think you'll find in the Hansard, those questions that were raised by Dr Flegg, I clearly indicated to him that they were matters that the Medical Board needed to be addressed. And if you look at the briefs that were handed to me during my ... between February and July ... February of last year and July of this year, every issue that was raised with me around overseas-trained doctors, those issues were addressed. And that clearly shows that in the documents that were released on Saturday.

Austin: You also had the report prepared by Dr Lennox ... which clearly showed there were major problems, which has been tendered as evidence in the Morris Royal Commission.

Nuttall: No. Sure. Steve, two things on that. The Dr Lennox report was prepared in 2003, and the Dr Lennox report was dealt with in 2003, ... wasn't dealt with by me as the minister. That was never given to me as the minister.

Austin: But you're the minister --

Nuttall: So it wasn't dealt with by me.

Austin: -- who has to deal with the problems it raised, which were quite significant, as we now know from the Royal Commission. It's ... sure these reports don't just sit on shelves in the Health Department and gather dust and nothing happens with them?

Nuttall: Sure. Sure. Sure. But ... but Steve, what I say is, that they were issues in 2003. If you look at the briefing material that was supplied to me, as I clearly said, you know, were issues that were raised by the AMA. Did we deal with them? Yes we did. And that's in the brief. And that clearly showed the action that we took on each occasion issues, um, that were raised, that were clearly dealt with. And that's in those documents.

...

Austin: Do you concede that you were asked four times in parliament between April and August last year about overseas-trained doctors with their competency, with their language proficiency, and with their qualifications?

Nuttall: And on all occasions, as I indicated, in the documents that I released on Saturday, we've addressed those issues.

...

The minister acknowledged having received briefings in respect of general issues regarding overseas-trained doctors.

Briefing papers

In a written statement, dated 30 August 2005, submitted on his behalf to the Morris Inquiry, the minister formally responded to questions posed of him by counsel assisting that inquiry. The statement dealt with, in part, the issue of what information had been conveyed to the minister in briefings by his department about issues relating to overseas-trained doctors.

While a complete copy of the minister's statement is attached,¹⁰ the following extracts are relevant:

Question posed by Counsel Assisting:

Was the minister briefed about: ...

(d) Erratic standards among overseas-trained doctors; ...?

Response:

53 When I became Minister for Health I was provided with a briefing folder containing issues for the incoming minister. This briefing folder dated 5th February 2004 at page 28 noted one of the issues as being that of overseas-trained doctors. (Attachment 4 is the front page, index and page 28 of the briefing) I was advised that Queensland Health had a high reliance on overseas-trained doctors with approximately 30% of its medical workforce being trained overseas. I was advised that many overseas doctors had difficulty with the English language and cultural assimilation. The competence of some of the international graduates was stated to be "questionable". However, I was advised that Queensland Health would fund and manage the centre for overseas-trained doctors from July 2004 to facilitate the processes of screening, recruiting and preparing such doctors for employment in the Queensland Health public hospitals.

54 On 16 February 2004 I received a written briefing referring to the issue of overseas-trained doctors and advising me of the initiatives by the Australian Government through the Medicare Plus package to address the issues. I was advised by way of background that Queensland Health had been involved in the development of the initiatives (Attachment 5). These initiatives included:

- Queensland Health has financially supported the Centre for Overseas Trained Doctors (COTD) since 1996, specifically to facilitate the processes of screening, recruiting and preparing OTDs for employment in Queensland Health Public Hospitals. The COTD provided over 80 assessed and oriented OTDs to Queensland Health in 2002.
- the General Manager Health Services has approved the relocation of the COTD, from the University of Queensland, to the Queensland Health Skills Development Centre from 1 July 2004.

¹⁰ See Appendix 6 — Statement of Minister Nuttall to Queensland Public Hospitals Commission of Inquiry.

- A joint Queensland Health/AMAQ Working Group was established to specifically address issues pertaining to TRDs [Temporary Resident Doctors]. This was an inter-agency committee comprising representatives of Queensland Health, AMAQ, the Medical Board of Queensland, COTD, the Australian Government Department of Health and Ageing, and the Department of Immigration, Multicultural and Indigenous Affairs.
 - this committee has met three (3) times with the latest meeting being in July 2003
 - there are no further meetings planned for this committee due to the establishment of a similar committee, with broader representation, by the Royal Australasian College of General Practitioners.
- The Medical Board of Queensland is introducing English language testing as a mandatory requirement for overseas-trained doctors from May 2004.

55 This briefing note (attachment 5) summarised the key issues as follows:

- The Royal Australian College of General Practitioners (RACGP) has convened a group of key stakeholders to address public concern regarding quality clinical care and OTDs.
 - membership of this group includes representatives from QH, AMAQ, COTD, RACGP, Rural Doctors Association of Queensland and Queensland Rural Medical Support Agency.
 - at this stage, this group has met once but it is planned to continue.
- The Australian Government Department of Health and Ageing has established a Taskforce to address issues relating to OTDs. Queensland Health anticipates to develop further strategies for the management of OTDs based on work completed by this Taskforce.
- Initiatives of the Australian Government's Medicare Plus package are aimed at addressing issues relating to OTDs. Queensland Health is involved with the development of these initiatives and does not plan to expend resources on concurrent processes. The Medicare Plus initiatives include:
 - International recruitment strategies aimed at improving the coordination and consistency of current recruitment arrangements, such as assessment and pathways to entry into the Australian workforce.
 - Reduction of 'red tape' in approval processes aimed at streamlining the requisite approval processes for OTDs entering the Australian workforce, such as AMC examination processes, Australian and State Government processes for assessing areas of workforce shortage and recognition of overseas-trained specialists' qualifications.

- Assistance in arranging placements of OTDs which will support the establishment of a national information and referral service for OTDs, to assist OTDs efficiently navigate through the various approval processes leading to entry into Australia, registration/ recognition and employment.
- Improved training arrangements aimed at providing access to training opportunities for OTDs who require additional training prior to obtaining recognition by the relevant Australian medical college and medical registration board.
- New immigration arrangements aimed at expanding on existing visa options aimed at encouraging TRDs [Temporary Resident Doctors] to provide medical services in Australia for longer periods and to participate in further training so they achieve permanent residency.

56 In my speeches at parliament in 2004 I continually raised my concerns about the lack of student places in our universities to train young Australians in the medical profession. Our reliance on overseas-trained doctors in my view stems from poor workforce planning back in the 1980s. Due to the decentralisation of our State we rely on overseas-trained doctors more than any other jurisdiction.

57 Arrangements were put in place shortly after my swearing in as a minister to meet several times a year with the Australian Medical Association (AMA) and the Rural Doctors Association of Queensland (RDAQ) so that we could regularly communicate about health matters in Queensland.

58 Immediately preceding their meetings with me as the minister, my director-general and/or the Director of Health Services would meet with the AMA and RDAQ to address their agenda items. It is my understanding that the department would deal with the matters on the agenda and respond accordingly.

59 At the meetings between the AMA and myself and the RDAQ and myself, the director-general and/or the Director of Health Services would also be in attendance. There was a broad discussion around the agenda items with an understanding by all the parties that the matters would be followed through by the department and that if there were any problems they were welcome to contact me.

60 In matters pertaining to overseas-trained doctors that were raised in these meetings my department supplied me with a number of written briefs which outlined actions that were being taken to address those matters. All of these documents were provided to the Commission of Inquiry prior to the commencement of hearings. None of these written briefs have shown anything that would raise concerns requiring ministerial intervention. None of these briefings indicated to me as minister any warning or alarm that there were overseas-trained doctors like Dr Patel operating in our system.

61 In addition these briefs did not contain any significant matters that were not being addressed at a State or Commonwealth

level. It was always my desire to ensure that the matters that were raised by the relevant parties were resolved in a collaborative way.

62 I was aware that the Australian Medical Association (AMA), the various colleges of specialists (doctors' professional associations) and the medical registration authorities were working with Queensland Health to address the supply, support and skills development of doctors who were recruited as Area of Need doctors to work in the public and private sector in Queensland. Workforce issues such as these were also discussed at a national level under the umbrella of the Australian Health Minister's Advisory Committee (AMHC). The states and territories would be represented at AMHC by the CEO of the various departments of health.

As already mentioned, on Saturday 9 July 2005 the minister published a bundle of documents which he said evidenced the extent of information briefed to him by Queensland Health (concerning overseas-trained doctors) from the time he assumed his ministerial portfolio.

A copy of the bundle of documents was, in turn, provided by a journalist to a staff member of the Office of the Leader of the Opposition. The bundle of documents eventually made its way to the CMC. One document not contained in the bundle was (the relevant extract from) the 'Briefings folder for Incoming Minister for Health', dated 5 February 2005 referred to above. The minister's statement to the Morris Inquiry of 30 August 2005 confirms that he received the relevant briefing.

The investigation has identified the following instances where briefings provided to the minister had touched upon the issues concerning overseas-trained doctors:

5 February 2004: As part of the comprehensive brief compiled for incoming minister

The competence of some international graduates is questionable.
... Queensland Health will fund and manage the Centre for Overseas Trained Doctors from July 2004 to facilitate the process of screening, recruiting and preparing OTDs for employment in Queensland Health public hospitals.

16 February 2004: Briefing paper to the minister regarding meeting with AMAQ

Overseas Trained Doctors (OTDs)¹¹

Background

Media coverage last year highlighted a number of issues pertaining to overseas-trained doctors (OTDs) / temporary resident doctors (TRDs), including a perceived lack of: competence; assessment prior to employment.

10 March 2004: Briefing paper to the minister regarding proposed meeting with Australian Salaried Medical Officers Federation, Queensland

ASMOFQ raised concerns regarding the screening process of overseas-trained doctors employed by Queensland Health.

¹¹ The issue of OTDs was the first of seven items canvassed in the briefing paper.

The concern is based on perceived poor language and communication skills held by some overseas-trained doctors. To address this and other issues regarding overseas-trained doctors, the AMAQ — Queensland Health Overseas Trained Doctors (AMAQ–QH OTD) Sub-Committee was established and meet on a semi-regular basis.

9 June 2004: Briefing papers suggesting possible suitable responses to questions likely to be posed of the minister during Estimates hearings, 2004¹²

14 July 2004: Briefing paper to minister regarding 'Contentious Issues with the AMAQ'

An academic from Monash University, Bob Birell, released a report last week (6 July 2004) 'Medicare Plus and Overseas Trained Doctors'. Media reports indicate this report raises issues that have been raised through a number of channels in the last 12 months namely:

- the increasing numbers of overseas-trained doctors coming from non-English-speaking countries
- concern about the lack of pre-employment assessment of overseas-trained doctors.

A Queensland overseas-trained doctors stakeholder forum has been established to address public concern regarding quality clinical care and overseas-trained doctors.

In addition, there are instances where the minister's response to questions raised in parliament strongly suggests both that the minister was aware of concerns that had been expressed as to the competency of overseas-trained doctors, and that information on that issue had been conveyed to the minister by Queensland Health both before the Patel scandal became public on 22 March 2005 and after. The following instances are relevant:

11 May 2004: Question on notice 328 (Question by Dr Flegg)

Question: Will he [Minister for Health] detail the total number of internationally trained medical officers currently employed in Queensland Health facilities that have not yet passed the Australian Medical Council's examination?

Answer: Overseas-trained doctors who are working temporarily in Australia are not required to sit the Australian Medical Council's examination.

18 May 2004: Question without notice (Question by Dr Flegg)

Flegg: My question is to the Minister for Health. There are overseas-trained doctors currently working in Queensland public hospitals who have only recently been asked to pass even a low-level basic English test and have not passed the Australian Medical Council examination at all. This test is designed to demonstrate basic medical competency and is comparable to the

¹² It has been contended that, as the suggested responses were not relied upon by the minister, disclosure of the documents would breach parliamentary privilege. The minister has not waived that privilege.

level of a final-year Australian university medical exam. I ask: why are Queenslanders being treated by people in public hospitals who have not passed even a basic medical competency exam?

Nuttall: Firstly, in relation to the issue of the doctors' competency, I am sure that Queensland Health takes the appropriate steps to ensure that those doctors are competent enough to do their work. However, in relation to the matter that the member has raised, I will find that out. The big question is: why do we have to have overseas doctors? We have to have overseas doctors simply because the member's colleagues in the federal government will not open up enough university places for young people to study medicine in this country.

19 May 2004: Question on notice 5 15 (Question by Dr Flegg)

Question: Will he [Minister for Health] detail for 2001–02, 2002–03 and 2003–04 (report separately) the total (a) number of medical negligence complaints lodged, (b) number of medical negligence complaints settled/final determination against doctors working in the Queensland public health system, (c) value of medical negligence complaints settled/finally determined against doctors working in the Queensland public health system, and (d) number of complaints made that involved overseas-trained doctors?

Answer: The data that Queensland Health collects on individual health litigation claims is subject to legal professional privilege and public disclosures of this information may compromise management of these claims. Queensland Health does not collect specific data in relation to the qualifications of doctors involved in complaints or medical negligence claims and is therefore unable to provide collated information on whether or not overseas-trained doctors are involved in complaints or medical negligence claims in relation to public health services.

15 June 2004: Question without notice (Question by Mr Quinn)

Quinn: My question is addressed to the Minister for Health, and I ask: do overseas-trained doctors employed in Queensland public hospitals require qualifications from a medical school recognised by the Australian Medical Council or do they just need a qualification from a recognised university?

Nuttall: I thank the Honourable Leader of the Liberal Party for his question. It is an important question and one that needs to be clarified. As I have said in this parliament before, there are 5000 young people who actually qualify to study medicine but we have only 1500 places available. That means that 3500 young people miss out. Unfortunately, that then requires us as a government to recruit overseas-trained doctors. Our figures differ, but last year over 1200 overseas-trained doctors were brought into Queensland. The federal government made a commitment for an extra 246 university places for 2004–05. That is not enough

and that means we will continue to have to recruit overseas-trained doctors.

The Medical Board of Queensland actually registers those doctors with qualifications that are suitable to allow practice in Queensland. It is actually the Medical Board that does the registering. The board verifies the qualifications of these overseas-trained doctors who do seek medical registration. The temporary resident doctors that seek specialist recognition are also assessed through the respective specialist medical colleges. The Medical Board of Queensland considers the college's assessment when determining registration eligibility.

Temporary resident doctors seeking unconditional general registration are required to meet Australian Medical Council standards. The Centre for Overseas Trained Doctors assesses and orientates permanent resident overseas-trained doctors for employment by Queensland Health through their preparation for employment courses. Queensland Health recruitment processes in the selection of overseas-trained doctors include an assessment of qualifications and experience by our districts to ensure that the doctor is able to meet the demands of the position being filled. Again I stress that the Medical Board of Queensland is the one that registers these doctors.

19 April 2005: Question without notice (Question by Mr Copeland)

Copeland: My question is addressed to the Minister for Health. Now that the minister has had three weeks in which to investigate and given his statement that all overseas-trained doctors have been audited, will he stake his ministerial career on a guarantee that all overseas-trained doctors working in Queensland Health hospitals today are appropriately qualified?

Nuttall: All overseas-trained doctors who are working in our hospitals are assessed by the Medical Board prior to commencing work in our hospitals. I outlined that this morning in my ministerial statement. This morning I tabled a number of documents which outlined what we will do to tighten this up. This is a national standard. It is not just a standard that applies in Queensland. It is a national standard. I am happy to outline it at a later date.

Copeland: You have constantly warned about it and you haven't done anything.

Nuttall: That is simply not correct. I am very happy to go through what we have been doing in relation to overseas-trained doctors since I was appointed as minister.

The issue surrounding overseas-trained doctors has been ongoing for some time. The important thing here is what we are going to do to ensure — and I want to answer the particulars of the honourable

member's question — that the overseas doctors who are currently in the system are okay. I met with the national president and state president of the AMA on Sunday. I asked the Medical Board to again meet with those good people yesterday. I understand the Medical Board CEO and chair met with the state president of the AMA. We now have an agreement with the AMA that the chairs of the colleges, together with Queensland Health, will form a group and determine how we will assess and the time frame for assessing the skills of the existing overseas-trained doctors both in the public and private sector. We will assess to ensure that the skills that they currently have and are using in both the health department and the private sector are adequate and that they have appropriate training. Where that training is lax we will take the appropriate steps to ensure that their skills are upgraded. I appreciate that this is an important issue. That is why we are taking the steps we are. That is what I have outlined to the House today.

19 April 2005: Question without notice (Question by Dr Flegg)

Flegg: My question is addressed to the Minister for Health. The minister has been aware since early last year that hundreds of overseas-trained doctors bypass any test of Australian standards to work in Queensland. In fact, they can fail the test and continue to work in Australia. In fact, I warned the minister about that fact in this place last May and he assured this parliament that Queensland Health would not employ incompetent doctors. How can the minister continue to duck his ministerial responsibility regarding the situation in Bundaberg? How can the minister continue to resist calls for an inquiry into other medically incompetent and untested doctors?

Nuttall: At no stage am I trying to duck my responsibilities. I make that very clear to the House. That is the first and foremost thing that I want to say. Dr Patel was not employed while I was the minister. He was employed [interjections] the member has asked a question about doctors being employed while I was the minister. I am simply answering that. In relation to the other issues raised by the honourable member, they are national standards. He is well aware that they are national standards.

Flegg: These are Queensland standards. You changed the Medical Act in 2002.

Nuttall: When we have national standards, we are part of that.

Flegg: These are Queensland standards.

A/Speaker: I warn the member for Moggill under standing order 253. ...

Nuttall: The criteria for the selection of overseas-trained doctors are a national standard. That is the reality, whether one is in Queensland, New South Wales,

South Australia or anywhere. Given what has happened — and we have not stood still on the issue of overseas-trained doctors — what we have done, as I have already outlined today --

Flegg: I rise to a point of order. The minister is misleading the House.

A/Speaker: The member will resume his seat. I said this to the member for Moggill on the last Thursday that we sat. I will make the same point, but I will not repeat it a third time. From this chair I do not have the capacity to judge the truthfulness of what a minister says. The member is not making a point of order. ...

Nuttall: I shall outline to the honourable member what we have done in relation to overseas-trained doctors so that the House clearly understands that we have not ignored the issue of overseas-trained doctors and the issue of their training. As early as August 2002, Queensland Health joined a national approach to the matter of overseas-trained doctors through the Medical Training Review Panel. The work of the panel resulted in the formation of an overseas trained doctor task force which examined a range of issues including recruitment, training, clinical competencies, language competency, registration ... *[Time for the minister's response expired.]*

20 April 2005: Question without notice (Question by Dr Flegg)

Flegg: My question without notice is to the Minister for Health. I refer to his media release issued last night where he made the breathtaking claim — 'The government has acted quickly and appropriately whenever questions have been raised about the standard of doctors in Queensland.' I also refer to the fact that the government has ignored repeated warnings, including those from the minister's department dating as far back as July 2003 and those from the Rural Doctors Association, the AMA, courageous whistleblowers like Toni Hoffman and me in this place. In the light of such an outrageous claim, how can anyone take the minister or this government seriously? Is this not further justification as to why we need the inquiry to be statewide, with sweeping powers and legal protection for witnesses?

Nuttall: I thank the honourable member for his question. I pointed out yesterday that there are a number of initiatives that we have --

Dr Flegg interjected

A/Speaker: Order! The member for Moggill has just asked his question.

Nuttall: On each occasion there is a complaint against a doctor — whether it be in the public or private system — the Medical Board investigates it. The member is well aware of that.

Dr Flegg interjected

A/Speaker: Order! I warn the member for Moggill under standing order 253.

Nuttall: As I have said, when there are complaints against doctors they are appropriately investigated by the Medical Board. The member is well aware of that. So it is wrong of the member to say that matters are not investigated or not checked. They are investigated and they are checked out appropriately and properly by the Medical Board. That is the appropriate thing to happen.

Opposition member: You did nothing for 12 months.

Mr Nuttall: I am happy to go through exactly what we have done in terms of looking after overseas-trained doctors in the last 12 months and the new stringent conditions that we have now put in place. I am happy to do that. As a society we need to be very careful where we go with this debate. At the moment we are maligning all overseas-trained doctors. That is what is happening in our society. We all know that doctors, whether they are overseas or Australian doctors, make errors like everybody else.

The Medical Board is there and the Health Rights Commission is there to assist people who believe that they have been mistreated by doctors. The Medical Board is there to assess doctors who are not performing to the appropriate standards. That continues to happen to this day.

Apart from the formal briefing papers, and the minister's oral statements to the parliament, there is other evidence indicating that the minister had been apprised of concerns relating to overseas-trained doctors. There is, for example, correspondence sent under the minister's hand:

13 July 2005: Letter from Minister Nuttall to Mr Jim Pearce MP, Member for Fitzroy

On 7 June 2004, Mr Pearce had written to the minister:

I write with reference to the issue of overseas-trained doctors which was raised with me by the Opposition during Question Time of 18th May 2004.

With regard to the Opposition's claims that there are some overseas-trained doctors operating in public hospitals who have not passed a basic medical competency exam, I note your response that you would investigate these claims further.

This issue has been raised with me by a number of interested constituents and with respect, I would therefore appreciate your further comments and advice on the issue of overseas-trained doctors working in the public system so that I may allay the concerns held by some of my constituents.

On 13 July 2004, the minister replied:

Thank you for your letter dated 7 June 2004, regarding overseas-trained doctors.

I note your reference to claims by the Opposition, and concerns held by some of your constituents.

... Prior to commencing work in Queensland, overseas-trained doctors are required to be registered with the Medical Board of Queensland. The *Medical Practitioner's Registration Act 2001* requires the Medical Board of Queensland to register only those doctors with suitable qualifications. In addition to having a medical degree, the Medical Board of Queensland also requires overseas-trained doctors to provide evidence of their English language proficiency and have designated the International English Language Testing System (IELTS) as the designated test of English proficiency.

In addition to the Medical Board of Queensland's requirements, recruitment processes by the employing service/facility include an assessment of qualifications and experience in relation to the position being filled. ...

4 February 2005: Letter from Minister Nuttall to Dr Paul Cotton, Chair of Fraser Coast District Health Council¹³

On 6 December 2004, Dr Cotton had written to the minister:

... Accordingly, the Fraser Coast District Health Council wishes to bring their concerns to your attention and considers that it is imperative that processes be put in place to ensure that overseas trained medical officers recruited by Queensland Health have the necessary English communication and clinical skills necessary to provide the high quality of clinical services expected by the community.

On 4 February 2005, the minister replied:

Thank you for your letter dated 6 December 2004, regarding the English language and clinical skills of overseas-trained doctors.

I note the Council's concerns and the communication difficulties experienced by patients, General Practitioners and other health professionals. I am pleased to advise that a number of initiatives targeting these issues are being put in place.

... I am confident the multi-pronged approach and the communication occurring through the above initiatives will result in improved preparation and support for overseas-trained doctors.

Further confirmation that the minister was briefed by Queensland Health concerning the question of competency of overseas-trained doctors can be found in an email from a member of the minister's staff to a Queensland Health officer, dated 19 May 2004.

On the previous day, 18 May 2004, in a speech to the parliament, Dr Flegg questioned the standards by which overseas-trained medical practitioners were tested before being permitted to practice medicine in Australia. Dr Flegg had said, in part:

¹³ See Appendix 3.

... As reported in the *Courier-Mail* on 3 November 2003, Dr Stable, Queensland Health's Director-General, said that the market for doctors had changed recently and we are receiving applications from poorer and poorer countries around the world. It is only this month that the requirement for a compulsory English test has been introduced in Queensland, and this requirement is not being backdated and is only to a language skill level 7 — in other words, broken English.

The Health Minister's predecessor received a report from the Queensland Health medical adviser for rural health services, Dr Denis Lennox. Dr Lennox identified grave concerns regarding overseas-trained doctors being plucked from Third World countries with a bare minimum of screening. He urged the minister to back a new system which demands mandatory vocational qualifications to protect the community from incompetent medical practice and consequent adverse outcomes.

...

There are a large number of experienced and respected clinicians who have gone public on their serious concerns about this matter. We have all witnessed the bullying of Queensland Health employed doctors who can in effect now only speak through professional organisations. ...

The next day, Ms Leisa Elder,¹⁴ then a senior media adviser in the minister's office, sent an email to the Senior Departmental Liaison Officer in the following terms:

Paul — we've taken a look at the longer speech by Flegg yesterday at 11.30 am — and the Min feels the QTB [Question Time brief] on overseas doctors doesn't directly answer his question of whether we aren't meeting the requirements in employing overseas doctors who aren't meeting standards, regardless of the info in the QTB to say we're providing extra training for them once their employed.

Does that make sense?

Leisa Schultz
Senior Media Adviser
Office of the Minister for Health

The speech by Dr Flegg and the subsequent email is significant in several respects. Firstly, the email suggests that the minister had previously been briefed by Queensland Health in respect of the issue of competency of overseas-trained doctors, and was concerned that a particular Question Time Brief was not sufficiently detailed. Secondly, Dr Flegg's speech specifically referred to Dr Lennox's report (and the fact that Dr Lennox's report had 'identified grave concerns regarding overseas-trained doctors').

¹⁴ Ms Schultz is now known by the surname Elder.

Summaries of interviews

Mr Hedley Thomas

In a statement provided to investigators, Mr Hedley Thomas outlined his recollection of discussions he had with the minister leading up to publication of two articles written by him on 30 April 2005. Mr Thomas has provided a copy of his handwritten notes of the discussion, together with a typewritten transcript of same.

By way of background to the articles, Mr Thomas explained that in November 2003, the *Courier-Mail* published articles he had written based upon the 'leaked' report prepared for Queensland Health by Dr Lennox.

On 8 April 2005, Mr Thomas had a brief discussion with the minister. This discussion formed the basis of an article published in the *Courier-Mail* the next day, 9 April 2005. It is Mr Thomas' recollection that when he spoke to the minister on 8 April, the minister claimed to have no knowledge of Dr Lennox's report.

Mr Thomas subsequently interviewed the minister on 27 April 2005 — the day after the Government's announcement that a Commission of Inquiry was to be established in relation to allegations concerning Bundaberg Base Hospital. This interview was conducted during a flight on the government aircraft, when Mr Thomas accompanied the minister on a visit to Rockhampton.

Mr Thomas says he used the statements made by the minister during the flights of 27 April 2005 as the basis for his articles that were published on 30 April 2005.

In his statement to investigators, Mr Thomas recalls that on 27 April 2005, he questioned the minister over concerns about overseas-trained doctors, including the concerns that had been identified in Dr Lennox's report touching upon the competency of overseas-trained doctors. Mr Thomas says that he specifically referred to Dr Lennox's report when speaking with the minister.

The handwritten contemporaneous notes prepared by Mr Thomas provide a verbatim account of the minister's responses, and are set out in chronological sequence as follows:

In all my briefs given to me when I became minister, all the briefs were by way of senior management coming in and talking to me about their issues, and this issue over OTDs was never raised. Never ever raised.

There was always the issue about how we had to import so many doctors because we did not have enough. It's why we have a Medical Board. That's its charter and job. It's there to assess these things.

I have to say that I really believe that people were too reliant on the Medical Board. I think that because of the way the mechanism was in place, with this other body separate from my

own department. So in fairness to my department, I think that's why.

When I took over in '04, nobody said to me 'we have a report here from '03 about problems with OTDs'.

Nobody did that.

And that Medical Board and that process has been in place for a number of [years] ...

When compared to the notes, the article subsequently published on 30 April 2005 and referring to the minister's claims appears to provide a fair recitation of what the minister is said to have told Mr Thomas.

Dr John Scott

Dr John Scott was interviewed on 14 October 2005.

Dr Scott had been employed by Queensland Health from 1994 until August 2005. At the time his employment ceased, Dr Scott occupied the position of Senior Executive Director of Health Services. In that capacity he reported to the director-general. His role was akin to that of a deputy director-general. He had regular interaction with the minister, with whom he says he enjoyed a good working relationship.

According to Dr Scott, in the period following the 2004 general election and the appointment of the minister to the Health portfolio, he was responsible for preparing a number of briefings for the minister. Dr Scott recalled that the minister's preference was for briefings to be written, but occasionally, briefings were delivered orally.

Dr Scott indicated that Queensland Health operated to a 'no surprises rule', meaning that the minister (directly, or through his advisers) was given advance notice on issues of potential concern. The briefings to the minister regarding overseas-trained doctors were general in nature, and unlikely to have involved matters that required ministerial action. One exception related to correspondence from the Chair of the Fraser Coast District Health Council, which identified concerns about overseas-trained doctors. A response [see above] was forwarded under the minister's hand, outlining strategies implemented by Queensland Health to address issues relating to overseas-trained doctors.

As to the newspaper article published by the *Courier-Mail* on 30 April 2005 (i.e. the article about which Minister Nuttall was questioned during his appearance before the Estimates Committee), Dr Scott said he had concerns at the time of publication as to the suggestion that the minister had not been given briefings about overseas-trained doctors as he knew such briefings had been given. He discussed those concerns with the director-general and with the minister's senior media adviser, but not the minister.

So far as his testimony before the Estimates Committee hearing was concerned, Dr Scott said that there had been no plan for him to answer questions. He did not think he would be asked the question and did not have time to think about the answer he was going to give. He stands by the response he gave before the Estimates Committee hearing.

Dr Scott recalled that during the mid-morning break in proceedings — shortly after his response — the minister congregated with his staff, while Dr Scott remained with the Queensland Health delegation.

Dr Scott says he never subsequently spoke to the minister concerning the answer he gave during the Estimates Committee hearing.

On 27 July 2005, Dr Scott was informed by the new Director-General of Queensland Health that his position was to be restructured. Dr Scott declined an offer of the role of Chief Health Officer (at the same classification) and resigned.

Dr Stephen Buckland

Dr Stephen Buckland was also interviewed on 14 October 2005. Dr Buckland had been the Director-General of Queensland Health from April 2004 (having acted in the position from early November 2003), until his services were terminated in July 2005.

As director-general, Dr Buckland had close and regular contact with both the minister and the minister's staff. This contact was both formal and informal in nature. The director-general was required to meet with the minister at various times during the working week to discuss departmental business and brief the minister on issues thought to be of relevance. The majority of briefings were delivered orally, and the pair often discussed relevant issues whilst travelling together.

Similarly, the director-general had many discussions with the various members of the minister's staff, including policy and media officers. Such discussions were usually informal and concerned matters of interest that had arisen or were thought likely to arise.

It was also Dr Buckland's policy that the minister should have access to any departmental officer. In other words, it was not necessary for information destined for the minister to be filtered through the director-general. A consequence of this policy was that it was possible for the minister (or member of the minister's staff) to contact particular departmental staff without the matter necessarily being made known to the director-general. Accordingly, Dr Buckland said he would not be aware of all discussions between the minister and departmental officers, although the more significant or urgent issues were required to be brought to the attention of the director-general.

According to Dr Buckland, the majority of the interaction and discussions between ministerial staff and the department went through Dr Scott. As a consequence, rather than being briefed by the director-general, the minister was more often briefed by Queensland Health officers, particularly Dr Scott. The Senior Departmental Liaison Officer routinely dealt with day to day inquiries from ministerial staff, usually by way of responding to emails sent by ministerial staff.

Dr Buckland's recollection was that there was a large number of briefings provided to the minister, and that some of those briefings concerned issues surrounding overseas-trained doctors. He believed that such briefings related in the main to general issues, and he cannot say whether the minister read any or all these briefings.

Dr Buckland recalled the publication of newspaper articles in November 2003 concerning the Lennox report as 'front page news.' Notwithstanding, the Lennox report was not produced to or discussed with the minister when he assumed the Health portfolio in February 2004.

According to Dr Buckland, although the article by Hedley Thomas published on 30 April 2005 caused a degree of anxiety within Queensland Health, he could not recall having discussed the article with the minister, nor with Dr Scott.

On 8 July 2005, Dr Buckland attended the hearing conducted by Estimates Committee D, accompanying Dr Scott, Ms Leisa Elder, and other departmental officers. Dr Buckland recalls speaking to the minister prior to the hearing, when they discussed the Dr Patel matter and issues related to the Morris Inquiry. The subject of overseas-trained doctors did not arise in this discussion.

During the course of the proceedings, Dr Buckland sat at the main table, alongside the minister and Dr Scott. Shortly after the minister had been asked the questions concerning the issue of overseas-trained doctors, Dr Buckland moved towards Ms Julie Dahl, a senior policy adviser, who was seated nearby. He scribbled the words 'he knows' on a piece of paper and handed the paper to Dahl. (Dr Buckland said he believes this occurred before the morning break in proceedings.) He did not speak to Ms Dahl, and does not know if she brought the notation to the attention of the minister.

During the subsequent break in proceedings, Dr Buckland spoke with the minister regarding the minister's answers to Mr Copeland's questions. He said words to the effect, 'We talked about this before. If you're specific about Patel there's no problem with what you're saying.' According to Buckland, the matter was not discussed further, and the minister moved off with his staff.

Later that day, Dr Buckland was advised that the minister had requested the department to provide a copy of all briefings provided in respect of overseas-trained doctors during the minister's tenure. That material was provided to the minister's office late in the day. Dr Buckland later learned that the minister published that material during a press conference.

According to Dr Buckland, following the proceedings before the Estimates Committee, the relationship between the minister's office and his office became 'fairly tense'.

Dr Buckland later learned that the Premier had criticised Dr Scott, and suggested Dr Scott's statement to the Estimates Committee had been motivated out of displeasure at the Government's withdrawal of legal support for Dr Peter Leck and Dr Darren Keating (who, at that time, were pursuing action in the Supreme Court that eventually resulted in the termination of the Morris Inquiry).

Mr Cameron Milliner

Mr Cameron Milliner was, until 13 July 2005, employed as a senior media adviser to the minister. He was interviewed as part of the investigation on 25 October 2005.

At the time of the publication of Mr Thomas's article on 30 April 2005, Mr Milliner was based at Bundaberg assisting with the response team which was formed to assist the patients' support group. He recalled being spoken to by Bundaberg Hospital staff who had concerns about the article and wanted to know if there was a communication issue with the department. Upon Mr Milliner's return to Brisbane, he heard further negative comments regarding the article from the Senior Departmental Liaison Officer and from some people in the director-general's office.

During a daily briefing session with the minister following publication of the article, Mr Milliner expressed a concern to the minister that the article may be viewed negatively by staff within Queensland Health, and he suggested that the minister might consider publishing a statement to clarify his position. According to Mr Milliner, the minister stated that his comments to Mr Thomas had been reported in a broader manner than he had intended. The minister said Queensland Health staff who were concerned by his comments were 'overly precious'.

Mr Milliner was not present in the hearing room for the entirety of the minister's appearance before the Estimates Committee on 8 July 2005. However, he was present for the minister's press conference, conducted during the mid-morning break.

He had become aware that in responding to Mr Copeland's questions as to whether or not the minister had received briefings in respect of overseas-trained doctors, the minister and Dr Scott had provided differing answers.

During the morning tea break, Mr Milliner went with the minister, David Potter (senior media adviser) and Leisa Elder (Queensland Health, Executive Director of Public Affairs and former senior media adviser) to a small room, where a strategy meeting took place. The discussion focused upon the briefs that had been provided to the minister, the article by Hedley Thomas that had been published on 30 April 2005, and the fact that Mr Copeland's questions had focused upon that newspaper article.

Mr Milliner said that during the strategy meeting, the minister had indicated that he could not recall being briefed on any matter that would have caused him to think a problem existed.

Later that day, Mr Milliner became aware that the minister had requested Queensland Health to provide a copy of all briefings previously prepared for his office on issues relating to overseas-trained doctors. (Mr Milliner was aware that the minister's office had no system of recording the briefings delivered to the minister, and that briefing papers were routinely returned to Queensland Health.)

According to Mr Milliner, he personally could not recall any ministerial briefings concerning overseas-trained doctors, but this did not surprise him because the minister's advisers had differing areas of responsibility,

and matters relating to overseas-trained doctors were handled by Ms Julie Dahl.

Mr Milliner pointed out to investigators that 13 July 2005 had been the last day of his employment in the minister's office. On the next day, however, Mr Milliner telephoned the minister to ascertain what had been contained in the briefs disclosed by Queensland Health the previous evening. According to Mr Milliner, the minister said that the briefs had been reviewed, and that they were very general in nature, containing nothing about Dr Patel or Bundaberg.

The minister also informed Mr Milliner that a meeting had been organised with advisers from the Premier's office, and accordingly, Mr Milliner later attended that meeting, where the documents that had been provided by Queensland Health were examined.

Mr David Potter

Mr David Potter was interviewed on 20 October 2005.

During the relevant period, Mr Potter was employed as a senior media adviser to the minister.

Mr Potter recalled travelling to Rockhampton with the minister and Mr Hedley Thomas in late April 2005. Mr Thomas's articles of 30 April 2005 followed the interviews he had conducted with the minister during the course of the Rockhampton travel.

According to Mr Potter, publication of Mr Thomas's articles caused a rift between Queensland Health officers and the minister's office. He recalled that one of the published articles quoted the minister as having stated that he had never been briefed by senior departmental officers about concerns regarding overseas-trained doctors.

Mr Potter explained that he and the minister were concerned at aspects of Mr Thomas's articles, although no action was taken. According to Mr Potter, there was some discussion about whether the minister's office should prepare an internal memorandum asserting that the newspaper report had taken the minister's comments out of context, but the matter did not extend beyond discussion.

On 8 July 2005, Mr Potter was present for the proceedings before the Estimates Committee, but was 'in and out' of the hearing room and did not hear the entirety of the minister's evidence. However, he did become aware of the response provided by Dr Scott, and consequently made enquiries to ascertain precisely what had been said by the minister and Dr Scott.

During the mid-morning break in proceedings, Mr Potter spoke to the minister for the purpose of preparing for a press conference that had been scheduled to take place during the break. Their discussion touched upon how the minister might clarify the apparent conflicting recollections on the part of the minister and Dr Scott.

According to Mr Potter, the minister said that he had understood the questioning to have related to Mr Thomas's article and the issues

affecting Bundaberg and Dr Patel. Mr Potter said he suggested that the minister should clarify his understanding of the questions.

Later that day, following the completion of the Estimates Committee hearings, steps were put in place for Queensland Health to provide a copy of all briefing documents prepared for the minister relating to overseas-trained doctors.

That evening, a bundle of documents was provided by Queensland Health — being the results of a preliminary search of Queensland Health records. A more detailed search was to be conducted by departmental officers.

The next day, Mr Potter arranged a press conference at which the minister published a media release concerning the matter. Prior to the press conference, Mr Potter prepared a two-page document to assist the minister. A copy of the two-page document has been produced to the CMC and is attached to the statement of Mr Potter.

During the course of the press conference, the minister endeavoured to clarify his answers of the previous day before the Estimates Committee. He explained that he had been briefed by Queensland Health about general issues relating to overseas-trained doctors but not about Patel or Patel-like issues. The minister also published copies of some of the briefing papers that had been provided to him the evening before by Queensland Health.

Ms Julie Dahl

An interview was conducted with Ms Julie Dahl on 20 October 2005.

At relevant times Ms Dahl was employed as the minister's senior policy adviser, and in that role saw that a large number of briefs and correspondence relating to a variety of issues came to the minister's office.

She said that although all such briefings and correspondence were addressed to the minister, he would not necessarily see all of the material.

Ms Dahl was on leave at the time of the publication of the Hedley Thomas articles on 30 April 2005, but recalled subsequently speaking to her counterpart within Queensland Health and being asked whether the minister would publish a retraction of his comments. She did not discuss the matter with the minister and he did not issue a retraction.

Ms Dahl explained that in the lead up to the Estimates Committee hearing of 8 July 2005, briefing papers were prepared for the minister by Queensland Health in respect of topics of likely concern. The briefing papers were vetted by senior departmental officers and the minister's staff. In the days immediately preceding the hearing, the minister met with departmental senior executives and his ministerial staff to discuss general issues relating to the estimates process. Ms Dahl was unable to recall specific topics of discussion.

Ms Dahl was present for the proceedings of 8 July 2005. She recalled that while minister Nuttall was giving evidence, Dr Buckland came

over to her and had a conversation. (Ms Dahl was not prepared to reveal what Dr Buckland said, claiming that the conversation attracted parliamentary privilege.) She did not recall Dr Buckland writing anything on a piece of paper.

Following the initial bracket of evidence, the hearing broke for morning tea.

Ms Dahl claimed to have limited recollection of who she may have spoken to during the morning break. She stated she may have spoken to the minister, but cannot recall. She does recall asking David Potter and Cameron Milliner to assist the minister in formulating lines to explain his position.

Ms Dahl recalled that the minister held a media conference during the morning break, and that at one point she went to listen in on the conference.

Following the Estimates Committee proceedings, Ms Dahl spoke to the minister. She has no recollection of discussing the disparity between the minister's answers and the answer provided by Dr Scott. Rather, she recalls the conversation was about their impressions of the estimates process, and that it was 'awful'.

Ms Dahl says she ceased work at 2 pm that afternoon, and travelled away over the weekend. She did not speak to the minister or his ministerial staff until the following Monday, when she prepared a letter for the minister to send to the Chair of the Estimates Committee.

In the weeks following the Estimates Committee, Ms Dahl reviewed the briefing material provided by Queensland Health in respect of overseas-trained doctors. While she had no recollection of specific briefings, Ms Dahl thought the material resembled what had come through the minister's office.

Ms Leisa Elder

Ms Leisa Elder (née Shultz) was interviewed on 31 October 2005.

Ms Elder is employed by Queensland Health as Executive Director of Public Affairs, a position she had occupied since July 2004. Prior to that appointment, Ms Elder had been a Senior Media Advisor on the minister's staff.

Ms Elder recalled the publication of the two articles by Mr Hedley Thomas around 30 April 2005. In particular, she recalled the article suggesting that the minister had not been briefed by departmental officers concerning issues relating to overseas-trained doctors. She explained that she later became aware that the articles had caused some anxiety for departmental officers.

The suggestion that the minister had not received any briefing in respect of issues pertaining to overseas-trained doctors was raised with Ms Elder by the director-general, Dr Scott, and other officers, all of whom considered that the minister had been provided with briefings.

Although Ms Elder can recall speaking with the minister concerning one of the articles published on 30 April 2005, she said she has no recollection of discussing the article suggesting that the minister had not been briefed.

By virtue of her respective roles, firstly on the staff of the minister, and subsequently as an officer of Queensland Health, Ms Elder was able to recall that the subject of overseas-trained doctors had been raised in ministerial briefings, but she could not recall any verbal briefing having been delivered to the minister in respect of concerns as to the proficiencies and competencies of overseas-trained doctors.

Ms Elder was in attendance at the proceedings before the Estimates Committee on 8 July 2005, to provide advice on media issues to both the director-general and the minister. She was present when the minister gave his evidence, and was party to the meeting with the minister during the morning tea break.

During the course of that meeting, Ms Elder told the minister that she believed he had been briefed generally about overseas-trained doctors and that it would be wrong to say he had not. However, the minister did not reply, leaving Ms Elder with the impression he had received contrary advice from his own advisers, and that he was weighing what she had told him against the other advice.

From her experience on the minister's staff, Ms Elder was able to say an extremely large number of briefings were received at his office. The minister and his staff were routinely briefed on hundreds of issues each week.

Generally, briefings received at the minister's office would be vetted by the Senior Policy Advisor (Julie Dahl), who would take appropriate action in respect of day to day business or general matters. The minister would be apprised of only those matters deemed necessary.

Issues and findings open on the evidence

The minister provided answers to questions asked of him during his appearance before a committee of the Legislative Assembly on 8 July 2005. The issues are whether the minister knowingly gave a false answer to a particular question, and whether the question was 'lawful and relevant'.

Lawful and relevant

To constitute an offence against section 57, the false answer must be to a question that was both lawful and relevant to the examination.

The CMC has accepted the views of Messrs Logan SC and Gageler SC that the questions asked by Mr Copeland were both lawful and relevant within the meaning of section 57 of the Criminal Code.

The Commission has accepted this advice notwithstanding opinions to the contrary expressed by Messrs Gotterson QC and O'Sullivan and Mr Fraser QC.

It is clear that the critical questions put to the minister were 'lawful' questions: they were asked by a duly appointed committee member (Mr Copeland) during the course of a proceeding of a duly appointed Committee of the parliament.

The joint advice of Messrs Logan and Gageler explains by reference to constitutional principles and to the established practice of the Queensland Parliament why the questions were 'relevant': they went to the operations of Queensland Health and to the minister's supervision of that department.¹⁵

In addition to this joint advice, the CMC has also taken into account in considering the issue of 'relevance' of the questions, the following statements appearing in the Ministerial Portfolio Statement for the Minister for Health,¹⁶ which was tendered to the Estimates Committee on 8 July 2005:

... The Ministerial Portfolio Statements (MPS) are the primary source of information for the hearings of the parliamentary Estimates Committees. These hearings examine the funding provided in the State Budget to each ministerial portfolio and take place following the presentation of the Budget. The MPS are also used by members of parliament, the media, the public and other interested parties for obtaining information on key strategies and prospective outcomes, and financial performance, of individual Queensland Government agencies in 2005–06. ...

¹⁵ If the parliament determined that criminal proceedings are warranted, evidence of the factual matters relied upon by Messrs Logan SC and Gageler SC in their advice could be placed before the court by an appropriate witness, e.g. the Clerk of Parliament.

¹⁶ *Ministerial Portfolio Statements 2005–06*: <http://www.health.qld.gov.au/publications/corporate/mps2006/MPS_2005-06.pdf>

Health system reform and innovation

Queensland Health has introduced a major program of improvement and transformation, supported by funding provided under the Australian Health Care Agreement 2003–2008 with the Australian Government Department of Health and Ageing. The Innovation and Workforce Reform Directorate was established in July 2004 specifically to lead this program. This program involves delivering on five priority areas:

- improving the standardisation of systems and clinical practice, ensuring best practice including establishing a Clinical Practice Improvement Centre
- developing a culture of safety including establishing a Patient Safety Centre
- using the Skills Development Centre to improve clinical practice standards
- systematically applying innovation through the organisation
- a range of programs aimed at attracting, training and retaining appropriately skilled staff in appropriate numbers, for example, a major leadership development program, workforce reform programs and specific programs to improve management practices and staff morale.

...

OUTPUT PERFORMANCE

OUTPUT: Treatment and Management — Acute Inpatient Services

RELATED OUTCOME: Healthy, active individuals and communities

Description

The Acute Inpatient Services output covers hospital-based medical, surgical and obstetric treatment services provided through a network of public hospitals across the State. Hospital-based health services represent a significant portion of services delivered within the Queensland public health system and expend approximately half of the funding available for health service delivery. Accordingly, an extensive staff requirement of medical, nursing and allied health professionals is essential to provide an integrated continuum of care for all clients admitted to hospital. Queensland Health is committed to increasing equity and access to high quality acute hospital services for clients on a State-wide basis and enhancing tertiary level services in both metropolitan and regional locations.

The CMC also has had regard, in the context of the relevance of the questions, to the statement in the Queensland Cabinet Handbook:

2 Roles and responsibilities

2.1 Ministers

Ultimate responsibility for departmental management rests with ministers who are legally and politically accountable to the parliament for the administration of their department(s).

The nature of the answer

Logically, the starting point is with Mr Copeland's questions, which must be interpreted in the context of the newspaper article of 30 April 2005, particularly the statements attributed to the minister. Having directed the minister to the content of the relevant article, the following exchange took place:

Copeland: Minister, I refer to your statement about the process of recruiting overseas-trained doctors. It was reported in the *Courier-Mail* on 30 April this year that —

Nuttall's position is that he did not know about the widely held concerns over the proficiency of overseas-trained doctors streaming into Queensland, nor did he know, he says, about the worries over the lack of screening of their qualifications because he said nobody, not his director-general, Dr Steve Buckland, his Head of Health Services, Dr John Scott, nor any of their underlings had told him. 'In all the briefings given to me when I became minister, all the briefs were by way of senior management coming in and talking to me about their issues. This issue of overseas-trained doctors was never raised — never ever raised.'

Minister, do you stand by that statement that you were never ever advised by your department of the issues relating to overseas-trained doctors?

Nuttall: What issues are you referring to?

Copeland: About the training, the concerns over proficiencies, the registration of those doctors coming into Queensland or any of those issues regarding OTDs as you were quoted as saying?

Nuttall: I stand by the statement I made.

Copeland: You were never ever briefed?

Nuttall: I stand by the statement I made.

The statement the minister was prepared to stand-by was the one attributed to him in the *Courier-Mail* article of 30 April 2005. It read, in part:

In all the briefings given to me when I became minister, all the briefs were by way of senior management coming in and talking to me about their issues. The issue of overseas-trained doctors was never raised — never ever raised.

A tribunal of fact could properly find that in his answers to Mr Copeland's questions, the minister, by confirming the accuracy of the statement attributed to him in the *Courier-Mail* report, was asserting that he did not know because he had never been briefed by his departmental officers about 'widely held concerns over the proficiency of overseas-trained doctors streaming into Queensland, and ... the lack of screening over their qualifications.'

That the evidence should be read in this light is confirmed by the minister's own attempts at clarification, immediately after Dr Scott's statement which contradicted the minister's:

- Mr Nuttall: ... The issue around the competencies of overseas-trained doctors was never brought to my attention. It was never brought to my attention that there were problems around the competencies of overseas-trained doctors by anyone, and, as I said to you, I stand by that statement.
- Copeland: Thank you, Minister. Dr Scott has just said that his belief is that they indeed were raised with you.
- Nuttall: And I'm telling you they were not.

Upon the resumption of the Estimates Committee hearing following the mid-morning recess, the minister sought for the first time to limit his earlier answers to the context of 'any overseas trained doctor at the *Bundaberg Base Hospital*'. [emphasis added] He said:

- Nuttall: ... My comments in that article related to the situation at the Bundaberg Base Hospital, although they were reported in a broader fashion. ... I want to make it very clear — very clear — at no stage was I briefed about the competency of any overseas trained doctor at the Bundaberg Base Hospital and, as I outlined today, I stand by those comments.
- ...
- Copeland: So you knew nothing about it until the Bundaberg issue was raised?
- Nuttall: Not on the scale — no. Not on that scale. There are always issues that come to you about individual doctors from time to time. Not around the issue of, 'We have a significant problem in relation to the certificate of competencies; we have a significant problem in relation to the skills assessment of the overseas-trained doctors; we have a significant problem in relation to X, Y and Z. No.

There is nothing in the newspaper article of 30 April 2005 limiting the minister's quoted comments to 'any overseas trained doctor at the Bundaberg Base Hospital' or Dr Patel. Equally, there was no such qualification on the minister's assertions 'I stand by the statement I made' in his answers to Mr Copeland prior to the mid-morning recess of the Estimates Committee.

There is an abundance of evidence (referred to above) that the minister, prior to the Dr Patel scandal becoming public on 22 March 2005, knew of such concerns from a number of sources, including departmental briefings. However, the minister told Mr Thomas on 27 April that he had never been briefed by his departmental officers about concerns relating to overseas-trained doctors, including concerns about their competency. He did not attempt to correct this statement after the publication of the Thomas article on 30 April, though aware of concerns among departmental officers that what it reported him as saying was not correct. The minister repeated his claim that he had not been briefed about those matters in his initial evidence to the Estimates Committee. He only changed his position and acknowledged he had been briefed after being contradicted publicly by Dr Scott.

In statements to the media soon after the Estimates Committee hearing, on 9 and 11 July 2005, the minister acknowledged that he had been briefed generally about overseas-trained doctors, but he said he thought the question at the Estimates Committee hearing was about the situation at the Bundaberg Base Hospital.

At no time has the minister claimed he forgot that he had been briefed about concerns relating to overseas-trained doctors. In his comments to Mr Milliner after being told of departmental concerns about the statement attributed to him in the Thomas article of 30 April, he indicated that Thomas had reported him in a broader manner than he had intended. His statements made after being contradicted by Dr Scott at the Estimates Committee hearing appear to be an elaboration of what he had earlier told Milliner, insofar as he thereafter acknowledged he had been briefed but thought he was being asked in the Estimates Committee about narrower issues, namely whether he had been briefed about concerns relating to overseas-trained doctors at Bundaberg hospital or about Dr Patel himself.

There is, however, clearly a question appropriate for resolution by a tribunal of fact whether the minister's answers to the critical questions by Mr Copeland were knowingly false.

In light of the above evidence, the Commission has decided that prosecution proceedings within the meaning of section 49(1) of the *Crime and Misconduct Act 2001* should be considered. For that purpose it has resolved to deliver this report to the Attorney-General so that the Attorney can take it to parliament to obtain direction as to the course parliament wishes to follow — i.e. whether proceedings should be instituted against the minister and, if so, whether they should be by way of prosecution under section 57 of the Criminal Code or by proceedings in parliament for a contempt of parliament.