



health quality
and complaints
commission

POSITIVE HEALTH ACTION

Report of the Health Quality and Complaints Commission

**An investigation into concerns
raised by Mrs De-Anne Kelly MP
about the quality of health
services at Mackay Base
Hospital**

August 2008

Quality of health services at Mackay Base Hospital

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An investigation into concerns raised by Mrs De-Anne Kelly MP about the quality of health services at Mackay Base Hospital

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Health Quality and Complaints Commission
Level 18, 288 Edward Street
Brisbane Qld 4000
GPO Box 3089
Brisbane Qld 4001
Tel: (07) 3120 5999
Website: www.hqcc.qld.gov.au

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Almehti, Dr Raad	Director of Surgery, Mackay Base Hospital.
Anderson, Dr Brent	Referee for Dr Khalafalla. General Practitioner, Medical Director, CAC Clinic, Taranaki, New Plymouth, New Zealand.
Ashraf, Dr Mohammed	Senior Medical Officer, Mackay Base Hospital.
Avramovic, Dr John	Surgeon at Townsville General Hospital who provided oversight to Dr Khalafalla some time between February 2001 and February 2002.
Barker, Dr Coralee	Participated in interview panel for the Royal Australasian College of Surgeons in Melbourne on 9 February 2006.
Barling, Dr Andrew	Provided assessment and oversight of Dr Khalafalla between 2 February 2002 – 31 July 2002 and 31 July 2002 – 3 February 2003.
Bedford, Ms Karen	Level 2 Nurse and Theatre Coordinator. Worked with Dr Khalafalla from March 2005 to August 2006.
Campbell, Dr Graeme	Provided assessment of Dr Khalafalla between 1 February 2002 - 31 July 2002 and 31 July 2002 – 3 February 2003.
Cohen, Dr Jon	General and Colorectal Surgeon, requested by the Health Quality and Complaints Commission to provide an independent, third party opinion regarding Dr Khalafalla's practice.
Collins, Mr John	Dean of Education for the Royal Australasian College of Surgeons in February 2006.
Christophi, Professor Christopher	Chairman of the Board in General Surgery for the Royal Australasian College of Surgeons in November 2003. Later International Medical Graduate Representative Board in General Surgery during Dr Khalafalla's assessment.
Cruceru, Dr Nicolai	Senior Medical Officer in Anaesthetics at Mackay Base Hospital throughout the period of Dr Khalafalla's employment at Mackay Base Hospital.
Davidson, Professor Patricia	Censor in Chief of the Royal Australasian College of Surgeons in November 2003 (evidence of Professor Davidson noted regarding correspondence and interview panels between 2003 and 2006).
Davies AO, Honourable Geoffrey	Queensland Public Hospitals Commission of Inquiry (the 'Davies Report'). The Report provides a comprehensive discussion and analysis of the context in which regional base hospitals operated between 2003 and 2005.

Demy-Geroe, Mr Michael	Former Deputy Registrar/Executive Officer, Medical Board of Queensland 1992 to December 2006.
Donald, Professor Ken	Chaired the Ministerial Taskforce on Recruitment, Assessment and Registration Processes for International Medical Graduates in Areas of Need. Also Assistant Commissioner for the Health Quality and Complaints Commission.
Donnelly, Professor Peter	Director of Surgery, Townsville General Hospital.
Ellison, Dr Anne	Director, Specialist Surgical Training and Assessment for the Royal Australasian College of Surgeons in 2004-2005.
Farlow, Dr David	Acting Executive Director Medical Services, Mackay Base Hospital in January 2007.
Farooq, Dr Asad	Director of Surgery at Mackay Base Hospital when Dr Khalafalla commenced employment but resigned 28 February 2005, continuing as Visiting Medical Officer until 3 October 2006.
Ferguson, Dr	Executive Director of Bendigo Health Care Group in January 2003.
Fitzgerald, Dr Cody	Doctor on call after hours, one night per week at Mackay Base Hospital whilst Dr Farooq was Director of Surgery in 2004.
Flower & Hart Lawyers	Act on behalf of Dr Abdalla Khalafalla.
Frank, Mr Ian	Chief Executive Officer, Australian Medical Council.
Fraser, Dr Todd	Director of Intensive Care, Mackay Base Hospital since June 2006.
Gallery, Dr Ross	Referee for Dr Khalafalla, employed by Mt Isa Base Hospital.
Gray, Dr Anthony	General Surgeon at Bendigo Health Care Group.
Hack, Dr John	Senior General Surgeon at Townsville General Hospital and Fellow of the Royal Australasian College of Surgeons who prepared an audit report on a selection of Dr Khalafalla's cases dated 8 November 2005.
Hall Payne Lawyers	Act on behalf of Dr Craig Margetts.
Heathwood, Dr Catherine	Doctor who provided oversight to Dr Khalafalla 1 December 2004 - 28 February 2005.
Hicks, Dr Barry	Provided oversight and assessment of Dr Khalafalla between 15 June 2001 and 15 October 2001.

Hillis, Dr David	Chief Executive Officer, Royal Australasian College of Surgeons.
Johnson, Dr Andrew	Executive Director Medical Services, Townsville General Hospital. Interviewed Dr Khalafalla in 2001 on behalf of the Medical Board of Queensland.
Kabir, Dr Selim	Referee for Dr Khalafalla, employed at Taranaki Hospital, New Plymouth, New Zealand.
Kosanovic, Dr Nik	Nominated by the Royal Australasian College of Surgeons to provide oversight of Dr Khalafalla 15 April 2003.
Khalafalla, Dr Abdalla	International Medical Graduate Area of Need Specialist in General Surgery employed at Mackay Base Hospital from 31 May 2004 - 18 August 2006. Subject of allegations made in Federal Parliament on 9 and 14 August 2006.
Kelly, Mrs De-Anne	Federal Member of Parliament for Dawson in August 2006.
O'Dempsey, Mr Jim	Executive Officer of the Office of the Health Practitioner Registration Boards in August 2006.
Mackay, Mr John	Chairman of the Board of General Surgery, Royal Australasian College of Surgeons.
MacLean, Dr Alison	Acting Executive Director Medical Services, Mackay Base Hospital, April 2007.
Mamon, Dr Shafiq	Principal House Officer in the Department of Surgery at Mackay Base Hospital. Involved in an incident of interpersonal conflict with Dr Khalafalla in the Operating Theatre on 7 July 2005.
Margetts, Dr Craig	Executive Director Medical Services, Mackay Base Hospital during the period of Dr Khalafalla's appointment and the person who authorised Dr Khalafalla's employment.
McCarthy (formerly Bugeja), Ms Angela	Clinical Support Officer (AO5) who performed an administrative role in the recruitment of Dr Khalafalla. Remains employed in that capacity.
McGovern, Mr Kerry	Acting District Manager, Mackay Health Service District since April 2005. Appointed permanently since February 2006.
Milne, Mr Glen	Director of Latitudes Group International, the recruitment agency which introduced Dr Khalafalla to Mackay Base Hospital and performed the administrative requirements of the Australian Medical Council Area of Need process.
Moueta, Dr Carol-Anne	Provided oversight and assessment of Dr Khalafalla from the 1 February 2003 – 15 May 2003.

Murphy, Dr Darra	Director Medical Services at Echuca Regional Health in January 2003.
Panagopoulos, Ms Toula	Administrative Officer, Censor in Chief's Office, the Royal Australasian College of Surgeons, later of the Division of Specialist Surgical Training and Assessment.
Pyke, Dr Chris	Chairman of the Queensland Regional Board of General Surgery of the Royal Australasian College of Surgeons. Responsible for the selection and recruitment of surgical trainees in Queensland and reporting on the progress of International Medical Graduate Area of Need Specialist Surgeons under oversight assessment. Remains in that role with the Royal Australasian College of Surgeons. General Surgeon in private practice in Brisbane.
Quinlan Miller Treston Lawyers	Act on behalf of Dr Raad Almehti.
Roy, Dr Nirranjan	Director of Anaesthetics, Mackay Base Hospital.
Sachdev, Dr Simi	Acting Executive Director Medical Services, Mackay Base Hospital during the period July 2005 to September 2005. Chaired the first Credentialling Committee meeting that determined Dr Khalafalla's scope of clinical practice on 26 July 2005. Commissioned Dr Hack to audit a selection of Dr Khalafalla's cases.
Sladden, Mr Peter	Acting District Manager of Mackay Health Service District on 28 August 2005.
Syme, Dr Graham	Referee for Dr Khalafalla, employed by Echuca Regional Health.
Theile, Mr David	Participated in interview panel for the Royal Australasian College of Surgeons in Melbourne on 9 February 2006.
Thompson, Mr Ivan	Chairman of the Board in General Surgery for the Royal Australasian College of Surgeons in June 2002.
Vigna-Rajah, Dr	Nominated to provide oversight to Dr Khalafalla, but was unable to do so due to being offsite.
Wagner, Dr Nils	Consultant Surgeon, Mackay Base Hospital.
Wall, Ms Linda	Registered Nurse and Elective Surgery Coordinator, Mackay Base Hospital who raised concerns about Dr Khalafalla with the District Director of Nursing and Executive Director Medical Services. Remains employed as Elective Surgery Coordinator at Mackay Base Hospital.
Weich, Dr	Director of Medicine and Intensive Care Unit, Mackay Base Hospital on 4 November 2005.

**Weidmann, Professor
Michael**

Participated in interview panel for the Royal Australasian College of Surgeons in Melbourne on 9 February 2006.

Woodruff, Dr Peter

Vascular Surgeon, in-house clinician for the Health Quality and Complaints Commission.

Abbreviations and acronyms

AON	Area of Need
AO	Order of Australia
ACCC	Australian Competition and Consumer Commission
AHMC	Australian Health Ministers Conference
AMC	Australian Medical Council
AST	Advanced Surgical Training (RACS)
BIGS	Board in General Surgery (RACS)
BST	Basic Surgical Training (RACS)
COAG	Council of Australian Governments
COGS	Certificate of Good Standing
CRM	Clinical Risk Management [Committee]
ECFMG	Education Commission for Foreign Medical Graduates
EDMS	Executive Director Medical Services
FRACS	Fellowship of the Royal Australasian College of Surgeons
FRCS Ireland	Fellow of the Royal College of Surgeons Ireland
HIC	Health Insurance Commission
HQCC	Health Quality and Complaints Commission
IGA	Inter-Governmental Agreement
IMG	International Medical Graduate
JHO	Junior House Officer
JMO	Junior Medical Officer
JSCOTS	Joint Standing Committee for the assessment of Overseas Trained Specialist
Latitudes	Latitudes Group International
MBQ	Medical Board of Queensland
MCQ	Multiple Choice Questionnaire (AMC)
MHSD	Mackay Health Service District

MOPS	Maintenance of Professional Standards Programme (RACS)
MOSS	Medical Officer of Special Scale
OTD	Overseas Trained Doctors
OTS	Overseas Trained Specialist
PHO	Principal House Officer
RACS	Royal Australasian College of Surgeons
RACS New Zealand	Royal Australasian College of Surgeons New Zealand
RACMA	Royal Australasian College of Medical Administrators
RAPTS	Recruitment, Assessment, Placement, Training and Support
RMO	Resident Medical Officer
SHO	Senior House Officer
SMO	Senior Medical Officer
VMO	Visiting Medical Officer

Executive summary

1. Introduction

- 1.1 This is the report of an investigation by the Health Quality and Complaints Commission (HQCC) directed by the Minister for Health under section 164(e) and section 164(f) of the *Health Quality and Complaints Commission Act 2006* ('the HQCC Act') into concerns raised by Mrs De-Anne Kelly MP in the Commonwealth House of Representatives on 9 August 2006 about the quality of health services at Mackay Base Hospital. The investigation revealed a complex and interrelated set of events and in order to assist in understanding these events, a chronology has been set out in Appendix 1.
- 1.2 The concerns raised by Mrs Kelly included that:
- International Medical Graduates (IMGs) were working outside their competency and unsupervised by Senior Surgeons.
 - IMGs were taking too long to perform laparoscopic surgery.
 - Australian trained doctors were being forced out of Mackay Base Hospital through bullying and harassment.
 - Surgical patients in category 2 were being moved to category 1 to upskill surgeons but denying category 1 patients earlier operations.
 - Promotion at Mackay Base Hospital was based on patronage not merit.
 - There were deaths as a result of a lack of a system of review for pathology and biopsies.
 - Mackay Base Hospital abandoned its duty of care to patients in favour of rigorously pursuing budget outcomes.
 - Patients injured as a result of unsuccessful surgery were being turned away from Mackay Base Hospital.
- 1.3 In general, the concerns related to the employment of Dr Abdalla Khalafalla as an Area of Need Deemed Specialist at Mackay Base Hospital from May 2004 until August 2006, and the investigation therefore focused on:
- (a) The quality of General Surgery services provided by Dr Abdalla Khalafalla at Mackay Base Hospital; and
 - (b) The quality of related administrative processes and services including:
 - (i) The special purpose registration of Dr Khalafalla by the Medical Board of Queensland as an Area of Need Deemed Specialist;
 - (ii) The Australian Medical Council's (AMC) assessment process for Area of Need special purpose registration;
 - (iii) The Royal Australasian College of Surgeons (RACS) involvement in the assessment and oversight of Dr Khalafalla; and
 - (iv) The actions of Queensland Health administrators related to the:
 - a) Recruitment of Dr Khalafalla as an Area of Need Deemed Specialist at Mackay Base Hospital;
 - b) Credentialling and privileging of Dr Khalafalla at Mackay Base Hospital; and

- c) Management of Dr Khalafalla's clinical competence and performance at Mackay Base Hospital.

2. Assessment of Dr Khalafalla as an Area of Need Deemed Specialist

- 2.1 Rural and remote Queensland has experienced medical workforce shortages for a considerable period now, and the recent *Report on the Audit of Health Workforce in Rural and Regional Australia* published in April 2008 by the Australian Government Department of Health and Ageing highlights that the supply of medical practitioners will continue to rely upon the recruitment of overseas trained professionals in the immediate and medium term future.
- 2.2 While there is clearly a need to recruit special purpose Deemed Specialist registrants to maintain surgical services in areas of need, those communities have the right to expect safe, competent surgical care, and the right to know they are being treated professionally by safe, competent surgeons. Compromising standards in order to fill positions does not resolve the problems for the affected communities.
- 2.3 There are substantial risks relying on overseas qualifications that are difficult to verify. This case demonstrated the reluctance of managers and other key stakeholders to intervene because of discrimination risks, allegations of workplace bullying and harassment. In this case, some 12 months passed before a whistleblower raised the matter in the public interest and appropriate action was taken to remove Dr Khalafalla from the Area of Need position.
- 2.4 In the HQCC's opinion, there was an inadequate exchange of information between the RACS, the Medical Board of Queensland and Queensland Health to ensure that Dr Khalafalla's qualifications and competence were matched to the requirements of a special purpose Area of Need Deemed Specialist in surgery at Mackay Base Hospital.
- 2.5 The failure to ensure that crucial information about Dr Khalafalla's clinical performance history was shared between the RACS, the Medical Board of Queensland and the Mackay Base Hospital was the critical underlying systemic issue.

3. Recruitment of Dr Khalafalla

- 3.1 The evidence demonstrates that Dr Margetts, Executive Director Medical Services, Mackay Base Hospital, placed significant reliance on the fact that the RACS supported Dr Khalafalla to occupy the Area of Need position at Mackay Base Hospital.
- 3.2 As the specialist college with the expertise and primary responsibility under the AMC guidelines to assess Dr Khalafalla's suitability to occupy the position, it was reasonable, in the HQCC's view, for Dr Margetts to rely on the RACS' support of Dr Khalafalla's ability to fulfil the requirements of the Area of Need at Mackay Base Hospital.
- 3.3 As the employer, the District Manager is ultimately accountable and drives the recruitment and employment process, including the ongoing assessment of the registrant's skill and competence.

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However, other stakeholders (including the Executive Director Medical Services and the Director of Surgery) who provide support to the District Manager as the employer, cannot abrogate their responsibilities to establish, maintain and implement reasonable processes to monitor the quality of health services under their control and protect the health and well being of users of those health services; and

- 3.4 This needs to be reinforced with medical administrators and well supported by Queensland Health's corporate resources.

4. Special purpose registration of Dr Khalafalla

- 4.1 Clearly, the process for the special purpose registration of Dr Khalafalla as a Deemed Specialist for an Area of Need was not effective, and significant improvement was needed.
- 4.2 The problems associated with special purpose registration processes of the Medical Board of Queensland at the time have been well canvassed in the Queensland Public Hospitals Commission of Inquiry and the Ministerial Taskforce on Recruitment, Assessment and Registration Processes for International Medical Graduates in Areas of Need which followed.
- 4.3 The Ministerial Taskforce (chaired by Professor Ken Donald, now an Assistant Commissioner of the HQCC) drove a number of initiatives to improve assessment and registration processes. This has resulted in a number of amendments to legislation, and improvement in assessment and registration processes. To date, these appear to have been effective.

5. Credentialling and privileging of Dr Khalafalla

- 5.1 When Dr Khalafalla commenced employment at Mackay Base Hospital, it was incumbent on Dr Margetts as Executive Director Medical Services to define Dr Khalafalla's scope of clinical practice in accordance with Queensland Health's *Credentials and Clinical Privileges Guidelines for Medical Practitioners July 2002*.
- 5.2 The Queensland Health guidelines specified that all applicants for positions within a health service facility must have their clinical privileges defined before the completion of the selection/appointment process.
- 5.3 Although Dr Khalafalla commenced employment on 25 May 2004, it was not until 27 January 2005 that Dr Margetts first granted Dr Khalafalla interim privileges in surgery at the Senior Medical Officer (SMO) level for a period of six months. Dr Khalafalla was not formally credentialled until 26 July 2005, when he was granted credentials and privileges in surgery (general, minor operations, endoscopy) with the condition that major procedures are done following consultation and under the supervision of Dr Almehti, Director of Surgery, Mackay Base Hospital.
- 5.4 In the HQCC's opinion, the credentialling of Dr Khalafalla to practice as a Deemed Specialist Surgeon at Mackay Base Hospital was not of a reasonable standard to protect the health and well being of users of surgical services at Mackay Base Hospital because:
 - (a) The granting of formal credentials and privileges was unreasonably delayed;
 - (b) There were unacceptable delays in reviewing credentials and privileges; and

(c) Credentials and privileges were not properly communicated to Dr Khalafalla, and other hospital staff who reasonably needed to know.

5.5 This investigation also highlighted that the honesty and integrity of peer reporting and review in the credentialing process can be compromised without the statutory protections of privilege and reprisal.

6. Quality of General Surgery services provided by Dr Khalafalla

Clinical review by Dr Hack

6.1 Following ongoing concerns about Dr Khalafalla's practice, Mackay Base Hospital commissioned Dr John Hack (Senior General Surgeon at Townsville Base Hospital) in September 2005 to review 26 of Dr Khalafalla's cases which involved postoperative haemorrhage.

6.2 Dr Hack expressed particular concern about six cases and said he had a sense of unease about the cases he had reviewed. Dr Hack reported that, cumulatively, the cases implied a potentially dangerous technique and, in particular, a failure to take the time to check for bleeding before finishing the surgery. Dr Hack said in two of the cases he had reviewed, the patients could have easily died had corrective action not been taken.

6.3 On 3 November 2005, Dr Hack recommended that Dr Khalafalla's work practices, particularly surgical technique, be presented to the RACS for review.

7. Management of Dr Khalafalla's clinical competence and performance

7.1 As a result of Dr Hack's review, Dr Margetts immediately imposed limitations on Dr Khalafalla's practice in that:

- *No elective abdominal surgery was to be performed; and*
- *Emergency abdominal surgery was to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts, until further notice.*

7.2 Dr Hack's report was forwarded to the RACS in November 2005, and the RACS decided to reassess Dr Khalafalla. The RACS interviewed Dr Khalafalla on 9 February 2006. It formed a preliminary view that Dr Khalafalla was no longer suitable for an Area of Need position, but required more information to make a final decision.

7.3 The RACS sought further information from Mackay Base Hospital, but the information provided in response was, in the HQCC's view, misleading. In the meantime, the Director of Surgery sought to reinstate Dr Khalafalla's privileges.

7.4 On 23 April 2006, the RACS supported Dr Khalafalla's continuation in the Area of Need position "with limited scope" until the reassessment decision had been resolved. This is said to be the first occasion on which the Medical Board of Queensland was informed of concerns about Dr Khalafalla's practice.

7.5 On 23 May 2006, the Medical Board of Queensland decided to issue a Show Cause Notice to Dr Khalafalla, but this did not proceed.

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- 7.6 In the meantime, there was ineffective consultation between Mackay Base Hospital, the RACS and the Medical Board of Queensland about Dr Khalafalla's practice.
- 7.7 On 4 August 2006, the RACS decided that the Area of Need position as General Surgeon at Mackay Base Hospital was no longer considered an appropriate appointment for Dr Khalafalla, nor was any other Area of Need position in Australia. The RACS considered that Dr Khalafalla required a minimum of 12 months supervision at Registrar level in a major metropolitan hospital and if his practice was satisfactory, he might be granted permission to sit the Fellowship examinations.
- 7.8 On 14 August 2006 the Medical Board of Queensland refused Dr Khalafalla's application for renewal of special purpose registration.

Clinical review by Dr J Cohen

- 7.9 Dr Jon Cohen, General and Colorectal Surgeon, was engaged by the HQCC to provide an independent expert opinion about Dr Khalafalla's surgical technique and postoperative management in 26 cases. Dr Cohen was provided with a copy of Dr Khalafalla's *curriculum vitae* and the relevant medical records.
- 7.10 Dr Cohen reported that in his opinion, Dr Khalafalla's performance as a Staff Specialist at the Mackay Base Hospital was unsatisfactory because:
- (a) Dr Khalafalla's early training lacked adequate exposure to major abdominal surgery;
 - (b) There was a fifteen year gap between Dr Khalafalla's graduation and obtaining any form of surgical degree (other than a Master's Degree obtained by thesis); and
 - (c) Dr Khalafalla's difficulty in handling surgical complications probably because of both (a) and (b) above.
- 7.11 In conclusion, Dr Cohen commented that Dr Khalafalla's *"training in major abdominal surgery has been deficient as evidenced by the results of the surgical cases under his care. He has never taken an examination equivalent to the final FRACS examination."*
- 7.12 Dr Cohen recommended that Dr Khalafalla *"should be placed in a surgical registrar position in a major teaching hospital for twelve months and at the end of that time he should be asked to sit the second part of the FRACS examination."*
- 7.13 In the HQCC's view, Dr Cohen's opinion is consistent with that of Dr Hack.

Health Quality and Complaints Commission opinion

- 7.14 There were significant deficiencies in the management of Dr Khalafalla's clinical competence and performance at Mackay Base Hospital, and the delay in dealing with Dr Khalafalla's performance was unreasonable.

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- 7.15 Dr Hack raised serious concerns with Mackay Base Hospital in November 2005, but it was not until August 2006 that the RACS, and then the Medical Board of Queensland, decided that Dr Khalafalla was not suitable in the Area of Need position of Deemed Specialist at Mackay Base Hospital. In the meantime, there was a proposal by hospital administrators to restore Dr Khalafalla's privileges. This is serious cause for concern.
- 7.16 Overall, it does not appear that decisive action was taken until whistleblowers raised their concerns with Mrs Kelly. There were many factors that contributed to this, including the conflicting opinions and information which was available and circulating, and the ineffective communication between key stakeholders and decision makers.
- 7.17 It is not difficult to see the pattern of persistent deficiencies in Dr Khalafalla's performance from the information assembled retrospectively by the HQCC, but this information could only be obtained from multiple sources and with considerable effort. There is a clear need for a better system of transferring crucial performance information between specialist colleges, medical boards and employing authorities.
- 7.18 Had such information been shared in this instance, the District Manager (as employer), the Executive Director Medical Services (EDMS) and the Director of Surgery would have been better informed in their employment decision, and this could have resulted in earlier intervention and remedial action in this matter.
- 7.19 Although some of this poor communication may be due to inadequate administrative processes and lack of analysis of relevant numeric performance data trends by statistical methods of known effectiveness, the problem is also made worse by understandable reticence based on legal or other constraints on sharing information.

8. Other concerns raised

- 8.1 The HQCC notes the concentration and prevalence of complaints related to Dr Khalafalla's practice, and the consistent complaint themes, and that these are serious cause for concern.
- 8.2 Although the threshold for disciplinary action had not been reached with substantiation of individual complaints, Dr Khalafalla's complaints profile should have attracted greater scrutiny from supervisors and administrators. A large complaints profile may be the result of inappropriate behaviour, or it may be the product of chance or interpersonal conflict. This is a delicate area for professional judgement and communication, and must be done without prejudice and with a presumption of innocence.
- 8.3 However, it is apparent that whistleblowers became frustrated with inaction and had to resort to their federal Member of Parliament for support.

9. Summary of recommendations

I. The HQCC recommends the Queensland Government:

- (a) Pursue, as a priority, an Australia-wide reporting system for tracking the performance of registered health professionals; and

Consultation with Queensland Health

“Queensland Health supports this recommendation, and will pursue the matter in the context of the National Registration and Accreditation Scheme agreed by the Council of Australian Governments and being implemented by the Australian Health Ministers Conference. The Queensland Parliament lacks sufficient jurisdiction to implement this recommendation unilaterally.”

- (b) Consider the introduction of legislation (with appropriate statutory protections and safeguards) to:

- (i) Require information about unsatisfactory periods of supervision and any reduction of clinical privileges related to special purpose registrants be transferred between relevant employers, specialist colleges and all state and territory registration boards; and

Consultation with Queensland Health

“Queensland Health supports this recommendation and will pursue the matter in the context of the National Registration and Accreditation Scheme. The Queensland Parliament lacks sufficient jurisdiction to implement this recommendation unilaterally.”

- (ii) Provide the protections of privilege and reprisal for health providers participating in the credentialing process in both public and private health sectors.

Consultation with Queensland Health

“Queensland Health supports this recommendation.”

II. The HQCC recommends Queensland Health:

- (a) Issue guidance to all Executive Directors and Directors to ensure that unsatisfactory periods of supervision and any reduction of clinical privileges related to special purpose registrants are promptly communicated to the Medical Board of Queensland and relevant specialist medical college;

Consultation with Queensland Health

“Queensland Health supports this recommendation and will provide appropriate guidance to all relevant staff by 15 August 2008.”

- (b) Issue guidance to all staff working with deemed specialists to improve the understanding of the term ‘Deemed Specialist’ and ensure those staff are aware of any restrictions on the practice of a Deemed Specialist;

Consultation with Queensland Health

“Queensland Health supports this recommendation and will provide appropriate guidance to all relevant staff by 15 August 2008.”

- (c) Review their monitoring and oversight processes to ensure that internal witnesses are supported in expressing their concerns, without prejudice or reprisal; and**

Consultation with Queensland Health

“Queensland Health supports this recommendation. A review will be completed by 31 October 2008.”

- (d) Conduct a clinical audit of all cases of major surgery (as identified by Dr Woodruff) performed by Dr Khalafalla at Mackay Base Hospital without direct supervision by a Fellow of the RACS.**

Consultation with Queensland Health

“Queensland Health supports this recommendation. Queensland Health has taken the following actions-

- *The 27 cases originally identified as requiring review are currently being audited by the Northern Area Health Service Clinical Governance Unit to ensure that appropriate follow up action has been taken.*
- *In June 2008, the Northern Area Health Service Clinical Governance Unit conducted an audit of all other identified major operations undertaken by Dr Khalafalla at Mackay, Townsville and Mount Isa. The audit found -*
 - a) *2 cases involving operations in Mackay and 3 cases involving operations in Mt Isa which required review by a surgeon. These cases are being reviewed as part of the broader audit discussed below.*
 - b) *3 cases involving operations at Townsville which required review by a surgeon. These cases have been reviewed by Director of Surgery at Townsville Hospital (Dr Rossato). No issues requiring follow-up action were identified.*
- *Following receipt of the draft HQCC report, the clinical audit was extended to all procedures, whether major or minor, performed by Dr Khalafalla without direct supervision of a Fellow of the Royal Australasian College of Surgeons.”*

And further:

“Review of the clinical files is being conducted by Northern Area Clinical Governance Unit staff led by the Medical Director of the Unit. Surgical advice will be sought on identified cases.”

- III. The HQCC recommends the RACS review their policies and procedures regarding the management of concerns and complaints pertaining to registrants under RACS oversight, to ensure that complainants are supported in expressing their concerns, without prejudice or reprisal.**

10. Referral of matters by HQCC

Pursuant to section 87(1) of the *HQCC Act*, the HQCC will refer this investigation report to the Medical Board of Queensland and Queensland Health to investigate or take other appropriate action in relation to the conduct of registrants.

11. Acknowledgements

The HQCC acknowledges the important contribution that IMGs have made and continue to make to health services in Queensland. International Medical Graduates (IMGs) can face significant challenges adapting to Australia's culture and language, and the complexities of the health system.

Nothing in this report should be construed as diminishing the value of IMGs in the delivery of health services in Queensland.

1. Introduction

This is the report of an investigation by the Health Quality and Complaints Commission (HQCC) directed by the Minister for Health under section 164(e) and section 164(f) of the *Health Quality and Complaints Commission Act 2006* ('the HQCC Act') into concerns raised by Mrs De-Anne Kelly MP in the Commonwealth House of Representatives on 9 August 2006 about the quality of health services at Mackay Base Hospital. Mrs Kelly raised particular concerns about the employment of Dr Abdalla Khalafalla as an Area of Need Deemed Specialist at Mackay Base Hospital from May 2004 until August 2006.

1.1 Events leading to the investigation

By letter dated 16 August 2006, Mrs Kelly wrote to the Honourable Tony Abbott MP, Federal Minister for Health and Ageing, requesting his assistance in securing an open independent inquiry into Mackay Base Hospital on the basis that systemic issues had been brought to her attention by four credible members of the community and "*some ten patients.*"

Mrs Kelly stated that the problems brought to her attention were that:

- International Medical Graduates (IMGs) were working outside their competency and unsupervised by Senior Surgeons.
- IMGs were taking too long to perform laparoscopic surgery.
- Australian trained doctors were being forced out of Mackay Base Hospital through bullying and harassment.
- Surgical patients in category 2 were being moved to category 1 to upskill surgeons but denying category 1 patients earlier operations.
- Promotion at Mackay Base Hospital was based on patronage not merit.
- There were deaths as a result of a lack of a system of review for pathology and biopsies.
- Mackay Base Hospital abandoned its duty of care to patients in favour of rigorously pursuing budget outcomes.
- Patients injured as a result of unsuccessful surgery were being turned away from Mackay Base Hospital.

By letter dated 17 August 2006, the Federal Minister for Health and Ageing conveyed these concerns to the Honourable Stephen Robertson MP, Queensland Minister for Health, and requested an open and independent inquiry into those concerns.

On the same day, the Queensland Minister for Health directed the Health Quality and Complaints Commission (HQCC) to investigate the concerns raised by Mrs Kelly and whether any of the decisions surrounding the scope of practice of Dr Khalafalla could have been made more expeditiously.

1.2 Role of the Health Quality and Complaints Commission

The Health Quality and Complaints Commission (HQCC) is an independent statutory authority established by the Queensland Government to protect the public interest with:

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- (a) Oversight and review of, and improvement in, the quality of health services; and
- (b) Independent review and management of health complaints.

(s.3(1) *HQCC Act*)

The HQCC has functions and powers relating to:

- Monitoring, reviewing and reporting on the quality of health services;
- Recommending action to improve the quality of health services;
- Helping users and providers resolve health service complaints; and
- Preserving and promoting health rights.

(s.3(2) *HQCC Act*)

In respect to the quality of health services, the HQCC is authorised under the *HQCC Act* to investigate the quality of a health service, an administrative process or service related to a health service, and systemic issues relating to the quality of health services, including a health complaint or systemic issues for which the Minister has given a direction.

(ss.8, 86 & 164(1) *HQCC Act*)

In an investigation report, the HQCC can provide information, comment, opinions and recommendations for action which the HQCC considers appropriate to improve the quality of health services, but the HQCC is not authorised to make findings of negligence, fault, blame or culpability. The HQCC cannot award compensation.

(s.91(3) *HQCC Act*)

Where an allegation of negligence, fault, blame or culpability arises in the course of an investigation, the HQCC considers whether the allegation should be investigated or otherwise dealt with, and may refer the matter to another entity that has a statutory function or power under a State or Commonwealth Act to investigate or take other appropriate action about the matter.

(s.87(1) *HQCC Act*)

For example an allegation of:

- Unsatisfactory professional conduct is a matter for decision by the relevant registration board;
- Official misconduct under the *Crime and Misconduct Commission Act 2001* is a matter for decision by the Chief Executive Officer of the employing department under oversight by the Crime and Misconduct Commission;
- Criminal offences are investigated by police and decided by the Courts; and
- Misconduct under the *Public Service Act 1996* is a matter for decision by the Chief Executive Officer of the employing department.

Where the investigation report includes comment adverse to an identifiable entity, the relevant entity has been invited to make submissions about a draft of the investigation report and provide a written statement to the HQCC before the investigation report was finalised.

(s.205(2) *HQCC Act*)

The HQCC has carefully considered all responses to adverse comments before finalising this investigation report. A fair summary of the submissions received has been included in the body of the report.

For fairness and completeness, this investigation report must be read in conjunction with those submissions.

1.3 Preliminary investigation

The HQCC reviewed:

- The Official Hansard record of Mrs Kelly speaking in the Commonwealth House of Representatives on 9 August 2006 and 14 August 2006; and
- A brief to the Queensland Minister for Health, the Honourable Stephen Robertson prepared by Dr Craig Margetts, Executive Director Medical Services, Mackay Base Hospital in August 2006.

On 6 September 2006, Dr John Youngman, then HQCC Commissioner, met with Mrs Kelly seeking further particulars of the concerns raised. Mrs Kelly declined to disclose the source of her information or provide any further particulars on the basis of confidentiality.

It was agreed that the HQCC would write to Mrs Kelly highlighting the protection afforded to both complainants and informants under the *HQCC Act*, and Mrs Kelly would advise her constituents of the opportunity to raise their concerns directly with the HQCC.

None of Mrs Kelly's informants contacted the HQCC and no further particulars of the concerns raised by Mrs Kelly were forthcoming.

The HQCC then decided to publish public notices seeking information about the quality of health services at Mackay Base Hospital. The notices were published in the Mackay Daily Mercury on 2 and 4 November 2006, and the Mackay, Sarina and Miners Midweek on 8 November 2006. The deadline for receipt of submissions was 20 November 2006.

The HQCC received a total of 42 responses consisting of 39 telephone responses and three written responses. Each of the responses related to the care that individual patients had received at Mackay Base Hospital.

1.4 Scope of the investigation

The scope of this investigation includes:

- (a) The quality of General Surgery services provided by Dr Abdalla Khalafalla at Mackay Base Hospital; and
- (b) The quality of related administrative processes and services including:
 - (i) The special purpose registration of Dr Khalafalla by the Medical Board of Queensland as an Area of Need Deemed Specialist;
 - (ii) The Australian Medical Council's (AMC) assessment process for Area of Need special purpose registration;
 - (iii) The Royal Australasian College of Surgeons (RACS) involvement in the assessment and oversight of Dr Khalafalla; and

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- (iv) The actions of Queensland Health administrators related to the:
- Recruitment of Dr Khalafalla as an Area of Need Deemed Specialist at Mackay Base Hospital;
 - Credentialling and privileging of Dr Khalafalla at Mackay Base Hospital; and
 - Management of Dr Khalafalla's clinical competence and performance at Mackay Base Hospital.

2. Investigation methodology

2.1 The investigators

The investigation was conducted by Ms Leanne Trotter, Principal Investigations Officer and Ms Maureen Mahony, Senior Investigations Officer.

Mr Peter Williams, Senior Investigations Officer, assisted with a review of clinical files and records.

Dr Jon Cohen, General Surgeon, provided an independent clinical opinion concerning the standard of surgery and post operative care provided by Dr Khalafalla to 26 patients.

2.2 Interviews

The following interviews were conducted:

1. Dr Abdalla Khalafalla Subject provider.
2. Dr Craig Margetts (two interviews) Executive Director Medical Services at Mackay Base Hospital during the period of Dr Khalafalla's employment.
3. Dr Asad Farooq Former Director of Surgery at Mackay Base Hospital at the time of Dr Khalafalla's employment. Resigned on 28 February 2005, continuing as a Visiting Medical Officer (VMO) until 3 October 2006.
4. Dr Raad Almehti Current Director of Surgery at Mackay Base Hospital. Appointed after Dr Farooq's resignation as Director of Surgery.
5. Mr Kerry McGovern District Manager, Mackay Health Service District – acting in that role since April 2005 and appointed February 2006.
6. Ms Angela McCarthy (formerly Bugeja) Clinical Support Officer (AO5 Level) who performed an administrative role in the recruitment of Dr Khalafalla.
7. Dr Alison MacLean Acting Executive Director Medical Services at Mackay Base Hospital (Locum appointment) as at April 2007.
8. Dr Shafiq Mamon Principal House Officer in the Department of Surgery at Mackay Base Hospital since May 2004.
9. Dr Niranjana Roy Former Director of Anaesthetics at Mackay Base Hospital who resigned on 29 June 2007.
10. Ms Linda Wall Registered Nurse and Elective Surgery Coordinator at Mackay Base Hospital.

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| 11. | Dr John Hack | Senior General Surgeon at Townsville General Hospital and Fellow of the RACS. |
| 12. | Dr David Hillis | Chief Executive Officer, the RACS. |
| 13. | Dr Chris Pyke | Chairman of the Queensland Regional Board of General Surgery responsible for the selection and recruitment of Surgical Trainees in Queensland and reporting on the progress of International Medical Graduate (IMG) Area of Need Specialist Surgeons under oversight assessment. |
| 14. | Confidential witness "A" | Medical Practitioner |
| 15. | Confidential witness "B" | Medical Practitioner |
| 16. | Confidential witness "C" | Medical Practitioner |
| 17. | Confidential witness "D" | Medical Practitioner |
| 18. | Dr Simi Sachdev | Acting Executive Director Medical Services at Mackay Base Hospital during the period July 2005 – September 2005. |
| 19. | Mr Ian Frank | Chief Executive Officer of the AMC. |
| 20. | Mr Glen Milne | Director of Latitudes Group International employment agency. |
| 21. | Mr Michael Demy-Geroe | Former Deputy Registrar/Executive Officer of the Medical Board of Queensland from 1992 until December 2006. |
| 22. | Dr Nicolai Cruceru | Senior Medical Officer in Anaesthetics at Mackay Base Hospital. |
| 23. | Ms Karen Bedford | Level 2 Theatre Nurse and Theatre Coordinator who worked with Dr Khalafalla from March 2005 until August 2006. |
| 24. | Dr Todd Fraser | Director of Intensive Care at Mackay Base Hospital since June 2006. |
| 25. | Dr David Farlow | Acting Executive Director Medical Services at Mackay Base Hospital in January 2007. |

2.3 Documentary evidence

The following documents were obtained during the course of the investigation.

1. Extract of Hansard Report of House of Representatives, Speech by the Honourable Member for Dawson Mrs De-Anne Kelly on Wednesday, 9 August 2006;

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2. Extract of Hansard Report of House of Representatives, Speech by the Honourable Member for Dawson Mrs De-Anne Kelly on Monday, 14 August 2006;
3. Letter from the Honourable Member for Dawson Mrs De-Anne Kelly to the Federal Minister for Health and Ageing, Honourable Tony Abbott dated 16 August 2006;
4. Letter from the Federal Minister for Health and Ageing, Honourable Mr Tony Abbott to the Queensland Minister for Health, the Honourable Stephen Robertson dated 17 August 2006;
5. Letter from the Queensland Minister for Health, the Honourable Stephen Robertson to Dr John Youngman, Commissioner Health Quality and Complaints Commission dated 17 August 2006;
6. Letter from the Health Quality and Complaints Commission to the Honourable Member for Dawson Mrs De-Anne Kelly dated 24 August 2006;
7. Letter from the Health Quality and Complaints Commission to Mackay Base Hospital dated 15 August 2006;
8. Brief to the Queensland Minister for Health, the Honourable Stephen Robertson prepared by Dr Craig Margetts, Executive Director Medical Services Mackay Base Hospital in August 2006;
9. Media Notices that appeared in the Mackay Daily Mercury on 2 and 4 November 2006 and the Mackay, Sarina and Miners Midweek on 8 November 2006;
10. Documents requested from the Medical Board of Queensland pursuant to Notice to Provide Information dated 19 January 2007 being:
 - (a) Copies of all file notes of conversations and correspondence between the Medical Board of Queensland and Mackay Base Hospital and/or MHSD in relation to the registration of Dr Khalafalla during the period of his employment at Mackay Base Hospital and following his termination of employment at Mackay Base Hospital;
 - (b) Copies of all correspondence, internal memoranda and file notes of meetings and discussions between the Medical Board of Queensland and the RACS in relation to the registration and credentialling of Dr Khalafalla;
 - (c) Details of complaints or concerns received by the Medical Board of Queensland in relation to Dr Khalafalla; and
 - (d) Copies of minutes of meetings of the Medical Board of Queensland or Professional Standards Unit of the Medical Board of Queensland dealing with concerns or complaints about Dr Khalafalla.
11. Documents requested from Mackay Base Hospital pursuant to Notice to Provide Information dated 18 January 2007 being:
 - (a) A copy of Mackay Base Hospital clinical records including radiological films, pathology reports, X-ray reports, ECG/EEG and CTG tracings and outpatient clinic records for the following patients (identified by Queensland Health Unit Reference (UR), names withheld):
 - (i) UR 004874
 - (ii) UR 158347
 - (iii) UR 152270
 - (iv) UR 161750

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- (v) UR 136173
 - (vi) UR 003703
 - (vii) UR 112517
 - (viii) UR 030686
 - (ix) UR 098609
 - (x) UR 183653
 - (xi) UR 292769
 - (xii) UR 174332
 - (xiii) UR 297466
 - (xiv) UR 196149
- (b) Copies of the following documents referred to and/or included in the Ministerial Brief prepared by Dr Craig Margetts, Executive Director Medical Services, Mackay Base Hospital for Minister Robertson entitled "*Dr Abdalla Khalafalla...a summarised history at the Mackay Health Service District*" dated 30 June 2006 and updated 4 and 7 August 2006 ("the Brief"):
- (i) A document relating to the outcome of the visit to Mackay Base Hospital on 26 September 2005 by a representative of the Royal Australasian College of Surgeons (RACS), such document being numbered "50" in the Chronology to the Brief.
 - (ii) The "letter sent to Dr Khalafalla in November" referred to at Item 4.16 of document numbered 35.3 in the Brief, being an extract of the minutes of Credentials and Clinical Privileges Committee Meeting held 20 December 2005.
 - (iii) Document numbered 36 in the Brief, being Minutes of a Credentialling and Privileges Committee Meeting held at Mackay Base Hospital on 2 August 2005.
 - (iv) A document or report detailing the outcome of the RACS Assessment of Dr Abdalla Khalafalla conducted by Dr Almehdi in or about September 2005, referred to as document number 47 in the Brief.
 - (v) Mackay Base Hospital clinical records including radiological films, pathology reports, X-ray reports, ECG/EEG and CTG tracings and outpatient clinic records for the following patients referred to in the memorandum from Dr Weich to Dr Margetts dated 4 November 2005 (being document numbered 54 in the Brief):
 - a) UR 006183
 - b) UR 200057
 - c) UR 197189
 - d) UR 154286
 - e) UR 066390
 - Letter from Dr Almehdi to Dr Margetts dated 2 July 2005 (referred to in document numbered 98 of the Brief).
 - All correspondence from Dr Pyke, the RACS to Mackay Base Hospital as a consequence of the teleconference held on 5 January 2006 in relation to the credentialling of Dr Khalafalla.
 - All attachments to document 96 of the Brief including the letter from Mackay Base Hospital to Dr Cox dated 14 July 2005 and those documents listed under the heading "*College Correspondence*" and numbered (#1) to (#12) inclusive.

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- Assessments in relation to Dr Abdalla Khalafalla completed by Dr Farooq in May - August 2004, September - November 2004 and 28 February 2005.
 - Assessments in relation to Dr Abdalla Khalafalla completed by Dr Almehdi for the RACS dated 6 January 2005 and 5 August 2005.
 - Assessments in relation to Dr Abdalla Khalafalla completed by Dr Almehdi for the Medical Board of Queensland on 10 February 2006.
- (c) A copy of the *“Detailed chronology of events and recent letters from the College and Dr. Raad Almehdi”* referred to at Item 2.2 of the Minutes of the Credentials and Clinical Privileges Committee Meeting held 27 July 2006.
- (d) Copy of the Minutes of all Credentials and Clinical Privileges Committee meetings discussing Dr Abdalla Khalafalla excluding the minutes of Credentials and Clinical Privileges Committee meetings held on 20 December 2005, 27 June 2006 and 27 July 2006.
- (e) Copy of letter to Dr Abdalla Khalafalla from Dr Craig Margetts and Mr Kerry McGovern advising of the termination of Dr Abdalla Khalafalla’s Clinical Privileges in Surgery.
- (f) All files held by Mackay Base Hospital and/or Mackay Health Service District in relation to the employment and/or registration and/or credentialling of Dr Abdalla Khalafalla.
- (g) With reference to item 1 of the *“Response to Complaints Commission”* document prepared by Ms Alison Faigniez, Northern Area Health Service dated 30 August 2006, the following details in relation to Medical Positions at Mackay Base Hospital for the period January 2004 – December 2006:
- Name of each doctor
 - Position and/or level at which the doctor was employed
 - The doctor’s registration status
 - Details of credentialling and privileges granted to the doctor
 - Whether the doctor was trained in Australia or an International Medical Graduate.
12. Documents requested from the Royal Australasian College of Surgeons pursuant to Notice to Provide Information dated 18 January 2007 being:
- (a) Copies of all file notes of conversations and correspondence between the Royal Australasian College of Surgeons and the Mackay Base Hospital and/or Mackay Health Services District (both hereinafter collectively referred to as “Mackay Base Hospital”) in relation to surgical credentialling and privileges granted to Dr Abdalla Khalafalla during the period of his employment at the Mackay Base Hospital from 31 May 2004 to September 2006 and in particular:
- (i) Letter from Mackay Base Hospital to the RACS dated 29 January 2005.
 - (ii) Email from Ms Sue Wheatley, the RACS to Mackay Base Hospital dated 17 February 2006.
 - (iii) Letter from Dr Hillis to Mackay Base Hospital dated 15 March 2006.
 - (iv) Letter from Mackay Base Hospital to Dr Hillis dated 31 March 2005.
 - (v) Letter from Professor Davidson (RACS) to the Registrar of the Medical Board of Queensland dated 24 April 2006.
 - (vi) Letter from Dr Hillis to Mackay Base Hospital dated 1 May 2006.
 - (vii) Letter from Mackay Base Hospital to Dr Hillis dated 17 May 2006.

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- (viii) Letter from Professor Ian Gough (RACS) to Registrar of the Medical Board of Queensland dated 30 May 2006.
 - (ix) Email from Mackay Base Hospital to the RACS dated 31 May 2006.
 - (x) Letter from Dr Michael Cox to Mackay Base Hospital dated 7 June 2006.
 - (xi) Memorandum of conversation between Dr Margetts and Dr Michael Cox approximately dated July 2006.
 - (xii) Letter from Mackay Base Hospital to Dr Cox dated 14 July 2006.
 - (xiii) Reports and/or correspondence prepared by Dr Farooq and Dr Almehdi in relation to Dr Abdalla Khalafalla.
- (b) Copies of all correspondence, internal memoranda and file notes of meetings and/or discussions between the RACS and the Medical Board of Queensland in relation to the registration and/or credentialling of Dr Abdalla Khalafalla.
- (c) Details of general concerns raised by the RACS in relation to the assessment and/or oversight and/or credentialling of International Medical Graduates at Mackay Base Hospital during the period January 2004 to the present.
- In addition to the documents requested, the RACS provided HQCC with documents pre-dating Dr Khalafalla's employment at Mackay Base Hospital both in hard copy and on compact disc (CD).
13. Documents provided by Dr Khalafalla to HQCC investigators at the time of his interview on 24 May 2007 including CD of Dr Khalafalla's curriculum vitae, Mackay Base Hospital file, the RACS file, case audit and studies in Australia.
14. Documents provided by the RACS to HQCC under cover of correspondence from Russell Kennedy Lawyers dated 25 May 2007 being:
- (a) Review of Assessment of Overseas Trained Surgeons (RACS) dated April 2005.
 - (b) The RACS Activities Report for the period January to December 2006
 - (c) Surgical Workforce Report dated 7 March 2005.
15. Documents provided by the RACS to HQCC investigators at the interview of Dr David Hillis on 23 May 2007 being:
- (a) Penultimate draft of the RACS Policy and Procedure in relation to Specialist Assessment of International Medical Graduates in Australia (Approval date October 2006 for review in October 2007).
 - (b) Form for the Assessment of International Medical Graduates (IMGs) by the Clinical Director and/or Board Chair which has been in use since about October 2005 (according to the CEO of the RACS).
 - (c) Undated Form in relation to Position Description and Hospital Post viability.
 - (d) Undated General Surgery – Data form regarding population catchment required for viable specialist service in General Surgery, infrastructure requirements for a sustainable resident service in General Surgery and infrastructure requirements for a sustainable outreach General Surgery service.
 - (e) Undated Blank Progress Report for an International Medical Graduate undergoing a period of assessment of Surgical Practice in Australia.
 - (f) The RACS Strategic Plan 2005-2006 containing organisational chart.

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16. Australian Council for Safety and Quality in Health Care Standard for Credentialling and Defining the Scope of Clinical Practice July 2004.
17. Surgical Audit and Peer Review 2005, A Guide - Royal Australasian College of Surgeons.
18. Health Quality and Complaints Commission, Credentialling and Scope of Clinical Practice Standard - 1 July 2007.
19. Documents provided to HQCC by Ms Angela McCarthy (formerly Bugeja), Clinical Support Officer, Mackay Base Hospital in relation to the employment of doctors at Mackay Base Hospital including:
 - (a) The Medical Board of Queensland ECFMG application for primary source verification of medical credentials.
 - (b) “*What Now*” document dated 16 April 2007.
 - (c) Visa Application Form 1066.
 - (d) Queensland Health Criminal History checking form (undated).
 - (e) Template for *curriculum vitae* now required by the Medical Board of Queensland National English Language proficiency requirements for IMGs which took effect from 1 July 2005.
 - (f) Blank application for special purpose registration with effect from September 2006.
 - (g) National Identification Validation Standard for Medical Registration applicants that took effect from 1 October 2006.
 - (h) Undated Medical Board of Queensland policy for special purpose registration.
20. Documents provided to HQCC by Dr Raad Almehdi, Director of Surgery at Mackay Base Hospital at interview on 19 April 2007.
21. Documents provided to HQCC by Mr Kerry McGovern, District Manager, Mackay Health Service District at interview on 19 April 2007.
22. Documents provided to HQCC by Dr Craig Margetts at interview on 2 May 2007:
 - (a) Handover notes from Dr Margetts to Dr Sachdev dated 8 July 2005.
 - (b) Item 1.1.1 from the “*Healthy Doctors Project*” in relation to the definition of levels of supervision.
 - (c) Draft flow chart of Safe Doctors Project dated 3 August 2005.
 - (d) “*IMGs and the role of the Clinical Director*” prepared by Dr Margetts dated February 2005.
23. Documents provided to HQCC by Mackay Base Hospital as requested in letter from HQCC to Mackay Base Hospital dated 4 May 2007 being:
 - Additional documents numbered 99 to 131 inclusive added to the original Ministerial Brief that was prepared by Dr Craig Margetts on 3 July 2006.
 - Minutes of the Credentialling and Privileges Committee meetings at Mackay Base Hospital held in August 2004, October 2004 and February to March 2006.

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- A list of all surgical procedures performed in the Department of Surgery at Mackay Base Hospital during the period 1 July 2005 to 30 June 2006 including details of the patient, Surgeon, Assistant Surgeon, procedure, time taken to perform the procedure and time spent in recovery.
 - Minutes of Mortality and Morbidity meetings held in the Department of Surgery during the period 31 May 2004 to 31 August 2006.
24. Documents requested from Mackay Base Hospital pursuant to Notice to Provide Information dated 27 June 2007 being patient files identified by the Queensland Health Unit Reference (UR):
 - (i) UR 066920
 - (ii) UR 092824
 - (iii) UR 109619
 - (iv) UR 047760
 - (v) UR 197150
 - (vi) UR 127291
 - (vii) UR 060638
 - (viii) UR 161876
 - (ix) UR 070612
 25. Australian Medical Council Assessment Process for Area of Need Specialists User's Guide 2002 Edition – Australian Medical Council Primary Source Verification of Medical Qualifications Authorisation for Release of Information Form and Form Area of Need.
 26. *“Credential Committees, Surgical Appointments and Complaints Procedures – A Guide,”* the Royal Australasian College of Surgeons 2000.
 27. Australian Medical Council file in relation to Dr Abdalla Khalafalla, 22 October 1999 to 10 August 2006.
 28. File from Latitudes Group International in relation to Dr Abdalla Khalafalla.
 29. Queensland Public Hospitals Commission of Inquiry (Davies Report) 30 November 2005.

2.4 Clinical review

All information received by the HQCC from the public notice in the media was reviewed by an independent Surgical Consultant to the HQCC and 21 patient files were identified that warranted further investigation.

On 10 and 11 January 2007, the independent Surgical Consultant and an HQCC investigator visited Mackay Base Hospital and conducted a preliminary review of the 21 patient files. Following the preliminary review, the HQCC conducted a more detailed audit of those files. In the meantime, the HQCC received another complaint about the quality of care provided by Mackay Base Hospital.

All patient files were provided to Dr Jon Cohen, General Surgeon, for an independent expert opinion concerning the surgery carried out by Dr Khalafalla and the related postoperative management of the patients concerned.

2.5 Standard of proof

The standard of proof adopted by the HQCC is the reasonable satisfaction standard (balance of probabilities).

The HQCC has followed the principles laid down in the High Court case of *Briginshaw v. Briginshaw* [1939] 60 CLR 336 to the effect that the more serious the possible consequences for a person adversely named in an investigation report, the more cogent and reliable the evidence upon which adverse opinions must be based.

Some of the information obtained by the HQCC has been provided on a confidential basis by “whistleblowers,” and some information is based on hearsay. It is acknowledged that hearsay evidence is not always reliable. Hearsay evidence is clearly identified in this report.

It is recognised that conflicting accounts of events or circumstances reflect the different perspective of each witness, and facts at issue cannot always be resolved. Where there is conflicting evidence about a fact at issue, the HQCC does not make a finding of fact.

The comment, opinions and recommendations for action provided by the HQCC are based on the information available to the HQCC which seems most likely on the reasonable satisfaction standard to constitute the real substance of the matter.

2.6 Response to adverse comments

In accordance with section 205 of the *HQCC Act*, the draft investigation report was provided to a number of entities and individuals, inviting those entities and individuals to make a written statement in response to adverse comments in the report about them. A copy of the draft investigation report was provided to:

- (a) Medical Board of Queensland;
- (b) Royal Australasian College of Surgeons;
- (c) Australian Medical Council;
- (d) Queensland Health;
- (e) Dr Abdalla Khalafalla;
- (f) Dr Craig Margetts; and
- (g) Dr Raad Almehti.

In response, written submissions were received from:

- (a) Ms Kaye Pulsford, Executive Officer, Medical Board of Queensland;
- (b) Dr David Hillis, Chief Executive Officer, Royal Australasian College of Surgeons;
- (c) Mr Ian Frank, Chief Executive Officer, Australian Medical Council;
- (d) Professor Andrew Wilson, Acting Director-General, Queensland Health;
- (e) Flower & Hart Lawyers on behalf of Dr Abdalla Khalafalla;
- (f) Hall Payne Lawyers on behalf of Dr Craig Margetts; and
- (g) Quinlan Miller Treston, Lawyers on behalf of Dr Raad Almehti.

Each of these submissions has been carefully considered by the HQCC before finalising this report.

The final investigation report has been corrected and amended where appropriate, and a fair summary of each submission has been included in the report. Some confidential information has been de-identified.

2.7 Consultation about recommendations

In accordance with section 91(2) of the *HQCC Act*, the HQCC has consulted with the following entities about the recommendations included in the investigation report:

- (a) Medical Board of Queensland;
- (b) Royal Australasian College of Surgeons;
- (c) Australian Medical Council;
- (d) Director-General, Queensland Health; and
- (e) Crime and Misconduct Commission.

The HQCC has carefully considered the comments made in consultation before making recommendations for action.

3. Mackay Base Hospital

3.1 Mackay Health Service District

The Mackay Health Service District in the Northern Area Health Service services a population of over 136,000, including a population of about 20,000 in the Moranbah region. The Mackay District has experienced recent population growth as a result of the expansion of the mining industry in the Bowen Basin particularly the surrounding districts of Emerald, Barcaldine, Moranbah, Goonyella, Blair Athol, Clermont and Blackall. Housing and rental costs have increased significantly. Anecdotal evidence suggests that high accommodation costs act as a deterrent to attracting staff to the hospital.

Under the *Health Services Act 1991*, there is a District Manager who is accountable to the Director-General, Queensland Health, for the management of the District, including the employment of staff. All base hospital staff effectively contract with, or are employed by, the Director-General, Queensland Health.

3.2 Base hospitals

A base hospital is the central public hospital which serves as the primary referral facility for smaller centres in the area. The base hospital provides certain core functions to their catchment areas and, in particular, they treat most, or all, of the emergency cases in the district, either as a primary admission or a referral.

Each base hospital has a Director Medical Services who is the 'line manager' to the doctors, and reports directly to the District Manager.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"The [Executive Director Medical Services] is not the employer of the primary employing health facility. The EDMS is not the immediate line manager of senior doctors other than the Directors of Departments. Queensland Health is the employer and the District Manager is the authorised delegate to employ. Dr Margetts was the line manager to the Director of Surgery who was the line manager to the Senior Doctors, including Dr Khalafalla."

There are a number of different medical departments in each base hospital (for example, Surgery, Medicine, Emergency, Anaesthetics and Obstetrics) and, for each department, there is a Director. The Directors are clinicians who take on certain administrative duties in addition to their clinical work and report to the Director Medical Services.

Doctors are employed across medical departments as follows:

- Resident Medical Officers (RMOs)**
- Interns: First year of practice following completion of a medical degree.
 - Junior House Officer (JHO): Second year of practice after eligibility for full registration as a Medical Practitioner.

- Senior House Officer (SHO): Third or subsequent years of practical experience after eligibility for full registration as a Medical Practitioner.
- Principal House Officer (PHO): Equivalent to Registrar, but not undertaking accredited study for a higher medical qualification.
- Registrars: Accepted into an accredited specialist training program in a clinical specialty with a nominated college.

Senior Medical Officers (SMOs)

General Practitioners and career hospital doctors who:

- Are appointed to work generally or within a specialty department of a Queensland Health Hospital, who function with greater autonomy than a Resident Medical Officer but are **not** specialists.
- May be qualified overseas in the specialty (but do not have Deemed Specialist status with the Medical Board of Queensland) and therefore function with greater autonomy but remain under the supervision of a specialist.

Positions in this category include:

- Medical Officers
- Medical Superintendent (Deputy or Assistant)

Clinical/Medical Managers

SMOs who receive an allowance for undertaking clinical or medical management responsibilities.

Staff Specialist

Doctors recognised as having qualifications in a given specialised area.

IMGs offered a specialist position must obtain registration as a "Deemed Specialist" through the Medical Board of Queensland.

Visiting Medical Officers (VMO's)

Specialist Medical Practitioners who have their own private practice or General Practitioners who choose to consult within public and private hospitals on a part time basis.

3.3 Mackay Base Hospital

The Mackay Base Hospital offers the following services:

Hospital	Medicine, Surgery, Clinical Support Services.
Specialist Services	Obstetrics & Gynaecology, Paediatrics, Emergency Medicine, Orthopaedic Surgery, Anaesthetics, Intensive Care, Coronary Care, Psychiatry, Aged Care, Renal Medicine, ENT, Ophthalmology, Palliative Care Services; Day Surgery.
Clinics	Dermatology, Oncology, Orthopaedic, Neurosurgical, Neurology, Liver, Diabetic, Urology, Surgical, Medical, Renal, Pacemaker, Cardiac, Haematology, Ophthalmology, Wound Management.
Allied Health Services	Physiotherapist, Dietician, Speech Pathology, Social Worker, Occupational Therapist, Psychologist.
Outreach Services	Palliative Care, Cardiac Rehabilitation, Pain Management, Generalist Nurses, Asthma Care, Team Midwifery.

Support Services Diagnostic X-ray, Pathology and Clinical Measurements Unit, Information Services Staff Development Unit, Human Resource Management, Library and Operational Services.

The main referral hospitals for Mackay are Townsville Hospital (a distance of 381kms) and the Royal Brisbane and Women's Hospital (a distance of 978kms).

3.4 Executive Director Medical Services

At the time of Dr Khalafalla's employment, Dr Craig Margetts was the Executive Director Medical Services (EDMS) at the Mackay Health Service District and had been employed in that position since July 2001.

3.5 Department of Surgery

The Department of Surgery at Mackay Base Hospital provides General Surgery services only and excludes Orthopaedic Surgery, Obstetrics and Gynaecology services.

The Department of Surgery operates an outreach service to Proserpine Hospital (Clinic and Theatre – two visits a month). Sarina and Moranbah Clinics have overnight facilities for three patients, but no surgical facilities, and therefore refer surgical patients to the Mackay Base Hospital.

In early 2004, Dr Asad Farooq was Acting Director of Surgery, having taken over that role from Dr Robert Presley in September 2003. Dr Farooq obtained his medical qualifications in Pakistan, and is a General Surgeon and Fellow of the Royal College of Surgeons (Edinburgh) and of the RACS.

The Mackay Base Hospital had essentially been without a second Specialist Surgeon since Dr Presley's departure in late 2003.

Dr Almehti commenced his role as Staff Specialist on 17 January 2005. Shortly after Dr Almehti commenced in Mackay, Dr Farooq announced he was resigning from the position of Director of Surgery to become a Visiting Medical Officer (VMO). The Executive Director Medical Services, Dr Margetts, asked Dr Almehti, as the only full time Fellow of the College of Surgeons, to fill the position of Director of Surgery. Dr Almehti commenced as Director of Surgery on 28 February 2005.

At the time of this investigation, the Department of Surgery was staffed by:

- Dr Raad Almehti, Director of Surgery
- Dr Nils Wagner, Consultant Surgeon
- Dr Mohammed Ashraf, Senior Medical Officer
- Dr Shafiq Mamon, Principal House Officer
- Four Registrars including:
 - Two basic Surgical Trainees on six month rotation;
 - An IMG under oversight assessment by the RACS; and
 - A non-accredited Principal House Officer (PHO)
- Four resident doctors on 10 week rotation.

According to the Director of Surgery, at times the entire medical staff of the Department of Surgery has been IMGs and never less than 70 to 80% IMG medical staff.

3.6 Surgical training program

According to Dr Chris Pyke, Chair of the Regional Board of General Surgery for the RACS, the RACS re-established a surgical training program at Mackay Base Hospital sometime after August 2004, having ceased the surgical training program in 1999 as a result of hospital rebuilding and a period of administrative instability.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Reintroduction of registrar training followed an audit by the RACS in August 2004 some 3 months after Dr Khalafalla commenced at the MBH and the RACS reported positively on such items as supervision and audit etc. These are requirements of a teaching unit.”

4. Assessment Process for Area of Need Specialists: 2004 - 2005

The events described in this investigation report must be considered in the context of the health service environment in 2004 to 2005, with particular regard to the systems and processes used in 2004 to 2005 for the recruitment of IMGs to an Area of Need.

The following is an overview of the Area of Need special purpose registration process as it applied in 2004 to 2005. The overview is drawn from information and comments in the *Report of the Commission of Inquiry into Queensland Public Hospitals* (‘the Davies Report’) and the Australian Medical Council’s 2002 guidelines, *Assessment Process for Area of Need Specialists* which applied at the time of Dr Khalafalla’s recruitment and employment.

4.1 International Medical Graduates

An International Medical Graduate (IMG) is someone who has gained their primary medical qualification outside of Australia or New Zealand. IMGs are also sometimes referred to as ‘foreign trained doctors’, ‘overseas trained doctors’ and ‘overseas trained specialists.’

In 2004 to 2005, IMGs could obtain the following registration in Queensland:

- **General registration** - if they had completed a medical course accredited by the AMC, or passed the examination set by the AMC for the purpose of qualifying persons for general registration; and/or
- **Specialist registration** - if they held a prescribed Australian or New Zealand qualification in the relevant specialty, or an overseas specialist qualification recognised by the relevant Australian specialist college.

Alternatively, an IMG who did not hold a registrable primary qualification might complete an Australian specialist training program.

Specialist registrants who were ineligible for general registration would have a standard condition imposed restricting practice in the profession to the approved specialty field.

- **Special Purpose Registration** - where an IMG was not yet eligible for General Registration, Section 132 – 138 of the *Medical Practitioners Registration Act 2001* provides for various circumstances in which the Medical Board of Queensland could allow “special purpose registration” of the IMG.

4.2 Area of Need

The most commonly invoked circumstance for special purpose registration related to an ‘Area of Need’ for a medical service under section 135 of the *Medical Practitioners Registration Act 2001*.

Under this provision, the Minister for Health could decide there was an Area of Need for a medical service if the Minister considered there were insufficient registered Medical Practitioners to provide medical service at a level which met the needs of the community.

An IMG qualified for special purpose registration to practice in an Area of Need if the IMG held a medical qualification and experience the Medical Board of Queensland considered suitable for practicing the profession in the area.

Special purpose registration was not permitted for more than one year and the Medical Board of Queensland was authorised to register the IMG as a special purpose registrant on conditions that the Medical Board of Queensland considered necessary or desirable for the IMG to competently and safely undertake the Area of Need activity.

Before an IMG could be considered eligible for special purpose registration by the Medical Board of Queensland, the employer had to apply to have the class of Medical Practitioner (i.e. Junior Medical Officer, Senior Medical Officer, Deemed Specialist etc) and location/s certified as an Area of Need.

Area of Need Certification applied to both public and private sector positions and allowed employers or authorised agents who had been unable to fill vacant Medical Practitioner positions with suitably qualified Australian doctors, to counter the shortage by the use of IMGs.

If an Area of Need application was approved by the Minister's delegate, an IMG could then make application to the Medical Board of Queensland, seeking special purpose registration in relation to the identified Area of Need position.

Almost any medical position available in Queensland could have been the subject of an Area of Need decision and through this process; IMGs could fill positions as General Practitioners, Junior House Officers, Principal House Officers, Registrars and Directors of specialist departments in base hospitals, and possibly even Directors of Medical Services in base hospitals (Para 2.32 Davies Report).

4.3 “Deemed Specialist”

Where an IMG is registered to practice the medical profession in a specialty in an Area of Need, the IMG registrant is taken to also be a specialist registrant in the specialty ('Deemed Specialist registration') subject to any conditions of the registrant's special purpose registration.

(s.143A *Medical Practitioners Registration Act 2001*)

4.4 Role of the Australian Medical Council

The Australian Medical Council (AMC) is an independent national standards body for medical education and training which administers the national examination of non-specialist overseas trained Medical Practitioners seeking to practice medicine in Australia.

The AMC examinations are designed to assess, for registration purposes, the medical knowledge and clinical skills of IMGs whose basic medical qualifications are not recognised by State and Territory medical boards. The standard of the AMC examinations is defined as the level of attainment of medical knowledge, clinical skills and attitudes required of newly qualified graduates of Australian medical schools who are about to commence intern training.

Assessment of Overseas Trained Specialists is a separate pathway to the AMC examinations. While the procedure is administered by the AMC, the assessment of an IMGs training and experience is undertaken by the relevant specialist medical college.

4.5 Verification of medical qualifications in 2004 - 2005

The AMC is responsible for the verification of an IMGs medical qualifications.

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Mr Ian Frank, the AMC Chief Executive Officer, informed the HQCC that at the time of Dr Khalafalla's initial registration in Australia the AMC verified primary medical qualifications using its own checking processes. International Medical Graduate's qualifications would only be referred to the Educational Commission for Foreign Medical Graduates of the United States (ECFMG) for verification if there was an anomaly such as mismatching of dates and gaps in an IMGs *curriculum vitae*.

Mr Frank also advised that the capacity of the AMC to verify postgraduate specialist qualifications was limited because there was such a wide variety of ways to achieve postgraduate qualifications. Sometimes the postgraduate qualifications were obtained at the same time as the primary medical qualification. At other times the postgraduate qualifications were obtained outside of an educational institution. Given these difficulties, Mr Frank said the AMC had relied in 2004 to 2005 on the specialist medical colleges to verify postgraduate qualifications and overseas experience, check log book data and interview the IMG. Mr Frank stressed that the AMC did not possess the expertise to verify postgraduate qualifications and experience.

Submission by the Australian Medical Council

The Australian Medical Council (AMC) advised that the above procedures were current until 1 January 2008 when primary source verification was implemented by the AMC for all IMGs who apply for assessment through the AMC.

This included all non-specialist IMGs applying for the AMC examination, as well as specialist IMGs seeking full recognition for independent practice and those Area of Need specialist that were processed through the AMC.

The AMC is of the view that not all Area of Need specialists are processed through the AMC/Specialist College pathway.

As a result from 1 January 2008 all primary medical qualifications and postgraduate specialist qualifications are sent to the ECFMG for verification through the original university or specialist training authority that issued the qualification.

The AMC understands that at least two State Medical Boards (Queensland and New South Wales) had implemented primary source verification through the ECFMG in late 2005.

The AMC has also advised that it is currently working with the Commonwealth and State Governments on a Council of Australian Governments (COAG) initiative to introduce consistent assessment processes for IMGs across Australia. The assessment of specialist IMGs is one of the areas that are being addressed.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"It has been noted by the CEO of the AMC that, even with their expertise, they have limited capacity to verify the many ways to achieve post graduate qualifications. He stated that they rely on the Colleges to verify post graduate qualifications and post graduate experience, including log-book data. Given that the Medical Board and the AMC rely almost totally on the RACS then it was proper and appropriate for Dr Margetts to do so. It is unreasonable and impracticable to suggest that Dr Margetts should have undertaken independent verification of the RACS opinion."

And further:

“In its submission, the AMC notes that “not all Area of Need specialists are processed through the AMC/Specialist College pathway.” It is therefore commendable that the Mackay Health Service District was diligent and conscientious in this regard with Dr Khalafalla being a prime example of doctors managed via this pathway.

Indeed a brief review of senior doctor appointments during Dr Margetts’ time as EDMS in Mackay reveals that no fewer than 16 doctors were recruited as Deemed Specialists via the AMC/College pathway. It is further notable that 11 have subsequently been awarded full college fellowship with an 12th passing his required examinations as recently as July 2008.

Accordingly it can be found that Dr Margetts and the Mackay Health Service District were extremely well versed with the process of deemed specialist appointments and processing and demonstrate exemplary leadership in this regard.”

4.6 Assessment process for Area of Need specialists

In 2002, the AMC published a *User’s Guide – Assessment process for Area of Need specialists* to assist employers, IMGs, specialist medical colleges, State and Territory medical boards and others with advice on the assessment process for Area of Need specialists.

At the time of Dr Khalafalla’s recruitment to Mackay Base Hospital, these guidelines applied as national policy, and the steps in the assessment process for Area of Need specialists were as follows:

Step 1 Employer and Specialist Medical College

Employer identified position requiring to be filled and contacted the relevant specialist medical college (the College) for assistance with preparing detailed position description and key selection criteria in terms of clinical responsibility and qualifications or experience required.

The College would advise on match of skills and expertise required for specific position.

Step 2 Employer and State Medical Board

Employer contacted State Health Authority (Department) to have position declared as Area of Need. If position approved as such, the process continued.

Step 3 Employer and Applicant

Employer matched applicants for Area of Need positions against position description and selection criteria and selected a suitable applicant.

Applicant and employer completed relevant documentation.

Step 4 Parallel processing

Specialist Medical College

Employer referred application to the College for assessment.

Australian Medical Council

Employer referred application to the AMC to verify documentation.

The College conducted initial assessment based on position description and written application.

If initial assessment satisfactory, the College usually conducted an interview to clarify and confirm applicant's suitability for position.

If initial assessment unsatisfactory, the College notified the employer, who took appropriate action to:

- Redefine position description;
- Resubmit further information; or
- Propose an alternative applicant.

College notified the AMC in parallel.

The AMC conducted primary source verification of the medical qualifications through the International Credentials Service of the Educational Commission for Foreign Medical Graduates of the United States (ECFMG).

If satisfactory, the AMC notified Medical Board and the College.

If unsatisfactory, the AMC returned documents. Employer liaised with applicant to ensure compliance with requirements.

Step 5 Specialist Medical College

College recommendation to Medical Board (within eight weeks of receipt by College of satisfactory documentation).

College recommended applicant for consideration by Medical Board for appropriate category of Area of Need registration and defined any limitations on nature and extent of practice involved.

College notified employer and the AMC in parallel with Medical Board.

Step 6 Medical Board

Applicant applied and would be considered for Area of Need registration in accordance with the provisions of State or Territory *Medical Practitioners Registration Act 2001*.

Medical Board notified employer, College, Health Insurance Commission and the AMC of decision.

Registration would be linked to further assessment and monitoring by the relevant College.

Step 7 Commonwealth

Application for Medicare Provider Number (where applicable).

Step 8 Specialist Medical College

College undertook ongoing assessment after a defined period (initially three months, follow-up as required, and after 12 months) – findings reported to employer and relevant medical board.

If any major deficiencies were notified by a College, the relevant medical board could alter conditions of registration (if deficiencies were not significant) or withdraw the registration if deficiencies were considered significant or constitute a danger to the community.

4.7 Royal Australasian College of Surgeons

The Royal Australasian College of Surgeons (RACS) is a Fellowship based specialist medical college which provides internationally recognised specialist registration qualifications in surgery. The RACS is also responsible for maintaining surgical standards in Australia and New Zealand.

The RACS is a non-government organisation run by a Council made up of elected members from throughout Australia and New Zealand who work in an honorary capacity. There are also co-opted members to represent surgical specialties.

Also working in an honorary capacity are the surgeons who make up the New Zealand, State and ACT Committees, as well as 32 Committees of Council which have been formed to address issues affecting surgeons in a wide variety of areas.

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“The College strives to ensure the highest standards of safe and comprehensive surgical care to the Australian and New Zealand communities, through excellence in surgical education, training, professional development and support.

Although the College is looked to as the body responsible for maintaining surgical standards in Australia and New Zealand, it has no statutory standing. The College can provide advice and guidance but has no capacity to formally investigate or remove registration. This is in the hands of the Medical boards.

The College undertakes surgical training and education for graduates in Australia and New Zealand.

The College also undertakes assessment, and assists with training and provides advice on registration in relation to International Medical Graduates, to ensure substantial comparability with Australian and New Zealand standards.

Fellows of the College work in an honorary capacity in delivering training and education in the nine surgical Specialties, throughout Australia and New Zealand.”

4.7.1 Recognition of overseas specialists

The normal pathway to independent specialist surgical practice in Australia involves obtaining Fellowship of the RACS by completing a training program and exit examination. Approximately 90 per cent of all surgeons practicing in Australia and New Zealand are Fellows of the RACS (FRACS).

International Medical Graduates (IMGs) with formal postgraduate specialist qualifications, who wish to either practice as an independent specialist, or work in a position designated as an Area of Need, may apply through the AMC for an assessment by the RACS.

At the time Dr Khalafalla was assessed, the RACS used its *Mechanisms for processing applications for specialist registration by surgeons trained outside Australia and New Zealand*, which were published in February 2000.

In brief, the RACS would recommend any doctor trained overseas for specialist registration when that doctor held Fellowship of the RACS. Fellowship implied that both the training and standard of the IMG met Australian and New Zealand community expectations.

The RACS Fellowship could also be acquired without examination (under the provisions of Article 21) where an IMG was assessed as exceeding the standard of substantial comparability to an Australian or New Zealand Surgeon at the time of completion of training, but within a defined scope of practice, and whose surgical services were considered valuable to the community and contributed to the goals of the College and the specialty discipline. Such applicants could be recommended for Fellowship with a defined scope of practice.

Surgeons who did not meet the above criteria were required to obtain Fellowship by examination before being recommended for specialist registration.

4.7.2 Article 21 Fellowship

To be recommended for Fellowship with a defined scope of practice, the following criteria had to be met:

- (a) The IMG was trained and qualified by examination and had practiced overseas at a level of substantial comparability in the relevant specialty, although this may have been earlier in their career.
- (b) They were now practicing a more limited scope of the specialty at a significantly higher level than would be expected of an Australian or New Zealand trained Surgeon at the time of completion of training.
- (c) Their surgical services were of significant value to the community.
- (d) Their professional and personal qualities would be of significant value to the College when they are accepted as Fellows.

4.8 Queensland Public Hospitals Commission of Inquiry

The recruitment and assessment of IMGs was comprehensively investigated by the Honourable Geoffrey Davies AO in the Queensland Public Hospitals Commission of Inquiry ('the Commission of Inquiry').

The *Report of the Commission of Inquiry into Queensland Public Hospitals* ('the Davies Report') provides a comprehensive discussion and analysis of the context in which regional base hospitals operated from 2003 to 2005. A full copy of the Davies Report is available at <http://www.qphci.qld.gov.au/>.

4.9 Findings of the Commission of Inquiry

The Commission of Inquiry arose out of complaints relating to Dr Jayant Patel at Bundaberg Base Hospital in 2004 and early 2005. These included complaints, and other concerns expressed about Dr Patel's judgment, competence and care, and the failure of Bundaberg Base Hospital's administrators, and later officers of Queensland Health, to address those complaints and concerns.

Dr Patel was registered by the Medical Board of Queensland under the Area of Need scheme (pursuant to section 135(2) of the *Medical Practitioners Registration Act 2001*) as a Senior Medical Officer in surgery at Bundaberg Base Hospital on 11 February 2003. As the *Medical Practitioners Registration Act 2001* required, his registration was for a period of one year.

The Commission of Inquiry found that Dr Patel's registration and appointment occurred through a chapter of negligent mistakes by the Medical Board of Queensland and administrators at Bundaberg Base Hospital in that:

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- The Medical Board of Queensland negligently failed to properly check Dr Patel's paper credentials and to make any assessment of whether Dr Patel had the qualifications and experience for practicing surgery in Bundaberg.
- Two Directors of Surgery, and later, the District Manager, negligently failed to have any assessment made of Dr Patel's skill or competence by a committee of peers called a Credentialling and Privileging Committee.

Dr Patel was appointed and employed by the Acting Director Medical Services at Bundaberg Base Hospital without any assessment being made of his clinical skill and competence. This should have been done by that hospital, as a condition of his appointment, by a process of credentialling and privileging, pursuant to policy and guidelines of Queensland Health which had been in force since 2002. This failure was due to the negligence of the Acting Director Medical Services of Bundaberg Base Hospital. The Acting Director Medical Services also caused Dr Patel, who had been registered and appointed as a Senior Medical Officer (a position which would ordinarily be supervised) to be appointed as Director of Surgery, a position ordinarily occupied by a registered Specialist Surgeon, where he was subject neither to supervision nor even peer assessment.

About a fortnight after Dr Patel commenced work at the Bundaberg Base Hospital, a permanent Director Medical Services was appointed. The Commission of Inquiry found that the permanent Director Medical Services, in breach of his duty to do so, and knowing that Dr Patel's skill and competence had not been assessed before he commenced employment at the hospital, failed at any time between April 2003 (when Dr Patel was appointed) and March 2005 (when Dr Patel left) to have that skill and competence assessed by an appropriate Credentialling and Privileging Committee. This was notwithstanding that the Policy and Guidelines required that his employment was conditional on that being done and that, in the meantime, Dr Patel's registration was renewed and his employment extended.

Mr Davies concluded that, in his opinion, four factors contributed to the situation at Bundaberg Base Hospital. They were:

(a) The hospital budget:

The Hospital budget contributed in two ways. The first was that, although a Director of Surgery is ordinarily, and should be, a registered Specialist Surgeon, a Surgeon who had Australian specialist qualifications would have probably required an offer of salary and conditions more generous than Queensland Health would have permitted the Hospital to offer; and so also would an Overseas Trained Specialist Surgeon who would have been able to satisfy the RACS that his qualifications and experience were sufficient for them to recommend that he be granted Deemed Specialist registration. It is unlikely that the Hospital would ever have obtained the money to pay this. The second aspect was the focus, dictated by the budget, upon elective surgery throughput. Dr Patel made himself so valuable in that respect that the administrators were plainly reluctant to offend him, let alone investigate.

(b) The failure to check Dr Patel's background:

Both the Medical Board of Queensland and Queensland Health failed to check the credentials which he submitted. Had that been done, Dr Patel's discreditable past would probably have been revealed.

(c) The failure to have Dr Patel credentialled and privileged:

At no stage did the District Manager or the Director Medical Services have Dr Patel's skill and competence assessed by a committee of his peers under Queensland Health Policy and Guidelines. That should have been done before he commenced to see or operate upon patients at the Hospital, and again before he was reemployed a year later.

- (d) The failure of any adequate complaint system to operate:

This failure was caused, in part, by the budget system and the focus of both the Director Medical Services and the District Manager upon the maintenance of the elective surgery target, but it is hard to believe that, if the District Manager had been constantly confronted with the accumulating number and seriousness of complaints, as he should have been under any proper system, he would not have felt obliged to act.

These factors emerged as a cause of problems in other hospitals, including Hervey Bay, Townsville, Charters Towers and Rockhampton, which were also the subject of evidence before the Commission of Inquiry.

4.10 The Forster Review

An independent review of Queensland Health's administrative, workforce and performance management systems was announced by the Queensland Government on 26 April 2005 and undertaken by Peter Forster ("the Forster Review"). Mr Forster published the Final Report in September 2005.

The Forster Review recommended a number of major reforms to Queensland Health to focus systems and resources towards the achievement of higher standards of health service and improved health outcomes for consumers and patients. The reforms collectively would address many of the identified deficiencies and help to restore the community's confidence in the Queensland public health system.

The Final Report of the Forster review is available at:
http://www.health.qld.gov.au/health_sys_review/final/

It was clear, that many of the problems noted in the Davies and Forster enquiries contributed to events that led to the current investigation. It is noted, however, that in response to the identification of most problems, significant changes have been made by Queensland Health. Some of which, are listed below.

4.11 Action Plan - Building a Better Health Service for Queensland

In October 2005, the Queensland Government produced an "*Action Plan - Building a Better Health Service for Queensland*" (the 'Action Plan') in response to the Davies Report and the Foster Review.

The Action Plan included a range of strategies and commitments by the Queensland Government to:

- Raise the standards for the registration and re-registration of overseas trained doctors through improving the 'Area of Need' process; and
- Have a medical excellence taskforce, to be chaired by an independent clinician with membership from the AMA, specialist colleges, other peak medical bodies and the Australian Medical Council. It will develop a broader and more integrated system to govern the recruitment, assessment, supervision, training and support of doctors.

The Action Plan is available at:

http://www.health.qld.gov.au/publications/corporate/action_plan.asp

4.12 Ministerial Taskforce on Recruitment, Assessment and Registration Processes for International Medical Graduates in Areas of Need

A Ministerial Taskforce was also established to review recruitment, assessment and registration processes for IMGs in areas of need. This Taskforce was chaired by Professor Ken Donald, who is an Assistant Commissioner with the HQCC.

The Ministerial Taskforce made a number of recommendations to improve assessment and registration processes, and this resulted in a number of amendments to legislation, and improvement in assessment and registration processes.

These are discussed in more detail later in this report.

5. Background - Dr Abdalla Khalafalla

Health Quality and Complaints Commission (HQCC) investigators obtained extensive documentation from the Medical Board of Queensland, the RACS and the Mackay Base Hospital relating to Dr Khalafalla's background and employment history.

According to the *curriculum vitae* submitted by Dr Khalafalla to Mackay Base Hospital, Dr Khalafalla obtained his primary medical qualification at Ain Shams University in Cairo, Egypt in 1979.

After graduation, Dr Khalafalla worked as an intern at Ain Shams University Hospitals in Cairo for one year before performing his compulsory military service as a Surgical Officer at Al Helmia Military Hospital in Cairo for a further year, finishing in February 1982.

Dr Khalafalla then worked as a Registrar in General, Plastic and Reconstructive Surgery at Ain Shams Teaching Hospitals in Cairo until February 1985.

In March 1986, Dr Khalafalla travelled to Saudi Arabia and worked in four different hospitals until February 1996. Those positions were mainly at Registrar level apart from a position held as a Specialist General and Plastic Surgeon at Almana General Hospital, Alkhobar, Saudi Arabia from May 1994 until February 1996.

Dr Khalafalla's *curriculum vitae* states that he became a Fellow of the Royal College of Surgeons gained in Ireland in 1994. The HQCC has confirmed this with that College.

5.1 Employment in New Zealand

According to a letter from the New Zealand Censor of the RACS dated 20 November 1995, Dr Khalafalla was advised to approach the Medical Council of New Zealand to ascertain whether his basic medical qualification entitled him to practice medicine in New Zealand. Dr Khalafalla was advised that:

"(his) FRCS Ireland is reciprocal with the FRACS Part 1 examination (both sections). In order to present for the final examination for the Fellowship of the Royal Australasian College of Surgeons, (he) would need to obtain a position of employment in New Zealand or Australia at registrar level. From such a post (he) could apply for entry into the Advanced Surgical Training Scheme."

Documents also indicate that on 4 April 1997 Dr Khalafalla attended an interview with the RACS (NZ) panel of surgical specialists chaired by the Chairman of the NZ Committee of the Board in General Surgery and:

- The panel could not assess his overall surgical exposure because his log book was only complete for one year.
- The panel noted that the extent of major surgery undertaken in that time was equivalent to two to three months of an advanced surgical trainee in New Zealand.
- The panel found Dr Khalafalla's English and communication skills were excellent.
- Dr Khalafalla relied on the Medical Council's findings that his qualifications were equivalent and considered him likely to achieve the vocational registration after two years assessment in suitable posts.

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- During this time, the panel considered that Dr Khalafalla should present to the Board in General Surgery for permission to sit the FRACS Part 2 examination.

According to “*Guidelines for IMGs Seeking Posts for Assessment for Vocational Registration in General Surgery*” forwarded by the RACS NZ Committee of the Board in General Surgery to Dr Khalafalla by letter dated 25 July 1997, “vocational registration” entailed:

- Employment at the level of Registrar (or Senior Registrar or Locum Consultant depending on the suitability of the candidate) at a hospital approved for surgical training;
- Six monthly assessments by two mentors and completion of a log book; and
- *“In general, the candidate will be expected to seek approval during the assessment period to sit for the Part 2 General Surgery examination.”*

In December 1997, Dr Khalafalla commenced working in New Zealand as a Senior House Officer in General Surgery at Southland Hospital, Kew, Invercargill before being appointed as Registrar in General Surgery (Year 6) at the same hospital until December 1998.

In December 1998, Dr Khalafalla worked as a Medical Officer of Special Scale (MOSS) in the Emergency Department of Taranaki Base Hospital in New Zealand. However, Dr Khalafalla’s resume does not give a finishing date for this position.

5.2 Employment in Australia

On 8 July 1998 Dr Khalafalla made an application for admission to the Victorian/Tasmanian Combined Training Program in General Surgery and indicated that he had attended an interview with the RACS panel of surgery in New Zealand where his qualifications were accepted as “Part One both sections of FRACS.”

An unidentified person has made a notation “? *Documentation*” and made notations “?” at other parts of the application.

On 7 August 1998, the Executive Officer of the RACS (New Zealand) wrote to Dr Khalafalla stating that there was no reciprocity between Australia and New Zealand in relation to either medical registration or the assessment interview that Dr Khalafalla had attended with the RACS (NZ) panel of surgical specialists chaired by the Chairman of the NZ Committee of the Board in General Surgery on 4 April 1997.

In September 2000, Dr Khalafalla applied for assessment by the RACS in Australia. Dr Khalafalla attended an assessment interview with Mr John Mackay, Chairman of the Board in General Surgery and two other Specialist Surgeons. The interview was apparently tape recorded but HQCC investigators were not able to obtain a copy of the recording.

Mr Mackay wrote to Ms Toula Panagopoulos, Administrative Officer, Censor in Chief’s Office, advising that following review of the documentation provided by Dr Khalafalla, Dr Khalafalla would be granted exemption for the Part 1 Basic Surgical Training Package.

However, Mr Mackay advised that the documentation “*did not allow one to assess Dr Khalafalla’s level of experience and competency in general surgery*” and therefore, it was recommended that Dr Khalafalla attend for an interview by the Censor in Chief and Mr Mackay as Chairman of the Board in General Surgery to facilitate further assessment.

Mr Mackay also commented that the log book for 1998 suggested that Dr Khalafalla had only performed relatively minor surgery or provided assistance to one of the consultants on more major cases. The log book data was scant and applied only to the year of December 1997 to September 1998, when Dr Khalafalla worked as a non-accredited Registrar in Invercargill. Mr Mackay sought further evidence of Dr Khalafalla’s log book experience, particularly from his time of training as a Registrar in the period 1990 to 1994 in Saudi Arabia, and the period 1982 to 1985 in Egypt.

Mr Mackay also queried why Dr Khalafalla had not taken up the offer from the New Zealand Committee to undertake a period of assessment and wondered what he had been doing since the end of 1998.

Two undated letters from Dr Khalafalla to Mr John Mackay as Chairman of the Board in General Surgery sought to address Mr Mackay’s concerns. Missing log book data from Dr Khalafalla’s time in Egypt and Saudi Arabia was provided in a hand written summary.

Dr Khalafalla was invited to attend an assessment interview with the RACS on 7 February 2001. The HQCC was not provided with any documents evidencing the results of that interview.

5.2.1 Townsville General Hospital: February 2001 - February 2002

According to the RACS documentation, Dr Khalafalla commenced a 12 month placement in February 2001 at Townsville as a Rural Senior Registrar which included three monthly rotational appointments between Townsville General Hospital (under the supervision of the Director of Surgery Professor Peter Donnelly and Dr John Avramovic) and Mt Isa Base Hospital (under the supervision of Dr Ross Gallery).

The RACS training requirements were clarified by Mr John Mackay, Chairman of the Board in General Surgery, in a letter he wrote to Professor Donnelly dated 19 March 2001. In that letter, Mr Mackay states, “*As a Rural Senior Registrar, it would be envisaged that Dr Khalafalla would undertake all surgical and endoscopic procedures under the supervision of Dr Gallery, Dr Avramovic and yourself.*”

The letter set out detailed conditions for the appointment including participation in the College’s Maintenance of Professional Standards Programme (MOPS), ongoing professional development provided by the hospital, adequate surgical audit, and completion of a surgical log book.

It is noted that the Chairman of the Board in General Surgery invited all supervisors and Dr Khalafalla to contact him directly if they had any concerns about the 12 month period of assessment. Mr Mackay used the terms “*supervision*” and “*assessment under oversight*” interchangeably throughout this correspondence.

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In separate letters to Dr Avramovic and Dr Gallery dated 15 May 2001, Ms Toulia Panagopoulos, Administrative Officer, Censor in Chief's Office, uses the term "*assessment under oversight*" to describe the level of supervision to be afforded to Dr Khalafalla. This contrasts with the specific instruction by Mr John Mackay to Professor Donnelly that all surgical and endoscopic procedures would be "*supervised.*"

In respect to this point, the RACS advise that at the time Dr Khalafalla was assessed, "*oversight*" was the general clinical assessment term used by the College for IMGs undertaking a period of clinical assessment.

Dr Khalafalla was employed as a Rural Senior Registrar at Townsville General Hospital and Mt Isa Base Hospital from 19 March 2001 to July 2001. In this time, the RACS received the following assessment reports in relation to Dr Khalafalla:

- Feb 2001: Professor Donnelly, *Overall rating 4 – above average, log book statistics 3 - satisfactory.* Identified deficiencies not circled 'yes' or 'no.'
- 19 Mar 2001 – 15 Jun 2001: Dr Gallery, *Overall rating 3, Log book 3 - satisfactory. No identified deficiencies.*

By letter dated 28 June 2001, Professor Donnelly noted that "*the extensive reporting documentation in the correspondence of 15 May 2001 had been rationalized to the RACS advanced Trainee Report form.*" Professor Donnelly withdrew from his role as supervisor on the basis that he was returning to the United Kingdom and commented that Dr Khalafalla would benefit from a three month placement with close supervision from Dr Avramovic.

Further, the RACS assessment reports were received as follows:

- 15 Jun 01 – 15 Oct 2001: Dr Barry Hicks. *Overall rating 3 satisfactory. Log book statistics not completed.* Identified deficiencies were noted to be "*Dr is from a different culture and this is evident in some relationships. Interpersonal relationships were discussed and attitudes changed and acceptable.*"
- 15 Oct 2001 – 15 Jan 2002: Dr Gallery. *Overall rating 4 above average. Log book statistics 3 - satisfactory. No identified deficiencies.*

The RACS requested a progress report from Dr Avramovic and it was thought that he had not provided the progress report because Dr Khalafalla had not yet been rotated to the position where oversight was to be provided by Dr Avramovic. (Memo from Toulia Panagopoulos to Mr Mackay dated 1 August 2001).

On 25 February 2002 Dr Avramovic wrote to the Chairman of the Board in General Surgery (RACS) raising several concerns about Dr Khalafalla's surgical competence, citing three examples and passing on adverse comments made about Dr Khalafalla by three Surgeons. Dr Avramovic stated that his "*overall impression was that Dr Khalafalla should undergo a further year of supervision and assessment before an opinion as to his suitability to present for the final FRACS exam be determined.*"

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“Dr Avramovic's letter of complaint dated 25 February 2002 was not provided to our client and he was given no opportunity to respond to that adverse report.”

5.2.2 Bendigo Health Care Group

Dr Khalafalla's next appointment was at Bendigo Health Care Group as a federally funded supernumerary surgical Registrar providing additional cover to specialties and orthopaedics.

On 21 March 2002, Dr Khalafalla advised the AMC that he was the Principal Registrar of Bendigo Health Care Group acting in the capacity of Junior Consultant in Surgery.

On 18 June 2002, Dr Graeme Campbell wrote to the Censor in Chief, the RACS, stating that he had *“no clear understanding of Dr Khalafalla's status as far as the College was concerned”* and asked the College to clarify whether it was meant to be assessing him, and if so, to whom assessments were to be sent.

These issues seem to have been clarified in discussions on 27 June 2002 and confirmed in writing by Mr Ivan Thompson, Chair of the Board in General Surgery, on 25 June 2002.

In letters to Dr Barling and Dr Campbell dated 17 July 2002, Ms Toula Panagopoulos advised that Dr Khalafalla was undergoing *“assessment under oversight.”*

The following the RACS assessment reports were submitted:

- 2 Feb 2002 – 31 Jul 2002 (retrospective): Dr A Barling, *Overall rating 3+.* *Log Book statistics 3.* Identified deficiencies were *“endoscopic accreditation.”* These deficiencies were noted to have been discussed with Dr Khalafalla and correction was *“in Progress.”*
- 1 Feb 2002 – 31 Jul 2002 (retrospective): Dr Campbell, *Overall rating 3 satisfactory.* *Log Book statistics 3 satisfactory.* Identified deficiencies were *“communication with nursing staff”* and these were noted to have been discussed and corrected.
- 31 Jul 2002 – 3 Feb 2003: Dr Campbell, *Overall rating between below average and satisfactory.* *Log book statistics satisfactory.* Identified deficiencies were noted to lie in judgment, post-operative care and academic performance (i.e. knowledge of subject). The deficiencies had been discussed with Dr Khalafalla but Dr Campbell was uncertain whether they had been corrected.
- 31 Jul 2002 – 3 Feb 2003: Dr Barling, *Overall rating 2+ - 3.* *Log book statistics satisfactory.* Dr Barling noted deficiencies in clinical skills (assessment, history and examination, judgment), technical skills in surgical laparoscopy/endoscopy and considered that Dr Khalafalla was not yet ready to obtain his FRACS and would benefit from further supervised training.

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By letter dated 25 November 2002, Dr Graeme Campbell and Dr Andrew Barling expressed concern to the RACS about Dr Khalafalla's judgment and recognition of postoperative complications and commented that *"there do seem to be areas of specific weakness in knowledge."* They stated that they felt uneasy about Dr Khalafalla being granted Fellowship without an examination and suggested that he needed a longer period of supervision.

In a further letter to the RACS dated 31 January 2003, Dr Graeme Campbell forwarded two further assessments that were unsatisfactory in some areas. It was clear that both assessors had concerns about Dr Khalafalla being granted Fellowship without an examination.

The funding had ceased for the position that Dr Khalafalla had occupied in Bendigo, so Dr Khalafalla applied for an Area of Need specialist position in Echuca.

The quandary in which the RACS found itself in relation to the ambiguity of the progress reports being overall satisfactory, but specific deficiencies having been identified, is highlighted by an internal email between Lorraine Devitt and Dr Christopher Christophi (then Chair, Board in General Surgery and later IMG Representative Board in General Surgery during Dr Khalafalla's assessment) and other officers within the RACS dated 3 February 2003.

5.2.3 Echuca Regional Health

In a letter from Dr Ferguson, Executive Director of Bendigo Health Care Group, to Dr Darra Murphy, Director Medical Services at Echuca Regional Health, received on 9 January 2003, Dr Ferguson suggested that Dr Khalafalla continue to work as a General Surgeon at Echuca Regional Health for several days a week working with Dr Kosanovic and Dr Graham Syme while remaining engaged at Bendigo Health Care Group on a regular basis under the direct supervision of Dr Campbell and Dr Barling.

Dr Campbell and Dr Barling both supported Dr Khalafalla's application *"subject to a degree of supervision and oversight being provided by the other surgeons in Echuca,"* with Dr Campbell and Dr Barling continuing with a degree of supervision, and Dr Khalafalla being offered one day a week in Bendigo to *"cement his training."* This proposal was formally submitted to the RACS under cover of an email to Ms Toula Panagopoulos dated 23 January 2003. The proposal defined supervision as Direct, Indirect or Remote and was very specific in its terms.

Dr Khalafalla's application for employment as an Area of Need Specialist at Echuca was approved and he commenced in that position on 1 April 2003.

By letters dated 15 April 2003, Ms Toula Panagopoulos of the RACS Censor in Chief's Office advised Dr Campbell and Dr Nik Kosanovic, that they were nominated by the RACS to provide *"oversight"* of Dr Khalafalla.

Whilst at Echuca, the following assessments were submitted to the RACS:

- 1 Feb 2003 – 15 May 2003: Dr Carol-Anne Moueta, *Satisfactory. Safe. Knows limitations. Happy to refer patients.*

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- 1 Feb 2003 – 1 May 2003: Dr Barling, *Overall rating satisfactory. Log book statistics satisfactory. Working hard at elevated level of responsibility and managing well. Has addressed issues of concern expressed on previous assessments. No identified deficiencies.*
- 1 Feb 2003 – 1 May 2003: (Echuca) Dr Graeme Campbell, *Satisfactory. Log book statistics satisfactory. Has corrected previously identified deficiencies. Coping well with increased responsibility. Keep it up. No identified deficiencies.*
- 1 Feb 2003 – 15 May 2003: Dr Graeme Campbell, *Satisfactory. No identified deficiencies.*
- 1 May 2003 – 31 Jul 2003: Dr Graham Syme, *Satisfactory. No identified deficiencies.*
- 1 May 2003 – 29 Jul 2003: Dr Graeme Campbell, *Satisfactory but raised concerns about communication and judgment in pre-operative booking of cases. Concerns to be addressed during an on-site visit in the next 4-6 weeks. To forward results of on-site assessment once completed.*
- 1 Jul 2003 – 31 Oct 2003: Dr Graham Syme, *Satisfactory. No identified deficiencies.*

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“In a letter to the Royal Australasian College of Surgeons (“the College”) dated 30 October 2002, Dr Graham Syme expressed the view that after three months working with our client in Echuca, his role in supervising our client was ‘quite unnecessary and an insult’ to our client. He had no criticism of our client’s technical skills, surgical knowledge or behaviour in the hospital while working at Bendigo. He noted our client ‘expects a high standard and is more prepared to comment when he feels that matters are not up to his expectations.’”

In an email from Ivan Thompson to Ms Toulia Panagopoulos dated 2 June 2003, Mr Thompson states that Dr Khalafalla appeared to be making satisfactory progress according to the reports of Dr Moueta and Dr Graeme Campbell.

However, on 23 June 2003, Dr Graeme Campbell wrote to Dr Darra Murphy of the Echuca Hospital raising concerns about Dr Khalafalla’s interpersonal skills with staff and hand washing.

Dr Murphy replied on 16 July 2003 enclosing a copy of a letter he had written to Dr Khalafalla dated 27 June 2003 notifying him of those concerns which included selection of cases particularly after hours, and an increase in postoperative infections, unplanned overnight admissions, surgical day cases and Theatre cancellations following pre-anaesthetic assessment.

Dr Anthony Gray wrote to Mr Campbell on 15 August 2003 citing particular cases where he had been concerned at a *“lack of operative skill”* on the part of Dr Khalafalla.

Dr Campbell provided copies of all of these letters to the RACS.

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In an email from Mr Ivan Thompson to Ms Toula Panagopoulos, (cc to Censor in Chief) dated 24 July 2003, Mr Thompson stated, *“This is not the first time that concerns have been raised with regards to this OTD’s performance. I feel Graeme Campbell will need to do an on-site inspection and evaluation to help resolve this issue.”*

No documents were provided to indicate that the site inspection did go ahead.

In a letter to the RACS dated 10 October 2003, Dr Campbell assessed Dr Khalafalla’s performance as unsatisfactory and called for a *“re-assessment of Dr Khalafalla’s status as far as the RACS is concerned.”*

However, in a letter to the Censor in Chief dated 21 October 2003, Graeme Campbell seemed to try to minimise his earlier concerns by noting Dr Khalafalla’s positive reaction to the criticism and that he had shown marked improvement in his practice *“in the twenty months since I had met him.”*

The letter goes on to discuss a case of tetanus which had been mismanaged by Dr Khalafalla, and Dr Campbell refers to his support for Dr Khalafalla to take up a position as an Area of Need Surgeon in Sale, Victoria. *“I would hope that the College would support him if he can secure this position and I think that twelve months in one location with a regular on-site surgeon to provide oversight may well be enough to see him over the line as far as acceptability goes.”*

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“The statement from Dr Campbell echoes Dr Khalafalla’s keen desire for a position where he could have ‘12 months in one location with a regular on-site surgeon to provide oversight’ this (which he stated at interview) was the one thing he needed to successfully complete his reports and therefore gain his FRACS. Indeed, he indicated that he would not accept the position if this 12 months could not be guaranteed. It was for this reason that a 12 month locum was offered, rather than the 8 month locum required to cover Dr Almehdi’s return to the district from his secondment to the Royal Brisbane Hospital.

This seemed at the time to be a reasonable explanation as to why he had not completed the requirements, and (when compared with others who have taken 3 years or more to gain fellowship recognition) was not unusual at the time, particularly in a doctor who had demonstrated appropriate promotion from Registrar (PHO) positions to (Deemed) specialist positions.

The statement made by Dr Khalafalla is supported by the above documentary evidence that this was also the view of his supervisor from the RACS.”

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“Our client was never given any opportunity to respond to the following:

- *Dr Avramovic’s complaint dated between February 2001 and February 2002;*
- *Letters from Drs Campbell and Barling to the RACS in February 2002 - 2003;*

- *Complaint by Dr Campbell dated July 2003;*
- *Complaint by Dr Anthony Gray undated;*
- *Complaint Dr D Murphy dated September 2003;*

The first time our client became aware of complaints was two weeks prior to his RACS interview. He was not given any details of these complaints nor was he provided with a copy of the complaints. The complainants were not identified to our client. Our client was not given any opportunity to respond to those complaints.

Our client had not seen Dr Avramovic's report and consequently was not given an opportunity to respond to the allegations. Our client was not aware of "adverse sequelae" to which Dr Avramovic has apparently referred.

Our client was never given an opportunity to respond to the complaint from Dr Campbell in July 2003. All of the communications our client received from Dr Campbell and Barling were satisfactory and supportive. No concerns were conveyed to our client. Dr Campbell acted as a referee for our client.

Our client can recall only one occasion when he worked with Dr Gray. Our client received a copy of this complaint from the RACS in February 2007. Our client considered Dr Gray was uncomfortable during the appendectomy and asked him to feel the appendix as a courtesy to a senior surgeon. Dr Gray interpreted this as a failure by our client to locate the appendix. Dr Gray did not communicate his concerns to our client and consequently he was unable to address those concerns at the time. Our client has performed 500 appendectomies, about half of them laparoscopically.

In relation to the complaint in September 2003 by Dr Darra Murphy, our client's understanding is that Dr Murphy wrote to Dr Campbell in relation to an issue identified by a nurse. Dr Campbell answered this correspondence and asked for specifics, which were not provided. Nothing was conveyed to our client and he understood that the issue had been dealt with."

And further:

"The only deficiency noted during the training period in the College assessments from February 2001 to 31 October 2003 was by Dr Barry Hicks in his assessment for the period from 15 June 2001 to 15 October 2001 in relation to cooperation with staff. He noted that our client was from a different culture and that this was evident in some relationships. Interpersonal relationships were discussed and attitudes changed and were acceptable. The deficiency was in the process of being corrected."

5.3 Interview with the Royal Australasian College of Surgeons November 2003

On 24 November 2003, Dr Khalafalla attended an interview with the Chairman of the Board in General Surgery, Professor Christopher Christophi, and the Censor in Chief, Professor Patricia Davidson. HQCC investigators obtained hand written notes made at that meeting.

The meeting notes indicate a genuine effort by the RACS to assist Dr Khalafalla and find him a suitable position with appropriate supervision. It appears that a position as Area of Need General Surgeon at Bass Coast Regional Health (formerly Wonthaggi and District Hospital) was suggested.

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This position was formally recommended to Dr Khalafalla by letter dated 11 December 2003 in which the RACS told Dr Khalafalla he should undertake a further 12 months of “assessment under oversight.” The letter acknowledged that Dr Khalafalla had “to date unsatisfactorily completed 30 months of assessment under oversight at Townsville, Bendigo and Echuca” and if his performance was unsatisfactory during this 12 month period of assessment, “the College will not arrange any further practice under oversight and recommend that you apply in open competition and if successful, undertake a period of further training in General Surgery and sit the Part II examination.”

According to documents obtained by the HQCC, Dr Khalafalla either did not apply or did not obtain the position at Bass Coast Regional Health. Instead, Dr Khalafalla obtained a position as Area of Need Specialist at Mackay Base Hospital.

5.4 Health Quality and Complaints Commission opinion

In the HQCC’s opinion, the RACS held substantial information about the quality of surgical services provided by Dr Khalafalla, which could have alerted Mackay Base Hospital and the Medical Board of Queensland to the concerns that had been raised in relation to Dr Khalafalla’s clinical performance while employed at Townsville General Hospital, Bendigo Health Care Group and Echuca Hospital.

6. Recruitment of Dr Khalafalla by Mackay Base Hospital

6.1 Events leading up to the recruitment of Dr Khalafalla

In early 2004, Dr Farooq was Acting Director of Surgery, having taken over that role from Dr Robert Presley in September 2003.

Dr Farooq was the only specialist General Surgeon working within the Department of Surgery at Mackay Base Hospital at that time. Dr Farooq was working six days a week and on call six nights per week. One night per week, Dr Cody Fitzgerald assisted Dr Farooq by being on call after hours.

The Mackay Base Hospital had essentially been without a second specialist Surgeon since Dr Presley's departure in late 2003.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"The recruitment process for Dr Abdulla Khalafalla commenced in or around April 2004 and he commenced employment at the Mackay Base Hospital on 31 May 2004.

At this time the Mackay Base Hospital was suffering from the impact of significant funding reduction. Dr Margetts made a number of submissions to the District Manager which were accepted at that level and passed on to the Zonal Manager however no additional funding was provided.

Dr Margetts addressed this matter and the concerns he held in relation to the non-actioning of his request for funding in an 'Addendum to Submission for 3^d Orthopaedic and General Surgeons at Mackay - Response to Clinical Support Unit Comments' on Tuesday 20 January 2004.'

At that juncture, Dr Margetts was not successful in obtaining additional funding to approve the medical and support services at Mackay Base Hospital.

6.2 Application for Area of Need Certification

On 21 March 2004, Latitudes Group International submitted an "Application for Area of Need Certification" signed by Dr Margetts and Dr S. Huxley as Principal Medical Advisor.

At this time, the power given by s135(3) of the *Medical Practitioners Registration Act 2001* to approve an Area of Need was delegated by the Minister for Health to three Queensland Health officers.

Where District Managers or Directors of Medical Services considered there was a shortage of some medical service in their district, they made application to the authorised Queensland Health officer (as the Minister's delegate).

6.3 Role of Latitudes Group International

On 6 April 2004, Dr Khalafalla was introduced to Mackay Base Hospital by Latitudes Group International, a private medical recruitment company.

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Latitudes Group International offers IMGs and Queensland Health a variety of support including recruitment, selection and screening, registration, relocation and migration services.

Latitudes Group International was paid an initial placement fee, and an ongoing administrative fee to complete any required ongoing documentation for renewal of registration, Area of Need status and any annual correspondence required to be provided to the RACS and elsewhere.

The evidence suggests Dr Margetts and his Clinical Support Officer, Ms McCarthy (formerly Bugeja), relied heavily on Latitudes Group International to fulfil the employer's obligations under the AMC Pathway, such as completing documentation for submission to the AMC, the Medical Board of Queensland, the RACS, the Health Insurance Commission (HIC) and the Department of Immigration.

This reliance is illustrated in the hand written notes on the facsimile from Latitudes Group International to Ms McCarthy (formerly Bugeja) dated 15 April 2004 asking Latitudes Group International to "*send the words*" for Dr Margetts to write "*a letter of support from Craig to the College.*"

In 2004 to 2005, it was common for private recruitment agencies to coordinate the application paperwork for the:

- Area of Need decision to be made by Queensland Health;
- Registration application to the Medical Board of Queensland; and
- The relevant visa to be issued by the Department of Immigration.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"The normal process in 2004 was for recruitment agencies such as Latitude to do all the checking necessary and to have, and provide all the paper work in relation to IMGs they were referring to Districts for employment. This is not to say that the District would not go through those records however it is likely that in 2004 the District did rely, and Dr Margetts would have relied, on Latitude's paper work being in order."

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

"Latitudes were requested by the CSO for the wording for a letter Dr Margetts asked the CSO to draft. The letter was requesting a letter of support from the college, it was not providing a letter of support to the college. This is significantly different.

The former is a letter which could be drafted by even the most junior administrative staff, and therefore it is perfectly appropriate for a level 5 administrator to be able to draft such a letter. The letter was reviewed and authorised by Dr Margetts prior to it being sent. There is nothing untoward with the process of requesting a draft letter from an AO5 which would ultimately be finalised and signed by the EDMS.

There can be no suggestion that this process was an abrogation of responsibility by Dr Margetts.

Any assertion that there was should be removed from the report.

Further, given the comments by the Director-General of Queensland Health it is difficult to sustain an argument that a CSO should not assist in the logistics of undertaking the paperwork required for compliance with the AMC/College pathway utilising the contracted agency."

6.4 Assessment of suitability

An email from Ms Angela McCarthy (formerly Bugeja), Clinical Support Officer at Mackay Base Hospital to Dr Farooq dated 14 April 2004 indicates the urgency felt to appoint Dr Khalafalla. The email attached *"a reference that Craig and I took yesterday."*

The email implies that Dr Khalafalla's *curriculum vitae* had been given to Dr Farooq but when interviewed, Dr Farooq stated that he could not recall seeing Dr Khalafalla's *curriculum vitae*.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"It was normal practice to forward resume and log books to the Clinical Director or (in the case of a Clinical Director's recruitment) to another Fellow of the college to assess his training history, experience etc with respect to the day to day activities required by the department in question.

The e-mail indicates that "all of the documents" were attached, not just the referee reports. In addition, Dr Farooq was part of the interview and he had already been given Dr Khalafalla's CV and Logbook before that time.

Dr Farooq made the final decision to appoint - which was ratified by Dr Margetts and then forwarded to the District Manager."

Dr Khalafalla's *curriculum vitae* appears to have been reviewed by Dr Margetts, as HQCC was provided with a copy of Dr Khalafalla's *curriculum vitae* containing Dr Margetts' handwritten notes.

Dr Khalafalla's *curriculum vitae* did contain anomalies (in that it omitted the date that he ceased working at Taranaki Hospital in New Zealand and there was a gap of over 12 months in his overseas experience), but there is no evidence that the gaps in his practice were identified by Dr Margetts.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"The HQCC draft report fails to identify any gaps in Dr Khalafalla's practice. Our client notes generally:

- That he believed the alleged "gap" was satisfactorily explained in the interview.*
- That HQCC have not demonstrated still that there was, in fact any true "gap."*

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- *That the Area of Need summary of Experience Form 2 completed by Dr Khalafalla highlights that there was, in fact, no gap in Dr Khalafalla's CV.*
- *Dr Khalafalla had a complete history in Australia since February 2001 in Registrar positions and had demonstrated progress and advancement to the equivalent of "Deemed Specialist" in Victoria (Note that no such registration category existed there, but the college provided the equivalent support).*
- *Dr Khalafalla was, and had been, in the college program and was well known to the RACS well before his arrival in Australia.*
- *Dr Khalafalla was recognised for specialist billing by the HIC upon recommendation by the RACS when in Victoria.*
- *Interview was conducted with Dr Farooq (the Director of Surgery) and the CSO present. Dr Farooq was able to ask questions regarding any clinical aspects and given every opportunity to satisfy himself from a Surgical/Departmental/RACS perspective.*
- *Written reference from a known and respected Fellow of RACS indicated that after working with him as his supervisor for 3 months he felt that his "role of supervision is quite unnecessary and an insult to Mr Khalafalla. I have no criticism of his technical skills, surgical knowledge or behaviour in the hospital. "noting that there were, however, "one or two parties in the hospital environment who have seen fit to make trouble. I have not received any adverse comments from any of the anaesthetists or nursing staff within the hospital."*
- *The written reference was supported by verbal checking of two college referees (Fellows) who felt that they would both be happy to have him operate on them or their families (except that one of them may have picked someone they know) and both would have him back again.*
- *Support was gained from the Censor in Chief of RACS for his appointment.*
- *Dr Khalafalla's level of supervision was the minimum that the RACS had - i.e. "under oversight."*
- *The RACS said that on completion of 12 months of satisfactory reports (i.e. 4), they would support his registration as a specialist (NB: not a "Deemed" Specialist) and may even offer him a FRACS without examination under their Article of Association #21.*
- *The process subsequently implemented in Queensland to verify post graduate overseas experience involved Certificates of Good Standing (CoGS) being forwarded directly from overseas authorities to the Medical Board, and does not involve local district staff due to the complexity of the verification process.*

The inability of Queensland Health to locate the documentation of the interview is most unfortunate; however this does not indicate that it was not produced at the time. Subsequent queries with the HR department indicate that the official documentation is routinely destroyed after 12 months as per QH policy."

And further:

"A copy of Dr Khalafalla's log book was reviewed and was also forwarded to Dr Farooq prior to assessment. Dr Khalafalla was one of the few IMG Deemed Specialists to produce a log book and its detail appeared to be substantial.

Dr Margetts recalls doing a quick calculation of the numbers to ascertain that he must have undertaken between 10-20 or so procedures per working week which seemed reasonable.

It is noteworthy that the copy of Dr Khalafalla's Log Book in the possession of HQCC has only every second page reproduced, whereas the one reviewed by Dr Margetts and forwarded to Dr Farooq and the RACS/AMC were full copies. We note that this does not appear to have been taken into account by the investigation and is certainly not noted in the HQCC draft report."

When interviewed by the HQCC, Dr Margetts said that he relied on the Medical Board of Queensland to verify qualifications. Dr Margetts stated that he had never seen the AMC Guidelines and seemed to have limited understanding of the role of the RACS in the assessment process for Area of Need Specialists.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"This conclusion is incorrect. Dr Margetts:

- Is aware of the assessment of medical schools and medical courses within Australia and New Zealand. He also had several recent discussions regarding AMC processes with them when seeking to get a slightly novel curriculum for the James Cook University medical school assessed and passed by the AMC.*
- Is a member of the State Committee of RACMA his own college - which is currently undergoing AMC Accreditation. Accordingly is fully aware of the AMC's role in approving programs of specialist medical training. He is therefore similarly aware of its role in the recognition of medical specialties and sub-specialties, as this is discussed at every State Committee meeting.*
- Is well aware of the two parts of the AMC examination for non-specialists. Mackay had run courses for AMC Examinations for Junior Doctors which Dr Margetts had supported, and via discussions with people involved with the RAPTS program and the preparation for examination program, as well as the annual recruitment of Junior Doctors.*
- Is also aware of its role in advising AHMAC and its advice to State and Territory Boards.*

None of the above was relevant to the conversation regarding the initial registration and application of Dr Khalafalla as a Deemed Specialist.

- Dr Margetts comments related to the AMC's virtually non-existent role in terms of assessment of IMG Specialists which, although administered by the AMC, all material components of Assessment are undertaken by the relevant College.*

In terms of verification of Basic Medical Degrees; the assessment of primary degrees occurs prior to Registration. This process was found wanting at the Bundaberg Royal Commission where registered medical practitioners were subsequently found not to have had basic degrees.

The process of verification of degrees was a key feature of the Bundaberg Inquiry, and as a result of the widespread confusion in this regard the Medical Board then insisted on utilisation of the AMC's resources and their agreement with the Educational Commission for Foreign Medical Graduates (ECFMG) using their Electronic International Credentialing Service (EICS) however this was put in place post Bundaberg. In all correspondence from the Medical Board, however, this is portrayed as a direct relationship between Medical Board and EICS.

The processing of the forms was well documented within the MHSD, and was done correctly. Although Dr Margetts had little to do with the AMC on a day-to-day basis he was well aware of their functioning in this area. That being said, the "Gold Standard" is whether or not the doctor gains registration and if so, whether such registration is as a Deemed Specialist or not under the relevant section of the Act.

Primary point verification is virtually impossible to undertake without the resources of ECFMG as evidenced by the fact that there is no individual, body or authority in Australia who can do this. To expect that of Dr Margetts in 2004 is unreasonable. Further, it is contended that to attempt to do independent verification is potentially dangerous, as it raises the possibility of conflicting information. Under such circumstances the Medical Board assessment, as embodied in the applicant's registration status is required to be relied upon for legal as well as Human Resource Management purposes."

And further:

"Mackay was uniquely diligent in seeking deemed specialist status for its senior staff, and the vast majority of them so recruited went via that process. All required significant input from the relevant college. The suggestion that Dr Margetts has limited understanding of the note of the RACS in the assessment process for Area of Need specialists is strongly refuted. We note that the finding is without foundation.

Indeed Mackay was quite progressive in this regard with many such appointments in Medicine, Surgery, Orthopaedics, Obstetrics & Gynaecology.

Finally the role of the College is well documented in both the Recruitment Flowchart Dr Margetts produced in 2005 as well as the "Safe Doctors - Fair System" Guidelines document which he authored."

And further:

"The statement by the HQCC that Dr Margetts had limited understanding of the role of the RACS in the assessment process for Area of Need specialists is without a basis. Dr Margetts had never stated that he had no understanding of the role of RACS (or any other college) in such processes, and the Mackay Health Service District was one of the most prolific users of the Deemed Specialist Pathway even when this was not common practice (as was identified in the Bundaberg Hospital Commission of Inquiry). With over 16 senior medical officers being appointed as Deemed Specialists via this pathway Dr Margetts was well versed with the process and was a strong and diligent supporter of gaining college endorsement and Deemed Specialist status for senior doctors.

The evidence is that Dr Margetts correctly wrote to RACS to request their review of Dr Khalafalla with a view to gaining Deemed Specialist status. This could not occur if the assertion of the HQCC that Dr Margetts had limited understanding of the role of the RACS in the assessment process, and is not supported by evidence from the transcript of interview with Dr Margetts."

And further:

"Our client has reviewed over 100,000 emails and can find no evidence that the AMC document was distributed to Queensland Health EDMSSs, and certainly not to him.

Further, a search has revealed that the document in question is still not available on the Queensland Health Electronic Publishing Service (QHEPS).

Finally, the only document citing the role of the AMC which is available on QHEPS does not mention its function with regard to Deemed Specialist Assessment.”

Submission by the Medical Board of Queensland

In respect to the submission by Dr Margetts, the Medical Board of Queensland submits:

*“The Queensland Public Hospital Commission of Inquiry did **not** find any instances where medical practitioners were subsequently found not to have had their basic degrees.”*

And further:

“Also between 1 October 2005 and 31 December 2006 the Medical Board of Queensland and EICS had a direct relationship in the primary source verification of medical qualifications. This arrangement did not allow the Board to share the verification report with any other authority (other Boards, employers or AMC). The AMC commenced verifying qualifications through EICS on 1 January 2007 and this arrangement allowed the AMC to share the verification reports with all Australian Medical Boards. The AMC’s contract with EICS also included benefits for the applicants in cheaper fees and a quicker verification process. The Medical Board of Queensland therefore adopted the AMC process.”

Submission by Queensland Health

The Director-General, Queensland Health, submits:

“The report cites evidence, including from Mr Ian Franks, CEO of the AMC that limited knowledge of the AMC guidelines was, at the time, common in key stakeholders in the process of assessment of Area of Need specialists. This is not disputed, but does point clearly to a systemic problem. If Dr Margetts was indeed ignorant of the guidelines, he was not alone.”

6.5 Recruitment interview

Dr Margetts conducted a telephone interview with Dr Khalafalla prior to Dr Khalafalla’s appointment. The HQCC was not provided with any notes made by Dr Margetts at the time of the interview. The evidence suggests that Dr Farooq was also present, but he relied on Dr Margetts to ask the questions.

There is no evidence that interview questions addressed the selection criteria for the position description for Staff Surgeon forwarded to the RACS prior to, or at the time of, Dr Khalafalla’s employment.

In terms of matching Dr Khalafalla to the Area of Need position, there is no evidence that the position description was developed in conjunction with the RACS. The document provided to the HQCC appears to be a standard Queensland Health position description for a Staff Surgeon.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Although Dr Margetts initiated the interview - Dr Farooq was asked to question Dr Khalafalla on his surgical experience and ability as he was the College Fellow. Dr Farooq was given every opportunity to satisfy himself in this respect.

Dr Margetts was particularly keen to determine Dr Khalafalla's ability as an IMG to understand and converse in English, including local idioms and understanding humour etc which can prove difficult in a foreign language. This is one of the few aspects which can only be ascertained by interview with a candidate. The remainder is more reliably gained from the two required professional referees.

It is well documented that seeking interview confirmation regarding the contents of a resume is an extremely low yield activity. Useful questions related to the specifics of surgery are difficult to assess at interview - and reliance is (it is submitted quite appropriately) placed on the College's endorsement of a doctor they have had under supervision for at least 3 years. Indeed the failure to do precisely this, was one of the main criticisms of the EDMS at Bundaberg.”

And further:

“It should be noted that it is not permissible for Queensland Health staff to modify a Position Description in order to fit an individual. Positions are created based on need, not based on prospective candidate's requirements. The Position Descriptions are, however forwarded to the AMC/College as was done in the case of Dr Khalafalla. No issues were raised by either the AMC or the College in respect of the Position Description, the suitability of the applicant or any other concern. In no other way was the AMC/RACS process bypassed by Dr Margetts, his staff nor the agency working on behalf of the district.”

Submission by the Australian Medical Council

“The AMC does not evaluate position descriptions and in any case would not comment on the suitability of the applicant according to a particular position description.”

And further:

“The position description is one of a number of documents received by the AMC for documentation verification purposes only.”

Dr Khalafalla stated that the interview was very informal and Dr Margetts appeared to know everything about him. He said that Dr Margetts would ask a question and Dr Khalafalla would start to answer, but then Dr Margetts would finish his answer for him. Dr Khalafalla said that Dr Margetts did not ask him if he could contact his former employers apart from those referees nominated by Dr Khalafalla.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“As the record of interview cannot be located, there is no evidence that this did not occur.

That being said, more emphasis was put on his references and his standing with the College than on asking a solo candidate to speak about himself. As indicated above it is not Queensland Health policy to alter job descriptions to fit individuals, however the job description was forwarded to the AMC/RACS process and no concerns were raised, and no alterations were made.”

6.6 Referee checks

When recruiting Dr Khalafalla, Dr Margetts checked only two references nominated by Dr Khalafalla, namely:

- Dr Graham Syme, Echuca Hospital; and
- Dr Ross Gallery, Mt Isa Hospital.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

“Dr Margetts personal standard in 2004 should not be confused with the standard required by Queensland Health policy, and it is manifestly unfair to draw an adverse inference against him merely on the basis that he deviated from his normal practice.

And further:

“It is noted that Dr Margetts obtained two referee reports from Dr Syme and Dr Gallery, both of whose RACS assessments of Dr Khalafalla were positive.”

On 13 April 2004, Dr Margetts spoke to Dr Syme and Dr Gallery in the presence of his Clinical Support Officer, Ms McCarthy (formerly Bugeja). Notes were made of the referee checks with Dr Syme and Dr Gallery.

Dr Margetts had devised his own set of questions including a question about whether the referee would have Dr Khalafalla treat a member of their own family. However, the referee questions did not address the selection criteria for the position of Staff Surgeon.

One of the referees, Dr Graham Syme, was well known to Dr Margetts. Dr Margetts did not seem to question the fact that Dr Syme had only worked with Dr Khalafalla as a locum at Echuca Hospital for a period of six months.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Having personal knowledge of a referee, particularly such a positive one, was important to ensure that the reference was not falsified and to confirm the view.

Dr Syme confirmed the reference - and provided additional information all of which was supportive of Dr Khalafalla. Questions were raised with Dr Syme regarding the only issue of concern, which was the reference to interpersonal issues. These were answered to the satisfaction of the committee.

Although the written reference was made after 3 months, Dr Syme continued to be his supervisor for some time after that writing two 3-monthly assessments for the college.”

Dr Margetts did not contact the Townsville General Hospital and make general enquires in relation to Dr Khalafalla's practice at that hospital.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Margetts specifically called one of his referees from that time. Dr Ross Gallery a fellow of the college, and his college supervisor. Dr Gallery was one of his nominated referees [he was from Mt Isa].

QH recruitment obligations are for referees only to be asked to verify information presented in the application and interview and only from nominated people which should include a recent supervisor. Arguably Dr Margetts went above and beyond the requirements of the policy of the day.

This was complied with.

Whilst in retrospect it may have been instructive to interview a supervisor of 3 years ago, it was not (and still is not) normal practice.

That being said, the updated process Dr Margetts drafted in 2005 included a standard question to seek references from other people, but it was neither common practice nor a policy requirement at the time, nor is it today.”

6.7 Suitability of Dr Khalafalla

At the time of the interview, Dr Khalafalla had undergone three unsatisfactory periods of oversight assessment totalling about 32 months. Dr Margetts did not make any enquires of the RACS as to why Dr Khalafalla had been under oversight assessment for such a long period of time. When interviewed by HQCC investigators, Dr Margetts said he did not think to make specific enquiries of the RACS.

Given that the RACS had a long association with Dr Khalafalla, the RACS was obviously a useful source of information and Dr Margetts could have been alerted to the concerns that had been raised in relation to Dr Khalafalla's clinical performance while employed at Townsville General Hospital, Bendigo Health Care Group and Echuca Hospital.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“There was nothing to indicate that previous reports were unsatisfactory except for Dr Khalafalla's comment that he needed a consistent 12 month appointment with the same supervisor. Dr Margetts believes that it would have been against Queensland Health practice of the day to contact the RACS. To spontaneously contact the RACS at that time would have been unusual. Further, as RACS were to be contacted (and were contacted) as part of the Area of Need registration process, it is simply untrue that the RACS were not informed and specifically given opportunity to support or not support Dr Khalafalla's appointment and registration as a Deemed Specialist in an Area of Need position at Mackay.

Conversely, RACS were in receipt of the information and had ample opportunity to put forward the large amount of information that they had with regard to this doctor. They did not do this.

Instead they provided a strongly supportive endorsement of Dr Khalafalla in the form of recommendation for Assessment only under oversight, and for full recognition as a specialist and for admission to fellowship without examination on the conclusion of the Assessment under oversight.

To spontaneously contact the RACS during the interview/referee stage - when they were to be formally approached as the next step in the process in any event would have been unusual to say the least.

It should be noted that the RACS were consulted via the Area of Need process prior to his appointment and yet none of this information was forthcoming.”

And further:

“Dr Margetts did specifically make enquiries of RACS regarding his suitability as he sent the Area of Need documents to RACS specifically seeking their input. Dr Margetts had no way of knowing that Dr Khalafalla had undergone three unsuccessful periods of oversight assessment totalling about 32 months and it is inappropriate to suggest that he should.”

When interviewed, Mr Ian Frank, CEO of the AMC, highlighted a potential problem with Area of Need specialists in that employers were often desperate to fill the positions. In a high risk procedural specialty such as surgery, satisfactory probity checks are critical, particularly where the Surgeon will be working in relative isolation with limited supervision.

Dr Margetts stated that at the time that he appointed Dr Khalafalla, he thought he had the “Gold Standard” because Dr Khalafalla was so well known to the RACS. It appears that Dr Margetts relied heavily on the approval by the RACS for Dr Khalafalla to occupy the Area of Need position at Mackay Base Hospital.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Queensland Health (via its delegate, the District Manager) was Dr Khalafalla's employer, not Dr Margetts.

Dr Margetts did endorse the recommendation of Dr Farooq to employ him. This decision was based on a range of information gained from credible sources, including RACS and Medical Board as well as advice from the Director of the Department and after perusing his CV, Log Book and References. Each of these sources was relied upon to varying degrees.

In addition to findings at interview, it was correct and proper for Dr Margetts to rely on referees, as well as the verification of Dr Khalafalla's qualifications and experience from the Medical Board, AMC, the HIC and RACS, as well as the Director of the relevant department who holds the appropriate fellowship.”

6.8 Offer of employment

On or about 14 April 2004, Dr Khalafalla accepted an offer of employment by the Mackay Base Hospital as a Staff Specialist, Department of Surgery, for a period of 12 months (with the possibility of an extension). A Staff Specialist is required to hold specialist or Deemed Specialist registration before commencing employment.

On 15 April 2004, Mackay Base Hospital requested that Latitudes Group International seek Area of Need specialist registration for Dr Khalafalla's position.

6.9 The Royal Australasian College of Surgeons assessment

On 19 April 2004, Dr Margetts wrote a letter (composed by Latitudes Group International) to the Royal Australasian College of Surgeons (RACS) stating that he believed Dr Khalafalla had been previously assessed as suitable to work in an Area of Need position and that Dr Khalafalla had been offered a position as Staff Surgeon. Dr Margetts requested the RACS consider Dr Khalafalla's suitability for the position against the position description. The letter stated that a copy of a letter of support from the RACS was required by the Medical Board of Queensland to facilitate registration.

On 22 April 2004, Latitudes Group International forwarded Dr Margett's letter to the RACS, enclosing a position description for Staff Surgeon MHSD MO1 (Date of review July 2003) and advised that Dr Asad Farooq and Dr Cody Fitzgerald had agreed to provide "supervision" for Dr Khalafalla.

On 28 April 2004, Ms Toula Panagopoulos, Administrative Officer, Censor in Chief's Office, the RACS, advised Professor Christopher Christophi, Chairman of the RACS Board in General Surgery, of Dr Khalafalla's appointment at Mackay Base Hospital and asked whether he would support Dr Khalafalla in the Area of Need position and agree to the appointment of Dr Farooq and Dr Fitzgerald as supervisors.

Dr Khalafalla does not appear to have attended a further interview with the RACS to assess his suitability for the position at Mackay Base Hospital and/or to match his qualifications and experience to the requirements of that position, as detailed in a position description.

On this point, Dr Hillis, CEO of the RACS, advised that there is no requirement for an IMG to attend an interview for an Area of Need if the IMG has been previously assessed by the RACS for specialist assessment. Dr Khalafalla had been interviewed by the RACS on 24 November 2003 for the purpose of assessing his suitability for an Area of Need position at Bass Coast Regional Health in Victoria and was assessed as suitable for that position. The RACS considers that a document based assessment is sufficient if the IMG has been previously interviewed for specialist assessment.

On 6 May 2004, the RACS Censor in Chief wrote to the Medical Board of Queensland advising that the RACS supported Dr Khalafalla's Area of Need appointment to Mackay Base Hospital and recommended that he undergo a 12 month period of assessment under oversight with the possibility of application to Fellowship under Article 21.

Under Article 21, the RACS assessment is to determine whether the individual has the capacity for independent surgical practice in Australia and New Zealand. If an overseas trained Surgeon demonstrates that they can be considered substantially comparable to an Australasian-trained Surgeon, then Fellowship follows.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"This was communicated prior to Dr Khalafalla's appointment as a specialist. He was initially appointed only as a locum SMO for 12 months."

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On 10 May 2004, Dr Chris Christophi advised Ms Panagopoulos by email that he would be happy to support Dr Khalafalla's Area of Need appointment to Mackay Health Service District. Dr Christophi did not mention supervisors.

The process under the AMC guidelines does not appear to have been followed on this occasion.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"In all material respects the guidelines and the process was followed. All documentation was sent to the correct people in accordance with the guidelines.

Apart from the guideline of altering PDs to suit individuals which was against QH policy, the guidelines were followed precisely."

6.10 Health Quality and Complaints Commission opinion

6.10.1 Accountability

When interviewed, the Clinical Support Officer at Mackay Base Hospital, Ms McCarthy (formerly Bugeja), demonstrated a high level of knowledge of most of the terms used in the AMC Guidelines. She had considerable experience in recruitment and demonstrated an excellent 'hands on approach.'

Whilst Ms McCarthy (formerly Bugeja) had not sighted the AMC Users Guide, she was aware of the AMC assessment process for Area of Need specialists and stated that she accessed the AMC website and followed the relevant links.

Despite her knowledge, at least at the time of Dr Khalafalla's initial employment by Mackay Base Hospital, Ms McCarthy (formerly Bugeja) relied heavily on the recruitment agency for assistance in satisfying the requirements of the AMC Guidelines including certification of the Area of Need position and dealings with the RACS, the Medical Board of Queensland and the AMC.

Ms McCarthy (formerly Bugeja) stated that she used a mental checklist and had recently been asked to prepare a procedures manual for use by other staff involved in the recruitment of Area of Need specialists. Ms McCarthy (formerly Bugeja) would sign the Area of Need forms on behalf of the Executive Director Medical Services, Dr Margetts.

The District Manager is ultimately accountable as the employer and drives the recruitment and employment process, including the ongoing assessment of the registrant's skill and competence.

When employing staff, the Executive Director Medical Services and the Director of Surgery cannot abrogate their responsibilities to establish, maintain and implement reasonable processes to monitor the quality of health services under their control and protect the health and well being of users of those health services. This needs to be reinforced with Executive Directors and Directors, and well supported by Queensland health's corporate resources.

6.10.2 Suitability of Dr Khalafalla

Rural and remote Queensland has experienced medical workforce shortages for a considerable period now, and the *Report on the Audit of Health Workforce in Rural and Regional Australia* published in April 2008 by the Australian Government Department of Health and Ageing highlights that the supply of medical practitioners will continue to rely upon the recruitment of overseas trained professionals in the immediate and medium term future.

Although there is clearly a need to recruit special purpose Deemed Specialist registrants to maintain surgical services in areas of need, those communities have the right to expect safe, competent surgical care, and the right to know they are being treated professionally by safe, competent surgeons. Compromising standards in order to fill positions does not resolve the problems for the affected communities.

The reality is that there are substantial risks relying on overseas qualifications that are difficult to verify. This case demonstrated the reluctance of managers and other key stakeholders to intervene because of discrimination risks, allegations of workplace bullying and harassment. Indeed, some 12 months passed before a whistleblower raised the matter with a federal member of parliament in the public interest and then appropriate action was taken to remove Dr Khalafalla from the Area of Need position.

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“Unfortunately with the privacy legislation and potential legal action, it is not always apparent that the College has the capacity to inform other groups (like Mackay Base Hospital) of previous concerns.

As the College is not a statutory body this issue needs to be clarified and indemnity provided. The College being conscious of this is now ensuring any concerns which can be formally reviewed with definite conclusions are reported to the appropriate registration body.”

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“At that time there was no information available to suggest to Dr Margetts that Dr Khalafalla had been under oversight for an extensive period of time.

Dr Margetts notes generally:

- Three years to progress from Registrar to Specialist is not an unusual long frame time. In Queensland there is currently a requirement to show progress toward Specialist Qualifications and to have that reviewed at 3 years.*
- At the time there were no such guidelines, and Dr Khalafalla's progress within Australia broadly fits with those more recently imposed timelines in any event.*
- Finally Dr Khalafalla's statement that he required a stable job with stable referees for 12 months was not unreasonable and is supported by documentation from Dr Campbell...”*

And further:

“If the RACS is unable to provide accurate reports based on their fear of litigation, this indicates a potentially enormous issue as it calls into question the reliability of all reports regarding the good standing of doctors, Area of Need or otherwise, emanating from RACS.”

Submission by Dr Almehti

Quinlan Miller Treston, on behalf of Dr Almehti, submit:

“While cognisant of the College’s concerns regarding privacy legislation and potential legal action, Dr Almehti reiterates matters raised in his original submission that the College still maintains obligations and responsibilities to disclose information to those placed by the College in a position of decision making through their supervisory role. That is to say the College should have been more proactive in its provision of the previous assessments in their possession concerning Dr Khalafalla. The inability of the College to provide this information to, for example the Director of Surgery, meant this had a direct impact on supervisory and management decisions which were subsequently taken.

The absence of that earlier information directly impacted upon the subsequent timeliness of management action taken to review and manage the clinical performance by Dr Khalafalla.”

6.10.2.1 Health Quality and Complaints Commission opinion

There are significant difficulties in assessing and verifying overseas qualifications, particularly specialist and postgraduate qualifications, and there is no clear and transparent measure to determine whether or not an IMG is safe to practice.

The evidence demonstrates that Dr Margetts placed significant reliance on the fact that the RACS supported Dr Khalafalla to occupy the Area of Need position at Mackay Base Hospital.

As the Specialist College with the expertise and primary responsibility under the AMC guidelines to assess Dr Khalafalla’s suitability to occupy the position, it was reasonable, in the HQCC’s view, for Dr Margetts to rely on the RACS support of Dr Khalafalla’s ability to fulfil the requirements of the Area of Need at Mackay Base Hospital.

However, rather than customising Dr Khalafalla’s assessment to determine suitability for appointment to the Area of Need position Mackay Base Hospital, it appears the RACS relied on its previous assessment of Dr Khalafalla’s suitability for an Area of Need position at Bass Coast Regional Health in Victoria.

6.10.3 Queensland Health

The Director-General, Queensland Health, has provided the following information:

“A number of measures [have been] taken by the Queensland Government and Queensland Health to improve systems for recruitment and management of IMGs. For example:

- *The creation of the Recruitment, Assessment, Placement, Training and Support (RAPTS) area within Queensland Health, which includes the "Work for Us Team" responsible for ensuring that all applicants for clinical positions (Medical, Nursing, Dental and Allied Health) meet the minimum standards for both registration and effective clinical practice within Queensland,*
- *The 'Roles and Responsibilities - Medical Superintendents' policy, which outlines the responsibility for Medical Superintendents (or howsoever titled) in relation to:*
 - *Ensuring that recruitment and selection processes are undertaken in accordance with Queensland Health policy and procedures;*
 - *Ensuring proof of qualifications and/or registration is provided, including any necessary endorsements prior to any medical practitioner commencing employment;*
 - *Credentialing - ensuring medical staff have the correct credentials to undertake their assigned duties;*
 - *Registration - to ensure that all of the medical practitioners are appropriately registered at all times:*
- *Ongoing audit of credentialling;*
- *Initiation of a review of credentialling policy;*
- *Changes to the Queensland medical practitioner registration legislation in relation to Area of Need and for special purpose registrants to show progression towards Obtaining Australian qualifications and implementation of associated administrative procedures.*

And further:

“The assessment of Overseas Trained Specialists (OTS) for Area of Need and/or Fellowship is subject to the ongoing work of the Joint Standing Committee for the assessment of Overseas Trained Specialists (JSCOTS), which is convened by the Australian Medical Council (AMC).”

And further:

“All junior medical officer positions (i.e. JHO's, SHO's and PHO's) in Queensland Health, including those in major teaching hospitals, are declared an Area of Need. AoN for senior medical officer positions, including specialists, is determined on a case by case basis.

In the 2005/2006 annual report of the Medical Board there were a total of 1,311 s.135 (Area of Need) and s.1351/143A (deemed specialists) registered in Queensland. The greater proportion of these registrants, are likely to be in the Queensland Health system. In acknowledgement of a requirement from the Ministerial Taskforce and from COAG, for assessment of IMGs pre-employment, the Nationally Consistent Assessment Processes for IMGs have been developed. While I acknowledge the [HQCC has expressed a preference for] clinical assessment in a major teaching hospital prior to taking up a position in an Area of Need, we are committed to implementing the National processes which include independent clinical assessment.”

And further:

“In July 2006, COAG agreed to the Implementation of” Nationally Consistent Assessment Process for IMGs, including Overseas Trained Specialists. This work was initially carried out by a National Implementation Committee, chaired by the Department of Health and Ageing, which presented a final report to Health Ministers in December 2007. The processes were agreed and are presently being carried forward by a National Technical Committee. An implementation date of 1 July 2008 has been set for changes to the assessment of OTDs from noncompetent authorities and the work continues on the assessment of OTSs.

An independent 'Review of the Assessment of Overseas Trained Surgeons' was established by the Royal Australasian College of Surgeons, in conjunction with the Australian Health Ministers' Conference (AHMC) and the AMC, in accordance with the requirements of Authorisation No.A90765, granted to the College by the Australian Competition and Consumer Commission (ACCC) on 30 June 2003. The Review was reported in April 2005.

In summary, some work has already been completed and more is progressing in this area.”

6.10.4 Relevant comments and findings from the Davies Report

In relation to Area of Need decisions made before 2005, the Davies Report found that it seemed:

- No genuine attempt has been made either to give effect to the evident purpose of s135(3) in identifying areas of need nor in ensuring that, by qualifications and experience, overseas trained doctors are suited to particular area of need positions.
- Neither the Minister's delegate nor Queensland Health attended to their role as statutory gatekeepers with any degree of vigilance.

The Davies Report comments (at para 2.22):

“...., Queensland has become highly dependent for a number of years on doctors from developing countries. This state employs well more IMGs than any other Australian state and, at least by 2003, the proportion of Resident Medical Officers who were IMGs across the State was approaching 50 per cent. Whereas in 1997-08, the United Kingdom and Ireland accounted for 70 per cent of the temporary working visas issued to IMGs (known as the subclass 422), by 2002-03 that share had fallen to 43 per cent. Over the same period, the proportion of doctors originating from India, Pakistan, Sri Lanka, Malaysia, the Philippines, Bangladesh and 'other' increased from 9.6 per cent to 37.3 per cent. Queensland authorities often know little about the training standards at particular medical schools in those countries and, in any case, the training may address quite different conditions from those operating in this State. The practice is also problematic from a moral point of view: it deprives developing countries of doctors in circumstances where those countries may have paid for their education and are likely to have at least an equal need for their services.”

The HQCC notes the following comments and findings from the Davies Report.

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- (a) The scheme has resulted in large numbers of IMGs practicing in Queensland without meeting the standards required of Australian-trained doctors.
- (b) The scheme allows those doctors to work in senior positions in, say, an orthopaedic department or an internal medicine department (and usually in a regional area), without informing the public that they have not satisfied the same criteria as those required of their Australian-trained counterparts.
- (c) Neither the Medical Board of Queensland nor Queensland Health carried out any examinations (theoretical or practical) to test the competence of IMGs.
- (d) This is in contrast to other jurisdictions including Canada, the United States, the United Kingdom and, to some extent, New South Wales, where the IMG must establish competence in English, medical knowledge and clinical skills.
- (e) Many IMG special purpose registrants tended to come from countries with different cultures and languages from Australia and sometimes with a medical and hospital system which is less developed or complex than Australia.
- (f) Even if Queensland Health anticipated that an IMG would perform the role of a specialist in a department, it might seek an Area of Need declaration only for a Senior Medical Officer position or as a Senior Medical Officer in a designated specialty.
- (g) Queensland Health 'mostly avoided' the two pathways for ensuring quality (namely Fellowship or deemed specialisation) because:
 - (i) Queensland Health could pay Senior Medical Officers considerably less than deemed specialists;
 - (ii) It was not always easy to obtain a college's approval for a particular candidate,
 - (iii) The college would almost always impose a condition that supervision be provided and this could be awkward for Queensland Health; and
 - (iv) Colleges would also require continuing medical education, which might be inconvenient for Queensland Health.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

- a) *"The final paragraph is not true in this case, as the CV and PD of Dr Khalafalla were specifically sent to RACS for this purpose demonstrating a high degree of diligence by Queensland Health and Dr Margetts.*
- b) *This is not true in the case of Dr Khalafalla, the standards were assessed by RACS/AMC and MBQ to be equivalent to specialist status.*
- c) *This is not true in the case of Dr Khalafalla, he was a Deemed Specialist, therefore he (by definition) was a specialist.*

- d) *It is not the role of Queensland Health to examine and determine the standards for admission to the ranks of “Specialist.” This, quite appropriately is the domain of the RACS.*
- e) *This is not true in the case of Dr Khalafalla – prior to the requirement for English Language proficiency testing, he was checked during interview for his understanding of English, including idioms, humour and colloquialisms. His references cite him as being good at English. Subsequently, of course, the IELTS has been introduced to cover this issue.*
- f) *This is not true in the case of Dr Khalafalla, he had been working in Australia for 3 years and many more in New Zealand prior to this.*
- g) *This is not true in the case of Dr Khalafalla – he was employed as a Deemed Specialist after being registered as such.*
- h) *This is not true in the case of Dr Khalafalla, or indeed the appointment of IMG’s at Mackay Health Service District at that time. Mackay Health Service District has taken 16 senior medical officers as Deemed Specialists.”*

6.10.5 Medical workforce shortages

The HQCC acknowledges that continuing medical workforce shortages in Australia contributed to the situation at Mackay Base Hospital, and presented significant challenges for the medical administrators.

The difficulties in maintaining quality health services in rural and regional Queensland are highlighted in the recent *Report on the Audit of Health Workforce in Rural and Regional Australia* published in April 2008 by the Australian Government Department of Health and Ageing.

Overall, the audit identified that:

- Rural and remote Australia has experienced medical workforce shortages for a considerable period, particularly in terms of general practice services and some specialist services, such as Obstetrics and Gynaecology;
- Regional and remote Australians continue to be disadvantaged in their access to health professionals compared to their urban counterparts
- The supply of the medical workforce, when considered as the number of doctors in comparison to the population of the area in which those doctors practice, is low to very poor in many rural and regional areas of Australia;
- One-third of doctors currently working in Australia were trained overseas; and
- The proportion of overseas trained doctors is significantly higher in rural and remote areas where 41% of all doctors have trained overseas.
- Measures to increase the supply and distribution of medical practitioners in Australia have helped improve the distribution of medical practitioners over the last few years, but the growth in the supply of medical practitioners has not kept pace with the general population growth over the same period.

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- The gains in distribution in rural and remote over recent years have been in a large part due to the increased numbers of overseas trained doctors working in these areas.
- The supply of medical practitioners will continue to rely upon the recruitment of overseas trained professionals in the immediate and medium term future.

The audit included consultation with 78 stakeholder organisations, including peak bodies representing the medical, nursing and allied health workforce, education and training institutions, specialist medical colleges, regulatory bodies, hospital associations, rural health service providers, consumer groups and other advocacy organisations.

The stakeholders highlighted the challenges for delivery of health services in rural and remote Australia, and in particular, commented that:

- There are ongoing issues of isolation as IMGs must live away from their support structures.
- IMGs are often ineligible for training programs that Australian-trained doctors have access to and they receive little support to prepare for and pass registration exams.
- IMGs are often placed in highly challenging work environments with little or no orientation.
- While the vast majority of IMGs are highly skilled, there is significant potential for IMGs with insufficient skills to slip through the net.
- There are not enough training positions for specialists.
- There is professional isolation and lack of support for specialists in rural areas.
- The population base of some rural and regional areas is not large enough to sustain some specialty services and infrastructure to support some specialist services is often inadequate or lacking.
- There are barriers and administrative issues with Australian Government funded programs being effectively used to ensure specialists reach rural and remote areas.
- Specialists that deliver services to rural and remote areas often do this at considerable personal cost of time and effort.

The stakeholders emphasised the need for better incentives for all health professionals to work in rural and remote locations and greater investment in innovative solutions undertaken in partnership with state and territory governments.

The full report is available at:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/work-res-ruraud>

6.10.6 Health Quality and Complaints Commission opinion and recommendation

In the HQCC's opinion, it seems there was an inadequate exchange of information between the RACS, the Medical Board of Queensland and Queensland Health to ensure that Dr Khalafalla's qualifications and competence were matched to the requirements of a special purpose Area of Need Deemed Specialist in surgery at Mackay Base Hospital.

The failure to ensure that crucial information about Dr Khalafalla's clinical performance history was shared between the RACS, the Medical Board of Queensland and the Mackay Base Hospital was the critical underlying systemic issue.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

"The implication is that Mackay Health Service District withheld information inappropriately. This has not been substantiated, indeed although certain information held by RACS was not provided to Queensland Health and the MHSD; they (in return) were transparent and open in their dealings with RACS, and, by the admission of the MBQ, broke no obligations with regard to reporting to them, particularly not while waiting the outcome of an investigation requested of RACS."

And further:

"This issue is addressed by the Safe Doctors – Fair System Framework which has been developed with the input and endorsement of Queensland Health, RACS, MBQ, and the HQCC itself."

The HQCC recommends the Queensland Government pursue, as a priority, an Australia-wide reporting system for tracking the performance of registered health professionals.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"It appears that the core systemic issues arising from the report are deficits in communication and information sharing.

This leads to what I believe to be the key finding of the investigation: the need for an Australia-wide reporting system for tracking the performance of registered health professionals."

And further:

"Many of the subsequent issues would have been unlikely to have occurred if such a system had been in place.

The Queensland Government has been instrumental in developing a proposal for a National registration and accreditation scheme for health practitioners which will help address these key issues, However, this system will need to go beyond the current registration processes, as the investigations show that the involvement of the Colleges is essential to that process."

And further:

“The Queensland Government has played a lead role in progress toward a proposed National Registration Scheme for health practitioners, under the auspices of the Council of Australian Governments (COAG). Queensland co-chaired the COAG Senior Officials Working Group which developed the draft Inter-Governmental agreement (IGA) to underpin the scheme. The draft IGA was approved by AHMC in 2007, but further consideration was postponed by the former Prime Minister.

As incumbent Chair of AHMC, the Minister for Health, the Honourable Stephen Robertson MP has played a key role in reviving AHMC support for the scheme, which is expected to be considered by COAG in March 2008.”

7. Registration by the Medical Board of Queensland

7.1 Special purpose registration

In 2004 to 2005, special purpose registration was granted for a specific, usually short term, purpose to IMGs who did not possess a primary medical degree from a medical school accredited by the AMC, to enable them to practice medicine for specific purposes under Sections 132 to 138 of the *Medical Practitioners Registration Act 2001*. Special purpose registration was usually granted for an initial maximum term of 12 months.

In the 2004 to 2005 Annual Report, the Medical Board of Queensland reported that:

- Of 13,649 registered medical practitioners, there were a total of 1,148 Area of Need special purpose registrants and 87 Area of Need deemed specialists;
- It processed a total of 3,377 applications for registration, the majority of which were Area of Need applications (1,413); and
- A further 118 Area of Need Deemed Specialist applications were also processed.

7.2 Specialist registration

Specialist registration was available to medical graduates who held a prescribed qualification in the specialty field to which their application related. A separate pathway was available through recognition of a person's overseas specialist qualification by the relevant Australian specialist college, or alternatively, an IMG who did not hold a registrable primary qualification might complete an Australian specialist training program.

Specialist registrants who were ineligible for general registration would have a standard condition imposed restricting practice in the profession to the approved specialty field.

Submission by the Medical Board of Queensland

"The Board wishes to clarify that all medical practitioners, including specialists have a primary medical degree. It is possible that an IMG can hold special purpose registration, complete a specialist training programs [sic] in Australia and subsequently become a specialist in Queensland."

Overseas specialists wishing to fill designated Area of Need vacancies, and whose specialist training and experience were assessed as appropriate for the requirements of such positions, were granted Deemed Specialist registration for that purpose.

7.3 Registration Advisory Committee

The Davies Report identified that when an application for special purpose registration came to the Medical Board of Queensland, it would be 'case-managed' by a registration officer. Unless the registration officer considered that the application was clearly non-compliant with the Medical Board of Queensland policy for special purpose registration, the application was provided to the Registration Advisory Committee for consideration.

The Registration Advisory Committee assists the Medical Board of Queensland to meet its primary objective of protecting the public, by considering registration issues and by assessing registration applications, including those from applicants who are eligible for general registration. The Committee aims to ensure that only those persons with suitable qualifications and experience are permitted to practice medicine in Queensland and that the Medical Board of Queensland's policies and determinations with respect to all registration matters are appropriate. The standing committee makes recommendations for confirmation by the Medical Board of Queensland.

The Davies Report commented that in this process, the Committee tended to focus its attention on the forms completed by the IMG and the hospital, and the IMGs *curriculum vitae* together with the Area of Need certifications, with a view to considering whether the skills matched the position. Where the applicant was a non-resident, a temporary working visa with the Department of Immigration also needed to be arranged.

7.4 First registration of Dr Khalafalla in 2001

In February 2001, Dr Khalafalla was first granted conditional registration as a Medical Practitioner in Queensland under section 17C(d) of the *Medical Act 1939 (Qld)* to fill an Area of Need position at Townsville General Hospital or any other public hospital authorised by the Medical Superintendent on a temporary basis.

Dr Khalafalla's initial application for registration was dated 10 January 2001. In that application, Dr Khalafalla listed his nationality as New Zealand, detailed his employment in Egypt for his first three postgraduate years after graduating in 1979 (1980-1985). There were no special circumstances indicated and he listed two referees:

- Selim Kabir from Taranaki Base Hospital, New Plymouth, New Zealand; and
- Brent Anderson, GP Medical Director CAC Clinic in Taranaki, New Plymouth, New Zealand.

Dr Khalafalla stated in the application that he had passed the New Zealand Medical Council's exams and had been practicing in New Zealand with general registration. He stated that he had attended an assessment interview with the RACS in New Zealand and had been granted Class Four registration in New Zealand that allowed for assessment as a specialist to gain the vocational registration in surgery, but Dr Khalafalla stated that he "*didn't activate that yet.*"

Dr Khalafalla also stated that he held a Fellowship with the Royal College of Surgeons of Ireland, a Masters Degree in Surgery from Egypt, and more than twenty years of experience in medical practice.

Accompanying Dr Khalafalla's application were certified copies of a document confirming that Dr Khalafalla had obtained a degree of M.B.B.Ch from AIN Shames University Faculty of Medicine Cairo Egypt with a grade of "*very good*" in December 1979. This certificate in the English language was a translation of an Arabic document.

Dr Khalafalla also attached a degree certificate of Master in Surgery with Grade "*very good*" dated November 1984. That document was also translated from Arabic.

In correspondence dated 10 January 2001, the registration authority in New Zealand (the Medical Council of New Zealand) referred to a copy of Dr Khalafalla's certificate from the Royal College of Surgeons in Ireland.

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Attached to his application was a report from the New Zealand committee of the RACS vocational registration interview held on 4 April 1997. That report indicated that:

- The log book of Dr Khalafalla's surgical experience related to only one year relatively late in his surgical experience.
- For the period 1980 – 1994 (14 years) the log book of Dr Khalafalla's surgical experience was not available in total and therefore his surgical exposure could not be assessed.
- The committee stated that for the one year that Dr Khalafalla had case numbers, the extent of his major General Surgery was very limited and equivalent to a two to three month experience for an advanced surgical trainee in New Zealand.
- Dr Khalafalla's *curriculum vitae* did not record any research or publications but his referee reports were adequate.
- The committee considered Dr Khalafalla likely to achieve vocational registration after two years assessment in suitable posts.
- It was acknowledged that the examination that he had sat for the Royal College of Surgeons in 1994 was equivalent to a Part 1 examination.
- The committee recommended that after two years' assessment in suitable posts, Dr Khalafalla apply to the Board in General Surgery for permission to sit the FRACS Part 2 examination.
- Dr Khalafalla also provided a certificate from ECFMG dated 17 May 1996 stating that he had passed medical examinations in basic science, clinical science and English examination.

Included in the documents obtained from the Medical Board of Queensland were the RACS assessment reports for non-accredited surgical trainees dated 19 February 1998, 24 March 1999 and some written references from consultants in Egypt and Saudi Arabia.

By letter from the Medical Board of Queensland to the Medical Superintendent of Townsville General Hospital dated 19 February 2001, the Medical Board of Queensland Registrar confirmed that the Medical Board of Queensland, at its meeting on 23 January 2001, had recommended conditional registration under section 17C (d) for Dr Khalafalla to fill an Area of Need position at Townsville General Hospital for a period of 12 months.

One of the conditions of registration was an interview which was conducted by Dr Andrew Johnson, Executive Director, Medical Services, Townsville General Hospital.

There is a postscript on the letter dated 19 February 2001 in which states that Dr Johnson is satisfied that Dr Khalafalla "*possesses such qualifications that would, upon proof thereof to the satisfaction of the Medical Board, entitle him/her to be registered.*"

On the Medical Board of Queensland file there was a copy of Dr Khalafalla's *curriculum vitae* (that was subsequently provided to Mackay Base Hospital) and the following documents:

- (a) Letter from Mr Ian Frank, Executive Director, the AMC to Dr Khalafalla dated 16 April 2002 enclosing "*Assessment of Overseas Trained Specialist Report 2*" dated 15 April 2002 noting at question 2 that the period of supervised clinical practice had been unsatisfactory.

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The letter further stated that an earlier report of the RACS (Report 1) forwarded by the AMC to Dr Khalafalla by letter dated 1 March 2001 enclosing “*Assessment of Overseas Trained Specialists report 1*,” noting that on the basis of documentation lodged by the applicant with the AMC and interview with the applicant that a decision was not yet possible as to whether the applicant’s training and experience was equivalent to that of an Australian trained specialist and stating that a period of 12 months “*supervised clinical practice was required.*”

However, the College advised that Dr Khalafalla was exempt from the RACS Part 1 training and assessment package, but that Dr Khalafalla must undertake a minimum of 12 months of assessment under oversight to be provided by two Fellows of the College.

The report stated that should Dr Khalafalla satisfactorily complete the 12 month period of assessment, the College would recommend Dr Khalafalla’s vocational registration as a General Surgeon in Australia and New Zealand. Should his performance within the 12 months assessment be unsatisfactory, the College reserved the right to extend the period of assessment or recommend a period of further training in General Surgery.

In answer to question four (“*Will an examination be required?*”), the report was ambiguous but it appeared that no decision could be made until reports were received from supervisors of Dr Khalafalla’s clinical practice.

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“Both of these reports are standard AMC reports and use the “period of supervised clinical practice” to cover either oversight or supervision. The AMC has not differentiated between the two in their reports. The understanding between the AMC and the College has been to complete the Report to best reflect the College recommendation and to attach a copy of the College’s own assessment together with the Report. The College’s understanding is that the AMC issues a copy of the College’s assessment together with their report.”

- (b) Queensland Health application for Area of Need Certification dated 12 January 2001. It was signed by a Deputy Director Medical Services, Dr Barry Hodges, who confirmed that he had obtained at least two independent referee reports about the sponsored doctor specific to this application.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Reference to this document supports that only two referees were required by Queensland Health and by Medical Board.

It is also significant to note that the qualifications are not certified by the Hospital and are left to the Medical Board (via the AMC) to verify.”

7.5 Registration of Dr Khalafalla in 2004

According to Dr Khalafalla, the Medical Board of Queensland did not require him to re-lodge documentation when he applied for special purpose registration to commence working at Mackay Base Hospital. The Medical Board of Queensland only requested that Dr Khalafalla provide his former registration number.

The only document provided to the HQCC by the Medical Board of Queensland that was relevant to Dr Khalafalla's employment at Mackay Base Hospital was a letter dated 20 April 2004 from the Registration Manager, Medical Practitioners Board of Victoria, to the Registrar of the Medical Board of Queensland confirming that Dr Khalafalla had been registered in Victoria to provide services at the Bendigo Health Care Group, Echuca Hospital, Swan Hill Hospital and Castlemaine Hospital with registration from 1 February 2002 to 31 January 2004. The letter certified that no disciplinary proceedings had been instituted against Dr Khalafalla by the Medical Practitioners' Board of Victoria.

On 6 May 2004, the RACS Censor in Chief wrote to the Medical Board of Queensland advising that the RACS supported Dr Khalafalla's Area of Need appointment to Mackay Base Hospital as a Deemed Specialist and recommended that he undergo a 12 month period of assessment under oversight with the possibility of application to Fellowship under Article 21.

On 25 May 2004, Dr Khalafalla was granted special purpose registration as a Medical Practitioner and Deemed Specialist pursuant to sections 135 and 143A of the *Medical Practitioners Registration Act 2001 (Qld)* for the Area of Need position at Mackay Base Hospital effective from 25 May 2004 until 27 April 2005.

The conditions imposed on Dr Khalafalla's registration were those recommended by the RACS, namely that Dr Khalafalla should undertake a minimum of 12 months of assessment '*under oversight*' in the specialty of General Surgery.

At the time of Dr Khalafalla's appointment, details of the supervisors of an Area of Need Specialist were not required to be included with Dr Khalafalla's registration.

7.6 Relevant comments and findings from the Davies Report

The Davies Report included the following comments and findings about the special purpose registration process:

- (a) The Medical Board of Queensland's scrutiny of IMGs qualifications had been inadequate.
- (b) Neither the registration officers nor anyone else within the Medical Board of Queensland would, as a matter of practice, contact the referees nominated by the IMG applicant or even satisfy themselves that this task had been carried out by others, nor would they make contact with the issuing authority for the Certificate of Good Standing.
- (c) Neither Queensland Health's Area of Need staff nor the Medical Board of Queensland had any system for monitoring the performance of Area of Need doctors in the course of their registration.
- (d) Of the persons registered pursuant to s135 of the *Medical Practitioners Registration Act 2001*, those who are most in need of supervision tend to be in areas where supervision is least likely to be capable of being provided.
- (e) The Medical Board of Queensland assumed that, if doctors were employed in a hospital as a Senior Medical Officer or in a more junior position, they would be carefully supervised.

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- (f) IMG special purpose registrants were not required to identify any supervisor, and there appears to have been no process in place for the Medical Board of Queensland to confirm, during the period of registration, that IMGs (particularly those working in regional locations) were receiving supervision commensurate with their backgrounds.
- (g) There were grounds for concern about the way that the Medical Board of Queensland interpreted and administered s143A of the *Medical Practitioners Registration Act 2001* in two respects:
- (h) It seems that the Medical Board of Queensland registered many Area of Need applicants on terms that would deem them to be specialists, but without consultation with the relevant College; and
- (i) The process of obtaining Deemed Specialist registration was largely circumvented in that it was the practice of the Medical Board of Queensland to apply the Australian Medical Council national guidelines and require the involvement of the relevant specialist college and the Australian Medical Council before granting registration.

The legislative scheme for special purpose registration in areas of need had been implemented in a way which assumes, or at least accepts, that those who live in some areas of Queensland must suffer a substantially lower standard of medical care than that enjoyed by those in other areas; in particular, that those who live outside the metropolitan area of Brisbane must suffer a substantially lower standard of such care than those who do not.

7.7 Improvements to special purpose registration processes

Clearly, the process for the special purpose registration of Dr Khalafalla as a Deemed Specialist for an Area of Need was not effective, and significant improvement was needed.

The HQCC notes that the Medical Board of Queensland was informed by the RACS in April 2002 that Dr Khalafalla's period of supervised clinical practice at Townsville was unsatisfactory, and 12 months further supervised clinical practice was required. There is no evidence that this was taken into account when Dr Khalafalla reapplied for registration in April 2004 with a further 12 month period of assessment under oversight.

Submission by the Medical Board of Queensland

"In fact the Board believes that it had considered the period of unsatisfactory clinical practice in Townsville in 2002, however subsequent to that Dr Khalafalla had practiced in Victoria time under oversight or supervision by the RACS. The RACS in 2004, with the knowledge of his performance since 2002, supported his appointment at Mackay Base Hospital. The Board placed considerable weight on the RACS' support."

The problems associated with special purpose registration processes of the Medical Board of Queensland at the time have been well canvassed in the Davies Report and will not be restated here. Since then, a number of system improvements have been made which appear to have been effective.

The following is a discussion of the changes that have been made since 2005 to improve processes for the registration of medical practitioners.

7.7.1 Amendments to legislation

A number of amendments to the *Medical Practitioners Registration Act 2001* were passed by Parliament on 10 June 2005. These amendments were made in direct response to recommendations contained in the Bundaberg Hospital Commission of Inquiry Interim Report, also handed down on 10 June 2005. The amendments received the assent on the same day and took effect immediately.

The amendments included clarification of when information or documents supplied to the Medical Board of Queensland would be regarded as materially false, and provided for harsher penalties for contraventions of the *Medical Practitioners Registration Act 2001* with respect to the provision of materially false information or documents.

Also, an offence was created where non registrants who, “*under colour or pretence of being registered ... or of being eligible to be registered,*” commit acts such as obtaining employment, diagnosing or purporting to diagnose an illness or the absence of an illness in circumstances where the person has claimed or held himself or herself out to be registered under the *Medical Practitioners Registration Act 2001* or eligible to be so registered, or has allowed such a representation by another person.

7.7.2 Medical Practitioners Registration Amendment Act 2006

In 2006, the *Medical Practitioners Registration Amendment Act 2006* amended the *Medical Practitioners Registration Act 2001* to enable prompt implementation of an anticipated national approach to streamline the registration of IMGs, and to expedite processes for registration of medical practitioners.

Section 11A was introduced requiring the Medical Board of Queensland, in performing its registration functions, to act promptly and adopt simple and flexible processes. However, it is noted this obligation does not override proper consideration of the issues in registration, and must be done in a way that is consistent with the objects in section 7 of the *Medical Practitioners Registration Act 2001*, and the Medical Board of Queensland's obligation under section 12 of the *Medical Practitioners Registration Act 2001* to act independently, impartially and in the public interest.

7.7.3 Health Legislation Amendment Act 2006

Later in 2006, the *Health Legislation Amendment Act 2006* amended Queensland's 13 Health Practitioner Registration Acts.

This included amendments to the *Medical Practitioners Registration Act 2001* to give effect to recommendations of the Ministerial Taskforce on Recruitment, Assessment and Registration Processes for International Medical Graduates in Areas of Need and:

In particular, amendments were made to Part 3, Division 10 ‘Special Purpose Registrations’ of the *Medical Practitioners Registration Act 2001* give effect to the recommendations of the Ministerial Taskforce by:

- (a) Introducing additional criteria for eligibility for registration, and renewal of registration, as a special purpose registrant;

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- (b) Requiring that decisions about special purpose registrants practicing in a specialty be made having regard to the advice and recommendations of any relevant Australian specialist college and the AMC;
- (c) Clarifying the scope of the Minister's power to declare an Area of Need for a medical service, specifying the key criteria for making such decisions and allowing these decisions to remain in force for up to four years;
- (d) Setting out the supervision requirements for special purpose registrants and enabling the Medical Board of Queensland to ask a registrant's supervisor for information about the registrant's practice;

Section 140A of the *Medical Practitioners Registration Act 2001* makes it a standard condition that special purpose registrants must practice only in accordance with their supervised practice plan, and enables the Medical Board of Queensland to ask a person involved in the supervision of a special purpose registrant, under the registrant's supervised practice plan to give information to the Medical Board of Queensland about the supervised practice.

Section 272 of the *Medical Practitioners Registration Act 2001* provides that supervisors, who, honestly and on reasonable grounds, give information to the Medical Board of Queensland in response to a request made under section 140A(2) are not liable civilly, criminally or under an administrative process for giving this information.

- (e) Setting out the time frames within which special purpose registrants must apply for general or specialist registration;

Section 140B of the *Medical Practitioners Registration Act 2001* makes it a standard condition that special purpose registrants registered to undertake an activity specified in sections 132 to 136 of the of the *Medical Practitioners Registration Act 2001* apply for general, specialist or special purpose registration under s.138 (as the case may be) during a specified continuous period of registration.

Since 1 March 2007, the Medical Board of Queensland policy requires that IMG doctors who hold special purpose registration to practice under appropriate supervision in a separately approved defined Area of Need activity must apply for general, specialist or section 138 special purpose registrations during four continuous years of registration as a special purpose registrant for any special purpose.

- (f) Setting out the circumstances under which specified medical practitioners may transfer on a temporary or permanent basis within a declared Area of Need or undertake supervised training; and
- (g) Making consequential amendments to the application and decision making processes associated with the granting, renewal and cancellation of special purpose registration.

7.7.4 The current special registration process (as at January 2008)

Since the registration of Dr Khalafalla, the special purpose registration process in Queensland has undergone significant change.

The following is a summary of current requirements for registration of IMGs in Queensland.

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This summary is not an exhaustive description of the requirements and processes that affect the registration of IMGs. More detailed information is available at www.medicalboard.qld.gov.au.

- If an IMG has passed the AMC examination and is the current holder of the AMC Certificate they are eligible to apply for general registration in Queensland, which allows them to work independently as a Medical Practitioner within the boundaries of their training and competence. Supervised practice conditions may be imposed on the registration.
- If an IMG has specialist qualifications, training and experience assessed under the AMC Specialist Pathway as being comparable to that of an Australian trained specialist, the IMG is eligible to apply for specialist registration, which allows the person to work as a medical specialist within the boundaries of their specialised training and competence.
- If an IMG has not passed the AMC examination and is not a current holder of the AMC Certificate, they are eligible to apply for registration with the Medical Board of Queensland under one of three registration pathways:

1. Competent authority pathway

To allow IMGs applying for non-specialist positions, who have completed and passed the training and examination process for registration through a medical examining body designated and approved by the AMC as a Competent Authority, to apply for 'advanced standing' toward the AMC certificate in order to register in Queensland.

2. Special purpose – Standard pathway

Special purpose registration by the Standard Pathway allows IMGs who are not eligible through the Competent Authority or the Specialist Pathways are eligible for registration in Queensland.

To be eligible for the pathway, applicants must pass the AMC Multiple Choice Examination before applying for registration.

3. Special purpose – Specialist pathway (“Deemed Specialist”)

The Specialist Pathway allows applicants who hold specialist qualifications from outside Australia or New Zealand and who are seeking registration for a specialist position, in Queensland, seek registration.

To be eligible for this pathway, the applicants need to provide their specialist qualification to the AMC for assessment by the relevant specialty college before applying for registration.

All IMGs seeking Special Purpose Registration are also required to:

- Pass an English Language Test (commenced in October 2004).
- Provide Certificate of Good Standing/Certificate of Registration Status from every jurisdiction from which they have practiced medicine (commenced mid 2005).
- Have their qualification verified by the EICS (commenced October 2005).
- Provide proof of their identity.
- Provide their registration and practice history and explain any gaps in their practice.

- Progress towards general or specialist registration within a maximum of four years.

Further detailed information is available at www.medicalboard.qld.gov.au.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

“In March 2006, A Ministerial taskforce tasked With the "Examination of recruitment, assessment and registration processes for International Medical Graduates in Areas of Need and review of Medical Practitioners Registration Act 2001 as it applies to Section 135: 'Practice in an Area of Need" reported to the Minister for Health.

As a result of this taskforce, there have been changes to the medical registration legislation as it relates to special purpose registration. Those changes and the policies since implemented by the Medical Board, place requirements on special purpose registrants to progress to general or specialist registration within four years of first registering with the Medical Board. This requirement means that upon annual renewal of registration, special purpose registrants must demonstrate their progress towards the AMC certificate (general registration) or Fellowship status (specialist registration),

The Medical Board also require a supervised practice plan to be in place for all special purpose registrants with the nomination of primary and secondary supervisors. A schedule of supervision and assessment activities is to be provided in the plan, as well as Medical Board requirements for the provision of regular assessment reports.”

7.8 Confusion regarding the term “Deemed Specialist”

Evidence gathered during the investigation suggests that the use of the term “Deemed Specialist” was confusing for many people who were interviewed.

The term “Deemed Specialist” arises from section 143A ‘Deemed Specialist registration’ of the *Medical Practitioners Registration Act 2001* and applies to a registrant who is granted special purpose registration under the *Medical Practitioners Registration Act 2001* to practice the medical profession in a specialty under either:

- Section 134 (Medical teaching or research, and connected practice); or
- Section 135 (Practice in Area of Need).

Section 143A(2) of the *Medical Practitioners Registration Act 2001* provides that “*While the registrant is registered to practice the profession in a specialty, the registrant is taken to also be a specialist registrant in the specialty.*”

The registrant’s Deemed Specialist registration is taken to be subject to any conditions of the registrant’s special purpose registration.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Margetts notes that this reference supports that Dr Khalafalla was a specialist, by Definition. That is what the term “Deemed” means.”

In the course of their enquiries, HQCC investigators were given a variety of explanations of the term including:

- (a) The Clinical Support Officer at Mackay Base Hospital engaged in the administrative process of employing staff complying with the AMC Guidelines understood the term “Area of Need Deemed Specialist” to mean a doctor whose overseas specialist qualifications had been assessed by the College at a level equivalent to an Australian specialist to enable the doctor to occupy a specialist position equivalent to an Australian specialist.
- (b) Dr Margetts, Director Medical Services correctly understood that the term referred to Dr Khalafalla’s registration as a special purpose registrant and correctly thought a Deemed Specialist was a sub-category of Senior Medical Officer.
- (c) Ms Linda Wall, the Elective Surgery Coordinator interpreted the term to mean a doctor who had achieved consultant specialist level in their own country and whose qualifications may not be recognised in Australia but because the doctor was needed, he or she was given the courtesy title of “Deemed” Specialist, but such doctors were not qualified Australian Fellows.
- (d) Dr Pyke, Chairman of the Regional Board of Surgery, the RACS (Qld) did not seem to know that the term originated from the *Medical Practitioners Registration Act 2001 (Qld)*.
- (e) Mr Kerry McGovern, District Manager of the Mackay Health Services District said that until the week before he had been interviewed, he had “*absolutely no idea.*”

Submission by the Medical Board of Queensland

The MBQ submits:

“The Board would further wish to clarify that Dr Khalafalla was registered to fill an Area of Need as a staff specialist at Mackay Health Service District not as a Senior Medical Officer. It is acknowledged that a Staff Specialist is defined within the Senior Medical Officer Award, however it is important that the distinction be made [clear].”

And further:

“Senior Medical Officer is a term used to describe all positions higher than a Resident Medical Officer. This is contained within the Medical Officers’ (Queensland Health) Certified Agreement (No.1) 2005.

The term Senior Medical Officer is a term usually relating to doctors practising in a non specialist capacity - and are commonly referred to as Senior Medical Officers. Medical practitioners in this position are not considered specialists and would not have deemed specialist status with the Board.

Positions in this category are:

- *Medical Officers*
- *Medical Officer General Practice*

- *Medical Officer Credential Practice*
- *Medical Superintendent (Deputy or Assistant)*

Dr Khalafalla was registered as a staff specialist under the award relating to Senior Medical Officers. A staff specialist is required to hold specialist or deemed specialist registration before commencing employment.”

And further:

“It is noted in this section that the investigators interviewed multiple people about the definition of a “deemed specialist.” The report has not afforded the Board, or a representative, an opportunity to provide the definition. The definition is:

An International Medical Graduate (IMG) who has been assessed by the relevant specialty college as being capable of practising in the specific Area of Need or medical teaching and research position at the level of a specialist. The term deemed specialist describes a special purpose registrant's status to practice as a specialist not the position the applicant holds.

The MBQ also submits that it does not consider a review is necessary to clarify the statutory definition and application of ‘deemed specialist’ provisions under section 143A of the *Medical Practitioners Registration Act 2001*. However, the MBQ supports the development of a communication strategy to ensure stakeholders have a better understanding of the term.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

“The report identifies confusion and misunderstanding by various persons about the meaning of the term ‘deemed specialist.’ Queensland Health does not contest this finding. However, the root cause of the problem appears to be poor awareness of the meaning of the term, rather than with the technical definition ‘per se.’ Accordingly, re-defining the term will not result in systems improvement, since it would do nothing to improve communication and awareness of the terms used in specialist registration.

Also, since the combined effect of sections 42, 130A, 131 (2)(d), 139 and 140A of the Medical Practitioners Registration Act 2001 is that all Area of Need registrants are subject to supervision conditions, the proposed delineation between those ‘deemed specialists’ whose registration is subject to supervision conditions and those who are not, would be of no practical effect.”

7.9 Health Quality and Complaints Commission opinion and recommendation

Although the term “Deemed Specialist” is well defined by legislation, it is poorly understood in clinical practice by administrators, supervisors and other health professionals, especially by those who provide health services in conjunction with the IMG.

The HQCC recommends that Queensland Health issue guidance to all staff working with deemed specialists to improve the understanding of the term “Deemed Specialist” and ensure those staff are aware of any restrictions on the practice of a Deemed Specialist.

8. Credentialling of Dr Khalafalla

Credentialling and defining the scope of clinical practice are essential components of a hospital's clinical governance activities in a continuous improvement environment to protect patients and improve the quality of patient care.

- '*Credentialling*' is the formal process used to verify the qualifications, experience, and professional standing of medical practitioners for the purpose of forming a view about their competence, performance and professional suitability to provide safe, high quality health care services within specific organisational environments.
- '*Defining the scope of clinical practice*' follows on from credentialling and involves delineating the extent of an individual Medical Practitioner's clinical practice within a particular organisation based on the individual's credentials, competence, performance and professional suitability, and the needs and capability of the organisation to support the practitioner's scope of clinical practice.

Credentialling takes a quality improvement rather than a disciplinary approach and it requires health care professionals to participate in self assessment as well as assessment of their peers.

This is an important safeguard where a surgeon's registration is subject to oversight or supervision requirements.

8.1 Queensland Health's credentialling policy (2002)

In August 2002, Queensland Health implemented the *Credentials and Clinical Privileges for Medical Practitioners Policy*. This applied at the time of Dr Khalafalla's recruitment.

Under Queensland Health's 2002 policy and guidelines, the credentialling and privileging process could be invoked in respect of its doctors in three instances, being:

- When a doctor was first employed by Queensland Health and before they commence performing procedures;
- Periodically, every three years a doctor was employed by Queensland Health; and
- On an *ad hoc* basis when matters were referred to the credentials and privileges committee by officers such as the Director Medical Services.

Both the policy and guidelines emphasised that clinical privileges should be defined before a doctor commenced any admissions or treatment within a hospital; and that overseas candidates for positions had to be informed that any appointment was subject to the successful awarding of privileges.

Item 6.1 of the Queensland Health credentialling guidelines specifies that all applicants for positions within a health service facility must have their clinical privileges defined before the completion of the selection/appointment process. The guidelines refer to the directive *Queensland Health Policy Statement Credentials and Clinical Privileges for Medical Practitioners*.

The District Manager had considerable discretion under the guidelines to form a Credentialling and Privileging Committee and to ensure that it included peers from the discipline of the applicant. To ensure continuity, the Credentialling and Privileging Committee was to have a core component consisting of the Director Medical Services or their nominee, and two Medical Practitioners nominated by the District Manager. Where appropriate, the Committee could also include other members as required, such as a representative of the relevant clinical college and other medical practitioners, who would best be able to assess the clinical qualities of the applicant.

As required, the Credentialling and Privileging Committee could grant limited privileges to an applicant until a satisfactory period of training had been completed, and an IMG might be required to undertake a period of supervised practice.

As such, when Dr Khalafalla commenced employment at Mackay Base Hospital, it was incumbent on Dr Margetts as Executive Director Medical Services to define Dr Khalafalla's scope of clinical practice through a formal credentialling process in accordance with *Credentials and Clinical Privileges Guidelines for Medical Practitioners July 2002, Queensland Health*.

8.2 National guidelines for credentialling and defining the scope of clinical practice

In July 2004 then Australian Council for Safety and Quality in Health Care made the *Standard for Credentialling and Defining the Scope of Clinical Practice* (The ACSQHC Standard). This standard came into effect in July 2004 shortly after Dr Khalafalla commenced employment at Mackay Base Hospital and compliance was voluntary.

The ACSQHC Standard is based on the following principles:

- Credentialling and defining the scope of clinical practice are organisational governance responsibilities that are always conducted with the objective of maintaining and improving the safety and quality of health care services;
- Processes of credentialling and defining the scope of clinical practice are complemented by medical practitioner registration requirements and individual professional responsibilities that protect the community;
- Effective processes of credentialling and defining the scope of clinical practice benefit patients, communities, health care organisations and medical practitioners;
- Credentialling and defining the scope of clinical practice are essential components of a broader system of organisational management of relationships with medical practitioners;
- Reviewing the scope of clinical practice should be a non-punitive process;
- Effective processes for credentialling and defining the scope of clinical practice depend on strong partnerships between health care organisations and professional colleges, associations and societies;
- Processes of credentialling and defining the scope of clinical practice must be fair, transparent and legally robust. They must comply with relevant laws including those governing health service provision, privacy, competition, whistleblower protection and antidiscrimination and equal opportunity.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“The National Standard was not released until 29th July 2004. Dr Khalafalla was appointed on 25 May 2004.

In any event, it is important to note that the process of credentialling all medical staff was initiated by Dr Margetts in 2001 before the introduction of National Standard in 2004 and before the Queensland Policy and Guidelines which were released in July 2002. Prior to his arrival in 2001 no credentials meetings had ever been held, and no record of any credentials or privileges could be found.

The delegation and responsibility for credentialling as outlined in the Policy are clearly with the District Manager, (not the EDMS) to not only ensure that all doctors are credentialled, but also stipulates that District Managers are responsible for ensuring that a process is in place within the District to enable this to happen.

The Guidelines clearly allow for the phased implementation of Clinical Privileges, and envisaged that once this was completed new applications and new appointments would be determined prior to appointment (or at least commencement) this was being arranged and was specifically sought in an e-mail to the trained and funded officer. (Funding of \$13,808 was provided in November 2002 - 0.5 FTE of [Administration Officer 1] A05 for 3 months to implement the policy).

A push to get credentials and privileges forms sent with all new applications was made by Dr Margetts in early April 2004 but this was thwarted as the forms were being changed, and needed ratification. This was discussed at the next meeting on 2nd August 2004 - but the forms were never provided. This was the last meeting convened by [Administration Officer 1] and the last in the district for nearly 12 months.

Despite numerous documented verbal and e-mail requests to [Administration Officer 1] to arrange a credentials meeting - and despite an equal number of verbal and e-mail assurances that this would occur, no meetings were arranged by [Administration Officer 1]. When Dr Margetts, in an attempt to resolve this impasse spoke to [Administration Officer 1] impressing on [them] the urgency of this matter, particularly in the light of the issues at Bundaberg, [Administration Officer 1] took offence, and Dr Margetts was reprimanded by the DM for upsetting the staff.

Ironically, Dr Margetts was specifically commended for his efforts in getting credentialling up and running in his Performance Appraisal at this time and Mackay was (or was close to being) fully up to date by August 2004 with only a few remaining (including Dr K) when the DM determined that the officer no longer reported to Dr Margetts, and from that time no further meetings were called until a new position was created (initially for 4 weeks) starting in July 2005 just as Dr Margetts commenced the secondment.

A database was being "rolled out" to manage the process and to ensure reporting and compliance. This was announced in November 2002 (e-mail 4/11/02) and was due to be completed by June 2003. It was never implemented in Mackay as it was found to be of poor design and functionality and was abandoned as being an unworkable solution. Of note Queensland Health has still not addressed this issue, thereby leaving individual EDMSs and Districts unnecessarily at risk.”

8.3 The Health Quality and Complaints Commission Standard

The Health Quality and Complaints Commission (HQCC) has made a standard, the *Credentiailling and Scope of Clinical Practice Standard* ('the HQCC Standard'), under section 22(1) of the *HQCC Act*, which imposes a statutory obligation on all public, private and licensed day hospitals under section 20(1) of the *HQCC Act* to ensure that all medical interventions in their facility are:

- Supplied by medical practitioners who are credentiailled (or practitioners under the direct supervision of a credentiailled Medical Practitioner);
- Within the Medical Practitioner's defined scope of clinical practice granted by the hospital; and
- Within the service capability of the hospital.

The HQCC Standard was developed in accordance with the Australian Council for Safety and Quality in Health Care's Standard for Credentiailling and Defining the Scope of Clinical Practice (2004).

Compliance with the HQCC Standard is being regularly monitored by the HQCC.

8.4 Commencement of employment

On 31 May 2004, Dr Khalafalla commenced employment at Mackay Base Hospital as a Deemed Specialist, under oversight, in General Surgery.

On 2 August 2004, a Credentiailling Committee meeting was held, but Dr Khalafalla's credentials and scope of clinical practice were not discussed.

Dr Margetts stated that there had been a "back log" of doctors at Mackay Base Hospital who had not gone through the credentiailling process. He explained that lack of administrative support resulted in the delay in convening a formal credentiailling meeting to discuss Dr Khalafalla's clinical privileges.

On 3 August 2004, Dr Farooq raised concerns about an operation note made by Dr Khalafalla on that day which indicated that Dr Farooq attended a difficult gall bladder dissection on 16 June 2004, when in fact Dr Farooq only came into the Theatre towards the end of the operation and was not scrubbed.

On 5 December 2004, Dr Khalafalla applied to Dr Margetts for clinical privileges in surgery.

On 23 December 2004, Dr Khalafalla's contract of employment was extended from 31 May 2005 to 15 January 2006.

8.5 Interim privileges granted

On 27 January 2005, Dr Margetts wrote a letter to Dr Khalafalla advising that interim privileges in surgery at the Senior Medical Officer level had been granted for a period of six months and that ratification of these privileges would be sought at the next meeting of the Credentials Committee.

The only restriction on Dr Khalafalla's practice in the initial stages of his employment seems to have been the limitations imposed by the RACS and noted on his registration namely, that he was to undertake a minimum of 12 months assessment under oversight.

However, whilst the RACS had advised the Medical Board of Queensland of this restriction, there is no evidence that the RACS actually advised Dr Farooq, Dr Khalafalla or Mackay Base Hospital of the arrangements in relation to oversight assessment until November 2004.

On 7 July 2005, Dr Margetts commenced a period of Secondment ending 23 September 2005.

On 12 July 2005, Dr Sachdev, Acting Director Medical Services, wrote to Dr Khalafalla advising that interim privileges granted by letter dated 27 January 2005 had been extended for a further three months.

8.6 Formal privileges granted

On 26 July 2005, there was the first formal credentialling committee meeting at which Dr Khalafalla's scope of clinical practice was discussed. By this time, a number of concerns had been raised within the hospital about Dr Khalafalla's clinical performance.

According to the minutes of that meeting, the meeting was chaired by a locum Director Medical Services, Dr Simi Sachdev. Dr Farooq and Dr Almehti, both Fellows of the RACS spoke to Dr Khalafalla's application but the minutes do not give details of the discussion.

A motion was put forward by Dr Sachdev that *"the committee recommends approval of credentials and privileges in surgery (general, minor ops, endoscopy) for Dr Khalafalla subject to verification of Board registration and satisfactory referee report."*

The decision was that those credentials and privileges in surgery (general, minor operations, endoscopy) be *"recommended for approval with the condition that major procedures be done following consultation and under the supervision of Dr Almehti."*

When interviewed, Dr Almehti stressed that the terms of Dr Khalafalla's privileges were identical to the privileges granted to another Senior Medical Officer in the Department of Surgery, Dr Ashraf, whose privileges were discussed at the same meeting. Dr Almehti suggested that the reasons for the restriction on Dr Khalafalla's scope of practice may not have been the concerns raised within the hospital about his clinical performance.

However, Dr Sachdev clearly recalled that there was a serious discussion about concerns that had been raised within the hospital about Dr Khalafalla's clinical performance. The evidence suggests that Dr Farooq had serious concerns about Dr Khalafalla's clinical performance at that stage.

On 2 August 2005, Dr Sachdev and Mr Peter Sladden, Acting District Manager, wrote to Dr Khalafalla advising of the decision of the credentialling meeting on 26 July 2005. In that letter, Dr Khalafalla was incorrectly advised that he had been granted privileges in *"Surgery (general surgery, endoscopy and minor ops)."* No special conditions were noted apart from any conditions that may have been imposed on his registration with the Medical Board of Queensland.

8.7 Concerns about scope of practice

On 9, 10 and 11 August 2005, Dr Almehdi was on leave and Dr Khalafalla claims he was appointed Acting Director of Surgery. Dr Almehdi refutes this.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“On 9, 10 and 11 August 2005, our client was appointed Acting Director of Surgery while Dr Almehdi was on leave and performed general surgery without supervision in accordance with the letter from the hospital dated 2 August 2005.

On 16 August 2005, Dr Farooq advised the hospital that our client was performing surgery without the supervision of the Director of Surgery and that at a recent Credentialing Committee meeting it was decided that our client should only perform major surgical operations under supervision. Dr Farooq was obviously not aware of the contents of the erroneous letter dated 2 August 2005 granting our client unrestricted operating privileges.”

And further:

“Dr Farooq's criticism that our client breached his operating privileges on 9, 10 and 11 August 2005 by operating without supervision is not sustainable.

Our client was acting in accordance with the operating privileges granted to him on 2 August 2005. Dr Farooq was obviously not aware that the erroneous letter dated 2 August 2005 omitted the requirement for direct supervision. That requirement had not otherwise been communicated to our client. Furthermore, as our client was only required to undergo "assessment under oversight" under the terms of his registration, it was not necessary for Dr Almehdi to be physically present for performance of those procedures, based on the definition of assessment under oversight provided by Dr Hillis, the CEO of the College.”

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

“Dr Almehdi denies the assertion in the draft report that he appointed Dr Khalafalla as Acting Director of Surgery. He asked Dr Khalafalla to attend to some of the clinical routine but he understood that in his absence the hospital had appointed the VMO, Dr Farooq, to be Acting Director of Surgery on both the occasions of his absence on leave. The request to Dr Khalafalla was purely for logistic purposes relating to signing travel forms and triaging GP referrals. This is a task Dr Almehdi states does not need expert input. It was easy to ask the full time staff to attend these matters than await the VMO to attend them as a result of his own time limitations. Dr Almehdi concedes with the benefit of hindsight his communication to the exact nature of Dr Khalafalla's duties to the other staff may have been lacking to some degree. If Dr Khalafalla performed surgery beyond the scope of privileges, then that should have been addressed by the Acting Director of Surgery, Dr Farooq. It is noted in the draft report that Dr Farooq offered to assist Dr Khalafalla with a number of operations, but the offer was declined.”

And further:

*“The Role of Director of Surgery has **no authority** to appoint any officer to a titled position.*

This is a job of the hospital administration, in particular the EDMS, Dr Margetts. However, to assign the duties of daily activities according to the capacity of the chosen officer is a common option taken by the Director of any unit. This delegation of administrative responsibility would take clearly into account the level of experience, as well as the limitation on abilities and frame of function that the officer holds initially.

Dr Almehti again repeats his assertion that for the period of three days leave, it is inconceivable that he would have appointed Dr Khalafalla Acting Director of Surgery.

Dr Khalafalla was asked to run the logistical and administrative side of the Unit in the form of paperwork duties. He was a full time surgeon at the Unit which gave him an effective presence to facilitate the flow of important and urgent forms and paperwork.

All clinical matters that needed urgent attention were to be done by consultation either with the Tertiary Referral Centre at Townsville, the VMO, Dr Farooq or any of the private surgeons who were available for support.

This is clear in the standing instructions of the Unit that it was to have a “low threshold of transfer to the Tertiary Centre” that is; if in doubt, the transfer to Townsville should occur.

Any inference suggesting that Dr Almehti had the authority to appoint someone to the position of Acting Director of Surgery is baseless and in fact denigrates the role of the EDMS.

Dr Almehti submits it is clear that upon long absence of Director of Surgery, that role would be filled by appointing a longstanding replacement which would carry with it an entitlement to the Director’s allowance. For any short leave, the duties are undertaken by the most senior surgeon who is preferably a Fellow of the College. In this case it was Dr Farooq who was a VMO. Dr Farooq was, for significant periods himself, on leave which effectively reduced his actual presence in the in the hospital to oversee most of the day to day issues that arise on the administrative side. It is also clear that Dr Farooq was not aware of much of the administrative arrangements, either by lack of presence in the Unit or, as he himself states on several occasions, a lack of interest. It is possible that the understanding of the delegation of the duties to Dr Khalafalla by Dr Almehti was misunderstood by him as being a titled position. This was not the case. This unfortunately sharpened the conflict between Dr Khalafalla and Dr Farooq who mistook this as an encroachment on his hospital-given rights to act as Director temporarily, something that was never in conflict.”

While Dr Almehti was away, Dr Khalafalla performed General Surgery without supervision. A number of operations including a reversal of Hartmann’s procedure (9 August 2005), total thyroidectomy (10 August 2005) and varicose veins operation (11 August 2005) which became more complex (due to the vein being nicked) were undertaken by Dr Khalafalla without supervision or any request for assistance.

Dr Farooq considered this surgery was beyond the scope of the privileges that had been granted to Dr Khalafalla at the meeting on 26 July 2005. Dr Farooq offered to assist Dr Khalafalla with a number of emergency operations, but the offer was declined.

On 16 August 2005, the Elective Surgery Coordinator sent a memorandum to the District Director of Nursing with details of concerns raised by a VMO about Dr Khalafalla performing complex surgery without supervision, contrary to a condition placed on him by the hospital's Credentialling Committee.

On 16 August 2005, Dr Farooq wrote to the District Manager conveying his concerns about Dr Khalafalla operating outside his approved scope of practice. The letter was not received by the District Manager until 23 August 2005.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"It is clear that, at least by 16 August 2005, the Elective Surgery Coordinator and Dr Farooq were of the understanding that Dr Khalafalla was not privileged to be doing Major Surgery except under direct supervision – a point which was clarified in the letter of the 30th August 2005."

On 18 August 2005, further concerns about Dr Khalafalla were brought to the attention of the Elective Surgery Coordinator by the Director of Anaesthetics. These were allegations that Dr Khalafalla was undertaking complex surgery without supervision despite a restriction placed on him by the Credentialling Committee. The Elective Surgery Coordinator passed these concerns on to the District Director of Nursing.

On 18 August 2005, Dr Sachdev wrote to Dr Khalafalla stating *"you will recall that you have been credentialled to perform major surgery under supervision. To this end, can you please make sure that you do not put any major case on your elective lists when Dr Almehdi is on leave and there is no other Fellow of the RACS available to supervise."*

Copies of that letter were sent to the Acting District Manager Mary Scott, Dr Roy, Dr Farooq, Dr Almehdi and Dr David Farlow. It appears that either Dr Sachdev was not aware that the letter dated 2 August 2005 was incorrect or she had verbally informed Dr Khalafalla of the Committee's decision. However, the letter states that they had not met. It is therefore more likely that Dr Sachdev had not realised the mistake in the earlier letter dated 2 August 2005.

8.7.1 Health Quality and Complaints Commission opinion

The confusion as to whether or not Dr Khalafalla was appointed Acting Director of Surgery in the absence of Dr Almehdi is of particular concern.

8.8 Amendments to scope of practice

On 9, 10 and 11 August 2005, Dr Almehdi was on leave and Dr Khalafalla claims he was appointed Acting Director of Surgery. Dr Almehdi refutes this.

On 25 August 2005, the Director of Surgery, Dr Almehdi, the Acting Executive Director Medical Services (Dr Sachdev) and Acting District Manager (Mr Sladden) raised concerns about Dr Khalafalla with Dr Margetts. Dr Margetts recommended the Royal Australasian College of Surgeons (RACS) be involved.

On 30 August 2005, Dr Sachdev and Mr Sladden wrote to Dr Khalafalla attaching a “*slightly amended credentialling letter*” and apologised for “*omitting some details in the initial letter.*”

The amended credentialling letter stated that Dr Khalafalla had been granted privileges in surgery (general surgery, endoscopy and minor operations) with the special conditions “*Major surgery to be performed under **direct** supervision of a Fellow of the Royal Australasian College of Surgeons.*” This differed from the condition noted on the minutes of the Credentialling Meeting in that:

- (a) It refers to “*direct supervision*” rather than “*consultation and supervision;*” and
- (b) Supervision was to be provided by any Fellow of the RACS, rather than just Dr Almehti.

The HQCC was unable to obtain evidence to explain why the wording of the conditions was changed from the decision appearing on the minutes of the credentialling meeting.

When interviewed by HQCC investigators, Dr Khalafalla said he was unaware that his privileges were to be discussed at the credentialling meeting on 26 July 2005, and he was not verbally advised of the decision of the credentialling meeting. The first notification Dr Khalafalla received was the incorrect letter dated 2 August 2005.

Dr Simi Sachdev could not recall whether she advised Dr Khalafalla verbally of the decision of the credentialling meeting prior to writing to him on 2 and 30 August 2005.

When interviewed, Dr Khalafalla stated that he was advised by Dr Sachdev that his clinical privileges were reduced to comply with the conditions on his registration. Dr Khalafalla stated that he was unaware of any concerns that had been raised about his surgical performance leading up to the letter from Dr Sachdev dated 2 August 2005.

8.9 Understanding of credentials and privileges granted

The HQCC investigation disclosed confusion and lack of understanding about the terms “Deemed Specialist” and “Senior Medical Officer” by a number of Mackay Base Hospital staff. There was also confusion amongst nursing staff about the responsibilities and privileges of the various levels of Medical Officers working in the Operating Theatres.

The range of persons to whom the details of Dr Khalafalla’s scope of practice were distributed varied. For example:

- Dr Sachdev sent copies of her letter to Dr Khalafalla dated 18 August 2005 to Mr Peter Sladden, Acting District Manager, Mary Scott, District Director of Nursing, Dr Roy Director of Anaesthetics, Dr Farooq, VMO, Dr Almehti, Director of Surgery and Dr David Farlow, DMS at Proserpine.
- Dr Sachdev sent copies of her amended credentialling letter dated 30 August 2005 to Angela Bugeja, Clinical Support Officer and Dr Almehti.
- Dr Margetts sent copies of his credentialling letter dated 9 November 2005 to the Director of Anaesthetics Dr Roy, Dr Almehti, Dr Farooq, the Patient Booking Officer, the District Manager and the Human Resources Manager.

However, the Elective Surgery Coordinator, Ms Linda Wall stated that she thought that Dr Khalafalla had been employed as a Staff Specialist. Throughout the whole time that Dr Khalafalla had been employed at Mackay Base Hospital, Ms Wall was unaware that he had been employed as an Area of Need specialist or of the existence of that position. Ms Wall was also unaware of Dr Khalafalla's need for oversight assessment by two Fellows of the RACS.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"A deemed [staff] specialist is (by definition) a [staff] Specialist. They are referred to as a [staff] specialist; they may use the restricted titles and are paid as such."

Ms Wall said that she directly asked both Dr Farooq and Dr Almehti on or about March 2005 whether, as the Elective Surgery Coordinator, there was anything she should know about Dr Khalafalla. At that time, Ms Wall was told nothing. Ms Wall was not informed of the restrictions placed on Dr Khalafalla's scope of practice at the Credentialling Committee meeting on 26 July 2005, and the first she learned of any restrictions on Dr Khalafalla's practice was when she received a copy of the letter dated 9 November 2005 from Dr Margetts to Dr Khalafalla informing him of his further restrictions.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"Linda Wall states that although she had heard rumours in December 2004, she met with Drs Almehti and Farooq, at a time when Dr Farooq was handing over to Dr Almehti [May 2005] and asked them if they had any concerns/problems that she should know about. They both replied, categorically 'no.'"

It was at this point that Ms Wall first became aware that Dr Khalafalla's privileges had even been discussed at a credentialling meeting on 26 July 2005. As the person responsible for booking elective surgery within the hospital, Ms Wall was understandably annoyed that she had not been informed of any such restrictions.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"This is not correct. In e-mail correspondence of 18 and 20 February 2005 to Dr Margetts she states: "I became aware of these restrictions around August 2005, after talking with Dr Farooq. I don't recall the initial restrictions being communicated to the booking office in writing. You and I may have talked about them, but I can't recall the timing of this"

The Nurse Unit Manager of Operating Theatres, Ms Karen Bedford worked with Dr Khalafalla from March 2005 and understood him to be a Senior Surgeon, who was able to function at "a highly independent level" but may not necessarily be a Fellow of the RACS. Ms Bedford indicated that Theatre Nurses considered that Dr Khalafalla as an IMG Surgeon must have been "vetted" by the RACS as qualified to perform General Surgery.

The investigation found that the medical and nursing staff within the Department of Surgery (with the exception of the Director of Surgery, Dr Almehdi) were not clearly informed of the restriction imposed on Dr Khalafalla's scope of practice at the credentialing meeting on 26 July 2005 or the further restriction imposed by letter dated 9 November 2005.

Dr Margetts stated that the reason for the extended delay in formal privileging of Dr Khalafalla lay in a lack of administrative support in arranging a meeting and the impact of increased workload of the medicolegal officer following the introduction of the *Personal Injuries Proceedings Act 2002 (Qld)*.

8.10 Submissions received

The HQCC received the following relevant submissions:

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Margetts is not aware of a single case of rejection of initial privileges following a successful interview and appointment with the exception of restrictions based on Service Capability or Resources in Queensland or elsewhere.

Dr Margetts had clearly turned his mind to all of the components which were required for such a decision, and Dr Margetts had the power and the capacity to recommend interim credentials. It is conceded that the paperwork formalising this was not completed.

Aspects considered by Dr Margetts (in conjunction with Dr Farooq) relevant to this matter include:

- *Eligibility for professional registration and current entitlement to practice.*

Complied with: - Registered by Medical Board. Previously registered in Qld and Victoria.

- *Qualifications and training including undergraduate, post graduate and special training with respect to privileges requested.*

Complied with: - Basic Degree - reviewed by AMC and registered by Medical Board. Higher Qualifications - Reviewed by RACS & Awarded Deemed Specialist Status by Medical Board. Also awarded specialist billing rights by HIC in Victoria.

- *Clinical experience and competence in the field of expertise in which privileges are sought:*

Complied with: - CV and Log Book reviewed by Dr Margetts, Dr Farooq and RACS as part of Deemed Specialist Recommendation.

- *That the applicant will continue to subject the results of clinical work to quality assurance mechanisms including clinical audit and peer review processes.*

Complied with: - Quality Assurance is hospital wide and is non-optional (highest participation rate of any hospital in Queensland by medical staff in incident reporting; all clinical directors are automatic members of Clinical Risk Management Committee.

The Department of Surgery was one of the few departments in Queensland to be conducting regular peer review and clinical audits. Not only were they in the minority in that regard. They further demonstrated their leadership in this area as the audit process was undertaken with the aid of the OTAGO computerised audit putting them in a lead position state-wide.

Dr Khalafalla is under "Oversight" meaning two college supervisors will report 4 times a year.

- Commitment to past and continuing professional education.

Complied with: - Being formally supervised by RACS with 2 supervisors, as well as day-to-day management while working under Director of Surgery (RACS fellow)

Attendance at College Meetings and presentations of findings in the past - and he indicated his keenness to continue. Mandatory for college progression. Prior papers in Breast/Plastic/Reconstructive surgery.

- Professional "good standing."

Complied with: - Recommended for Deemed Specialist Status by RACS.

- Satisfactory professional (i.e. not Nursing or Administration) referees.

Complied with: - Checked (at least) 2 medical referees and documented same.

- Physical and mental fitness to practice.

Not mandatory - and rarely used at all, less so on an initial credentials and privileging meeting.

It is simply not conceivable that the Mackay Credentials committee would not have approved his Credentials and Scope of Clinical Practice in "General Surgery" had it met at or before his commencement."

And further:

"Given that compliance with the ACSQHC is voluntary and does not form part of Queensland Health's practice or procedure reference to it should be deleted. The discussion regarding the 2002 Policy and Guidelines should remain with appropriate emphasis on who is accountable and what the guidelines actually say.

Further, we note the recently released credentials and Scope of Clinical Practice Guidelines for Queensland Health states that when there is a difference between Queensland Health policy and the National Standard, Queensland Health policy will prevail."

And further:

"Initial SOCP was determined and defined by Dr Khalafalla's position description, his registration limitations and by his title. There could be, for instance, no doubt in Dr Khalafalla's, or any one else's mind that he was no privileged to undertake such areas of medicine as Obstetrics, Pathology or even General Practice by virtue of these documents.

As has been already indicated, Dr Margetts had already turned his attention to all of the elements which should be considered for the awarding of either temporary or permanent SOCP.

Moreover, when his SOCP was formally defined by Dr Margetts on 27 January 2004, no further definition was placed, nor was any further specificity required by policy or by the guidelines.

Finally, there was less than 1 month's gap between the completion of the first set of supervision reports (by Dr Farooq) and the formal notification on 27 January 2004 which clearly represents a process in keeping with the wording of the Guidelines of 2002.

Notwithstanding the above, Dr Margetts then took steps to arrange for Dr Khalafalla's credentials and SOCP to be reviewed by the Credentials and SOCP Committee as outlined in paragraphs 133-139 of his response of 7 May 2006.

This issue is addressed by the Safe Doctors – Fair System Framework which has been developed with the input and endorsement of Queensland Health, RACS, MBQ, and the HQCC itself."

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"In relation to the specific concerns raised:

- Our client did not conduct general surgery outside his approved scope of practice.*
- Our client did not conduct general surgery without appropriate supervision as required by the Royal Australasian College of Surgeons.*

Our client pursuant to the conditions on his registration was required to undertake a minimum of 12 months of "assessment under oversight" in the specialty of general surgery.

We note that the hospital agreed that our client did not conduct general surgery outside his approved scope of practice.

And further:

"On 18 August 2005, Dr Sachdev wrote to our client and an amended credentials letter was provided to our client on 30 August 2005. Our client subsequently complied with the requirement for direct supervision of major surgery. Our client was verbally informed by Dr Almehdi on 4 November 2005 that no elective abdominal surgery was to be performed and that emergency abdominal surgery was to be performed only after consultation with Dr Almehdi, Dr Farooq or Dr Margetts.

The only occasion that was not authorised by Dr Almehdi was authorised by the executive director of medical services, Dr Margetts, when our client treated a patient in an emergency situation. The patient was referred to our client by the intensive specialist in the hospital while Dr Almehdi was away. The patient had a gangrenous gall bladder and our client performed a laparoscopic cholecystectomy. Otherwise all major surgery was authorised by and directly supervised by Dr Raad Almehdi.

Our client has instructed us that Dr Raad Almehdi, a fellow of the College, was physically present in theatre observing our client on all occasions that our client performed major surgery, as defined in the College's log book, except when another fellow of the College was present or assisting in the surgery, such as Dr Catherine Heathwood, and the single occasion mentioned above.

Although Dr Almehti was physically present in theatre supervising our client, he was not formally recorded as an assistant on the operation record unless he had scrubbed in for the procedure.

In summary, our client was required to undergo at least 12 months assessment under oversight as a term of his registration. He was granted unrestricted operating privileges on 2 August 2005 and practiced without direct supervision until 18 August 2005 at which time his operating privileges were limited to performing major surgery under direct supervision. He practiced under the direct supervision of Dr Almehti when he performed major surgery until 4 November 2005 when his operating privileges were further restricted. From that time on, our client only performed emergency abdominal surgery after consulting with Dr Almehti, Dr Farooq or Dr Margetts and performed that surgery under the direct supervision of Dr Almehti except on the one occasion set out above.”

Submission by Queensland Health

The Director-General, Queensland Health, submits:

“The report places heavy emphasis on the fact that for a period of 12 months Dr Khalafalla was not formally credentialled. This should be considered in the context that in 2004 there was significant variations in what credentialling was undertaken and the quality of that credentialling. The process then certainly would not be up to the standard that it is today. Following the Queensland Public Hospitals Commission of Inquiry, the quality of credentialling and level of compliance has markedly improved.

The HQCC may consider exploring whether the earlier credentialling would have resulted in materially different outcomes. That is, would Dr Khalafalla have been credentialled to practice general surgery? Was there any evidence available at the time to reject his credentialling? This is not to argue that Dr Khalafalla should have been credentialled. However, the credentialling did not attract the same priority in 2004 that it has following the Queensland Public Hospitals Commission of Inquiry.”

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“In the case of Dr Khalafalla, both Mackay Base Hospital and Queensland Health had responsibility for credentialling and day to day supervision of Dr Khalafalla as an Area of Need practitioner.”

8.11 Relevant comments and findings from the Davies Report

The Davies Report identified the absence of credentialling and privileging (or any like method of assessment of doctors) as a key deficiency in Queensland Health prior to 2005.

The Commission of Inquiry found that the clarity of the Queensland Health Guidelines, the ease with which they could have been complied with, and the importance of complying with them in the interest of patient safety, together made it astonishing and alarming that they were not complied with in a number of Queensland Health facilities at that time.

The Commission of Inquiry considered that although it would have been possible to constitute a Credentialling and Privileging Committee at all relevant times, there was a concerning absence of credentialling and privileging (or any like method of assessment of doctors).

The responsibility for complying with the Queensland Health Guidelines was upon the District Manager, but the responsibility had understandably been delegated to the Director Medical Services because of their medical qualifications and understanding of the need for peer assessment of medical practitioners before they commenced work in a hospital

The Davies Report comments, at pages 386 to 387 and 395, that:

“...the fact that a person holds medical qualifications does not automatically entitle them to practice medicine in Queensland public hospitals. In accordance with best practice, Queensland Health policy demands that before a doctor commences providing clinical services they must first be subject to a process of credentialling and privileging;”

“To find out, after a doctor has been working in a hospital for some time, that he has been working beyond his capacity or beyond the capacity of the hospital, would be plainly negligent and causative of serious risk to patients’ lives and safety;”

And further:

“Those doctors who were appointed pursuant to the Area of Need scheme had not satisfied the same criteria for practice as those required of their Australian trained counterparts. Consequently, the need for such a process of assessment by credentialling and privileging, and for that to take place before a doctor commenced work in a hospital, became more acute in public hospitals as more doctors in those hospitals came to be appointed under the scheme.”

8.12 Summary of credentialling process

Dr Khalafalla commenced employment at Mackay Base Hospital on 25 May 2004 and was credentialled as follows:

- | | |
|-----------------|---|
| 27 January 2005 | Dr Margetts granted interim privileges in surgery at the Senior Medical Officer level for a period of six months. |
| 12 July 2005 | Dr Sachdev extended Dr Khalafalla’s interim privileges for a further three months. |
| 26 July 2005 | Dr Khalafalla was formally credentialled and was granted credentials and privileges in surgery (general, minor operations, endoscopy) with the condition that major procedures are done following consultation and under the supervision of Dr Almehti. |
| 2 August 2005 | Dr Khalafalla was notified in writing of the credentialling decision made on 26 July 2005, but the notification was partially incorrect in that it did not include the special condition for major procedures. |
| 18 August 2005 | Dr Sachdev wrote to Dr Khalafalla stating, <i>“You will recall that you have been credentialled to perform major surgery under supervision. To this end, can you please make sure that you do not put any major case on your elective lists when Dr Almehti is on leave and there is no other Fellow of the RACS available to supervise.”</i> |

- 30 August 2005 Dr Sachdev and Mr Sladden wrote to Dr Khalafalla attaching a “*slightly amended credentialling letter*” and apologised for “*omitting some details in the initial letter.*” The amended credentialling letter stated that Dr Khalafalla had been granted privileges in surgery (general surgery, endoscopy and minor operations) with the special conditions “*Major surgery to be performed under direct supervision of a Fellow of the Royal Australasian College of Surgeons.*”
- 9 November 2005 Dr Margetts wrote to Dr Khalafalla advising that in addition to the restrictions imposed on his operating privileges at the Credentialling Committee meeting on 26 July 2005, the following further limitations were imposed:
- *No elective abdominal surgery was to be performed; and*
 - *Emergency abdominal surgery was to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts, until further notice.*

8.13 Health Quality and Complaints Commission opinion: integrity of credentialling process

In the HQCC’s opinion, the credentialling of Dr Khalafalla to practice as a Deemed Specialist Surgeon at Mackay Base Hospital was not of a reasonable standard to protect the health and well being of users of surgical services at Mackay Base Hospital because:

- The granting of formal credentials and privileges was unreasonably delayed;
- There were unacceptable delays in reviewing credentials and privileges; and
- Credentials and privileges were not properly communicated to Dr Khalafalla, and other hospital staff who reasonably needed to know.

The honesty and integrity of peer reporting and review in the credentialling process would be compromised without the protections of privilege similar to the statutory protections in the new Part 4B (Root Cause Analyses) of the *Health Services Act 1991* and section 272 (Protection for persons involved in supervising registrants) of the *Medical Practitioners Registration Act 2001*.

This was evident in the RACS perception of their litigation risks, and was raised by a number of witnesses who also feared litigation, workplace harassment or other reprisals. In the HQCC’s opinion, the protection of statutory privilege is considered to ensure that persons involved in credentialling give full and frank information relevant to the registrant’s performance.

The protection is defensible on the grounds that credentialling committees have a vital role in protecting the public through the effective credentialling and privileging of health providers. If credentialling committees were liable to be sued for defamation or breach of confidence, there is a risk that they would be less likely to provide candid and comprehensive reports and information about health providers.

8.13.1 Health Quality and Complaints Commission recommendation

The HQCC recommends the Queensland Government consider the introduction of legislation (with appropriate statutory protections and safeguards) to provide the protections of privilege and reprisal for health providers participating in the credentialling process in both public and private health sectors.

Both the RACS and the Medical Board of Queensland have indicated their support for this proposal.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"I am pleased to advise that in December 2007, the Department's Internal Witness Support Unit comprised of two officers, was established within the Assurance and Risk Advisory Services. Recruitment for these two positions is being finalised.

The Unit is dedicated to the receipt, assessment and subsequent management of potential Public Interest Disclosures (PIDs) made to the Department. The Unit will be a central point of expertise which will apply consistent assessment procedures, to determine which complaints made to Queensland Health meet the requirements of the Whistleblowers Protection Act 1994 as PIDs

The Unit will also be responsible for developing a support network for those involved in making the disclosure and intends to monitor subsequent investigation and/or review of the issues raised within PIDs

This Unit will also be required to collate and report PID data and provide clear guidance to staff and management on how to report PIDs.

A training program is currently being developed by Crown Law, in consultation with the Unit, for delivery to Queensland Health senior staff, regarding PID awareness in the workplace.

At present, Assurance and Risk Advisory Services is in the process of consulting with Officers from the Crime and Misconduct Commission, Office of the Public Service Commissioner, Health Quality and Complaints Commission and Crown Law regarding refining Departmental procedures for addressing potential PIDs."

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"No evidence is presented which indicates reticence or reluctance to participate in credentialling processes, for fear of civil litigation or reprisal."

Under the Medical Practitioners Registration Act 2001, the Medical Board has the power to require reports from nominated supervisors of Area of Need' deemed specialists' (MPRA, s140A (3). The Board also has the power to impose additional conditions (section 149A) and this power may be delegated (s. 14).

Under the Health Practitioners (Professional Standards) Act 1999, the Medical Board has the power to suspend the registration of a practitioner to effectively respond to serious potential risks posed by registrants to the wellbeing of vulnerable persons (Part 4). This power is non-delegable."

Further, informal advice from the Executive Officer of the Office of the Medical Board is that a bulletin is soon to be released and the content will relate to supervision.”

8.14 Notification to the Medical Board of Queensland

Although medical practitioners are registered to practice medicine through the Medical Board of Queensland, this registration does not:

- Outline the scope of practice which the Medical Practitioner is competent to undertake;
- Verify the quality of medical interventions by the Medical Practitioner;
- Consider the capability of the health facility to reasonably support the health services being provided by the Medical Practitioner; or
- Make provision for the recredentialling of medical practitioners.

Mr Michael Demy-Geroe, former Deputy Registrar of the Medical Board of Queensland, advised that there was no specific legislative requirement for Mackay Base Hospital to notify the Medical Board of Queensland of concerns about medical practitioners or changes in clinical privileges, and the Medical Board of Queensland had not been notified of any concerns about Dr Khalafalla until receipt of a letter from the RACS in April 2006.

The HQCC notes that on the “*Assessment Form - Special Purpose Registrants*,” there is a place where the supervisor has to advise of any concerns or areas requiring further development. This form was signed by Dr Almehti on 10 February 2006 without any concerns expressed, well after Dr Hack’s adverse audit report in respect of Dr Khalafalla dated 8 November 2005.

On 22 August 2006, the Medical Board of Queensland questioned Mackay Base Hospital as to why Dr Almehti did not note the concerns that had been raised by this time. However the response provided to the Medical Board of Queensland by Mackay Base Hospital dated 1 September 2006 lacked specificity.

8.14.1 Health Quality and Complaints Commission opinion and recommendation

In making its registration decisions, the Medical Board of Queensland relies on full and prompt disclosure of all relevant information by those responsible for supervision and oversight of a registrant.

Section 140A of the *Medical Practitioners Registration Act 2001* now makes it a standard condition that special purpose registrants must practice only in accordance with their supervised practice plan, and enables the Medical Board of Queensland to ask a person involved in the supervision of a special purpose registrant, under the registrant’s supervised practice plan to give information to the Medical Board of Queensland about the supervised practice. The HQCC notes that there is no statutory obligation on supervisors to report unsatisfactory practice, unless the Medical Board of Queensland asks for the information.

Submission by the Medical Board of Queensland

“While no specific statutory obligation exists for the supervisor to report unsatisfactory practice to the board, as detailed in the report previously, the legislation was amended to require all special purpose registrants to only practice in accordance with a supervised practice plan approved by the Board. The supervised practice plan specifies that an assessment report on a special purpose registrant is required:

- *At three, six and twelve months for the first year of registration in a new position*
- *On registration renewal*
- *On change of nominated supervisor*
- *On request of the board*
- *On cessation of practice including resignation*
- *Upon termination*
- *On review of supervised practice conditions*
- *On identifying any adverse incidents.*

This is agreed to by the supervisor under their signature. As a result of this the Board has a variety of statutory penalties that it can apply to supervisors who fail to report to the Board as required. These penalties include:

- *Commencing disciplinary action for failing to comply with a lawful demand of a board (Section 124 of the Health Practitioners (Professional Standards) Act 1999)*

Imprisonment or fine for providing false and misleading information in relation to an application for registration.”

The HQCC recommends Queensland Health issue guidance to all Executive Directors and Directors to ensure that unsatisfactory periods of supervision and any reduction of clinical privileges related to special purpose registrants are promptly communicated to the Medical Board of Queensland and relevant specialist medical college.

9. Quality of surgical services provided by Dr Khalafalla

9.1 Scope of practice

All hospitals have a legal responsibility to ensure that services are provided in circumstances where the safety and quality of health care have been properly addressed. The ongoing evaluation of the performance of health professionals is the responsibility of both health professionals and health service provider organisations.

The defined scope of practice delineates the extent of an individual Medical Practitioner's clinical practice within a particular organisation based on the individual's credentials, competence, performance and professional suitability, and the needs and capability of the organisation to support the practitioner's scope of clinical practice.

Dr Khalafalla's scope of practice at Mackay Base Hospital was defined as follows:

31 May 2004	Not defined.
27 January 2005	Granted interim privileges in surgery at the Senior Medical Officer level had been granted for a period of six months.
26 July 2005	Granted privileges in surgery (general, minor operations, endoscopy) with the condition that major procedures be done following consultation and under the supervision of Dr Almehdi.
30 August 2005	Granted privileges in surgery (general surgery, endoscopy and minor operations) with the special condition that "major surgery to be performed under direct supervision of a Fellow of the Royal Australasian College of Surgeons."
9 November 2005	Further limitations imposed: <ul style="list-style-type: none">• <i>No elective abdominal surgery was to be performed; and</i>• <i>Emergency abdominal surgery was to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts, until further notice.</i>
9 August 2006	Ceased employment at Mackay Base Hospital.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

"It is not true that Dr Khalafalla's scope of practice was not defined when he commenced on 31 May 2004.

Notwithstanding the fact that the Credentials and SOCP committee had not met, Dr Khalafalla's scope of clinical practice was defined by the following:

- 1. His registration as a Deemed Specialist under Area of Need with the requirement to practice only in the specialty of "General Surgery"*
- 2. His position description*

3. *His Title and Department*

4. *The discussions during his recruitment and his appointment*

There was no doubt that Dr Khalafalla was not permitted to undertake Obstetrics, Pathology, Psychiatry or any other specialty. Further as he was registered only for “General Surgery” there was no ability for him to undertake any other sub-specialty of surgery as defined in the regulations to the Medical Practitioner’s Registration Act.

The use of the Service Capability Framework to further limit procedures was not used in 2004, and was not even referred to in 2005 when he was conferred formal SOCP by letter from the District Manager.

The definition of “General Surgery” is more specific than is recommended by the Credentialing and Clinical Privileging Guidelines of 2002 – as they only refer to “Surgery” not even defining the sub-specialty level such as “General Surgery.”

Accordingly, whilst not formally defined via a committee, it is simply untrue to say that Dr Khalafalla’s scope of clinical practice was not defined at the time of his appointment and was ‘undefined.’”

9.2 Evidence and analysis

Dr Peter Woodruff, Vascular Surgeon, in his capacity as an HQCC consultant, reviewed the surgery lists of Dr Khalafalla from 22 August 2005 until 9 August 2006.

Dr Woodruff was asked to assist in the classification of cases as either ‘minor’ or ‘major’ surgery. Dr Woodruff has qualified his opinion in that:

- There is no absolute definition of “major surgery” and the categorisation of a procedure depends on the facilities available at the particular hospital. Dr Woodruff’s opinion as to what may constitute major surgery is based on his surgical experience.
- Procedures such as appendectomies, division of abdominal adhesions and incisional hernia repairs can vary in their complexity depending on the comorbidities of the patient.
- The terms “supervision” and “direct supervision” are ill defined.
- Dr Woodruff’s comments were made solely on a desktop review of the information contained in the surgical lists and without reference to clinical records.
- Dr Woodruff categorised subcutaneous mastectomy and radical excision of lymph nodes as major procedures.

Based on the information contained on the surgical lists, Dr Woodruff provided his opinion that:

- (a) During the period 18 August 2005 to 4 November 2005, Dr Khalafalla performed 37 major procedures and:
 - (i) In two of these procedures, Dr Khalafalla was assisted by a Visiting Surgeon who presumably was a Fellow of the RACS.
 - (ii) In one procedure, Dr Khalafalla was assisted by Dr Almehti.
 - (iii) For one procedure no assistant is listed.

Quality of health services at Mackay Base Hospital

- (iv) For the other 33 procedures, Dr Khalafalla was assisted by a Registrar or Principal House Officer.
- (b) During the period 4 November 2005 to 9 August 2006, Dr Khalafalla performed 27 major procedures including 22 cases of abdominal surgery only one of which seemed to have been performed with the assistance of a "Visiting Doctor." The rest of the procedures were performed with the assistance of a Principal House Officer, a Registrar or Dr Ashraf. Dr Ashraf was not a Fellow of the RACS at the relevant time.
- (c) Of particular concern, there was an extended left hemicolectomy performed on 24 November 2005 with the assistance of a Principal House Officer (UR: 179881). Surgery time for this procedure was 329 minutes (five and a half hours).

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"It is most concerning that numerous operations appear to have been done outside the Scope of Clinical Practice.

Unfortunately the HQCC draft report does not indicate which were done before/after each of the three letters. Two from Dr Sachdev and one from Dr Margetts.

Nor does the HQCC draft report distinguish elective bookings from patients admitted via the Emergency Department ("ED") (including those done as semi-urgent but still admitted via ED).

The booking office was aware, as were the Directors of Surgery and Anaesthetics as well as Dr Khalafalla himself. Dr Margetts was repeatedly reassured by both the Director of Surgery and the Booking office that no abdominal surgery was being done.

There was a further distinction made regarding operations that went through the peritoneum as distinct from, say a skin lesion on the abdomen - i.e. intraabdominal surgery - and such cases were referred to the Director if there was any doubt. (Email from Linda Wall on point).

It is believed that Dr Margetts put all reasonable management steps in place. The only thing he could do more than that would be to personally review the surgery lists, as Dr Woodruff did, however this would be most unusual for a Medical Administrator, particularly when being reassured by a RACS Fellow who was the Director of the Department. At the time Dr Margetts had no reason not to trust either Dr Khalafalla, Dr Almehdi nor the Booking office and this appeared to be an excessive precaution, particularly when he was being reassured that such procedures were not happening, and Dr Almehdi was keen to have the restrictions removed so that Dr Khalafalla could be better assessed and contribute more to the workload. If the restrictions were being ignored, this would seem a redundant request.

Further, the Director of Anaesthetics was well aware of the restrictions yet there was no alarm raised from him.

In any event, the complications and deaths databases continued to be monitored by Dr Margetts, and no untoward issues appeared which would have raised concerns from a management perspective.

Recent communication from the Mackay Health Service District have cast doubt on whether these cases were all elective surgery and Dr Margetts formally requests a copy of any information provided to the HQCC by Queensland Health in this regard.

Finally, Dr Margetts continued to monitor the ICD-10 Complications and the Deaths databases neither of which indicated any potential breaches of SOCP.”

It is noted that:

- In their letter to Dr David Hillis, Chief Executive Officer of the RACS dated 31 March 2006, Dr's Margetts and Almehdi conceded that *“Dr Khalafalla had operated outside the recently imposed restrictions.”*
- Dr Farooq in his letter dated 16 August 2005 alleged that Dr Khalafalla operated outside his approved scope of practice. However, the evidence suggests that at the time that Dr Khalafalla performed these procedures, he had not been advised of the outcome of the decision in relation to his operating privileges made at the credentialing meeting on 26 July 2005.

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

“Dr Almehdi notes that the draft report uses terms such as ‘based on the information contained on the surgical list.’

It is noted that from Dr Almehdi's own review that the number of operative cases excluding endoscope performed are:

Year	Total	Major	Dr Almehdi
2005	1,098	344	147 (43%)
2006	1,052	284	140 (49%)

Dr Almehdi notes the draft report makes much of the purported number of major operations performed by Dr Khalafalla, and suggests this demonstrates evidence of a failure by Dr Almehdi to manage Dr Khalafalla. Dr Almehdi submits this is not the case.

Dr Almehdi also notes there are questions over what is defined as major abdominal procedures as opposed to other procedures. This definitional question is important in relation to the nature of the operations performed by Dr Khalafalla and the degree to which the performance of those operations evidenced a failure of management by Dr Almehdi. If operations performed by Dr Khalafalla were not in reality major operations then this suggests that much of the basis for perceived criticism of Dr Almehdi is not correct. This will be discussed in more detail below.

Dr Almehdi has reviewed the surgical lists and notes that the draft report suggests that Dr Khalafalla's operating without supervision was based on information contained on the surgical list. The report fails to clarify which lists and from what source. The main operative data on which surgical department bases its analysis of the operative activity is that of the OTAGO system placed in the theatre. Other information could be obtained occasionally from the Surgical Coordinator to draw the best picture for the regular monthly and annual audit data. The classification procedures (major/intermediate/minor) is usually scrutinised during the monthly audit presentation.

From the OTAGO system the following data analysis was undertaken as well as input from the theatre elective coordinator, Dr Almehti's analysis produces somewhat different results to the draft report.

Period 18 August 2005 to 4 November 2005

Dr Almehti's analysis is there were 19 major cases rather than 37:

- Lap Cholecystectomy - 6;
- Incisional hernia - 5;
- Breast (mastectomy or WLE plus axillary dissection) - 4;
- Small bowel - 2 (and one other case done by Dr Almehti with Dr Khalafalla assisting);
- Thyroid lobectomy - 1.

Period 4 November 2005 to 9 August 2006

Dr Almehti's analysis states there were 22 major cases rather than 27 and of these four were performed by him with Dr Khalafalla assisting, making his total cases as first surgeon 18 only.

The nature of the major cases done were:

- Breast - 11;
- Incisional hernia - 3;
- Thyroid lobectomy - 2;
- Axillary dissection for malignant nodes - 1;
- Laproscopic cholecystectomy for gangrenous gall bladder - 1.

From figures obtained from the OTAGO system, Dr Almehti notes that the number of major cases done by Dr Khalafalla in the calendar years 2005 and 2006 were:

- 2005 - 63 (from a total of 315), that is approximately 20%;
- 2006 - 17 (from a total of 188), that is less than 10%.

Dr Almehti notes that these figures support submissions he has made to the Commission in relation to his management action in that it is clear:

- (a) The total number of cases done by Dr Khalafalla had dropped by 40%;
- (b) The number of major cases had dropped by 50%;
- (c) The 50% (17 cases for 2006) were done being directed with the restrictions in place.

If one separates out the two most commonly performed major abdominal procedures for the calendar years 2005 and 2006, the results show:

	2005	2006
Lap Chole	29	1
Bowel surgery	14	0

Dr Almehti states this shows a dramatic reduction which could only have arisen with imposed restrictions and surveillance, which goes against the suggestion that there was a failure to take management action in relation to Dr Khalafalla's clinical performance.

Dr Almehdi again states that much is made in the draft report of the fact that major abdominal procedures were carried out in breach of restrictions placed under Dr Khalafalla. Dr Almehdi states that the analysis noted above suggests that a significant number, if not all of the cases noted above, constitute a major abdominal procedure as per the clear restrictions placed following the recommendations of the Hack Report in November 2005.

Among the examples of major abdominal procedures referred to specifically in the draft as examples of breaching restrictions by Dr Khalafalla and thus evidencing the alleged lack of scrutiny by Dr Almehdi, are cases in which it is submitted were clearly either performed by Dr Almehdi himself with the assistance of Dr Khalafalla and junior staff (for example the case of laparoscopic assisted extended left hemicolectomy) or was exclusively sanctioned by the Director Medical Services (as per the Credentialing Committee requirements) for an emergency gallbladder operation to be performed by Dr Khalafalla when Dr Almehdi was, at the time, on leave. Again, in relation to appendectomies, the total number for the years are as follows:

- **2005** - 59;
- **2006** - 21.

Dr Almehdi would again state this shows the same pattern of a reduction in numbers.

Dr Almehdi would argue that an appendectomy does not translate to a major abdominal procedure except if associated with extensive dissection, a major resection, or extensive adhesiolysis; otherwise, it is considered an intermediate procedure.

With the exception of five cases where adhesiolysis is described in the operative notes (to varying extents) all others were non-eventful. In none of these cases was Dr Almehdi called back to give assistance

Dr Almehdi submits that he did not see the Hack recommendation suggesting that he, in his clinical and supervisor role, should undertake to be involved in every appendectomy procedure.

The technical argument as to what constitutes major cases is again deferred to the College log book for operative cases in which only large ventral hernial repairs are considered major. According to the operative details checked by Dr Almehdi, only one case of recurrent hernia could have been classified as major. This however it is noted was referred to in another entry from the nurses' operative sheet as a small hernia.

During the period after the Hack audit of November 2005, most of the major cases on record were Breast surgery. Dr Almehdi confirms he attended some of these as an observer and thought there was little benefit in assisting in them. These procedures were sanctioned to continue after discussion with the Director Medical Services, since they were evidently shown to be among those with minimal complications in the period prior to the audit with relatively good outcome. Moreover, this class of cases was not emphasised in the caution raised by the final conclusion of the Hack audit.

The argument for major abdominal procedures being carried out in breach of the restrictions is therefore subject to significant criticism, as noted from the above.

The view taken at the time was none of these cases constituted a major abdominal procedure as per the clear restriction placed by the recommendations of the Hack audit report of November 2005.

He states in his role as Director of Surgery, the restrictions to major abdominal surgeries were carried out to the best of his capacity.

Dr Almehti states that it is clear from this analysis that, contrary to the findings of the draft report, management action to review Dr Khalafalla's performance was taken as evidenced by the figures."

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"There appears to be a difference of opinion about what is considered a 'Major' procedure by Dr Woodruff and what the RACS consider Major, Intermediate and Minor.

And further:

"I am advised that Queensland Health has examined information on clinical information systems relating to the procedures identified by Dr Woodruff and has identified that of the 37 procedures between 18 August 2005 and 4 November 2005:

- (a) 26 were emergency procedures;*
- (b) One emergency procedure was undertaken by Dr Khalafalla on 22 August 2005, prior to him being advised of his restrictions regarding direct supervision on 30 August 2005;*
- (c) Of the remaining 10 procedures, 8 are listed as per the RACS categorisation as being minor or intermediate procedures;*
- (d) One procedure was a mastectomy and axillary clearance. I am advised that Dr Khalafalla was considered by colleagues to be very skilled in this procedure.*

In relation to the 'Lap Chole' performed on 26 October 2005, I am advised that it is recorded in the operating notes that Dr Almehti was called and present for this procedure."

And further:

"I am advised that the Queensland Health examination of the information on clinical information systems relating to procedures identified by Dr Woodruff as 'major' procedures identified that of the 29 procedures between 4 November 2005 and 9 August 2006:

- 26 were emergency procedures; (Attachment 3)*
- One of the procedures listed as being performed by Dr Khalafalla was in fact undertaken by Dr Almehti, this being the extended left Hemicolectomy. The discharge summary dated 5 December 2005 clearly lists Dr Almehti as the surgeon.*
- The remaining 2 procedures were not abdominal procedures and whilst these are listed as major procedures by the RACS they were considered by Dr Almehti as procedures that could be undertaken by Dr Khalafalla under supervision.*

In relation to major surgery, there is some evidence that Dr Khalafalla complied with the restrictions placed on him. An elective procedure to be undertaken on 1 September 2005 was cancelled by Dr Khalafalla due to Dr Almehdi being absent. A copy of the chart notes is included.

Other information clearly indicates that the common major and abdominal operations performed by Dr Khalafalla had ceased following the restrictions being placed on his practice.”

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“Our client did not conduct general surgery outside his approved scope of practice.”

And further:

“There is no evidence that our client has conducted surgery outside his approved scope of practice.”

And further:

“Our client pursuant to the conditions on his registration was required to undertake a minimum of 12 months of "assessment under oversight" in the speciality of general surgery.

We note that the hospital agreed that our client did not conduct general surgery outside his approved scope of practice.”

9.2.1 Health Quality and Complaints Commission opinion

While there is disagreement about the classification of some procedures performed by Dr Khalafalla as to whether they are “major” or “minor,” evidence gathered in the investigation indicates that Dr Khalafalla did perform major surgery that was beyond his credentialed scope of practice.

At least some occurred after 9 November 2005, when Dr Khalafalla had been unequivocally informed of the need for direct supervision of his surgery by a member of the RACS.

The letter to Dr David Hillis of the RACS dated 31 March 2006 and signed by Dr’s Margetts and Almehdi appears to concede that Dr Khalafalla operated outside of his credentialed restrictions. This is consistent with Dr Woodruff’s opinion provided to the HQCC after a review of Dr Khalafalla’s surgical cases.

Further, it is noted that Dr Khalafalla’s formal advice from Mackay Base Hospital of his credentialling status dated 2 August 2005 states that his privilege was “*Surgery (general surgery, endoscopy and minor operations)*” (emphasis added). In other words, it seems arguable that Dr Khalafalla was not credentialed by Mackay Base Hospital to perform major surgery at all. In the HQCC’s opinion, Dr Khalafalla did perform major surgery such as thyroidectomy, and reversal of Hartman’s procedures.

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Dr Khalafalla also appears to have performed ‘after hours’ surgery that was outside his scope of practice on at least one occasion with the approval of Dr Margetts, Director Medical Services.

It is noted that the lawyers for Dr Khalafalla in their response to the draft investigation report state that “*our client was appointed acting Director of Surgery while Dr Almehti was on leave.*” This contrasts with Dr Almehti’s view that he did not appoint Dr Khalafalla as Acting Director of Surgery while he was absent from Mackay Base Hospital.

9.3 Quality of surgery by Dr Khalafalla

Dr Jon Cohen, General and Colorectal Surgeon, was engaged by the HQCC to provide an independent expert opinion about Dr Khalafalla’s surgical technique and postoperative management in 26 cases. Dr Cohen was provided with a copy of Dr Khalafalla’s *curriculum vitae* and the relevant medical records.

Dr Cohen reported that in his opinion, Dr Khalafalla’s performance as a Staff Specialist at the Mackay Base Hospital was unsatisfactory because:

- (a) Dr Khalafalla’s early training lacked adequate exposure to major abdominal surgery;
- (b) There was a fifteen year gap between Dr Khalafalla’s graduation and obtaining any form of surgical degree (other than a Master’s Degree obtained by thesis); and
- (c) Dr Khalafalla’s difficulty in handling surgical complications probably because of both (a) and (b) above.

In the review, Dr Cohen noted:

- Dr Khalafalla took fifteen years to obtain an Irish College Fellowship (equivalent to the first part of the RACS training requirements);
- Dr Khalafalla’s training over the 15 year post graduate period was “*loaded in the direction of plastic and reconstructive surgery rather than general surgery;*”
- There are unexplained gaps in Dr Khalafalla’s periods of postgraduate training;
- Dr Khalafalla’s assessment reports from Townsville and Bendigo were both unsatisfactory;
- Dr Anthony Gray, General Surgeon at Bendigo in a letter to Dr Graeme Campbell described his concern about “*a lack of operative skill;*”
- In a letter dated 25 November 2002, Dr Campbell mentioned “*specific concerns*” relating to “*issues of judgment;*”
- The assessment report from Echuca from Dr Graham Syme was satisfactory but the report from Dr Graeme Campbell although satisfactory was qualified by “*some concerns have been raised obliquely about communication and interaction with nursing staff in ward and in theatre and possibly about judgment in pre-operative booking of cases.*” Dr Campbell’s final report was “*uncertain*” in its rating of Dr Khalafalla;
- The overall rating by Dr Barling was unsatisfactory and recommended that “*he would benefit from further supervised training;*”

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- Dr Ross Gallery of Mt Isa Hospital gave Dr Khalafalla a satisfactory report but commented that *“experience in recent years has focussed on Plastic and Reconstructive surgery and these skills have been very useful in Mt Isa, exposure to a wider general surgery is progressing satisfactorily;”*
- Dr John Avramovic in June 2002 in a letter to Dr Ivan Thompson, Chairman of the Board in General Surgery, the RACS detailed specific instances of unsatisfactory clinical management during Dr Khalafalla’s period in Mt Isa and the poor response of Dr Khalafalla during a face-to-face meeting regarding the same. Dr Avramovic made reference to an incident involving Dr Khalafalla which had occurred at Mt Isa being *“but a single example of many similar clinically dubious practices;”*
- An (unsigned) letter to Dr Chris Pyke, Chairman of the Queensland Board of General Surgery, the RACS apparently from the Director of Surgery at Mackay Base Hospital which reflected an interview with two surgical trainees who worked with Dr Khalafalla. The letter advised that Dr Khalafalla had a *“problem in admitting complications post surgery, his technique in appendectomy was not up to scratch and his decision making under pressure was poor;”*
- In relation to Dr Khalafalla’s decision making, Dr Cohen identified two cases of particular concern:
 - (i) Motor vehicle accident case 4 March 2005. CT scan and ultrasound showed increased free fluid and gas in the abdomen and a distended small bowel. Operation was inappropriately delayed until 7 March 2005 when a large mesenteric tear was revealed and a 30cm gangrenous segment of ileum was resected.
 - (ii) 76 year old male MVA on Warfarin with high INR. Injuries included a flail chest in the right upper side and massive pneumothorax. Case discussed with Dr Khalafalla over the phone who considered it unlikely that there was intracerebral bleeding and did not want a CT scan performed. The Intensive Care Unit physician requested a CT scan which showed an extensive subarachnoid haemorrhage and a slight subdural haematoma. Patient was transferred to the neurosurgical unit at Townsville Hospital.
- Dr Khalafalla was appointed to Mackay Base Hospital as a Staff Specialist with the support of the RACS provided he undertook *“twelve months of assessment under oversight.”*

Dr Cohen expressed particular concerns about the following surgery conducted by Dr Khalafalla:

- | | |
|-----------------|---|
| Case I | Significant blood loss during surgery due to a technical error – either a tie slipping at the sapheno-femoral junction or due to damage to the femoral artery causing 1500ml blood loss. Presence of Factor V Leiden (which carries an increased risk of blood coagulation) and was known to the examining resident but not made known to the Surgeon resulting in the complication of ilio-femoral thrombosis in the postoperative period. |
| Case II | Inappropriate placement of an intercostal chest tube in a stab wound patient. |
| Case III | Failure to remove the main tumour in right superficial parotidectomy. CT scan and fine needle aspiration cytology six weeks later confirmed residual tumour. |

Referred to Royal Brisbane Hospital for revision surgery.

- Case IV** During mesh repair of a large recurrent incisional hernia, small bowel had been caught up in the sutures which caused a leak and gross infection. This resulted a few days after surgery in faecal peritonitis and necrotising fasciitis of the abdominal wall. Patient required transfer to Townsville Hospital for further treatment.
- Case V** Severe diverticular disease in a patient with multiple comorbidities. Bleeding after sigmoid colectomy necessitating return to Theatre where splenectomy was performed. Abdominal packs removed in a third procedure the next day. Later developed a stricture at the anastomotic site. Balloon dilatation attempted but unsuccessful and symptoms still under review.
- Case VI** Poor management of post operative phase of a laparoscopic cholecystectomy. Bile leak occurred and no action was taken in the first instance. This was an error of management and the patient was subsequently admitted with a subphrenic collection requiring drainage, ERCP and stenting of the bile duct.
- Case VII** Inadequate handling of a bile leak after a laparoscopic cholecystectomy. Required transfer to Townsville Hospital for ERCP and stenting. Once the diagnosis of bile leak had been made, laparoscopy for assessment and biliary stenting should have been considered in the first instance.
- Case VIII** Fungating lower rectal tumour presenting with a CT scan suggesting transmural invasion *“should have been treated by ultralow anterior resection in the first instance.”* Dr Khalafalla performed a transanal excision.

In conclusion, Dr Cohen commented that Dr Khalafalla’s *“training in major abdominal surgery has been deficient as evidenced by the results of the surgical cases under his care. He has never taken an examination equivalent to the final FRACS examination.”*

Dr Cohen recommended that Dr Khalafalla *“should be placed in a surgical registrar position in a major teaching hospital for twelve months and at the end of that time he should be asked to sit the second part of the FRACS examination.”*

The HQCC considers that Dr Cohen’s opinion is consistent with that of Dr Hack and this is discussed in the next chapter.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“Our client is unable to respond to specific allegations in Dr Cohen’s report because he has not been provided with a copy of this report or the records of the patients identified by Dr Cohen. However, our client can make the following general comments regarding Dr Cohen’s report:

Dr Cohen was clearly not provided with our client’s curriculum vitae setting out his extensive surgical history and exposure to both general and plastic surgery.

There was not a fifteen year gap between our client's graduation and obtaining any form of surgical degree.

Our client completed his MBHCB in 1979 and then completed his Masters in Surgery in 1984 which involved both a lengthy written and clinical exam (the same as a fellowship examination) and a thesis which he wrote on Breast Reconstruction after Mastectomy. Our client then practiced as a general surgeon in Egypt and Saudi Arabia until 1994. He took two years to become a Fellow of the Royal College of Surgeons in Ireland, obtaining that qualification in 1994;

In relation to Case V identified by Dr Cohen, this case was at night, Dr Almehti was away and the patient was bleeding. It was decided that a transfer to Townsville could kill the patient. The family was given the options of either having the surgery performed by a local private surgeon or by our client who expressed his reservations about performing the surgery. After discussion with the family of the patient, the family agreed that the only chance of survival was if our client performed the surgery. A local private surgeon was alerted in case our client required assistance, but he did not require assistance.

As indicated previously, our client promptly addressed concerns which were identified to him, but is unable to respond to or correct deficiencies which were not identified to him."

And further:

"Our client has demonstrated adequate knowledge, skill, judgment and care while practising as a deemed specialist in general surgery and took prompt action to correct any deficiencies in his practice which were identified to him."

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"Dr Cohen's report is a more definitive report, and is the kind of report Dr Margetts was hoping RACS would produce. It contains a much needed expert review of his CV, experience etc - all of which was known to RACS and which could only be undertaken by an experienced Surgeon.

Of note, the cases referred to Dr Cohen do not appear (at his admission) to be entirely within his scope of expertise, yet there appears to be no follow-up of cases identified which were not general surgery, such as orthopaedic, gynaecological, obstetric. Similarly the case notes of patients undergoing general surgical procedures performed by other general surgeons does not appear to have been reviewed. Nor does there appear to be any review of the initial procedures performed on cases where Dr Khalafalla was asked to review complications of other surgeons.

The comment by Dr Cohen regarding verbal comments by surgeons in addition to written references indicates a concerning pattern of written and verbal information being at odds with each other - a point which is not commented upon within the HQCC's draft report."

And further:

“It is interesting to note that, with the advent of the Safe Doctors - Fair System approach developed by Dr Margetts and the Queensland Clinical Assessment Service, a clear and comprehensive assessment should be much more accessible, and the issues of communication with, and within the RACS should be greatly assisted.”

9.3.1 Health Quality and Complaints Commission opinion

The quality of general surgery services provided by Dr Abdalla Khalafalla was assessed and reviewed by a number of surgeons supervising and overseeing Dr Khalafalla’s clinical practice in Victoria and Queensland.

Despite many conflicting comments in the supervision reports and the substantial period of unsatisfactory practice under oversight, the RACS supported Dr Khalafalla’s suitability for appointment as a Deemed Specialist, authorising Dr Khalafalla to practice General Surgery as a specialist.

However, the independent review by Dr Hack between September and November 2005 identified a sense of unease about the cases reviewed. Dr Hack felt that cumulatively the cases implied a potentially dangerous technique and, in particular, a failure to take the time to check for bleeding before finishing the surgery. In two of the cases reviewed, Dr Hack said the patients could have easily died had corrective action not been taken.

On 9 November 2005, Dr Hack recommended Dr Khalafalla’s work practices, particularly surgical technique, be presented to the RACS for review. Dr Hack stated, *“I understand his work load has been limited to avoid more complex operations and this limitation should remain until RACS has reviewed his practice. It may be that he is not suited to abdominal surgery and his workload should be adjusted accordingly.”*

Dr Margetts immediately downgraded Dr Khalafalla’s privileges. No elective abdominal surgery was to be performed by Dr Khalafalla, and emergency abdominal surgery was to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts, until further notice.

On 4 August 2006, the RACS (after interview and reassessment) decided:

- Neither the Area of Need position of Deemed Specialist at Mackay Base Hospital nor any other Area of Need position in Australia were appropriate positions for Dr Khalafalla to occupy; and
- Dr Khalafalla needed a minimum of 12 months supervision at Registrar level at a major metropolitan hospital and if his practice was satisfactory, Dr Khalafalla might be permitted to sit the College Fellowship examination (thereby withdrawing the RACS previous recommendation of Dr Khalafalla for Fellowship pursuant to Article 21 without examination).

The independent clinical review by Dr Cohen (which was commissioned by the HQCC) confirmed:

- Dr Khalafalla’s performance as a Staff Specialist at the Mackay Base Hospital was unsatisfactory; and

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- Dr Khalafalla “*should be placed in a surgical registrar position in a major teaching hospital for twelve months and at the end of that time he should be asked to sit the second part of the FRACS examination.*”

Based on the reviews conducted by Dr Hack, Dr Cohen and the RACS, the HQCC is of the opinion that the quality of surgical services at Mackay Base Hospital was compromised while Dr Khalafalla was employed as a Deemed Specialist.

9.3.2 Health Quality and Complaints Commission recommendation

The HQCC recommends that Queensland Health conduct a clinical audit of all cases of major surgery (as identified by Dr Woodruff) which were performed by Dr Khalafalla at Mackay Base Hospital without direct supervision by a Fellow of the RACS.

9.4 Other concerns about Dr Khalafalla

9.4.1 Accuracy of surgical data and records

Confidential information was received in the course of this investigation that:

- Registrars had been asked on several occasions by Dr Khalafalla to insert their name as the primary Surgeon when the trainee Registrar had not in fact been present for all of the relevant operation.
- A doctor had been asked by Dr Khalafalla on numerous occasions to note the Registrar’s name on the operation notes as the primary Surgeon in procedures that had in fact been performed by Dr Khalafalla.
- On at least one occasion, the Registrar had not arrived at the operation until the operation was almost finished.
- The reason given that the Registrar should record their name as primary Surgeon was for the purposes of completion of their log book.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“Our client denies these allegations. Our client was directed by Dr Raad Almehti that if a surgeon had performed more than 50% of the surgery, then for the purpose of their College logbook only, the surgeon could claim that surgery in their logbook. Our client did not direct that the registrar should record their name as primary surgeon on the operation notes. All of the registrars were in their first six months of training and were not aware of this.

Our client has instructed that Dr Farooq's name was recorded in the record of the procedure as having been in attendance. Dr Farooq has admitted that he attended the theatre and watched our client but was not scrubbed in for the procedure. Dr Farooq was not named as the surgeon or assistant on the operation record. He was not described as supervising our client. Dr Margetts has already expressed the view that it was a misunderstanding that arose from the term "in attendance. It is difficult to see on what basis the HQCC's investigator can conclude that our client falsified the operation record, when Dr Farooq has admitted that he attended during the procedure and he was not described as the surgeon or assistant to the procedure.”

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Dr Farooq also provided information that he was concerned Dr Khalafalla had made a typewritten operation note which was misleading in that it suggested that Dr Farooq was in attendance at an operation on 16 June 2004 when Dr Khalafalla performed a laparoscopic cholecystectomy on Patient 14.

The operation was prolonged and the attending Anaesthetist, Dr Crueru, went to an adjacent Theatre to ask Dr Farooq to check on Dr Khalafalla as he was concerned about the length of time the procedure was taking.

Dr Farooq came into the Theatre and watched Dr Khalafalla but was not scrubbed for the procedure and did not provide any assistance. Dr Khalafalla made handwritten notes of that operation.

On 3 August 2004, Patient 14 developed complications and required transfer to Townsville General Hospital. Dr Farooq was concerned that Dr Khalafalla had forwarded with the patient's record a typewritten operation note which suggested that Dr Farooq was in attendance at the operation.

The typewritten operation note (below) had been entered on the computerised system of recording, the Otago system.

OPERATION NOTE		Tuesday, 3 August 2004	
[REDACTED]		Consultant GP	A Khalafalla
Hospital	196149		
Operation	16/06/2004 GALLBLADDER - laparoscopic cholecystectomy		
Surgeon	Abdalla Khalafalla	Wound Timing	Possibly Urgent
Assistant 1	Michael Harfield		
Assistant 2			
Pre-op Diagnosis	GALLBLADDER - abscess / empyema		
Umbilical Hasson's port. 2* 5 mm Rt Flank ports. Epigatric 10 mm port. Extensive adhesions around the GB with the duodenum on top of the base. Liver retractor was used in a 5 mm port. retrograde dissection of the gangrenous GB started from the fundus. Dr Farooq was called in and attended the difficult dissection. Endoloop was tied around the cystic duct. cystic Artery was found and clipped. GB retrieved in an endocatch. wash out and closure in layers with maxon/0 and 3/0 monocryl.			

Evidence from Dr Khalafalla and all other surgeons interviewed suggested that operation notes were entered by the Registrar immediately following the operation. Dr Khalafalla stated that there was a period of time when he was writing handwritten operation notes in order that he could teach the more junior doctors how to enter data on the Otago system.

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Dr Margetts stated that in his opinion, it was simply a misunderstanding that arose from a different understanding of the terms “in attendance.”

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Whilst Dr Margetts believes that there was an element of ambiguity in the term “attended” - i.e. “Attended” was the “attending doctor” versus the dictionary definition of being physically present, he agrees that the use of the word might easily give the wrong impression. That is the reason why Dr Margetts raised the issue with Dr Khalafalla directly.

This was the first incident involving Dr Khalafalla that had been brought to Dr Margetts’ attention and, as the official paper medical record itself was not altered - (i.e. only the notes made in the OTAGO system had an additional phrase) Dr Margetts counselled Dr Khalafalla at the time but gave him the benefit of the doubt in terms of whether this was a deliberate falsification of the records.

This was discussed with Dr Farooq, as his line manager, and it was agreed that this be brought up for discussion in an educational context regarding the potential for confusion and any issues of language at the next peer review meeting. Dr Farooq agreed with this approach.”

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“Our client has instructed that Dr Farooq’s name was recorded in the record of the procedure as having been in attendance. Dr Farooq has admitted that he attended the theatre and watched our client but was not scrubbed in for the procedure. Dr Farooq was not named as the surgeon or assistant on the operation record. He was not described as supervising our client. Dr Margetts has already expressed the view that it was a misunderstanding that arose from the term “in attendance.”

And further:

“Dr Farooq has admitted that he attended during the procedure and he was not described as the surgeon or assistant to the procedure.”

A number of confidential medical witnesses stated that Dr Khalafalla insisted that Registrars and junior doctors submit morbidity and mortality data concerning surgery in which he was involved to him before routine Department of Surgery Morbidity and Mortality meetings.

A number of these witnesses stated that data submitted by them was altered by Dr Khalafalla before the meetings. When pressed for an explanation of this conduct, the witnesses stated that they believed that it was to enable Dr Khalafalla to artificially minimise the impact of his post-surgery complication rate.

Several witnesses stated that they felt intimidated and bullied by Dr Khalafalla to comply with his directions to change prepared data and did not feel able to freely raise perceived complications arising from his operations at the mortality and morbidity meetings.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“In relation to the other professional conduct issues identified, our client can only respond generally in the absence of specific complaints or the records of particular patients.”

And further:

“Our client was required to present the material at morbidity and mortality meetings and his audit material has previously been made available to you. Our client was required to teach principal house officers and registrars about categorising complications. Those discussions were open, as reflected in the minutes of the morbidity and mortality meeting. Our client has not been given a copy of the minutes for these meetings and cannot comment on individual instances. Our client introduced the OTAGO electronic audit system and the template for morbidity and mortality meeting presentations. He started the first audit meeting in Mackay Hospital every 3 months and the first one was in September 2004. When Dr Almehti joined the hospital in 2005, the meetings were changed to monthly.”

And further:

“Our client did not bully or harass Australian trained doctors nor did he inappropriately vet material to be presented at morbidity and mortality meetings.”

Hearsay evidence was obtained from a Medical Officer who had received information from a junior doctor. The junior doctor was assisting Dr Khalafalla in surgery on a patient who was being returned to Theatre following a mesh repair of an abdominal hernia. When the patient returned to Theatre, the junior doctor said that a stitch from the mesh had gone through the bowel, perforating the bowel.

It is said that when the junior doctor told Dr Khalafalla of the presence of the stitch, Dr Khalafalla denied its existence. The junior doctor attempted to set out the presence of the stitch in the operation notes but was told by Dr Khalafalla to amend the clinical records not to reflect this.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“In relation to the second hand hearsay evidence, Dr Almehti was the surgeon and our client was his assistant. The junior doctor offered to write the notes. The junior doctor thought that a stitch from the mesh had gone through the bowel perforating the bowel. Our client checked the location of the stitch but it had not perforated the patient's bowel, contrary to the junior doctor's belief. Our client did not agree with the junior doctor's description of events and directed that the operation record accurately reflect the situation. Surgeons commonly add to or correct registrar's notes.”

9.4.2 Inappropriate surgery and treatment of female patients by Dr Khalafalla

Evidence and analysis

Confidential evidence from one Medical Officer suggested that there was a high rate of appendectomies in teenage girls seen by Dr Khalafalla.

It is alleged that Dr Khalafalla told the witness he performed the appendectomies because of the risk to a child's fertility. However, the witness expressed grave concern that Dr Khalafalla's practice was contrary to contemporary paediatric surgical practice in that the appendectomies were performed without proper verification of the clinical need for the surgery.

The Medical Officer described being reluctant to admit girls suffering any of the symptoms of appendicitis because the child would almost certainly undergo surgery by Dr Khalafalla the following day, rather than Dr Khalafalla allowing the proper time for observation of the child's condition to clinically verify the need for surgery.

One witness stated that a young female who had undergone an open haemorrhoidectomy performed by Dr Khalafalla and had suffered a postoperative bleed and collapsed in the Ward. The witness said that the patient was returned to Theatre, transfused and eventually recovered.

An appointment was arranged for the patient to be seen by the original Surgeon, Dr Khalafalla, in the Outpatients Department. The witness stated that Dr Khalafalla refused to see the patient and made an allegation that the patient partook in anal sex and that he therefore refused to see her. The witness considered that such a comment was extremely inappropriate and felt that it arose from cultural differences.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"In relation to the other professional conduct issues identified, our client can only respond generally in the absence of specific complaints or the records of particular patients:

Our client does agree that appendectomies may be performed because of a risk to the child's fertility. Patients with obvious symptoms of appendicitis were treated as soon as possible. Our client observed patients for as long as was necessary to clinically verify the need for surgery.

Post operative bleeding is a known complication of an open haemorrhoidectomy and can occur without any lack of care on the part of the surgeon. Our client agrees that the patient would have been returned to theatre and given a blood transfusion if necessary.

Our client has never refused to see or treat a patient on the basis that they engaged in anal sexual intercourse. Our client enters into no personal judgment of his patients or their sexual practices."

9.4.3 Inappropriate treatment of female and junior medical colleagues and other female staff by Dr Khalafalla

Evidence and analysis

A number of confidential Medical Practitioner witnesses, both female and male, commented on the way Dr Khalafalla treated female medical colleagues and female staff at the hospital in general. In particular, it was said that Dr Khalafalla:

- Was generally disrespectful of the expertise of female medical colleagues and was unwilling to accept comments made by them concerning his treatment of patients even when such comments were merely directed at ensuring the welfare of the patient;
- Was dismissive of the need for female surgical trainees to have exposure to sufficient surgical procedures of a particular type to ensure their proper training;
- Was frequently rude and aggressive when dealing with female nursing staff and was unwilling to heed anything that the female nursing staff told him;
- Treated junior male medical staff poorly; and
- Engaged in a shouting argument with Dr Mamon in Theatre necessitating intervention by Dr Cruceru, an Anaesthetist.

Dr Khalafalla's poor interpersonal skills made it necessary for Mackay Base Hospital to organise for him to attend a Cognitive Institute training course. Dr Khalafalla appeared to lack insight into the detrimental effect his behaviour had on other staff and female staff in particular.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"In relation to the other professional conduct issues identified, our client can only respond generally in the absence of specific complaints or the records of particular patients:

And further:

"Our client did not discriminate against female surgeons, make inappropriate comments about or tolerate inappropriate comments in relation to female surgeons."

9.4.4 Health Quality and Complaints Commission opinion

The HQCC notes the concentration and prevalence of complaints related to Dr Khalafalla's practice and the consistent complaint themes about surgical records and data are cause for serious concern.

Although the threshold for disciplinary action may not be achieved in respect to individual complaints, Dr Khalafalla's complaints profile should have attracted greater scrutiny from supervisors and administrators.

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A large complaints profile may be coincidental; it is either the product of dysfunctional interpersonal relationships or it may be otherwise reasonably explained. It may also be the result of inappropriate behaviour. This is a delicate area for professional judgement and communication, and must be done without prejudice and with a presumption of innocence.

It is apparent that whistleblowers became frustrated with inaction and had to resort to their federal Member of Parliament for support.

9.4.5 Health Quality and Complaints Commission recommendation

The HQCC recommends that Queensland Health review their monitoring and oversight processes in relation to:

- Profiling complaints about registrants; and
- Ensuring that internal witnesses are supported in expressing their concerns, without prejudice or reprisal.

10. Supervision and oversight of Dr Khalafalla

10.1 Role of the Royal Australasian College of Surgeons

An IMG deemed suitable for an Area of Need position was required to undertake a designated period of supervision and/or oversight of between 12 and 24 months.

Notification of the Royal Australasian College of Surgeons (RACS) recommendation after assessment is sent to the IMG and the AMC. International Medical Graduates (IMGs) must complete all elements of the recommendation, including the Fellowship Examination if applicable, within four years from the date that the oversight and/or supervision period commences. Otherwise, the recommendation expires.

The RACS has advised that prior to October 2006 there was no four year validity period so that this four year requirement did not exist at the time of Dr Khalafalla's assessment.

The level of supervision required depends on the qualifications and experience of the IMG, but there is no formal definition of supervision/oversight.

The following definitions are based on the evidence of Dr Hillis, CEO of the RACS. Dr Hillis conceded that the terms may actually have different interpretations in regional areas as distinct from central policy.

Assessment under oversight

This term is loosely defined and acknowledges that in a rural setting, the supervisor may only provide oversight assessment from a distance and not necessarily work in the same hospital as the Surgeon under oversight. The Surgeon under oversight assessment may undertake day to day clinical activities, have responsibility for clinical decisions and simply report to the supervisor on a weekly basis to discuss cases.

Supervision

Applies more to surgical trainees in that between the trainee and the supervisor the clinical decisions, clinical treatment paths and the clinical activities of the trainee are very closely supervised. Both parties work in the same facility and the supervisor has the prime responsibility for the patient.

Direct Supervision

Very close supervision in that the supervisor is present and can actually observe the actions of the supervised Surgeon.

Prior to the introduction of the RACS assessment policy in 2006, there was no clear differentiation between oversight and supervision. While there were some guidelines, most IMGs were recommended to undertake a period of clinical assessment under oversight. The RACS does not assume responsibility for supervision, merely assessment.

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“The College will undertake “assessment under oversight” which is simply to maintain an assessment of the candidate at regular intervals. Assessment reports are usually conducted on a 3 monthly basis by the appointed supervisor/overseer, and a formal report lodged with the College. The hospital/employer has the responsibility for credentialling the candidate, to ensure that their scope of work is consistent with the position held, and is responsible for the supervision (day to day supervision, assessment, monitoring, etc.) of the candidate in the hospital context.”

And further:

“Responsibility for supervision rests with the employer (either the hospital or the Health Department in the relevant State or Territory). The employer needs to ensure they have appropriate supervisors although the College may on occasions facilitate this.”

The RACS advise that Dr Khalafalla and his assessors were issued with the College’s clinical assessment brochure which outlines the major features of assessment of professional practice. This brochure is currently under review and the guidelines in relation to oversight and supervision incorporated. Since Dr Khalafalla’s assessment, the RACS has progressed defining the requirements of oversight as opposed to supervision. The RACS advise it is in the process of reviewing clinical assessment policy to incorporate the definitions of surgical oversight, compared to supervision.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“The fact that there may or may not have been confusion with regards to terminology is irrelevant in these circumstances. RACS awarded Dr Khalafalla their highest honour as a deemed specialist - that of assessment under “Oversight.” This demonstrated that their assessment of him was as in the highest order with the exception of a full fellowship – which has never been awarded to an AoN IMG to Dr Margetts knowledge.

We note that assessment was made by RACS in full knowledge and with the benefit of supervisor’s reports, and all knowledge of his work experience in Australia and New Zealand, as well as multiple reviews of his formal qualifications. Dr Margetts had no evidence to question RACS assessment and accordingly it would have been inappropriate for Dr Margetts to question the assessment – even when initial concerns were raised - due to the strength of the commendation after many years of supervision and the absence of any caveat or caution by RACS. It is notable that the down grading of Dr Khalafalla’s status from “Supervision” to “Direct Supervision” was only done by Dr Sachdev and not by RACS at any time. Further comments that these levels are only used for registrars is not supported by the registration requirements for other IMGs who are under “supervision.”

Finally, the reference to “surgeon” under the third category of “direct supervision” is defined and restricted by the Act to mean “specialist” (including deemed specialists).”

10.2 Ongoing clinical assessment of International Medical Graduates

If an International Medical Graduate (IMG) has been assessed and a nominated period of supervision/oversight has been advised, this supervision/oversight would be conducted by two Fellows of the RACS.

The RACS introduced its *Clinical Assessment of International Medical Graduates* policy in June 2007 but this did not apply to Dr Khalafalla during the time he was under clinical assessment.

Dr Hillis, CEO of the RACS, explained that in some rural areas of Australia, it is not always possible to find two College Fellows to carry out this task. In those cases, the Chair of the Regional Training Board has to try and use his or her influence to persuade local Fellows to provide the requisite level of supervision.

An IMG is not in a formal training environment. An IMG who is under clinical assessment may be required as part of their assessment to undertake further skills orientated courses or specific training in certain areas identified as deficient during interview.

The clinical assessment is recorded and forms the core of how the IMG will progress through the supervision/oversight period and even beyond the supervision/oversight arrangement. This information must be accurate and informative, and must be indicative of the real situation in which the IMG is involved.

Supervisors/overseers have an obligation to be open and transparent in this process and enable corrective action to occur as soon as possible, if deemed necessary. Any concerns which could be identified as a potential risk (to the IMG, patients or medical institution) should immediately be brought to the attention of the RACS.

Assessment reports consist of regular progress reports and log book reviews and are required to be conducted on a three monthly basis by each supervisor/overseer, in conjunction with the IMG.

The assessment report is submitted to the Chair of the relevant specialty board or IMG Representative of the relevant specialty board. Also, the Clinical Director is involved in the initial document based assessment. The specialty Board Chair and/or IMG Representative are involved in the upfront assessment of IMGs not performing under clinical assessment.

International Medical Graduates that are assessed for Area of Need are managed by the Department of IMG Assessments within the RACS and specialty Chair and/or IMG representative which are governed by the Medical Board of Queensland of Specialist Education Training. Dr Khalafalla was managed by the Censor in Chief's Office under the direction of the Censor in Chief.

According to Dr Hillis, if the progress report appears incomplete, the Chair of the Regional Subcommittee Training Board or IMG Representative of the relevant board would then investigate any gaps either directly with the person who is providing the oversight.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“It is significant to note that the "oversight" was done by College Fellows of RACS and the reports were to go back to RACS. The MHSD only received verbal reports initially and copies of the written reports were subsequently provided, but it was not an automatic requirement of RACS that a copy went to local management.

It is Dr Margetts' experience that the College prefers direct communication from its fellows and rarely seeks or considers the opinions of medical administrators. The sending of reports directly from the supervisor to RACS bypassing Medical Administration and without further comment is evidence of this.”

10.3 October - November 2004

The RACS did not formally advise the hospital, the nominated supervisors or Dr Khalafalla of the arrangements in relation to supervision until November 2004, some six months after Dr Khalafalla had started working at Mackay Base Hospital.

Submission by RACS

Dr David Hillis, Chief Executive Officer submits:

“Dr Khalafalla and his nominated overseers were advised of their responsibilities on 22 November 2004. Admittedly there was a delay between Dr Khalafalla's commencements at Mackay to the time of advice in relation to the requirements of clinical assessment. However at that time, it was the responsibility of the IMG to notify the College that they wish to take up the College's recommendation so that the necessary arrangements may be made in relation to the clinical assessment. Also prior to the introduction of the College's Position Description Assessment Form, the specialty Chair would need to source the Fellows suitable for assessment purposes and this would often prove difficult in Area of Need. This process has been rectified as proposed assessors are sourced by the employer and submitted to the College as part of its requirements of AoN assessment.

The College cannot assume that the IMG has commenced the AoN position at time of assessment. Generally employers like to finalise visa/registration requirements following College advice. It is not uncommon for an IMG to commence their clinical assessment 3 to 6 months following College advice.

The College has further streamlined this process by clearly stating in their letters issued following interview that if the doctor wishes to comply with the College's recommendation for:

- Area of Need; or
- Area of Need and specialist assessment

They should contact the Department of IMG Assessments (contact details of responsible staff member included).

Once the doctor has complied with College recommendation, the correspondence relating to their clinical assessment requirements and responsibilities are issued within 2 weeks to both the doctor and assessors.”

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Farooq was aware at least by 31 December 2004, as he forwarded 2 reports to RACS both sent in December.

If RACS have no “bring-up” system to remind them of overdue reports, then this is a matter for them to address, particularly as their processes totally bypass local Medical Administrators by design. Further as a similar process had been used in his awarding of a fellowship of RACS, Dr Farooq would be intimately aware of such a process.”

On 19 October 2004, Dr Khalafalla emailed the RACS to advise that his supervisor, Dr Cody Fitzgerald, was no longer available. Dr Khalafalla nominated other surgeons as possible supervisors.

On 20 October 2004, Ms Toulia Panagopoulos forwarded Dr Khalafalla’s email to Professor Christophi, Chair of the Board in General Surgery, seeking details of possible supervising surgeons.

On 8 November 2004, Ms Toulia Panagopoulos sought a response to her email of 20 October 2004.

On 22 November 2004, the RACS wrote to Dr Khalafalla advising him of his responsibilities and nominating Dr Farooq and Dr Vigna-Rajah to provide oversight. On that date the RACS also wrote to Dr Farooq and Dr Vigna-Rajah advising them of their responsibilities using the term *“assessment under oversight.”*

10.4 December 2004

On 3 December 2004, Dr Khalafalla advised the RACS that Dr Vigna-Rajah was unable to mentor his work *“being offsite”* and suggested Dr Catherine Heathwood.

On 6 December 2004, Ms Toulia Panagopoulos emailed Dr Chris Christophi and expressed reservations about Dr Heathwood being only able to provide oversight at a distance stating *“I’m not sure whether oversight at a distance is an option for Dr Khalafalla given his previous reports.”* An email of the same date suggests that Dr Farooq had expressed concerns at being solely responsible for providing Dr Khalafalla’s oversight.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“These concerns were never forwarded or raised with Dr Margetts by either RACS or Dr Heathwood. It appears that RACS again failed to disclose relevant information.

This suggests that RACS engaged in a pattern of behaviour of regularly not disclosing relevant (crucial) information.”

On 10 December 2004, Dr Anne Ellison, Director, Specialist Surgical Training and Assessment, wrote to Dr Khalafalla advising that the RACS was prepared to nominate Dr Heathwood to provide oversight. Dr Ellison also wrote to Dr Heathwood on the same date.

10.5 Information on the Royal Australasian College of Surgeons file

It is clear from documents provided by the Royal Australasian College of Surgeons (RACS) that at that stage it was aware of further incidents of concern in relation to Dr Khalafalla's clinical performance and relationship with staff. Health Quality and Complaints Commission investigators were provided with one page of a type written note to "Chris" regarding Dr Khalafalla that spoke of concerns raised by two trainees regarding Morbidity and Mortality Committee meetings, haematomas and communicating regularly with other surgeons in a different language.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"RACS, however, once again failed to pass this on to the hospital.

His supervisor, Dr Farooq, wrote supportive reports after this time (31 December 2004) and did not pass this onto management or deal with the issue himself as Director of Surgery.

Moreover, both Dr Farooq and Dr Almehdi (both FRACS nominated supervisors) denied any concerns in their discussion with Linda Wall as late as May 2005."

The RACS file also contained patient records that had clearly been given to someone at the RACS raising concerns about clinical performance in respect of Patient 25 and Patient 14.

There is no indication as to who provided the documents to the RACS.

A handwritten note on the RACS file also makes reference to the proceedings of a Clinical Risk Management Committee (CRM).

10.6 Issues discussed at Clinical Risk Management Committee

The Clinical Risk Management (CRM) Committee's functions include the assessment and evaluation of the quality of health services, the reporting and making of recommendations concerning those services and monitoring the implementation of its recommendations.

The Mackay Health Service District CRM was gazetted as a Quality Assurance Committee under section 31 of the *Health Services Act 1991* on 3 October 2003. As such, a person who is or was a member of the CRM must not make a record of, or divulge or communicate to someone else, information acquired by the person as a member of the CRM, other than for the purpose of:

- (a) Exercising the functions of a CRM member of the committee;
- (b) As prescribed under a regulation.

(s.33(1) *Health Services Act 1991*)

Further, a person who is or was a relevant person (a person authorised by the CRM to receive information to enable the committee to perform its functions) must not make a record of, or divulge or communicate to someone else, information acquired by the person as a member of the CRM, other than for the purpose of enabling the CRM to perform its functions.

(s.33(2) *Health Services Act 1991*)

Quality of health services at Mackay Base Hospital

Information from a CRM can not be given in evidence. A person who is or was a member of the CRM (or relevant person for the CRM), is neither competent nor compellable:

- (a) To produce, in compliance with a requirement under an Act, or legal process, any document in the person's possession or under the person's control created by, at the request of, or solely for the purpose of, the CRM; or
- (b) To divulge or communicate, in compliance with a requirement under an Act, or legal process, information that came to the person's notice as a CRM member or relevant person for the CRM.

(s.34 Health Services Act 1991)

A finding or recommendation by the CRM as to the need for changes or improvements in relation to a procedure or practice is not admissible as evidence in any proceedings that the procedure or practice is, or was, careless or inadequate.

(s.35 Health Services Act 1991)

Section 35 of the Health Services Act provides that if there is an inconsistency between the provisions of this division and a provision of any other Act or law, the provisions of this division prevail to the extent of the inconsistency.

(s.38 Health Services Act 1991)

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"Under the Health Services Act nothing mentioned within a Gazetted Quality Committee may be disclosed or used in any proceeding against a person.

The terms of reference and the privacy principles which each member of the committee receives are clear in this regard.

To be able to action a matter it must, be raised separately outside the [clinical risk management meeting] CRM. It is not even permissible to discuss whether such information was or was not raised, or to acknowledge or deny such data.

If it was raised separately it is the responsibility of the Clinical Director (either Dr Farooq or Dr Almehdi depending on the dates) to bring this to the attention of the appropriate authority outside such a forum so that it can be acted upon in order to discharge their clinical governance responsibilities."

And further:

"[The CRM committee] was not the appropriate forum for an unsubstantiated allegation regarding an individual named provider without their permission, indeed such reports are forbidden under the Act. The committee receives analyses into clinical incidents and is not a clearing house for individual doctor performance concerns which must be managed via the appropriate line management structure due to the special nature of such committees."

10.7 Other concerns

There is an email from Lorraine Blair to Dr Craig Margetts (cc Dr Farooq) dated 19 August 2004 raising concerns about Dr Khalafalla's treatment of Theatre staff when an operation was delayed for 15 minutes.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“This is further evidence of interpersonal issues in relation to Dr Khalafalla however it is not evidence of any systematic clinical issue. RACS did not advise Dr Margetts about any concerns that had previously been raised.”

However, at no stage did anyone at the RACS advise Mackay Base Hospital about the concerns that had previously been raised about Dr Khalafalla.

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“Unfortunately with the privacy legislation and potential legal action, it is not always apparent that the College has the capacity to inform other groups (like Mackay Base Hospital) of previous concerns. As the College is not a statutory body this issue needs to be clarified and indemnity provided. The College being conscious of this is now ensuring any concerns which can be formally reviewed with definite conclusions are reported to the appropriate registration body.”

10.8 The Royal Australasian College of Surgeons Assessment Reports

On 31 December 2004, Dr Farooq completed two retrospective the RACS progress reports for Dr Khalafalla for the periods:

- 31 May to 31 August 2004; and
- 1 September to 30 November 2004.

Both assessment reports indicated that Dr Khalafalla’s performance was satisfactory.

In the reporting period 31 May to 31 August 2004, Dr Farooq stated a concern that Dr Khalafalla was too quick in performing laparoscopic and endoscopic procedures which might not be safe. However in the subsequent three monthly report Dr Farooq noted that Dr Khalafalla had responded positively and was now performing therapeutic procedures more carefully and diagnostic procedures more thoroughly.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“An assessment dated 31 December 2004 of our client was graded "satisfactory" by Dr Farooq for the period from 31 May 2004 to 31 August 2004. Dr Farooq commented that our client was too fast in performing laparoscopic and endoscopic procedures which may not be safe and that Dr Farooq had discussed that issue with our client.

A further assessment dated 31 December 2004 of our client was again graded "satisfactory" by Dr Farooq for the period from 1 September 2004 until 30 November 2004. Our client was reported as having taken Dr Farooq's criticism of haste positively and he was stated to be performing "therapeutic procedures more carefully and diagnostic procedures more thoroughly.”

On 28 February 2005, Dr Almehti completed the Medical Board of Queensland 'Assessment form for special purpose registrants' for the period 1 June 2004 to 28 February 2005. He described Dr Khalafalla's performance as *"better than expected"* and did not list any areas requiring improvement.

On 1 March 2005, Dr Farooq resigned as Director of Surgery at Mackay Base Hospital but continued as a VMO.

10.9 Renewal of special purpose registration

On 20 April 2005, the RACS wrote to the Medical Board of Queensland supporting Dr Khalafalla's ongoing specialist recognition in the Area of Need position of Staff Surgeon, General Surgery at Mackay Base Hospital for a further 12 months.

On 27 April 2005, Dr Khalafalla's special purpose registration expired. No documents obtained from the Medical Board of Queensland show renewal on this date.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"Dr Khalafalla's registration was temporarily extended by the Medical Board. This was not uncommon at the time due to workload backlog at the time in the wake of Bundaberg.

Given the RACS letter was produced on 20 April, Dr Khalafalla's renewal would have had to have been completed well before that."

On 3 May 2005, a complaint was received about Dr Khalafalla's treatment of a patient who had suffered a torn bile duct. The allegation was that Dr Khalafalla was reluctant to recognise that a complication had occurred. The patient was transferred to Townsville Hospital for further treatment.

On 10 May 2005, Dr Khalafalla's special purpose registration as Medical Practitioner and Deemed Specialist was renewed until 27 April 2006.

On 22 May 2005, Dr Raad Almehti met with Dr Khalafalla to discuss his morbidity figures and selected case studies. Dr Khalafalla was advised that he needed to pay more attention to minor details of surgery, resist the urge to rush, to discuss with the team regarding operation options, and to accept that high risk patients need broader discussion including Anaesthetics and Intensive Care Unit. They agreed to meet again in two months time.

On 24 May 2005, Dr Farooq advised the RACS that he could no longer provide oversight of Dr Khalafalla as he had resigned from his position as Director of Surgery and could not provide adequate supervision while working as a VMO.

10.10 Assessment report by Dr Heathwood

On 31 May 2005, Dr Heathwood submitted her first progress report to the RACS for the period 1 December 2004 to 28 February 2005. Dr Heathwood identified problems with patient communication and log book figures. Dr Heathwood notified the RACS of concerns that had been raised within Mackay Base Hospital about Dr Khalafalla's communication with patients and colleagues, technical skills and patient management.

Quality of health services at Mackay Base Hospital

Dr Heathwood stressed that her opportunity to supervise Dr Khalafalla had been limited. Dr Heathwood attached a response from Dr Khalafalla dated 23 May 2005.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"An assessment dated 25 May 2005 of our client by Dr Catherine Heathwood for the period from 1 December 2004 to 28 February 2005 was generally graded "satisfactory," although Dr Heathwood noted two areas of concern:

- Our client was graded "poor" to "satisfactory" in that he was willing to help but responded poorly to criticism or questioning. She noted that while the process of discussing these criticisms and concerns had been painful and uncomfortable, it had opened the door to frank negotiations for assessment of any future problems;*
- Our client was graded "poor" in that he had performed a limited number and range of procedures. Dr Heathwood noted that operating theatre time and bed shortages had restricted our client's opportunities to do more major cases. Dr Heathwood noted that this limitation had been discussed with Dr Almehti and that better theatre access would be forthcoming."*

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"These matters were not raised with Dr Margetts.

This is another illustration of information being withheld from Dr Margetts by RACS. Further this is in contrast with Dr Farooq's and Dr Almehti's reassurances that all was well at this time both to Dr Margetts, and also to Linda Wall."

On 31 May 2005, Dr Farooq declined to complete the final assessment report of the RACS for Dr Khalafalla for the period 1 March 2005 to 31 May 2005.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"On 15 July 2005 at the Provincial Surgeons Australia meeting, our client's audit was reviewed by Dr David Watters, the pioneer of the RACS audit programs. He was happy with that presentation."

On 7 July 2005, there was a dispute in the operating rooms between Dr Khalafalla and a Surgical PHO about treatment of a patient which resulted in the PHO being told by Dr Khalafalla to unscrub and leave the surgery. Dr Khalafalla informed Dr Sachdev, Acting Executive Director Medical Services, and the Director of Surgery that he was unhappy to be questioned by a junior doctor during surgery. Dr Khalafalla was counselled about appropriate and professional behaviour. Dr Khalafalla apologised to the PHO.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

“There is no evidence that there were systematic or recurrent issues raised by Dr Khalafalla’s supervisor or his line manager, nor his RACS supervisor as late as the end of May 2005. The concerns were raised after Dr Margetts commenced his secondment on 7 July and had been actioned by the commissioning of Dr Hack’s report before his return.”

10.11 The Royal Australasian College of Surgeons 12 month review

On 19 July 2005, the RACS advised Dr Khalafalla of Dr Farooq’s resignation as his supervisor and further advised Dr Khalafalla that the RACS required a progress report from Dr Heathwood for the period 28 February 2005 to 30 May 2005, a report from the current Director of Surgery and a log book summary for the period 1 December 2004 to 30 May 2005 so that the Chair of the Board in General Surgery could assess and make a recommendation in relation to his 12 month period of oversight assessment.

10.12 Further assessment report by Dr Almehti

On 5 August 2005, Ms Toulia Panagopoulos of the RACS emailed Dr Almehti asking for a progress report on Dr Khalafalla, and stating that the RACS had understood from Dr Farooq that Dr Almehti would be taking over supervision of Dr Khalafalla *“upon Dr Farooq’s departure.”*

On 5 August 2005, Dr Almehti completed an assessment report for the RACS for the period 1 December 2004 to 31 May 2005 indicating that Dr Khalafalla’s progress was satisfactory. Dr Almehti attached a covering letter stating that Dr Khalafalla had participated candidly in monthly surgical audit meetings.

Dr Almehti also emailed Toulia Panagopoulos of the RACS stating that this was the first time an official request had been made for him to supervise Dr Khalafalla.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“On 26 July 2005, the Credentials and Clinical Privileges Committee of Mackay Base Hospital recommended that our client’s privileges be ratified with a condition that major procedures were to be performed following consultation and under the supervision of Dr Almehti. Both Dr Farooq and Dr Almehti were present for that Committee meeting. Our client was not present at that meeting.

A subsequent assessment dated 2 August 2005 by Dr Catherine Heathwood for the period from 1 March 2005 until 30 May 2005 was graded “satisfactory.”

By letter dated 2 August 2005, our client was granted operating privileges for general surgery, endoscopy and minor operations. No special conditions were placed on our client’s operating privileges to the effect that supervision was required in that letter. No restrictions on our client’s practice were orally communicated to our client.

An assessment dated 5 August 2005 of our client by Dr Almehti was yet again graded “satisfactory” for the period from 1 March 2005 to 31 May 2005. Our client was described as a “hard working, conscientious surgeon.”

The assessment contained the statement "I believe Dr Khalafalla's progress to be quite satisfactory. I wish him well in his endeavour to obtain his College credentials." Dr Almehti was not requested to provide further reports to the College.

On 9, 10 and 11 August 2005, our client was appointed Acting Director of Surgery while Dr Almehti was on leave and performed general surgery without supervision in accordance with the letter from the hospital dated 2 August 2005.

On 16 August 2005, Dr Farooq advised the hospital that our client was performing surgery without the supervision of the Director of Surgery and that at a recent Credentialing Committee meeting it was decided that our client should only perform major surgical operations under supervision. Dr Farooq was obviously not aware of the contents of the erroneous letter dated 2 August 2005 granting our client unrestricted operating privileges."

10.13 Request for the Royal Australasian College of Surgeons review

On 20 August 2005, Dr Pyke, Chairman of the Queensland Regional Board of General Surgery of the RACS emailed Professor Christophi requesting that Dr Khalafalla's status be reviewed stating *"his operative ability and case selection is sub-standard to the point where the credentialing committee has become involved and limited his options in relation to unsupervised work."*

Dr Pyke also referred to documentary evidence in the possession of the supervisor, Dr Farooq about retrospective falsification of operative notes to indicate the presence of Dr Khalafalla's supervisors when they were not present.

Dr Pyke suggested to Professor Christophi that the RACS Board would need to *"reassess his oversight status to downgrade it and suggested that Dr Khalafalla apply for SST with a shortened period of training."*

When asked about the degree of scrutiny or questioning conducted by the RACS when there are concerns raised by correspondence or in a report from an employer about an Area of Need specialist who is under oversight or supervision, Dr Hillis stated that the Chair of the Training Board will review all previous progress reports and if there are concerns with progress reports, then the assessment of the IMG may need to be reviewed. Local peer review may also need to be increased.

Dr Hillis advised that if the situation gets to a level where the RACS is not able to sort out the situation and it appears that the IMG Surgeon is not safe, then he or she would usually be put into an area where they could be supervised more closely, rather than at a distance under oversight. In other words, the RACS may withdraw support for the doctor to occupy the Area of Need position.

At the time of Dr Khalafalla's assessment, Dr Pyke was the Chair of the Regional Subcommittee of the Board in General Surgery in Queensland. Dr Pyke is now the Chair, Board in General Surgery.

Dr Pyke stated that the management of Mackay Base Hospital seemed to misinterpret his role and questioned whether he ought to have clearly communicated that he was not the right person at the RACS to be dealing with in relation to any concerns that the hospital may have had in relation to Dr Khalafalla's practice.

Dr Pyke said his role within the RACS entailed oversight assessment of Area of Need Surgeons, and that any documentation that he received was forwarded to the central office of the RACS in Melbourne.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Pyke's comments are surprising given his involvement in this matter. Dr Margetts properly understood that Dr Pyke was the appropriate person to be dealing with at the RACS for the following reasons:

- *Dr Pyke's title is "Chairman of the Board of Surgery"*
- *Dr Pyke is held out by the RACS to be the person who "Responsible for reporting on the progress of IMG AoN specialist surgeons under oversight assessment" - and continues in that role*
- *Dr Pyke was the only person from the College (outside Mackay Base Hospital) who raised concerns in relation to Dr Khalafalla, and with whom the Mackay Health Service District had most dealings. (It is particular noteworthy that the concerns raised related to Dr Khalafalla's interpersonal and communication skills.)*
- *Dr Pyke was shown the database of Deaths and Complications by Dr Margetts and remarked that this was a useful adjunct information provided by Medical Administration and that this was the first time he had seen such useful data emanate from Medical Administration*
- *Dr Pyke specifically undertook to follow-up the process*
- *Dr Pyke wrote to the MHSD commending the "thorough, timely and ethical manner" in which it had undertaken the assessment and proposed a joint path with technical skills being followed up by the College, whereas the District would assist with interpersonal skills training.*
- *Dr Pyke indicated that he had forwarded Dr Hack's report within the college for further action.*
- *Dr Pyke was the key contact person repeatedly, particularly in the initial stages.*

Given the above, it was not unreasonable of Dr Margetts to believe that he was communicating with the correct person within RACS.

It should be noted that all these elements were clarified and agreed to in policy which is now in place in the "Safe Doctors - Fair System" approach - and in some ways this collaborative approach was used as a model for the ultimate development of that system.

The fact that internal communication issues were present within RACS was not within Dr Margetts knowledge and it is unreasonable to suggest that he ought to have known or acted differently.

The transparent forwarding of the report from Dr Hack to the key person within RACS, and their on-forwarding to the "appropriate" people puts a lie to any suggestion of misleading the RACS management.”

On 23 August 2005, Professor Christophi decided to “place things on hold until documentary evidence from Dr Pyke is forwarded in relation to new developments. We would then need to re-assess and discuss at BIGS.”

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“On 26 August 2005, a teleconference between Dr Chris Pyke (representing the College), and Drs Margetts and Almehti and Mr McGovern was conducted. Interpersonal issues were identified and our client was required to undergo a Cognitive Institute course. It was agreed that the Hospital was to set limitations on the complexity of work performed by our client without supervision pending the College's assessment.

On 26 August 2005, our client received confirmation that he had met the requirements of the 04/05 MOPS programme and had been successfully verified.

On 30 August 2005, the hospital wrote to our client enclosing an amended credentials letter which included a special condition stating that major surgery was to be performed under the direct supervision of a Fellow of the College.”

10.14 Registration renewed

On 29 August 2005, Dr Khalafalla was advised by letter from the Medical Board of Queensland that he had been granted re-registration for a further period from 10 May 2005 to 27 April 2006 with the condition that he must undertake a minimum of 12 months assessment under oversight in the speciality of General Surgery.

10.15 Clinical audit

In September 2005, Dr Sachdev requested Glen Hokin, Acting Manager Decision Support Unit at Mackay Base Hospital; check the hospital database for complications from major surgery where Dr Khalafalla was the primary Surgeon. Dr Sachdev's handover notes to Dr Margetts dated 23 September 2005 suggest that there were ongoing concerns about Dr Khalafalla's emotional outbursts.

The database search was restricted to the complication of postoperative haemorrhage and 26 patient files were sent to Dr John Hack for review. Dr Hack recalled being contacted by Dr Sachdev and asked to review Dr Khalafalla's work because concerns had been raised about his clinical performance.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“This assumption is incorrect.

The database searched all ICD-10 complication codes.

These are clearly indicated in attachment 46 to the "Brief."

This was augmented, and also compared with the searches which had been developed for Bundaberg. This document has already been provided to the HQCC by Dr Margetts. Of note:

- *The system Dr Margetts devised identified 7 more complications than the corporate system meaning that, under Dr Margetts' guidance, the MHSD were routinely doing a more rigorous/robust review than is corporately mandated in their complications reporting model.*

- *The result was comparatively the worst for an individual in Mackay*
- *However - when benchmarked with the other hospitals in the peer group, Dr Khalafalla fell within the pack.*
- *Varicose veins were also added manually*

The MHSD was commendably advanced and productive in its complications reporting process.

In addition - similar databases regarding deaths, infections were routinely reviewed, as was the PRIME clinical incidents database - making Mackay, under Dr Margetts' leadership - the most advanced hospital in this regard within Queensland Health."

According to Dr Khalafalla, at the time that Dr Hack's audit was being undertaken, he was told by Dr Simi Sachdev, Acting Executive Director Medical Services, that similar audits were being conducted for all IMGs working within Queensland Health and that these audits were being conducted as a result of the situation with Dr Patel at Bundaberg Base Hospital. Dr Khalafalla said that as a result, he thought this audit was not unusual.

However, in a letter to the RACS dated 29 March 2006, Dr Margetts indicated that Dr Hack was asked to review Dr Khalafalla's work because of concerns raised by Dr Farooq and nursing staff. Dr Margetts did not mention the concerns that had also been raised by Dr Roy, the Director of Anaesthetics.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

"The reason that Dr Margetts did not mention concerns raised by Dr Roy was that he had been away when the concerns were raised, and was providing, at best, second-hand information in an attempt to clarify to the RACS the situation as he understood it at the time."

10.16 The Royal Australasian College of Surgeons inspection

On 7 September 2005, the Royal Australasian College of Surgeons (RACS) received a letter from Dr Pyke concerning Dr Khalafalla, and the matter was referred to the next Board in General Surgery meeting.

On 23 September 2005, Dr Margetts returned from the Secondment commenced 7 July 2005.

On 26 September 2005, Dr Chris Pyke and a "re-inspection team" visited Mackay Base Hospital to reassess the surgical training program. Dr Pyke discussed with Dr Almehti "some aspects to do with the College's role in the oversight of Dr Khalafalla."

Dr Pyke also had a discussion with Dr Margetts. There is no clear evidence of what was discussed, but it appears that as Dr Khalafalla was away, it was decided that it was not appropriate to discuss him in his absence.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Pyke raised concerns and was informed that files were being sent to Dr Hack for his review. Of note, the concerns that he raised regarded Dr Khalafalla's interpersonal behaviour toward the Registrars, which was the reason for his visit on the 26th of September. As the report was not backing from Dr Hack it was felt appropriate to wait for that to be completed.”

On 29 September 2005, Dr Pyke wrote to Dr Heathwood asking whether Dr Khalafalla's privileges had been altered in 2005 and asked whether Dr Khalafalla now *“required some degree of supervision as opposed to being able to operate independently.”*

On 7 October 2005, Dr Pyke wrote to the Board in General Surgery in Melbourne stating that it had come to his attention that the hospital Credentialling Committee had placed restrictions on Dr Khalafalla's freedom to work unsupervised and that *“confidential communication from sources at Mackay Base Hospital and the wider North Queensland surgical fraternity suggested that Dr Khalafalla may be working outside of the restrictions placed on him.”* Dr Pyke advised that he had sought corroboration from Dr Khalafalla's two supervisors Dr Almehdi and Dr Heathwood.

On 14 October 2005, Dr Pyke wrote again to Dr Heathwood seeking information about Dr Khalafalla's clinical privileges.

On 18 October 2005, Dr Almehdi wrote to Dr Pyke raising his concerns about the lack of communication from the RACS in relation to his supervisory role. In this letter, Dr Almehdi advised the RACS that the restriction imposed on Dr Khalafalla's practice on 26 July 2005 was due to the requirements of his registration as a Deemed Specialist which required supervision. Dr Almehdi stated that on 18 August 2005, he had been advised by the Acting Executive Director Medical Services *“that a new status of credentialling had been imposed whereby supervision should be provided directly for major surgery.”* Dr Almehdi said a letter to this effect was sent to Dr Khalafalla on 30 August 2005 and that the new restriction had arisen after Dr Khalafalla had performed a reversal of Hartmann's procedure with a Registrar.

10.17 Meeting of the Royal Australasian College of Surgeons Board in General Surgery

On 22 October 2005, the Royal Australasian College of Surgeons (RACS) convened its Board in General Surgery (BIGS) meeting. Item 8.2 dealt with Dr Khalafalla. The BIGS meeting noted that the Mackay Base Hospital credentialling meeting had taken away Dr Khalafalla's right to operate unsupervised. This was the fourth time Dr Khalafalla had been given 12 months oversight and failed. The Medical Board of Queensland discussed the options of extending oversight or reassessing Dr Khalafalla due to unsatisfactory progress. It was decided to refer the matter back to the IMG department for reassessment with a recommendation that the Area of Need assessment had been unsatisfactory.

On 1 November 2005, a confidential witness emailed Dr Pyke making a formal complaint about the care/services provided by Dr Khalafalla and referred specifically to alleged falsification of records.

10.18 First report by Dr Hack

In a draft report dated 3 November 2005, Dr Hack noted that he had reviewed 24 of the 26 patient files. Dr Hack stated that he understood these 26 files involved postoperative haemorrhage and that Dr Khalafalla had performed over 500 procedures in 14 months.

Dr Hack discussed six particular cases. In short, Dr Hack said he had a sense of unease about the cases he had reviewed and felt that cumulatively the cases implied a potentially dangerous technique and, in particular, a failure to take the time to check for bleeding before finishing the surgery. Dr Hack said in two of the cases he had reviewed, the patients could have easily died had corrective action not been taken.

Dr Hack recommended Dr Khalafalla's work practices, particularly surgical technique, be presented to the RACS for review. Dr Hack stated, *"I understand his work load has been limited to avoid more complex operations and this limitation should remain until RACS has reviewed his practice. It may be that he is not suited to abdominal surgery and his workload should be adjusted accordingly."*

On 4 November 2005, Dr Weich, Director of Medicine and Intensive Care Unit, at Mackay Base Hospital brought four additional cases to the attention of Dr Margetts. These patient files were also forwarded to Dr Hack for review, but Dr Hack does not appear to have provided a supplementary report concerning these cases.

10.19 Scope of practice revised

On 4 November 2005, Dr Almehti verbally advised Dr Khalafalla that his scope of practice was further restricted as follows: *"No elective abdominal surgery is to be performed. Emergency abdominal surgery is to be performed only after consultation with Dr Almehti or Dr Farooq or Dr Margetts."*

On 4 November 2005, the Censor in Chief recommended that Dr Khalafalla should present for interview with the Chairman of the RACS Board in General Surgery and the Censor in Chief to determine whether Dr Khalafalla:

- Needed more formal training; or
- Would be eligible for vocational registration in the speciality of General Surgery following a maximum of two years of assessment, practice under oversight; and
- Should present for the Part II examination in the specialty of General Surgery.

The Censor in Chief noted Dr Khalafalla's age and the period of time which had elapsed since completion of his surgical training.

Dr Khalafalla was verbally advised of this decision and he advised the RACS that *"the medical registration board had requested an audit of all complications that have arisen from operations conducted by him in the last 18 months."*

Submission by Dr Almehti

Quinlan Miller Treston Lawyers, on behalf of Dr Almehti, submit:

"Dr Almehti rejects categorically [any assertion] that he did not take prompt, timely and reasonable management action to review and manage the clinical performance of Dr Khalafalla."

Dr Almehti commenced his role as Staff Specialist on 17 January 2005 and commenced his role as Director of Surgery on 28 February 2005. It must be noted that throughout all of 2004 Dr Almehti was in fact seconded to the Royal Brisbane Hospital.

Dr Almehti was recruited to the position of Staff Consultant by the then Director Medical Services, Dr Craig Margetts with the endorsement of the then Director of Surgery, Dr Asad Farooq. A matter of weeks after commencing in Mackay, Dr Farooq announced he was resigning from the position of Director of Surgery to become a VMO. The Executive Director Medical Services, Dr Craig Margetts, asked Dr Almehti, as the only full time fellow of the College of Surgeons, to fill the position of Director of Surgery. He accepted in good faith.

Despite expectations to the contrary, Dr Farooq never provided a formal handover or debriefing to Dr Almehti, particularly in relation to Dr Khalafalla and the supervision arrangements agreed with the College of Surgeons and Queensland Medical Board. Mackay Base Hospital had recently been reaccredited for training purposes and this pre-accreditation placed significant burdens on the position of Director of Surgery, particularly in relation to matters such as supervision. It became apparent to Dr Almehti that he would be required to be the sole supervisor of both Dr Khalafalla and Dr Ashraf in accordance with:

- The credentialling requirements for the registration as deemed specialist and SMO respectively; and*
- The College requirement for their oversight assessment.*

Dr Almehti submits that the draft report is incorrect in its assertion that he did not take prompt timely and reasonable management action to review and manage the alleged poor clinical performance by Dr Khalafalla.

Dr Almehti states Dr Khalafalla's performance was reviewed by peer review, oversight by him as Director, discussion at morbidity meetings and more formal discussion at Credentialling Committee meetings.

The performance of Dr Khalafalla was thereafter managed by the imposition of the various credentialling restrictions that were placed upon Dr Khalafalla, notwithstanding those restrictions had the impact of significantly increasing Dr Almehti's own workload.

That this management by Dr Almehti was timely can be seen from the fact that action was taken immediately concerns were raised.

Dr Almehti submits that he did review and manage the performance of Dr Khalafalla. He maintained regular discussions with him about his work. This was kept up during formal and nonformal meetings in the corridors of the hospital and after work.

Dr Almehti denies the reference in the report to Dr Khalafalla saying 'He was unaware of any concerns that had been raised about his surgical performance leading up to the letter from Dr Sanchez dated 2 August 2005.'

The first suggestion of any concerns directed towards Dr Khalafalla was in or about May 2005. On 22 May 2005, Dr Almehti met with Dr Khalafalla and he was advised he needed to pay more attention to minor details of the surgery, to resist the urge to rush, to discuss with the team and to accept that high risk patients need a broader discussion. It was agreed that Dr Almehti and Dr Khalafalla would meet again in two month's time.

It must be noted that Dr Almehti was also at the time performing the tasks of Director of Surgery.

Dr Khalafalla's performance was the subject of review at a Credentialing Committee meeting on 26 July 2005 at which Dr Almehti was present. The Credentialing Committee meeting decided that credentials and privileges in surgery (general minor ops endoscopy) be granted with the condition that major procedures be done following consultation and under supervision of Dr Almehti.

Dr Khalafalla was informed repeatedly as to the nature of his credentialing, in particular in letters from the hospital dated 18 August 2005 and 30 August 2005.

While some criticism is made in the draft report that the original letter of 2 August 2005 was not clear in regards to conditions other than those imposed by the Medical Board, subsequent correspondence and meetings with the hospital confirmed the nature and scope of these restrictions.

That prompt, timely and reasonable action to review performance by Dr Khalafalla was taken can be seen in the decision to undertake an audit review of some of Dr Khalafalla's surgery by Dr John Hack in or about November 2005.

Following receipt of that report on 20 December 2005, the Credentialing Committee (again attended by Dr Almehti) met again and imposed further restrictions on Dr Khalafalla's scope of practice.

As noted in the draft report itself, Dr Almehti was providing oversight assessment at the same time providing direct supervision for major surgery under the scope of practice defined by the hospital Credentialing Committee. Dr Khalafalla remained excluded from performing major elective abdominal surgery and could only perform emergency abdominal surgery if he first obtained permission from either Dr Almehti, Dr Farooq or Dr Margetts.

In February 2006, Dr Khalafalla attended the Cognitive Institute three day course in relation to purported problems with interpersonal skills."

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

"The College notes that Dr Khalafalla was granted special purpose registration as a medical practitioner and deemed specialist, under the Medical Practitioners Registration Act 2001 (Queensland) for the Area of Need position at Mackay Base Hospital.

The registration imposed conditions that Dr Khalafalla undertake a minimum of 12 months of assessment under oversight.

The College notes that the Assessment Reports in relation to Dr Khalafalla were problematic, although formal reports by the appointed supervisors, particularly those at the Mackay Base Hospital, were recorded as being overall satisfactory.

The College acknowledges that "concerns" had been expressed in relation to Dr Khalafalla in previous positions, but formal assessments did not reflect some of the concerns that had been informally raised and communicated to the College.

The College notes its obligations under privacy legislation, and the need for transparency in decision making for all candidates, appropriate procedural fairness and natural justice, when concerns of this nature are raised.

The HQCC draft report is critical of the failure of the College to communicate concerns at various stages in Dr Khalafalla's positions as an Area of Need applicant. The draft report fails to recognise the legal limitations on the College in being able to communicate freely when issues of this nature are raised, particularly when they are raised informally. The College acknowledges that the processing of these concerns within the College could have been handled more expeditiously, but the draft report fails to take into account the legal restrictions imposed on the College in exchanging information, particularly of an adverse nature, in relation to applicants and candidates, and the increasing litigious environment in which the College (as a private organisation) operates.

The Commission should consider the need for further protections for organisations such as the College in being able to report information of an adverse nature, particularly in relation to Area of Need candidates, without the fear of litigation or legal risk."

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

"Within Dr Almehdi's submission he states that "The first suggestion of any concerns directed toward Dr Khalafalla was in or about May 2005" and this was addressed on 22 May with a meeting.

If the Director of Surgery believes that there was no suggestion of concerns prior to that time, this is consistent with the information presented to Dr Margetts.

It would be difficult to imagine the magnitude of issues which would have had to occur between the end of May and the beginning of June for it to be expected that Dr Margetts should have (or could have) taken any further steps to investigate.

There is no evidence presented to suggest that there was any information of which Dr Margetts could reasonably have been aware which would have suggested any other course of action."

And further:

"The issues identified by Dr Hillis are substantially resolved with the advent of the "Safe Doctors – Fair System" framework developed by Dr Margetts, with significant positive contribution from the RACS and with the endorsement of RACS, the MBQ, Queensland Health and the HQCC.

This work would appear to be an appropriate solution to this issue (...).

These issues are addressed by the Safe Doctors – Fair System Framework which has been developed with the input and endorsement of Queensland Health, RACS, MBQ and the HQCC itself."

10.20 Final report by Dr Hack

On 9 November 2005, Dr Margetts received Dr Hack's final report.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"The Information from Dr Hack was as follows:

1. *Dr Hack's initial comments (as relayed in writing by Dr Sachdev) indicated that "Prima Facie according to Dr Hack there does not appear to be a problem."*
2. *Telephone conversations with Dr Hack gave a clear impression of a borderline issue and the uncertainty in his voice was palpable.*
3. *Written report describes his concerns in terms of "a sense of unease" resulting from 3 significant complications over 18 months that we were able to detect with the tools available. (It is noted that this is unlikely to be statistically significant in such a small population sample).*
4. *He notes that all surgeons would have had these complications at some time and each individual complication perhaps would be acceptable.*
5. *He does indicate however that the two serious haemorrhage cases could have died had not corrective action been taken.*
6. *Dr Hack commented on the unacceptable delay of 10 days in the missed diagnosis of a bile leak. This was certainly a technical issue, but most importantly the delay in identification also represented a failure to listen. Had he been more receptive to those around him, Dr Khalafalla is highly likely to have picked this up earlier and dealt with the complication in a much more expeditious manner.*
7. *He talks in terms of "potentially" dangerous technique not "definitely" dangerous technique.*
8. *He thinks his operative technique "could" (not "must") be inspected and maybe he could be "counselled" (not "struck off")*
9. *Finally he remarks that "As far as I can tell, the process of performing the operation has been done reasonably expeditiously, in as much as there was no recurrent laryngeal nerve damage or parathyroid damage at the total thyroidectomy and the colonic anastomosis did not leak. "*

He makes no clear recommendations, but he thought that his work practices, particularly surgical technique should be presented to the RACS for review - which is precisely what Dr Margetts did.

Against this background there were also clear and irrefutable issues with Dr Khalafalla's interpersonal skills which needed to be addressed. It was Dr Margetts view that addressing the interpersonal issues could be done in parallel with the RACS review.

This, along with the wealth of information to suggest that interpersonal and communication skills (as taught by Dr Margetts and others in the HEAPS course) have direct consequences in terms of human error and clinical harm made the reasonable conclusion that the key aspect was his interpersonal skill rather than (say) his knowledge of anatomy or physiology.

Finally, there is a wealth of published information which illustrates how borderline technical and decision skills can be improved upon or made worse by fluctuations in interpersonal skills such as listening ability and introspection etc - the sort of things that are taught in the Cognitive Institute course."

On 9 November 2005, Dr Margetts wrote to Dr Khalafalla advising that in addition to the restrictions imposed on his operating privileges at the Credentialling Committee meeting on 26 July 2005, the following further limitations were imposed:

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- *No elective abdominal surgery was to be performed; and*
- *Emergency abdominal surgery was to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts, until further notice.*

Copies of this letter were given to the Director of Anaesthetics Dr Roy, the Director of Surgery Dr Almehdi, Dr Farooq, the Patient Booking Officer, the District Manager and Human Resources.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"We note that the practice review of our client appears to have been instituted as a result of the episode involving Dr Patel and the Bundaberg Hospital. There is no suggestion that the review was instituted as a result of any concerns with our client's management or treatment of patients.

We are instructed by our client that the College has never conducted any assessment or review of our client's operating technique, as was suggested by Dr Hack and formally requested by the hospital.

And further:

In a report dated 8 November 2005, Dr John Hack reported on a review of 26 sets of patients notes submitted to him from around 500 cases. The 26 cases were identified by a computer search for cases involving a haemorrhage complication. Dr Hack recommended that our client's work practices, particularly surgical technique, should be presented to the College for review. Dr Hack also suggested that our client's workload should be limited to avoid more complex operations until the College had reviewed our client's practice. It was also suggested that our client may not be suited to abdominal surgery and his workload should be adjusted accordingly.

Our client responded to the hospital concerning Dr Hack's report and noted the following:

- *Of the 24 cases of complications reviewed by Dr Hack, our client had identified 10 patients who were not treated by him. These errors were due to errors in surgeon coding.*
- *Dr Hack identified 6 cases upon which he wished to comment, 3 of which he regarded as dangerous. Our client has commented on each case and identified the lessons learned from each patient.*

Patient 20 - *Patient 20 failed to comply with instructions to rest and presented the next morning with a traumatic haematoma with no identifiable bleeder.*

Patient 21 - *Dr Hack felt this case was managed reasonably. Our client has noted that the wound closure was in fact attended to by the registrar;*

Patient 22 - *Our client treated the haematoma conservatively, but now leaves drains in place after discussions in the audit in December 2004;*

Patient 23 - *Dr Hack thought that bleeding following thyroidectomy was a well recognised complication which had been expeditiously dealt with. The patient's long term recovery was not compromised.*

Our client underwent further training with Professor Ian Gough and has changed his technique. Our client has not experienced thyroid complications since.

Patient 24 - *Our client only operated after extensive consultation with the family. Patient 24 had substantial co-morbidities developed a post operative coagulopathy evident by post-operative bleeding controlled by packing. Patient 24 made a slow but complete recovery. Dr Hack noted "He is probably a credit to all concerned that he did in fact survive."*

Patient 14 - *A post-operative ileus resolved spontaneously after 3 days, which was thought consistent with the history of a gangrenous gall bladder with elevated bilirubin and fever pre-operatively. This was supported by ultrasound. A CT scan 6 days post-operatively, showed a loculated collection which was drained radiologically to show clear fluid with bile stains. The radiologist, Dr Staub, initially decided against leaving a drain in place. A continuous drain was placed after Patient 14's pain and fever persisted. A repeat ultrasound demonstrated a collection and a continuous drain was left in. Once a continuous bile leak was identified, Patient 14 was transferred to Townsville for ERCP. Our client was advised by the Townsville combined surgical and GE meeting to treat conservatively. At the August audit, Dr Farooq's recommendation was for a lower threshold for open procedures. At the Provincial Surgeons Australia meeting, the recommendation was to leave a drain in all acute gall bladders, which our client adopted."*

Submission by Dr Almehti

Quinlan Miller Treston Lawyers, on behalf of Dr Almehti, submit:

"In relation to supervision, Dr Almehti disputes the draft reports findings of a deficiency in the supervision he provided. The draft report itself concedes that the formal system of supervision as required by the College was far from clear as to by whom and how supervision was provided. He states supervision was provided, including:

- *Being present in theatre watching Dr Khalafalla operate;*
- *Attendance at the morbidity and mortality meetings;*
- *Daily meetings with Dr Khalafalla about patients.*

Dr Almehti in an assessment report provided to the Queensland Medical Board detailed the direct interaction supervision regime that he undertook of Dr Khalafalla as follows:

- *Daily ward rounds and weekly ground rounds*
- *Regular clinical and academic meetings.*
- *Monthly audit of mortality and morbidity.*
- *Assisting and supervising in theatre.*
- *Indirect feedback from peers and other staff members.*

Dr Almehti during the period endeavoured to attend as many times as possible theatre sessions, both elective and emergency. His presence, in his view, was to observe, assist or carry out the procedure as first operator.

He does not say that he was there for every procedure, although the records do not record the number of occasions when he was called into assist in a difficult step or dissection, only to leave when progress was evident. Dr Almehti states his presence was only as per the scope of the credentialling. He states that for him to be physically present in the theatre for every case would have been an aberration of his role as Director of Surgery which would have meant abandoning other duties.

It should be noted that during the relevant period since obtaining the post in March 2005 Dr Almehti assumed the role of supervisor of duties of the non fellow surgeons in the unit (the SMO - Dr M Ashraf, and the staff specialist Dr Khalafalla). In that capacity Dr Almehti endeavoured to be on standby for every call they had. With the exception of the emergency leave this equated to a total of almost four days a week and 3 weekends a month.

From that time until July 2006 the "Supervisor of Training" position as stipulated by the College of Surgeons was carried out by Dr A Farooq."

10.21 Response to Dr Hack's Report

On 29 November 2005, Dr Margetts forwarded Dr Hack's final report to Dr Chris Pyke, Chairman of the Board of General Surgeons, the RACS. In that letter, Dr Margetts formally advised Dr Pyke that Dr Khalafalla's privileges had been further restricted to exclude elective abdominal surgery pending review by the College. Dr Margetts also gave Dr Pyke a copy of Dr Khalafalla's response to Dr Hack's report.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"On 29 November 2005, a letter was sent to Dr Pyke at the College requesting a formal review of our client's performance and training status. Dr Hack's report was provided to the College and the hospital advised that as an interim step, the hospital had further restricted our client's operating privileges to exclude elective abdominal surgery (based on Dr Hack's report) pending further review by the College. The hospital also sent a copy of our client's responses to Dr Hack's report to the College."

On 14 December 2005, Dr Pyke provided copies of Dr Hack's report to the IMG Department of the RACS and the Chair of the Board in General Surgery of the RACS.

On 16 December 2005, Dr Pyke wrote to Dr's Margetts and Almehti congratulating them both on the "*thorough, timely and ethical manner*" in which Mackay Base Hospital had undertaken the audit by Dr Hack. In the letter, Dr Pyke advised that he had sent a copy of Dr Hack's report to the appropriate office in the RACS in Melbourne and mentioned the Censor in Chief. Copies of the letter were forwarded to Dr Michael Cox and Dr Patricia Davidson.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Any allegation that Dr Margetts took too long or that Dr Margetts mislead the RACS is without foundation, particularly when reference is made to correspondence from RACS upon receipt of the Hack report (only 20 days after it's finalisation) congratulating Dr Margetts on the "thorough, timely and ethical manner" in which MBH had undertaken the audit by Dr Hack.

Further - as this report was sent to the "appropriate" officers at RACS, including the Censor in Chief as well as Dr Michael Cox and Dr Trish Davidson, to use a colloquialism: the ball was squarely in their court from that time on.

Despite formally requesting a more substantial review none was ever forthcoming from RACS. This is all the more troubling, given the knowledge we now have of the substantial amount of additional evidence that only RACS had.

There is no evidence that Dr Margetts mislead RACS.”

On 20 December 2005, a Credentialling Committee meeting attended by Dr Margetts and Dr Almehdi noted the further restrictions imposed on Dr Khalafalla's scope of practice. The minutes noted that *“people to be aware that clinical privileges had changed to under supervision.”* There were *“general discussions regarding the surgeon's credentials and revealing these to such people as nursing staff.”* The minutes of the meeting note *“it was agreed that outcomes of the committee should not be discussed with anyone outside the committee, unless that someone is charged with monitoring compliance.”*

On 21 December 2005, Dr Anne Ellison, Director of Specialist Surgical Training and Assessment at the RACS emailed Dr Pyke advising that Dr Khalafalla's case had been put on the complaints and appeals register for consideration by the Censor In Chief and CEO. She asked if there was any suggestion that Dr Khalafalla's registration status could be affected by any of these reviews.

10.22 Subsequent communication with the Royal Australasian College of Surgeons

By 5 January 2006, Dr Margetts had not received a reply from the RACS in response to his letter to Dr Pyke dated 29 November 2005, and he telephoned Dr Pyke unexpectedly that day to discuss what action should be taken in relation to Dr Khalafalla. The call was made in the presence of Dr Almehdi and Mr Kerry McGovern, District Manager.

Dr Pyke stated that he had received the call in the middle of an Outpatients' Clinic but took the time to speak to Dr Margetts. Dr Pyke thought Dr Margetts was calling him to find out if he approved of Mackay Base Hospital's suggestion that Dr Khalafalla attend a Cognitive Institute course to improve his communication skills with patients and staff.

Dr Pyke said that he did not really see himself as being responsible for this issue but took the time to speak to the hospital. He emailed “Minutes of Meeting” to Dr Margetts being his notes of the teleconference. Dr Pyke inserted the title “Chair QBIGS” after his name confirming that he was acting as the representative of the RACS. The minutes noted the issues that were discussed and that Dr Pyke was to *“chase up timing of re-assessment of oversight status by the College.”*

The email suggests that there were concerns that the RACS may need to change the degree of supervision from oversight assessment.

At this stage Dr Almehdi was supposed to be providing oversight assessment as the College representative at the same time as providing direct supervision for major surgery under the scope of practice defined by the hospital credentialling committee. Dr Khalafalla remained excluded from performing elective abdominal surgery and could only perform emergency abdominal surgery if he first obtained permission of Dr Almehdi, Dr Farooq or Dr Margetts.

Submission by Dr Almehdi

Quinlan Miller Treston, on behalf of Dr Almehdi submit:

“Dr Almehdi wishes to reassert that the only requirement of the College for him to act as supervisor for Dr Khalafalla, in which he provided three monthly reports, was during the 12 month period of original oversight. The commenced in May 2004 and until December 2004 was provided by Dr Farooq. Dr Almehdi provided, after officially being asked to do so in August 2005 the first and final report in August 2005 for the assessment. Following completion of the 12 month period of oversight, Dr Almehdi was not asked again by the College to effectively act as an overnight supervisor, subsequent to August 2005.

Dr Almehdi notes that notwithstanding his formal period of supervision as required by the College had ceased, he continued his direct supervision of Dr Khalafalla as required by the Medical Board and the hospital Credentialling Committee. Dr Almehdi himself continued to request (via correspondence from the hospital) for the College to finalise its verdict as to the review.”

On 11 January 2006, Mackay Base Hospital extended Dr Khalafalla’s employment contract from 15 January 2006 to 16 July 2006.

On 24 January 2006, Dr Pyke wrote to Dr Margetts to advise that he had located Dr Margett’s letter to him dated 29 November 2005 enclosing Dr Hack’s report dated 9 November 2005.

In mid February 2006, Dr Khalafalla attended a Cognitive Institute three day course. According to evidence obtained at interview with Dr Khalafalla, this was only the residential component of a six month course that he commenced some time in late 2005.

On 9 February 2006, Dr Khalafalla attended an interview by the RACS in Melbourne before a panel comprising Professor Patricia Davidson, Mr David Theile, Dr Coralee Barker, Professor Christopher Christophi and Professor Michael Weidmann.

The RACS panel was concerned about Dr Khalafalla’s lack of reflection, insight or acceptance that his performance was poor. Dr Khalafalla’s log books and experience demonstrated that his scope of practice was limited and that his capacity to manage common general surgical problems was not at a level comparable to ANZCS. In summary, the RACS needed to have full access to the current health authority reviews, but the preliminary judgment was that Dr Khalafalla was not of the standard required for approval as an independently practicing Surgeon and the Area of Need position at Mackay Base Hospital was not suitable given the level of supervision required.

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The panel considered that Dr Khalafalla may be able to reach an improved standard but this would require a minimum of 12 months supervision at Registrar level at a major metropolitan hospital. Further, Dr Khalafalla would only be granted permission to sit the Fellowship exams if his practice standard was satisfactory.

On 10 February 2006, Dr Almehdi provided a positive assessment of Dr Khalafalla for the Medical Board of Queensland for the period 27 April 2005 to 10 February 2006 noting that Dr Khalafalla's performance was consistent with or better than expected and "*Good results noted in areas of plastic and breast surgery.*"

On 14 February 2006, the RACS Dean of Education, John Collins noted that Dr Khalafalla obtained the FRCSI (pre-intercollegiate status) after completing a variable array of surgical posts. Mr Collins noted that limitations had been placed on Dr Khalafalla's practice by the Mackay Base Hospital and that he was no longer able to undertake major surgery unless a supervising Surgeon was present. Mr Collins therefore assessed Dr Khalafalla as no longer appropriate for an Area of Need position.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"Our client was interviewed on 9 February 2006 by the College as part of its re-assessment process.

An assessment of our client dated 10 February 2006 for the Medical Board completed by Dr Almehdi for the period from 27 April 2005 to 10 February 2006 graded our client's performance as either "Consistent with level of experience" or as "Performance better than expected." Good results were noted in areas of plastic and breast surgery.

Our client attended the Cognitive Institute course between 15 and 17 February 2006. An audit of our client was favourable with the overwhelming majority of responses falling within the "Completely," "Mostly" and "Moderately" categories."

On 22 February 2006, an "*Application for Area of Need Certification*" was received by the Area of Need Team at the Medical Board of Queensland requesting registration from 28 April 2006 to 27 April 2007. In the application, Dr Almehdi certified that Dr Khalafalla was able to fulfil the requirements of the attached position description for Senior Medical Officer.

On 3 March 2006, handwritten notes of a telephone conversation between a representative (identity unknown) of the RACS and Dr Margetts to clarify the nature of concerns about Dr Khalafalla note that Dr Margetts said "*Administrators feel problems are in relation to interpersonal skills and have booked him into a Cognitive Institute course.*"

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"Dr Margetts maintains the view that a substantial portion of the issue lay with Dr Khalafalla's interpersonal problems.

In Dr Margetts' view these issues included introspection, ability to learn and act on advice (particularly with regard to early intervention with possible complications etc).

The wealth of literature (a selection of which is attached") supports the contention that this was key to his poor clinical outcomes as well as the direct impact on interpersonal relationships.

However, having knowledge of and recognising that the interpersonal issues also required attention is quite different from saying that the MHSD had formed an opinion which differed from the opinion provided by Dr Hack. The MHSD's actions are consistent with them accepting Dr Hack's view. Dr Hack recommended a further review of Dr Khalafalla by RACS. Consistent with this Dr Margetts actioned this recommendation and formally requested the review by RACS, which was widely circulated within RACS."

And further:

"Mackay Health Service District took decisive action on numerous occasions. This has been elsewhere commended by the HQCC and was also commended by RACS.

Indecision was only as a result of delays in RACS undertaking the requested definitive review, perhaps as a result of internal communication issues."

And further:

"The only recurrent themes were in relation to some interpersonal dealings, and these were addressed as they arose, and were specifically addressed with the Cognitive Institute intensive course."

On 15 March 2006, Dr Hillis, CEO of the RACS wrote to Dr Margetts and advised that the RACS panel had been unable to reach a final decision as they did not have enough information as to the reasons why Dr Khalafalla's privileges had been reduced. Dr Hillis sought details of the concerns that had given rise to "the original investigation," the current status of Dr Khalafalla's employment and whether Dr Khalafalla could fulfil his obligations in the Area of Need position.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"On 15 March 2006, the College wrote to the hospital seeking clarification of the hospital's decision to reduce our client's operating privileges. On 31 March 2006, the hospital responded to the College's request. The letter incorrectly states that our client's operating privileges were reduced at a Committee held in December 2005, when in fact that Committee meeting was held in August 2005."

On 31 March 2006, Dr Margetts and Dr Almehdi jointly replied to Dr Hillis. This letter set out the history for Dr Hillis but in the HQCC's view it is misleading in that it:

- (i) States that on 2 August 2005 Dr Khalafalla initially received privileges for Surgery (general surgery, endoscopy and minor operations).

- (ii) States that the restriction in Dr Khalafalla's privileges whereby he was to perform "Major surgery under direct supervision of a Fellow of the Royal Australasian College of Surgeons" was decided at a Credentialling and Clinical Privileges committee meeting held in December 2005 whereas these restrictions had been decided at the meeting on 26 July 2005 and eventually communicated to Dr Khalafalla in writing on 30 August 2005.

When questioned in relation to this issue, Dr Margetts could not explain the discrepancy and attributed it to a typographical error.

However, despite a request for the minutes of all such meetings where Dr Khalafalla's privileges were discussed, the HQCC was not provided with minutes from any meeting subsequent to 20 December 2005 in which Dr Khalafalla's clinical privileges were discussed.

Assuming that the letter contains a typographical error and the date of the meeting at which Dr Khalafalla's privileges were first reduced was in fact 26 July 2005, the letter effectively states that Dr Khalafalla did operate outside his scope of practice following the credentialling meeting on 26 July 2005.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"It should be noted at the outset that Dr Margetts was on secondment from 9 July 2005 to 23 September 2005.

A review of the documentation clearly explains the sequence of events:

- 1. Major Surgery under "supervision" - letter from Simi Sachdev of 2 August 2005*
- 2. Major Surgery under "direct supervision" was based on the letter from Simi Sachdev of 30 August 2005*
- 3. This was based on the meeting of the 26th of July (not the 20th of December 2005 as stated in the letter - this was the typographical error).*
- 4. The further restrictions were those which Dr Margetts put on Dr Khalafalla (using his power as EDMS) immediately following receipt of Dr Hack's report on 9 November 2005. It was the letter from Dr Margetts to Dr Khalafalla which was read and endorsed at the credentials meeting of 20th December 2005. No meeting occurred after 20th December in which this was discussed as the MHSD was waiting for the RACS report ... which was never forthcoming.*
- 5. It was certainly known that Dr Khalafalla had operated without direct supervision between the two letters (Aug 2 and Aug 30). At the time this was believed to be outside his SOCP as determined in the meeting on 26th of July, however due to the lack of documented clarity in the minutes regarding the precise discussion in the Credentials Meeting of 26th of July, it was difficult for anyone not at that meeting to be sure whether what was discussed and decided matched with the initial letter (as the minutes would indicate) or the second letter, which Dr Farooq contends.*
- 6. In any event, privileges are conferred by the District Manager, not by the committee. Therefore the privileges as contained in the letters (even if they did not match the discussion at the meeting) were the appropriate privileges to measure compliance by.*

7. *Statements made at the Committee of 20th August reflected (no doubt in good faith) members recollections of what was said at the meeting of 26 July - and whether the operations fitted within that discussion - however as identified above, the committee is merely advisory, and has no power to determine privileges - only the DM has this power in the delegations.*
8. *It is therefore at least plausible, that Dr Khalafalla was working within the specific wording of his privileges as signed by Peter Sadden, at least in regards to these specific cases.*

At the meeting on 20th December Dr Margetts had not been made aware of this paradox, and, as it was stated by those present that he had worked outside his privileges, this was accepted on face value at the time.

Importantly, however, even if he had worked outside the limitations suggested/recommended by the discussion at the meeting, if he was working within the written privileges (remembering that it is the OM's letter, not the discussion at the meeting which is important) then for those cases at least, it could be argued that he, in fact, was still working within his SOCP.

Any failure in this regard needs to be addressed with Dr Simi Sachdev and Mr Peter Sladden who signed the documents."

Submission by Dr Almehti

Quinlan Miller Treston on behalf of Dr Almehti submit:

"The Commission considers the letter 31 March 2006 is misleading in that it mentions restrictions commenced in December 2005 and not 26 July 2005. It is submitted this fails to acknowledge that the earlier restrictions placed on Dr Khalafalla in July 2005 were conveyed clearly to Dr Chris Pyke of the College in the letter of 29 November 2005 which also included the report of Dr Hack. This fact was acknowledged by Dr Pike in his letter to the hospital of 24 January 2006.

The fact that Dr Pike on behalf of the College was already aware of these restrictions was noted in his letter to the board of General Surgery on 7 October 2005 which was followed by his request for Dr Almehti's corroboration of this restriction which was given in Dr Almehti's letter of 18 October 2005.

Dr Almehti would contend that the 31 March 2006 letter is not misleading as the date of December 2005 is a factual date when a further meeting by the credentialing committee did take place in which the restrictions on all major elective abdominal surgery were discussed and affirmed as well as other relevant matters. Any error which occurred in this letter may have been oversight in relaying the December date rather than all of the chronological dates which had previously been disclosed to different members of the College.

Dr Almehti wishes to submit that this oversight should not be considered misleading."

- (iii) States that *"at a subsequent meeting of the Credentialling and Clinical Privileges Committee, it was noted that Dr Khalafalla had operated outside the recently imposed restrictions, and his clinical privileges were further reduced pending discussion and advice from the Royal Australasian College of Surgeons."*

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Yes the letter did contain a typographical error. It only discussed elective surgery but in any event this was merely a temporary restriction pursuant to Dr Hack’s report and was pending the requested further formal assessment by RACS (which had at that time already been forwarded and distributed within RACS).

It goes without saying that emergency situations require some residual flexibility, especially in rural and regional areas and this is covered in the preamble to the Credentials and Privileging Guidelines released in 2002.

To leave this out made no material difference and could hardly be construed as misleading.”

- (iv) Did not inform the RACS of the restrictions that were imposed by letter dated 9 November 2005 (and ratified in the Credentialing Meeting on 20 December 2005) that Dr Khalafalla was to be excluded from performing elective abdominal surgery and could only perform emergency abdominal surgery after consultation with Dr Almehdi or Dr Farooq or Dr Margetts.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

“This statement is incorrect. The letter specifically mentioned the restriction on abdominal surgery. In any event this information was well known to the RACS.”

- (v) Implied that following discussions with the College (presumably Dr Margetts was referring to the teleconference with Dr Pyke on 5 January 2006), it was decided that *“the key issue related to interpersonal, rather than operational skills”* and the appropriate way to assist Dr Khalafalla was to fund his attendance at the Cognitive Institute course.

In the HQCC’s view, this misrepresents the conclusions reached by Dr Hack in his report dated 9 November 2005.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

“This statement does not purport to represent Dr Hack’s views one way or the other. It was a view expressed, and still held by Dr Margetts and is will supported by international literature which has already been forwarded to the HQCC.

It is an undeniable fact that interpersonal and communication issues lie at the core of the vast majority of issues with senior doctors.”

- (vi) States *“there are no specific obligations listed on Dr Khalafalla’s Area of Need and therefore Dr Khalafalla will be able to fulfil his obligations.”*

In the HQCC’s view, this statement seems to be a misrepresentation of what was actually happening in the Mackay Base Hospital Department of Surgery at that time in that Dr Khalafalla was unable to perform the requirements of the position in which he was initially employed according to the position description having been operating under significantly reduced privileges since 30 August 2005 or 9 November 2005 at the latest.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“There was a clear paradox being established:

- 1. For patient safety (and to follow Dr Hack's advice) Dr Khalafalla's privileges were temporarily reduced pending advice formally requested from RACS.*
- 2. His operative performance could not be reassessed until RACS did its review as formally requested in November 2005.*
- 3. Despite this, RACS were now asking whether his AoN should be ceased, but that could not be determined pending their review.*
- 4. Whilst it would be possible for more major surgery to be done with direct supervision of another surgeon, this would be a poor use of resource as the other surgeon may as well be doing the operation unless it was to serve a specific assessment purpose. However it was inappropriate to do this until RACS had done the aforementioned review.*
- 5. Interpersonal issues, for the most part, appeared to be improving, and there was mounting pressure to see whether or not that had fixed the issue or whether (pending the RACS review) there were more serious technical issues to be addressed.*
- 6. Arguably Dr Khalafalla could fulfil the AoN as soon as the precautionary and temporary limitations were able to be removed however this was still pending the RACS review.*

In retrospect, this situation is doubly frustrating given the recent knowledge of the vast store of information that RACS had at their disposal yet were unwilling to share.”

And further:

“There was no information provided to RACS which was either:

- a) Contradictory to Dr Margetts' formal request to RACS for review, or*
- b) Contradictory with Dr Hack's report.*

Repeated calls by Queensland Health, and MHSD in particular, for RACS to undertake the requested review were unfortunately not actioned. The only error was in relation to the dates and this has already been addressed in Dr Margetts submission of 7 May 2008. Dr Margetts refers to and relies on his earlier submission in this regard.”

10.23 Mackay Base Hospital's response in relation to privileges

In the letter dated 31 March 2006 Dr Almehdi and Dr Margetts proposed that Dr Khalafalla's privileges be progressively reinstated and this was to be discussed at the forthcoming Clinical Privileges Meeting on 6 April 2006. The RACS was invited to submit any correspondence or comment for consideration at that meeting. There does not appear to have been a meeting held on that date and discussion of Dr Khalafalla's privileges was deferred at the credentialling meeting on 30 May 2006 given the absence of both Dr Farooq and Dr Almehdi.

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"[In regard to] Dr Margett's and Dr Almehti's joint response dated 31 March 2006 to a letter from Dr Hillis (CEO RACS) dated 15 March 2006.

Dr Hillis had sought more information as to the reasons Dr Khalafalla's privileges had been reduced. Dr Hillis sought details of the concerns that had given rise to "the original investigation," the current status of Dr Khalafalla's employment and whether Dr Khalafalla could fulfil his obligations in the Area of Need position.

The letter contains a number of apparent factual errors. However, [any inference] that these constitute deliberate dishonesty should be considered in light of the following:

- The context of general openness with RACS about concerns with Dr Khalafalla's clinical performance. For example, as noted above, on 29 November 2005, Dr Margetts forwarded Dr Hack's final report (and Dr Khalafalla's response to the report) to Dr Chris Pyke, Chairman of the Board of General Surgeons, RACS. Dr Margetts then actively followed up the report with Dr Pyke by phone;*
- Whether the factual errors were material in the broader context of the letter;*
- Whether the statements cited are, in the context of the whole letter, capable of alternative interpretations that do not suggest dishonesty.*

Three aspects of [any] assertion that the letter was misleading deserve particular attention.

First, the draft report suggests that the following statement is 'misleading': "[that] at a subsequent meeting of the Credentialing and Privileging Committee, it was noted that Dr Khalafalla had operated outside the recently Imposed restrictions, and his clinical privileges were further reduced pending discussion and advice from [RACS]" (emphasis added). It is said to be misleading because the minutes of the 'subsequent meeting' were not produced to the HQCC. However, no evidence is presented that the material content of the statement is misleading. To the contrary, in the context of the letter - which proposes the progressive lifting of restrictions - it could be construed as a significant admission.

Second, the draft report asserts that the letter '[did] not inform RACS of the restrictions that were imposed by letter dated 9 November 2005 that Dr Khalafalla was to be excluded from performing elective abdominal surgery and could only perform emergency abdominal surgery after consultation with Dr Almehti, Dr Farooq or Dr Margetts. This assertion is contradicted by the evidence that:

'[on] 29 November Dr Margetts forwarded Dr Hack's final report to Dr Chris Pyke, Chairman of the Board of General Surgeons, RACS. In that letter, Dr Margetts formally advised Dr Pyke that Dr Khalafalla's privileges had been further restricted to exclude elective abdominal surgery pending review by the College.' (emphasis added).

Third, the draft report characterises the following statement as 'clearly misleading': "there are no specific obligations listed on Dr Khalafalla's Area of Need and therefore Dr Khalafalla will be able to fulfil his obligation."

This is said to be misleading because it does not convey that 'Dr Khalafalla was unable to perform the requirements of the position in which he was initially employed according to the position description having been operating under significantly reduced privileges since 30 August 2005, or 9 November 2005 at the latest.'

However, the reduced privileges were not inconsistent with the ability to fulfil the requirements of the Area of Need position. [It is noted that] on 29 August 2005 'Dr Khalafalla had been advised by the Medical Board that he had been granted re-registration from 10 May 2005 to 27 April 2006 with the condition that he must undertake a minimum of 12 months assessment under oversight in the specialty of general surgery' (emphasis added). The restriction on Dr Khalafalla's privileges imposed on 30 August 2005 was that major surgery must be performed under direct supervision of a RACS Fellow. The further restrictions imposed on 9 November were that no elective abdominal surgery were to be performed and that emergency abdominal surgery was to be performed only after consultation with Dr Almehti, Dr Farooq or Dr Margetts. Dr Khalafalla was not prohibited from performing general surgery other than elective abdominal procedures. He was not prevented from performing other general surgical procedures, subject to the condition that major procedures must be directly supervised. This appears consistent with the condition on his Area of Need registration."

And further:

"The comments provided above about the joint letter in relation to Dr Margetts apply equally in relation to Dr Almehti."

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"[In regard to Dr Almehti's management of Dr Khalafalla's performance] the positive steps taken by Dr Almehti appear not to have been taken into account.

In this context the following points may be noted:

- On 3 May 2005, Dr Almehti met with Dr Khalafalla to discuss his morbidity figures and selected case studies. Dr Khalafalla was counselled about a number of issues and agreed to a follow up meeting;*
- Dr Almehti participated in the first formal credentialling meeting at which Dr Khalafalla's scope of clinical practice was discussed on 26 July 2005;*
- On 5 August 2005, Dr Almehti was asked by RACS to provide a progress report on Dr Khalafalla. This was the first time Dr Almehti had been officially requested by RACS to supervise Dr Khalafalla. Dr Almehti provided the report on the same day, attaching a covering letter that Dr Khalafalla had participated candidly in monthly surgical audit meetings;*
- On 18 October 2005, Dr Almehti wrote to RACS raising his concerns about the lack of communication from RACS in relation to his supervisory role, and advising RACS why Dr Khalafalla's scope of practice had been restricted;*
- Following receipt of Dr Hack's draft audit report on 3 November 2005, and further information from Dr Weich on 4 November 2005, Dr Almehti verbally advised Dr Khalafalla that his scope of practice had been further restricted;*

- *On 16 December 2005, Dr Pyke wrote to Drs Margetts and Almehdi congratulating them on the "thorough, timely and ethical" manner in which the MBH had undertaken the audit by Dr Hack (P62);*
- *Dr Pyke did not respond to the 16 December letter until 24 January;*
- *On 5 January 2006, having not yet received the reply from Dr Pyke, Dr Almehdi joined Dr Margetts and Kerry McGovern in telephoning Dr Pyke;*
- *On 20 December 2005, Dr Almehdi attended a credentialling committee, which noted the further restrictions imposed on Dr Khalafalla;*
- *On 10 February 2006, Dr Almehdi provided a positive assessment of Dr Khalafalla to the Medical Board;*
- *On 2 July 2006 Dr Almehdi proposed restoration of Dr Khalafalla's privileges. However, this was subject to the conditions that Dr Khalafalla operate under the direct supervision and constant surveillance of the Director of Surgery;*
- *As late as 10 August 2006, RACS was prepared to support Dr Khalafalla's continued training in preparation for the fellowship exam."*

10.24 Communications between Mackay Base Hospital, Medical Board of Queensland and the Royal Australasian College of Surgeons

On 6 April 2006, a Credentialling Committee meeting was scheduled but not held.

On 21 April 2006, Ms Angela McCarthy (formerly Bugeja), Clinical Support Officer at Mackay Base Hospital wrote to the Medical Board of Queensland endorsing Dr Khalafalla's application for renewal of his special purpose registration saying "*Regular assessments indicate that Dr Khalafalla is hard working, reliable and displays sound clinical judgment and we are eager for him to continue working with us.*"

On 23 April 2006, Dr Hillis, CEO, the RACS, wrote to Dr Margetts advising that the RACS had supported Dr Khalafalla's continuation in the Area of Need position "*however, we have been waiting the outcome of the government's review before making our final recommendation.*" The letter stated, "*In order to assist us in making our recommendation, could you please provide elaboration on the nature of the interpersonal skills, how they were a 'key' contributing factor and how they affected Dr Khalafalla's operational skills?*"

On 24 April 2006, the RACS advised the Medical Board of Queensland that the RACS had interviewed Dr Khalafalla and "*reviewed the position of Staff Specialist General Surgeon at Mackay Base Hospital*" and referred to concerns that had been raised about his clinical practice. Pending further information about those concerns, the RACS was prepared to support Dr Khalafalla's continued occupation of the position "*with limited scope*" until the decision about his reassessment had been resolved.

According to Mr Michael Demy-Geroe, former Deputy Registrar of the Medical Board of Queensland, this was the first indication that the Medical Board of Queensland received of any concerns about Dr Khalafalla's practice resulting in reduction of clinical privileges.

On 4 May 2006, an amended contract of employment was signed by the District Manager and Dr Khalafalla.

Quality of health services at Mackay Base Hospital

On 17 May 2006, Dr Margetts replied to the RACS letter of 23 April 2006 but once again seemed to minimise the concerns that had been raised by Dr Hack about Dr Khalafalla's technical skills. In this letter, Dr Margetts stressed that the hospital was not competent to judge the technical aspects of Dr Khalafalla's practice and deferred to the College for that assessment.

In the HQCC's opinion, this is difficult to understand because Dr Almehti was the Director of Surgery at the hospital, a Fellow of the RACS and the supervisor nominated by the RACS to provide three monthly assessment reports to the RACS in relation to Dr Khalafalla's progress.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"This view was reiterated by the RACS in their letter of 19 July 2006 that the college had the "appropriate people" and in any event an external review by the college was required to be completed to make this judgment on a fair and transparent basis."

Submission by Dr Almehti

Quinlan Miller Treston, on behalf of Dr Almehti submit:

"There is no official request by the College for the Director of Surgery to provide any open ended 3 monthly assessments during the tenure of any oversight surgeon. At the cessation of any assessment period (in the case of Dr Khalafalla that period was 12 months) the College makes a determination and undertakes a plan on action. In the case of Dr Khalafalla that determination or additional planning by the College was no undertaken in a timely fashion.

Dr Almehti again reiterates his original submission that the College regulations state that ongoing professional assessment by oversight should be carried out by two Fellows of the College. This again reiterates the view expressed in the letter of 17 May 2006. It is noted that there was sufficient evidence provided to the College subsequent to 9 February 2006 and following the college panel judgment after interviewing Dr Khalafalla, that the Mackay Base Hospital was not suitable for the area of need position given the level of supervision required by the College. That is to say supervision should have been provided by more than just one surgeon. This was not possible since August 2005. At that stage the other two Fellows who had contributed previously to the oversight, either declined any further involvement or assistance (Dr Farooq) or had finished their contribution by the end of August 2005 (Dr Heathwood).

Dr Almehti wishes to reiterate that the lack of capacity referred to in the correspondence of the hospital to be a technical judge of an IMG is only a reflection of the limitation imposed on the assessment when it is driven by one supervisor. It is clear no action was taken by the College subsequent to identifying that it was not possible to maintain the College standard form of supervision in terms of number of supervisors.

The College's position may have been somewhat confused by the perception that there were in fact two supervisors – Dr Almehti and the appointed Supervisor of Training Dr Farooq who, as was known to the College, declined any involvement in the supervision since March 2005.

Notwithstanding this declination, he maintained his position as advisor to the College in these matters while denying the Department of Surgery any of the incoming advices and concerns from the College. Dr Almehti submits this is a somewhat different situation to the assumption (...) that he was the sole advisor to the College throughout the process.

Dr Almehti wishes it noted that any purported deficiencies can be linked to the lack of numbers of supervisors required by the College. It is clear the College was aware there was only one supervisor who, in addition to his other clinical and administrative roles was responsible for the assessment of another IMG in the unit. That person was Dr Almehti.”

This situation highlights the risk posed to the independence of the Area of Need specialist supervision process by having only one nominated supervisor who is the Director of Surgery at the hospital and who must also provide supervision to an Area of Need Deemed Specialist.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“Dr Margetts was not deferred to with dealings in regards to RACS, particularly not with respect to supervisor reports.

Further Dr Margetts was waiting for advice from RACS as was clearly and formally requested in November 2005.

Further, as such information was at the disposal of RACS when Mackay formally requested (via the Deemed Specialist Process) for their assessment of Dr Khalafalla their failure to provide this relevant information may be construed as misleading, particularly when this was the precise reason for referring the issue to them under the AMG guidelines prior to appointment. The lack of criticism of RACS in this regard is inappropriate, particularly as they, and they alone, had the ability and the duty to provide this information to the Medical Board and to the MHSD and yet they did not.”

In the HQCC’s opinion, there is a risk of a conflict of interest in that in an Area of Need, the Director of Surgery may not want to lose the services of a Deemed Specialist in case the vacancy cannot be refilled. This was alluded to in the evidence given by Dr Almehti when he stated that he deferred to the authority of Dr Margetts as Executive Director Medical Services when it came to dealing with the RACS. Given Dr Almehti’s Fellowship of the RACS and Dr Margetts’ admitted lack of knowledge of the RACS processes and procedures, this situation seems extraordinary.

Submission by Dr Almehti

Quinlan Miller Treston, on behalf of Dr Almehti submit:

“Dr Almehti agrees there was some deference to the EDMS in relation to communications with the College. Dr Almehti states the rationale for this was:

- 1. The initiative to ignite the contact between Mackay Base Hospital and the College after the Hack Report was taken by the EDMS himself and was not the first communication with the College...*

2. *The College appeared to exclude the Director of Surgery from any meaningful and constructive discussion or communication regarding Dr Khalafalla prior to and subsequent to 18 October 2005, as noted in the letter in which Dr Almehti expressed his concern about the lack of communication.*
3. *Notwithstanding the fact the College stated that Dr Almehti was to become the supervisor of oversight for Dr Khalafalla after March 2005, the College continued to relay communications via the Supervisor of Training, Dr Farooq who held this post until August 2006. This communication included any actual or perceived, previous or ongoing problems with Dr Khalafalla. None of this was conveyed directly to Dr Almehti as Director of Surgery.*
4. *On the basis of the confused and apparent multiple lines of communication, it was Dr Almehti's judgement that the EDMS was pursuing the issue with single minded persistence to establish a platform of communication with the RACS.*
5. *In relation to suggestions of conflict of interest about the Director of Surgery not wishing to lose the services of deemed specialists, Dr Almehti states that the reality of the situation was that the vast majority of those services had been lost in any event as a result of the restrictions placed on Dr Khalafalla's practice. Many of those restrictions were placed by Dr Almehti himself with the Credentialing Committee. While it is open to suggest that those competing interests may result in a conflict, this clearly was not the case as those gaps in services resulting from Dr Khalafalla's restrictions were taken up by the Director of Surgery himself.*
6. *In practical terms, Dr Khalafalla's service was so marginalised after the Hack Report (between November 2005 and August 2006), that there would have been increasing pressure to cancel elective lists. Dr Almehti notes that the service was, however, maintained and carried, to a large extent by the Director of Surgery himself, whose workload, both clinical and administrative, effectively doubled during this period."*

10.25 Actions of the Medical Board of Queensland and the Royal Australasian College of Surgeons

On 23 May 2006, the Medical Board of Queensland Registration Advisory Committee met to discuss Dr Khalafalla and recommended that:

- (a) Dr Khalafalla be issued with a Show Cause Notice imposing a condition as per email (to be updated following further advice from the College) and that he must provide copies of any reports of assessments undertaken by the College.
- (b) Mackay Base Hospital and the RACS be asked to explain why they failed to notify the Medical Board of Queensland when concerns were raised about Dr Khalafalla in February 2006.

The Show Cause Notice was never issued and the Medical Board of Queensland did not correspond with the Mackay Base Hospital. There was no information available to HQCC investigators as to why this Show Cause Notice was not issued.

Submission by the Medical Board of Queensland

“The Board would like to clarify that the Show Cause Notice to seek Dr Khalafalla’s submission on a proposal to renew his registration with conditions, was not issued because of advice that Mackay Base Hospital had reduced Dr Khalafalla’s privileges.

After receiving advice on 30 May 2006, that as early as February 2006, the RACS and Mackay Health Service District had identified issues with Dr Khalafalla’s practice (details of the concerns were yet to be specified to the Board at this time), the Board contemplated whether refusing to renew Dr Khalafalla’s registration would be the more appropriate action, rather than renewing Dr Khalafalla’s registration with conditions. On this basis, the Show Cause Notice regarding proposed conditions as recommended by the Registration Advisory Committee was not issued. This was subsequently endorsed by the RAC and the Board.”

On 30 May 2006, the RACS informed the Medical Board of Queensland that it had been advised by Mackay Base Hospital that Dr Khalafalla’s privileges had been reduced as follows:

- Major surgery is to be performed under direct supervision of a Fellow of the RACS; and
- Exclusion from performing elective abdominal surgery.

The terms of Dr Khalafalla’s clinical privileges conveyed by the RACS to the Medical Board of Queensland did not mention that Dr Khalafalla had been granted privileges to perform “*emergency abdominal surgery only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts.*”

In this regard, the documentary evidence suggests that the RACS was never informed by Dr Margetts or Dr Almehdi of this additional clause that had been added to the terms of Dr Khalafalla’s operating privileges in the letter dated 9 November 2005.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“This was an unintentional oversight. But as indicated above. It is a moot point. There have to be flexible arrangements with regards to emergency services. Particularly in regional and remote areas. The additional clause does not materially affect the need for the RACS review which had been requested. And the RACS delay (not the limitation) was the primary cause for concern and frustration.

It has not been explained how this additional clause. If included. would have changed anything. It was intended to be a temporary solution while waiting for the RACS review.”

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“On 1 May 2006, the College wrote to the hospital noting that it had conducted an assessment of our client’s recent clinical experience but had been awaiting the outcome of the “government’s review.”

The College asked the hospital to elaborate on the nature of the interpersonal skills as a key contributing factor and how these affected his operational skills.

On 17 May 2006, Dr Craig Margetts wrote to the College explaining the reasons for the hospital's belief that interpersonal rather than operational skills lay at the foundation of our client's issues."

On 7 June 2006, the RACS wrote to Dr Margetts and advised that if Dr Khalafalla was excluded from major surgery and elective abdominal surgery, then oversight assessment was unable to continue and the College would need to reassess Dr Khalafalla's status with respect to further training. Before making its final decision, the RACS again asked Dr Margetts to explain how Dr Khalafalla's interpersonal skills affected his operational skills.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"On 7 June 2006, the College wrote to the hospital seeking clear and appropriate documentation, the discussions with our client and the mechanisms proposed to address these issues in order to make an assessment."

10.26 Subsequent events

On 20 June 2006, Dr Almehdi emailed Dr Farooq requesting his input in relation to the status of Dr Khalafalla's privileges *"in view of your original viewpoints and role in enacting the ongoing restrictions."*

On 21 June 2006, there was a patient complaint about deep vein thrombosis following varicose veins surgery complicated by bleeding. The relevant surgery by Dr Khalafalla involved an alleged altercation with anaesthetic staff in Theatre.

On 25 June 2006, Dr Farooq advised the RACS that he no longer wished to be involved in any discussions concerning Dr Khalafalla's scope of practice and gave the reason that he had a conflict of interest.

Submission by Dr Almehdi

Quinlan Miller Treston, on behalf of Dr Almehdi submit:

"This occurred more than a year after his resignation from the supervisory role.

Dr Almehdi notes Dr Farooq retained the position of Supervisor of Training until August 2006."

On 27 June 2006, a Credentialling Committee meeting was held at Mackay Base Hospital but Dr Almehdi and Dr Farooq were not present. Discussion of Dr Khalafalla's privileges was deferred.

On 27 June 2006, Dr Hack agreed to be the RACS representative at the Mackay Base Hospital Credentialling Committee meeting, but he was on leave from 28 June 2006 to 4 August 2006. The RACS notified the Medical Board of Queensland of this.

Quality of health services at Mackay Base Hospital

On 28 June 2006, the RACS wrote to Dr Margetts and advised that Dr Hack would be the College representative on the Credentialling Committee.

On 29 June 2006, Dr Khalafalla's contract was extended from 17 July 2006 to 25 August 2006 pending advertising for Area of Need Certification and in line with the expiry of his registration.

On 2 July 2006 Dr Almehdi wrote to Dr Margetts expressing frustration about the situation and proposing that Dr Khalafalla's privileges be fully restored and that Dr Khalafalla operate as a Staff Specialist under direct supervision and constant surveillance by the Director of Surgery. Dr Khalafalla's operating privileges would include elective and emergency abdominal surgery, but would be under strict scrutiny and there would be a *"low threshold to have patients transferred to another facility for definitive management"* if time and the patient's condition allowed it.

Copies of this letter were sent to Dr Khalafalla, Dr Farooq, Dr Hack and the District Manager.

Dr Farooq sent a copy of this letter to the RACS.

On 14 July 2006, Dr Margetts wrote to the RACS asking to *"meet with the key players face to face"* to discuss the progress of Dr Khalafalla's review and *"the steps we need to take to resolve outstanding issues."*

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"After waiting for approximately six months Dr Margetts became increasingly concerned about the progress of the RACS review.

The dealings with the RACS were becoming somewhat surreal with new people being nominated and none of them having any apparent knowledge of what was going on.

The only solution, Dr Margetts felt, was to clear any confusion by having all the players in the same place at the same time.

Over time it was becoming more apparent that the formal request had not been prioritised or felt to be important by RACS."

17 July 2006 was the advertised closing date for the surgical position. Dr Khalafalla did not apply.

On 19 July 2006, the RACS wrote to Dr Almehdi reminding him that Dr Hack had raised serious concerns with Mackay Base Hospital about Dr Khalafalla's competence and it would therefore be unwise to alter Dr Khalafalla's restrictions. The letter further stated that the process of review was being undertaken by the appropriate people within the College.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“This correspondence confirms that RACS had the report and had had it since Dr Margetts sent it to them and that the review was being undertaken by the appropriate people.”

On 24 July 2006, Dr Hack telephoned Dr Margetts from the United Kingdom confirming that he would not return to Australia until 4 August 2006 and did not wish to progress anything until his return.

Mackay Base Hospital did not convene a Credentialling Committee meeting to discuss Dr Khalafalla’s privileges as it was waiting for Dr Hack to return from overseas.

On 27 July 2006, Dr Margetts wrote to the RACS confirming that the current restrictions on Dr Khalafalla’s operating privileges would remain in place.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

“On 14 July 2006, Dr Margetts wrote to the College, noting discussions with various fellows of the College and suggested a face-to-face meeting to resolve the situation.

On 19 July 2006, the College wrote to the hospital reminding Dr Almehti and “everyone concerned” that Dr Hack had raised “serious concerns” about our client’s competence and that a process of review was being undertaken by the College. The College warned the hospital that while this review was being conducted, it would be unwise to alter our client’s current work restrictions.”

On 1 August 2006, the Medical Board of Queensland Registration Advisory Committee recommended that the Medical Board of Queensland write to Mackay Base Hospital seeking an explanation as to why the Medical Board of Queensland had not been informed of the restrictions on Dr Khalafalla’s scope of practice. The Committee requested full details of the concerns that led to the restrictions and advice as to whether the conditions were being met. The meeting of the Committee noted that the Show Cause Notice had never been issued.

Submission by the Medical Board of Queensland

“The Board submits that it was not provided the information it required freely or promptly, even after requesting the information, which it needed as a basis for decision on the renewal or otherwise of Dr Khalafalla’s registration.”

The Registration Advisory Committee meeting also noted that the IMG assessment form submitted by Dr Khalafalla’s supervisor had indicated Dr Khalafalla’s practice to be ‘consistent with level of experience’ or ‘performance better than expected’ and that in the role of Staff Specialist, Surgery, there was no listing included for any required ‘areas of improvement.’ The Committee resolved to defer further consideration until further advice was provided by Mr Jim O’Dempsey, Executive Officer of the Office of Health Practitioner Registration Boards to Dr Cohn, the Medical Board of Queensland Chair.

On 4 August 2006, the RACS decided that Dr Khalafalla needed a minimum of 12 months supervision at Registrar level at a major metropolitan hospital and if his practice was satisfactory, he might be permitted to sit the College Fellowship examination. The RACS advised Dr Khalafalla that neither the Area of Need position at Mackay Base Hospital nor any other Area of Need position in Australia were appropriate positions for him to occupy. This decision was conveyed by email to Dr Khalafalla on 10 August 2006 and by letter of the same date.

On 7 August 2006, the Medical Board of Queensland met.

On 9 August 2006, the Federal Member for Dawson, Mrs De-Anne Kelly MP, alleged in the Commonwealth House of Representatives that Dr Khalafalla operating outside the scope of his clinical practice. The allegations were published in the media on 10 August 2006.

On 10 August 2006, the RACS wrote to Dr Khalafalla advising that following the re-evaluation on 3 August 2006, in conjunction with the College assessment panel interview in February 2006, the College's decision of 4 August 2006 was that he required a minimum of 12 months supervision at Registrar level in a major metropolitan hospital and if his practice was satisfactory, he might be granted permission to sit the Fellowship exams. Dr Khalafalla was advised that the Area of Need position as General Surgeon at Mackay Base Hospital was no longer considered an appropriate appointment nor was any other Area of Need position in Australia.

A copy of this letter was provided to the Medical Board of Queensland, the AMC, Queensland Health but not directly to the Mackay Base Hospital.

Submission by the Medical Board of Queensland

"The first concerns RACS "raised" with the Board were in April 2006 in the form of their continuing support of Dr Khalafalla's registration "with limited scope." Upon the Board became [sic] fully aware of the issues and receiving the RACS opinion on 4 August 2006 the Board took action to refuse Dr Khalafalla application for renewal at the next Board Meeting, 14 August 2006. The serious cause for concern was that neither the Mackay Base Hospital nor the College advised the Board of the issues when they were first identified. In fact the Board continued to receive satisfactory assessment reports from the Mackay Hospital and support for his registration from the RACS up until 4 August 2006."

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"On 9 August 2006, the hospital again wrote to the College indicating that they were keen to discuss the process of the College review, particularly as our client's registration expired on 25 August 2006. The hospital also responded to the College's letter dated 19 July 2006 and indicated that our client's current operating privileges would remain in force pending the outcome of the College's review.

By letter dated 10 August 2006, the College advised our client of the College's decision dated 4 August 2006.

We note that the practice review of our client appears to have been instituted as a result of the episode involving Dr Patel and the Bundaberg Hospital. There is no suggestion that the review was instituted as a result of any concerns with our client's management or treatment of patients.

We are instructed by our client that the College has never conducted any assessment or review of our client's operating technique, as was suggested by Dr Hack and formally requested by the hospital.

In relation to the specific concerns raised:

- *Our client did not conduct general surgery outside his approved scope of practice.*
- *Our client did not conduct general surgery without appropriate supervision as required by the Royal Australasian College of Surgeons.*

Our client pursuant to the conditions on his registration was required to undertake a minimum of 12 months of "assessment under oversight" in the specialty of general surgery.

We note that the hospital agreed that our client did not conduct general surgery outside his approved scope of practice."

On 14 August 2006, the Medical Board of Queensland made a resolution outside the ordinary meeting schedule to refuse Dr Khalafalla's application for renewal of his special purpose registration as the Medical Board of Queensland was no longer satisfied that Dr Khalafalla was eligible for registration in the previously approved activity in terms of his qualifications and experience, having regard particularly to the advice from the RACS that it no longer considered that position appropriate for Dr Khalafalla.

On 15 August 2006, the Medical Board of Queensland advised Dr Khalafalla that his application for renewal of his special purpose registration to fill an Area of Need as a Deemed Specialist in General Surgery for Mackay Health Service District was refused because the RACS did not consider Dr Khalafalla suitable for the position.

On 22 August 2006, the Medical Board of Queensland wrote to Mackay Base Hospital seeking an explanation as to why the hospital did not immediately inform the Medical Board of Queensland of the concerns regarding Dr Khalafalla's practice, provide full disclosure of the concerns that were raised with the RACS that led to the restrictions on Dr Khalafalla's practice, and advise whether those conditions were being met.

On 23 August 2006, the Director-General, Queensland Health issued a Memorandum to all District Managers and Clinical CEO's detailing their reporting obligations to the Medical Board of Queensland in relation to the performance and employment of medical practitioners.

On 1 September 2006, Dr Margetts replied to the Medical Board of Queensland (the letter was signed by Dr Adrian Groessler "for" Dr Craig Margetts) explaining that it was not normal practice for a hospital to notify the Medical Board of Queensland of the outcome of hospital credentialling meetings, that the hospital was unaware of any circumstances relating to Dr Khalafalla that would have mandated notification to the Medical Board of Queensland, and that the obligation to notify the Medical Board of Queensland rested with the applicant and not the employer.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"This is incorrect.

Dr Margetts was on secondment during this period. Dr Sachdev was the author of the report."

On 13 September 2006, the Medical Board of Queensland wrote to Mackay Base Hospital stating that the hospital's response of 1 September 2006 did not detail why Dr Almehdi did not advise the Medical Board of Queensland of the adverse reports as they were identified. The Medical Board of Queensland stated that this was one of the supervisor's responsibilities agreed to by supervisors when signing the Medical Board of Queensland's clinical supervision statement within the 'Special Purpose - Employer' form.

10.27 Relevant submissions received

The HQCC received the following relevant submissions.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"Our client has demonstrated adequate knowledge, skill, judgment and care while practising as a deemed specialist in general surgery and took prompt action to correct any deficiencies in his practice which were identified to him."

And further:

"As for the concerns identified by the hospital, those concerns were limited to interpersonal issues, which our client promptly addressed once they were identified by taking the Cognitive Institute course.

The comments in the third paragraph of the decision concerning a deficient knowledge base were not conveyed to our client. The RACS allowed our client to continue to practice for a further 6 months after its assessment. We note that our client's operative technique was never reviewed by Dr Hack, notwithstanding an invitation to do so from the hospital.

Our client's scope of practice was limited by the hospitals' capacity in provincial centres. Our client suggests that his log book experience is comparable with that of other Australian surgeons working in similar sized provincial hospitals.

Our client cannot be held responsible for failing to address:

- *Concerns separately identified by medical practitioners to other parties which were contrary to the favourable assessments those medical practitioners were providing to our client;*
- *Complaints which were not communicated to our client and which our client was not given any or any adequate opportunity to provide a response;*
- *Complaints by patients which have not been communicated to our client and which our client has not been given any or any adequate opportunity to provide a response, such as:*

- *The complaints by Ms Eileen Bath, Mr Jack McDougall, Mr Michael Pilcher and Ms Sandra McGuigan mentioned in the Minister's speech to Parliament. We note that none of these complainants were willing to contact the HQCC to provide further particulars, despite invitation from the HQCC;*
- *The 42 unidentified complaints by former patients of Mackay Base Hospital who may or may not have been treated by our client."*

And further:

"We note that no assessment or review of our client's operating technique, as was suggested by Dr Hack and formally requested by the hospital, has ever been conducted."

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

"Dr Almehdi is adamant that any direct transactions he had with the College of Surgeons, the Queensland Medical Board or any other body in relation to Dr Khalafalla was reflective of the time periods at which stage it happened and reflected his honest belief at that time. Any suggestion to the contrary in the draft report is incorrect and vehemently denied by Dr Almehdi.

(a) Royal Australasian College of Surgeons' progress reports

The draft report appears to place much emphasis upon the Royal Australasian College of Surgeons' Progress Report for an IMG undergoing a period of assessment for surgical practice in Australia and the Medical Board Assessment Form for special purpose registrants.

The draft report suggests that Dr Almehdi's response in these forms wherein Dr Khalafalla's performance is recorded as satisfactory is dishonest and deliberately misleading. In denying that suggestion in the draft report, Dr Almehdi states that the progress reports while completed honestly, represent only a small portion of the total communication between himself and more particularly the Mackay District Hospital and the Royal Australasian College of Surgeons and that the other correspondence (which has been acknowledged in the draft report) clearly sets out steps taken by Dr Almehdi and the Mackay Base Hospital in relation to the restriction of practices imposed upon Dr Khalafalla. Taken in totality, this correspondence confirms that it is incorrect that the College has in any way been misled by Dr Almehdi as to Dr Khalafalla.

Dr Almehdi submits that the draft report is incorrect where it talks of Dr Almehdi providing three monthly reports to the College following Dr Hack's audit. The requirement for three monthly reporting to the College was only during the period of Dr Khalafalla's 12 month period of supervision which ended in August 2005. There was no requirement on Dr Almehdi to provide reports after that date and the draft report is misleading in that it suggests there was such a requirement.

Notwithstanding the cessation of the formal requirement on Dr Almehdi, it is clear a significant amount of correspondence was directed from the Mackay Base Hospital (some of it co-signed by Dr Almehdi himself) to the Royal Australasian College of Surgeons which details processes implemented by the hospital in relation to credentialling of Dr Khalafalla.

(b) Medical Board of Queensland assessment reports

Much is made in the Commission's draft report of the Medical Board's Assessment Form for Special Purpose Registrants completed by Dr Almehti on 28 February 2005. Dr Almehti notes he did sign the Board assessment on 28 February 2005 having been in the position of Director of Surgery for less than one day.

Dr Almehti relied upon Dr Farooq's assessment form signed on 31 December 2004.

In the assessment form dated 28 February 2005 Dr Almehti notes 'Dr Khalafalla is a senior surgeon who has good organisational capacities and who is well acquainted with the running of the health system.'

Dr Almehti's predecessor, Dr Farooq, had left the form unsigned at the time of his resignation as Director of Surgery for Dr Almehti to come to the decision based on his presence in that role for one month. With the benefit of hindsight, Dr Almehti concedes he should have returned the form to Dr Farooq for completion, but again states his completing the form evidences no intention to mislead.

The draft report alleges that on the 'Assessment Form - Special Purpose Registrants' there is space where the supervisor 'has to advise of any concerns or areas requiring further development.' This form was signed by Dr Almehti on 10 February 2006. It is alleged that Dr Almehti signed this form without any concerns expressed following Dr Hack's audit report dated 8 November 2005.

It is the case that there is no such place on the form where comments of that nature are required. The form requires supervisors to provide information under the following headings:

- List strengths;*
- List areas for improvement;*
- Comments on 'Requiring substantial assistance' and/or 'Further development' give specific examples;*
- Improving Performance Action Plan; and*
- Explanation as to how the supervision or monitoring was undertaken for Dr Abdulla Khalafalla.*

It is further alleged, falsely, that Dr Almehti provided a positive assessment of Dr Khalafalla or the Medical Board for the period 27 April to 10 February 2006 noting that Dr Khalafalla's performance was consistent with or better than expected and "Good results noted in areas of plastic and breast surgery."

In fact, Dr Almehti assessed Dr Khalafalla's performance as better than expected only in the areas of clinical skills, patient and family communication, professional responsibility and teaching. In all other areas Dr Almehti assessed Dr Khalafalla's performance as being consistent with level of experience. In no area did Dr Almehti assess Dr Khalafalla's performance as exceptional.

This regime forms the basis upon which Dr Almehti's assessment report was prepared.

He provided a report in February 2006 wherein he states:

Broad base knowledge in general surgery and good results noted in areas of special interest of plastic and breast surgery.

There is no basis to the allegation that Dr Almehti engaged in dishonest or misleading behaviour about Dr Khalafalla's clinical performance in the preparation of this assessment. Dr Almehti based his report on the facts as known to him in February 2006.

At no time did Dr Almehti suggest that Dr Khalafalla's performance was exemplary in the fields in which his privileges were limited to at that time. Rather the report reflects Dr Almehti's genuinely held view, on the information available at the time, that the spectrum and outcome Dr Khalafalla's clinical and operative work, since the restrictions initiated by the audit report of Dr Hack dated 3 November 2005, were commensurate with his level of experience. And in the field of his exposure to Breast and Plastic surgery, his outcomes were better than the previous year.

And further:

“...The Medical Board while maintaining its request for all relevant feedback in relation to officers under supervision, did not reciprocate by providing officers such as the Director of Surgery or the hospital administration with any of the information shared with the Royal Australasian College of Surgeons that was held by it in relation to Khalafalla’s practice between 2002 and 2004.”

(c) Communication with Royal Australasian College of Surgeons

Moreover, matters of professional standing or conduct were already being assessed and scrutinised aggressively by the hospital administration.

Dr Almehti denies categorically that he was withholding or misleading in relation to information to the Medical Board or the College of Surgeons. It is clear from the body of the draft report there is significant confusion as to who should be communicating with the Board or the College when matters of professional standing or conduct were already been assessed and scrutinised by the hospital administration by way of credentialling.

Dr Almehti also noticed Dr Khalafalla showed better than expected effort to correct his attitude and indirection pitfalls which was again in contrast to the period prior to the restrictions and prior to the subsequent cognitive behavioural input.

In relation to reports to the Royal Australasian College of Surgeons, it is to be noted that report dated 5 August 2005 was accompanied by a covering letter by Dr Almehti which expounds the basis of the report.

As noted above, Dr Almehti was not required to provide any further progress reports as the 12 month period of review had expired. Correspondence with the Royal Australasian College of Surgeons from the hospital concerning Dr Khalafalla and the various restrictions placed upon him following the various credentialling committee meetings include letters dated:

- 29 September 2005;
- 29 November 2005;
- 31 March 2006;
- May 2006;
- 14 July 2006.

In addition to correspondence we note that Dr Almehti and the hospital spoke to Dr Christopher Pyke, the Queensland Chair in Surgery of the College on several occasions concerning Dr Khalafalla in particular:

- **September 2005** - during a visit by Dr Pyke to Mackay Base Hospital in relation to credentialling the hospital for advanced surgical training. During a meeting with staff, Dr Khalafalla and his performance were mentioned. Dr Almehti suggested to Dr Pyke that that perhaps was not the appropriate forum and suggested the College meet with Dr Khalafalla directly to discuss his performance issues. Dr Almehti himself offered to assist in that meeting. It was noted there was no direct contact by the College with Dr Khalafalla following that suggestion.
- **October 2005** - during a phone link-up with Dr Pyke there was reference to the forthcoming Hack audit and sending Dr Khalafalla to the Cognitive Institute. It was clear the College was being kept in the picture as regard Dr Khalafalla's performance.
- **29 November 2005** - Dr Hack's report was sent to Dr Pyke in which it specifically noted the restrictions to be placed on Dr Khalafalla.

We note also Dr Almehti wrote to the Queensland Regional Sub-Committee of the Board In General Surgery under letter dated 18 October 2005 which sets out in some detail his role in the supervision of Dr Khalafalla. This correspondence clearly sets out the position relating to Dr Khalafalla as it was at the time.

As the draft report itself notes, there appears to be significant confusion as to the various roles of the major players in this situation, in particular the Royal Australasian College of Surgeons, the Medical Board and the hospital itself.

There can be no suggestion Dr Almehti was attempting in any way to keep any of those bodies in the dark or to misrepresent the position as to Dr Khalafalla as can be seen from the correspondence sent from the hospital to both the Board and the Royal Australasian College of Surgeons.

The situation in relation to the flow of information between Dr Almehti as Director of Surgery and the Royal Australasian College of Surgeons is further complicated by the position of the VMO (and former Director of Surgery), Dr Asad Farooq.

It is to be noted Dr Farooq resigned on 28 February 2005 as Director of Surgery but continued as Visiting Medical Officer until 3 October 2006.

It is noted further that (unknown to Dr Almehti for the vast majority of the relevant period), Dr Farooq had retained his role as Supervisor of Training with the Royal Australasian College of Surgeons. This was in spite of the fact he repeatedly declined any form of communication with Dr Almehti as Director of Surgery and declined repeatedly to assist in the supervision of Dr Khalafalla.

Dr Almehti submits that it is apparent that while Dr Farooq retained the role as Supervisor of Training with the College, the College was liaising with Dr Farooq in that role concerning Dr Khalafalla. It was clear Dr Farooq was attending QBIS meetings and maintaining correspondence with the College without reference to Dr Almehti.

Dr Almehti contends that the maintenance of Dr Farooq in this role, without the knowledge of Dr Almehti, added to the misinformation which may have led to the incorrect suggestion of dishonesty on his part. Dr Almehti only received an official letter from the College asking to him to act as Supervisor of Training upon the resignation of Dr Farooq from this role in August 2006.

The draft report also seems to place some emphasis on the fact that some of the correspondence to the College, in particular the letter dated 31 March 2006 places emphasis on what are described as 'interpersonal rather than operational skills.'

While Dr Almehti concedes the letter contained this sentiment and may have diluted to some extent the full effect of the matter, it should be noted that the letter also notes 'we have already corresponded with Dr Chris Pike in November 2005 stating the position of Dr K including his status regarding AON and that information was referred to the College before Dr K's interview in February 2006.'

In addition to correspondence, it is noted that Dr Almehti also spoke to senior members of the Royal Australasian College at the Gold Coast State Meeting in July 2006 when he queried when the College's final outcome in relation to Dr Khalafalla would be made.

The College finally in August 2006 recommended that Dr Khalafalla required a 12 month supervision at registrar level in a major metropolitan hospital. It is to be noted this was a suggestion which had been put forward to the hospital verbally by Dr Almehti on numerous occasions.

Some of that correspondence incorrectly identifies the date of a credentialling committee meeting and that that mistake has been perpetuated in further correspondence is evidence only of a typographical error and does not indicate any dishonest behaviour on the part of Dr Almehti.

In correspondence sent to Dr Almehti by the President of the College in October 2006 it reiterates the complex nature of the difficulties faced by the Department of Surgery in Mackay and commends (rather than condemns) the 'commitment to the patients and the community of Mackay' played by Dr Almehti in 'shouldering much of the burden during this difficult time.'

(d) Conclusion

At all times Dr Almehti has conducted himself in the position of Director of Surgery with integrity and honesty and has attempted to balance the various competing roles of that position to the best interests of the hospital and its patients. Dr Almehti finds it regrettable, to say the least, that these efforts have not been recognised, that the complexity of the situation which he found himself concerning the ongoing training and credentialling appears to have been glossed over in the draft report, particularly in circumstances where the draft report itself expends much of its contents detailing with some particularity the complexities of the training and credentialling system at which Dr Almehti found himself at the centre. The draft report makes clear that none of the respective players in this situation - including the Royal Australasian College of Surgeons and the Queensland Medical Board fully fulfilled their particular responsibilities in relation to Dr Khalafalla.

That Dr Almehti's singular attempts to afford the public protection by the imposition of restrictions and at the same time maintain the Surgical Unit at Mackay Base Hospital are being characterised as dishonest and misleading is a significant misapprehension by the Board of the role Dr Almehti played in this complicated matter."

And further:

"It is clear throughout 2006, Dr Almehti was engaged in an attempt to balance duties to the hospital and patient safety while awaiting a fair judgment and verdict in relation to Dr Khalafalla whose shortcomings had, at that stage, been identified, dissected and analysed extensively. The verdict that was awaited was the view of the Royal Australasian College of Surgeons as to what, if any, conditions would remain upon his registration.

Dr Almehti decided that while the imposed credentialling restrictions were in place and pending the arrival of the verdict from the College, he had to be available for Dr Khalafalla's close supervision and assistance at all times in order to cover not only the supervision of elective cases but also emergency work. It translated literally to Dr Almehti being on call four days a week and three weekends a month, since he also had to supervise the other SMO colleague who was a non-Fellow. This was against the background that the other College Fellow, Dr Farooq (the VMO) had repeatedly stated his reluctance to act as back-up to Dr Khalafalla's emergency or elective work. As the only Fellow staff surgeon on site, Dr Almehti was also responsible for the supervision of the other SMO which, as a VMO, Dr Farooq was not.

At each point where criticism is made of Dr Khalafalla's performance, usually via the mechanism of the Credentialling Committee, Dr Khalafalla's credentials and his ability to operate were restricted pending the final verdict of the College. This is not, Dr Almehti would submit, evidence of a failure to take timely actions to review and manage clinical performance and submits the draft report is mistaken in its findings in this regard. Dr Almehti submits the submissions in paragraphs 3 and 4 above show the contrary - that Dr Khalafalla's clinical performance was reviewed and managed in a timely way. Dr Almehti submits that the draft report be amended to remove any suggestion of management failure on his part."

And further:

"Again Dr Almehti, without wishing to reiterate his earlier submission again wished to refute any opinion there was delay in dealing with Dr Khalafalla's performance. Dr Almehti notes that any purported delay was in awaiting the Royal Australasian College of Surgeons to finalise the review process in relation to Dr Khalafalla and report its findings to the hospital."

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"In or around September 2005, the Queensland Public Hospitals Commission of Inquiry Report was published."

Attention is drawn to paragraphs 8.8 and 8.9 at page 538 with emphasis to the comments:

"It may be reasonably inferred that they contributed to similar problems in other hospitals."

It was further submitted:

"In response to the Queensland Public Hospitals Commission of Inquiry Report and the Foster review, the Queensland Government produced an "Action Plan - Building a Better Health Service for Queensland" (the "Action Plan") in October 2005. As part of that process, Queensland Health identified a number of systemic issues in relation to trust and accountability, including in relation to the registration of doctors, which it was suggested should be remedied..."

Attention is drawn to the following statements in the Action Plan (with emphasis added):

"We will restore trust and accountability.

We have already taken action to ensure all our doctors are appropriately qualified and properly registered.

We have:

- Raised the standards for the registration and re-registration of overseas-trained doctors through improving the 'Area of Need' process. Legislative amendments have been introduced to delegate the power to decide an 'Area of Need' to the Executive Officer of the Office of the Health Practitioner Registration Boards.

We have committed to a medical excellence taskforce to be chaired by an independent clinician with membership from the AMA, specialist colleges, other peak medical bodies and the Australian Medical Council. It will develop a broader and more integrated system to govern the recruitment, assessment, supervision, training and support of doctors.

We will:

- Develop a state-wide approach to clinician individual performance assessment and development and the management of concerns about an individual clinician's performance by the end of 2006
- Change the culture and processes to allow patients and staff to more easily lodge complaints

We will:

- Promote a culture of patient safety by introducing a new clinical governance system which encourages clinicians to more effectively and systematically review clinical practice outcomes within their work units
- Generate a clinical culture which recognises the importance of timely and accurate incident reporting and investigation, clinical audit, benchmarking and clinical pathways variance analysis
- Establish Area Clinical Governance Units, a state-wide Patient Safety and Clinical Improvement Service
- Develop Clinical Networks that will:
 - Develop and implement state-wide safety initiatives
 - Improve clinical service planning
 - Have a role in funds distributing processes to support improving clinical practice
 - Develop and implement standard treatment processes in targeting high volume services (where standardisation will improve safety and quality) with the support of the Patient Safety and Clinical Improvement Service
 - Development quality and safety benchmarking processes with the assistance of the Patient Safety and Clinical Improvement Service
 - Involve local clinical teams in the discussion and interpretation of benchmarking data
 - Undertake clinical audits in collaboration with clinicians and services
 - Have paid clinical chairs with three-year renewable terms."

(Emphasis added; Items which are bold underlined were developed and implemented by Dr Margetts himself demonstrating his leadership in this area)

The Action Plan identified a number of systemic issues within Queensland Health and provided a plan to remedy these within a five (5) year period. It becomes immediately apparent when perusing the Action Plan, that a number of the matters raised in the HQCC draft report, particularly in relation to the recruitment and credentialling of Dr Khalafalla, were contemporaneously recognised as being systemic problems throughout Queensland Health.

The systemic issues identified include, inter alia, the following:

- (a) *The standards for the registration and re-registration of IMGs including improving the Area of Needs process;*
- (b) *The development of a broader and more integrated system to govern the recruitment, assessment, supervision and training and support of doctors; and*
- (c) *The promotion of a culture of patient safety.*

Recognition of the systemic nature of these matters and the whole of system changes undertaken by Queensland Health since the Bundaberg Inquiry and indeed the recruitment of Dr Khalafalla have not been recognised by the authors of the HQCC draft report. The HQCC draft report fails to consider the conduct and practice of Dr Margetts in light of this context. We will submit that Dr Margetts' conduct and practice in 2004 generally exceeded the services and practice of that time.

Dr Margetts became an integral part of the solution to the systemic problems identified within Queensland Health. Relevantly, from September 2006 until December 2007, Dr Margetts was appointed as the Senior Medical Advisor Patient Safety. This was a full time position which established the "Safe Doctors - Fair System" approach to the management and remediation of doctors about whom concerns had been made," The "Safe Doctors – Fair System" guidelines includes guidance in relation to the following:

- (a) *Selection, recruitment and initial scope of clinical practice;*
- (b) *Monitoring, feedback and professional development;*
- (c) *For conducting an assessment of concerns;*
- (d) *A mediation management plan.*

In addition, Dr Margetts designed and implemented a unified approach to facilitate and guide staff with regard to the lodgement of complaints. Once again as an integral part of the solution to the systematic issues facing Queensland Health, Dr Margetts lead the resolution of issues in this domain.

Further, the HQCC draft report is highly critical of Dr Margetts' conduct however it often judges him on either:

- (a) *Today's standards (which he helped develop); or*
- (b) *Personally recommended standards promoted subsequently by Dr Margetts which were in excess of those accepted by Queensland Health and required by policy, even today.*

Dr Margetts conduct and practice in relation to recruitment, credentialling and risk analysis and awareness in 2004 were well above what was required and indeed was being practiced throughout Queensland Health at that time."

Submission by Queensland Health

The Director-General, Queensland Health, submits:

"The positive steps taken by Dr Margetts appear not to have been taken into account

In this context the following points may be noted:

- *The first notice Dr Margetts received about concern regarding Dr Khalafalla's clinical performance was by way of the 16 August 2005 letter from Dr Farooq. The letter was not received by the District Manager until 23 August 2005;*

- *Two days later, on 25 August 2005. Dr Margetts brought these concerns to the attention of the Director of Surgery (Dr Almehti) the Acting Director Medical Services (Dr Sachdev) and the Acting District Manager (Mr Sladden). Dr Margetts recommended RACS be involved;*
- *In September 2005, Dr Sachdev asked Dr Hack to review Dr Khalafalla's work. Dr Hack presented a draft report to Dr Margetts on 3 November 2005 and a final report on 9 November 2005;*
- *The same day that he received Dr Hack's report (9 November 2005), Dr Margetts wrote to Dr Khalafalla advising he (Dr Margetts) had imposed further limitations on Dr Khalafalla's credentialling. The additional conditions were that no elective abdominal surgery was to be performed and that emergency abdominal surgery was to be performed only after consultation with Dr Almehti, Dr Farooq or Dr Margetts;*
- *The 9 November letter was copied to the Director of Anaesthetics, the Director of Surgery, the patient booking officer, the District Manager and Human Resources;*
- *On 29 November 2005, Dr Margetts forwarded Dr Hack's final report (and Dr Khalafalla's response to the report) to Dr Chris Pyke, Chairman of the Board of General Surgeons, RACS;*
- *On 16 December 2005, Dr Pyke wrote to Drs Margetts and Almehti congratulating them on the "thorough, timely and ethical" manner in which the MBH had undertaken the audit by Dr Hack;*
- *Dr Pyke did not respond to the 16 December letter until 24 January;*
- *On 5 January 2006, having not yet received the reply from Dr Pyke, Dr Margetts telephoned Dr Pyke (in the presence of Dr Almehti and Mr Kerry McGovern, District Manager);*
- *Mr McGovern has advised that two main issues were discussed during the teleconference of 5 January 2006 -Dr Khalafalla communication issues with other staff members within the hospital other medical staff, and the findings of clinical concern by Dr John Hack. (The issue around communications was arguably as important as the clinical practice side because many of the problems with doctors related to communication problems.);*
- *Mr McGovern also advises that the outcomes were, that Mackay District would deal with the communication issues and that RACS, would deal with the clinical issues. It was quite clear that RACS were, as recommended by Dr Hack, required to assess the clinical practice of Dr Khalafalla. This is consistent with [...] Dr Pyke's email to Dr Margetts regarding "Minutes of Meeting";*
- *As late as 10 August 2006, RACS was prepared to support Dr Khalafalla's continued training in preparation for the fellowship exam."*

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

"[Any] suggestion that the College did not exercise due diligence in supporting the special purpose registration of Dr Khalafalla as a deemed specialist in an Area of Need position, is utterly rejected.

The conclusion that Dr Khalafalla required 12 months assessment under oversight was appropriate in the circumstances.

The College rejects the suggestion that it did not exercise due diligence in providing supervision and oversight of Dr Khalafalla. As noted, the College is not responsible for supervision or day to day oversight of an Area of Need candidate, but is required to undertake an assessment of the candidate at intervals, to ensure continuing suitability for the position involved. Supervision of an Area of Need candidate is the responsibility of the hospital and/or State Health Department. Indeed, some of the perceived delays with Dr Khalafalla were because the administration of Mackay Base Hospital were reviewing his activities and the overall action plan by the employer was unclear.

The College accepts that it could have taken more prompt action in relation to withdrawing support for Dr Khalafalla and his position at Mackay Base Hospital. The College has, and continues to review its processes and policies, to ensure that these issues are addressed.

Overall, the College therefore rejects any suggestion of maladministration, or any failure of the College to act lawfully and properly, albeit that some action could have been taken more expeditiously in this particular case.”

And further:

“The College accepts that in relation to its role in relation to Dr Khalafalla as an Area of Need candidate, that it could have dealt with Dr Khalafalla more expeditiously. Unfortunately many of these concerns were not formalised and the processes in Mackay Base Hospital was complicated by the Hospital's own internal reviews. However, the College rejects any suggestion that its conduct represents "maladministration," or that the College has otherwise unreasonably acted having regard to the competing interests, and quite substantial legal rights and responsibilities of all of the parties. The College notes the primary responsibility for supervision of an Area of Need candidate rests with the employer, in this case, Dr Khalafalla's hospital and Queensland Health.”

Submission by the Medical Board of Queensland

The Medical Board of Queensland submits:

“The Board had placed, as it would now appear, too much faith in the assessment by the RACS of Dr Khalafalla. The Board is concerned that the RACS approved Dr Khalafalla to become a staff specialist at Mackay Health Service District in the knowledge of Dr Khalafalla's previous 32 months of unsatisfactory performance.

The Board acknowledges the RACS as the expert in this field of assessing specialists for surgical disciplines and that its recommendations would always be highly regarded.

It should be noted that as a result of the Ministerial Taskforce the Queensland Government amended the Medical Practitioners Registrations Act 2001 to ensure the Board considers the Colleges support for a deemed specialist.”

And further:

“...the Board was first notified of concerns regarding the clinical performance of Dr Khalafalla on 24 April 2006. The nature, seriousness or number of concerns was not detailed to the Board at this time.

The Board then sought feedback from the RACS as to the nature of these concerns.

On 23 May 2006 the Board's Registration Advisory Committee met and considered Dr Khalafalla's application for renewal. The Board had not had a response from the RACS or Mackay as to the nature of the concerns.

The Registration Advisory Committee recommended to:

Issue a Show Cause Notice as to why the Board should not impose conditions (to be determined when further advice from the RACS is received).

An explanation be sought from the RACS and Mackay Base Hospital as to why they had not advised the Board previously of the concerns raised regarding Dr Khalafalla's practice.

"On 30 May 2006 the RACS advised the Board that it had been advised by Mackay Base Hospital that Dr Khalafalla's privileges had been reduced. After receiving this information and in the knowledge that still unspecified issues had been identified by the RACS or Mackay Health Service District as early February 2006, the Board began contemplating whether refusing to renew Dr Khalafalla's registration would be more appropriate than imposing conditions on his registration. Therefore the Show Cause Notice as recommended by the Registration Advisory Committee was not sent.

The Medical Board was kept informed by the RACS of its attempts to obtain further information from the Mackay Health Service District and was advised that Dr Hack was to be the RACS representative on the credentialing committee for Dr Khalafalla but Dr Hack was on leave until 4 August 2006.

On 1 August 2006 the Registration Advisory Committee met and agreed to seek an explanation from Mackay Hospital as to why it had not been informed of the restrictions they had placed on Dr Khalafalla's scope of practice. The Committee also noted that the Show Cause Notice seeking to impose conditions had not been sent and made no further recommendation at that time to issue a notice.

On 14 August 2006 the Board refused to renew Dr Khalafalla's registration on the basis of information from the College dated 10 August 2006.

The Board believes [it] needed to receive conclusive information in relation to Dr Khalafalla's clinical practice before taking further action. The Board needed the RACS to undertake its reviews before it could make a decision to refuse the registration of Dr Khalafalla. The Board believes it acted promptly in making this decision.

It should also be noted that throughout this time it was Mackay Health Service District's intention to continue to employ Dr Khalafalla regardless of their concerns."

And further:

"The Board has the power to remove suspend, cancel or impose condition on any registrant. This action can only occur if the Board is notified of the concerns."

10.28 Comment: The assessment and monitoring of Dr Khalafalla by the Royal Australasian College of Surgeons

It is acknowledged that Fellows of the Royal Australasian College of Surgeons (RACS) provide enormous *pro bono* contributions of time and skills to assess deemed specialists in Area of Need positions.

The role of the RACS in all aspects of the assessment of surgical credentials of IMGs and maintenance of professional standards after acceptance is crucial to protect the health and well being of users of Area of Need surgical services, and integrating deemed specialists into the Australian health system.

The RACS 2004 ‘*Submission To The Australian Competition And Consumer Commission Review Of The Assessment Of Overseas Trained Surgeons*’ (“RACS submission to the ACCC”) provides a good insight into the context of assessment and oversight at that time.

In its submission to the ACCC, the RACS acknowledges that the paramount concern in surgical training and practice is the welfare and safety of patients, and the assessment of surgical competence is of intense interest to the community. The RACS identifies the purpose of such assessment is to determine whether an Overseas Trained Surgeon has the:

- Knowledge to identify the need for appropriate therapeutic procedures.
- Experience to perform clinical care in an effective and evidence based manner.
- Skill to be able to perform appropriate therapeutic procedures safely.
- Capacity to design and carry out effective management plans.
- Ability to work within a multidisciplinary team and communicate effectively.
- Willingness and skills to undertake continuous professional development including peer review, audit and critical appraisal of the literature.

The HQCC notes the following comments in the RACS submission to the ACCC:

“College-based assessment of surgical competence therefore includes assessment of general skills and of specialty-specific skills. It currently involves paper-based and semi-structured interview components, and the College is keen to develop and validate a range of modern assessment instruments, including:

- *“360° performance assessment”*
This would be a natural and innovative progression from the existing “practice oversight.” “360° performance assessment” would include others in the healthcare environment, such as employers, jurisdictions, peers (Overseas-Trained Surgeons and Fellows), patients and families, trainees, allied health professionals, medical educators. Other international surgical educational institutions have similar goals.
- *The role of the surgical skills laboratory utilising both bench-top and simulation.*
The College has made significant investment in surgical skills laboratories which would be made available for this work.

Quality of health services at Mackay Base Hospital

- *Modular based programmes that provide opportunities for education and self-testing, e.g. risk management, communication in a multicultural environment, or communication and ethics.*

The College is already developing such modules for Basic Surgical Training (BST) and Advanced Surgical Training (AST) that would be accessible to Overseas-Trained Surgeons.”

And further:

“It is important to note that the College process in assessing Overseas-Trained Surgeons for Area of Need positions is only one part of a complicated assessment and employment matrix comprising also among others the Jurisdictions and other employers, the Australian Medical Council, the Medical Council of New Zealand (since a doctor registered in New Zealand can ultimately move to Australia), the state and territory medical boards, immigration authorities, the Health Insurance Commission and recruitment agencies. The College is focussed on the assessment of surgical competence but the outcomes of assessment and employment always have to be considered in the light of the other assessments.

Some Area of Need positions are created by neglect.

It concerns the College that it has no part in determining whether or why a position should be classified as Area of Need. While it is true that some Area of Need positions around Australia exist because there are no suitable Australasian-trained surgeons who want to practice in that geographical area, others exist because Australasian-trained surgeons don't want to practice in that particular position. There is no doubt that poor resources and support are the cause of surgical jobs being vacant in some instances, because the employer has failed to provide the resources to make the position attractive to an Australasian-trained surgeon. This often becomes apparent when the College tries to arrange the support and infrastructure necessary for practice oversight of those Overseas-Trained Surgeons applying for admission to Fellowship, whereas this is not readily apparent for Area of Need positions where practice oversight is for a relatively short time and there is no ongoing responsibility for assessment or support from the College.

The College feels very strongly, in the role of surgical advocate, that it should have a say in determining whether such a poorly supported position is suitable to support the career of an Overseas-Trained Surgeon. The College is uncomfortable about recommending Overseas-Trained Surgeons for positions that are not suitable for safe practice or sound career development. The College should become involved in assessing the infrastructure available to Overseas-Trained Surgeons placed in Area of Need positions so as to better be able to match the position to the qualifications of the Overseas-Trained Surgeons and so as to better be able to ensure that the minimum requirements for safe and competent surgical practice are provided by the employer.

Monitoring

There is a fundamental question about who has ultimate responsibility to ensure that Overseas-Trained Surgeons fulfil the requirements of assessment. Currently the College is required to assess the Overseas-Trained Surgeons over a period including oversight that may run for years. One of the problems Overseas-Trained Surgeons experience, particularly if they are in Area of Need posts, is that recommended pathways towards Fellowship become distorted by a number of factors. The stated responsibilities of the College are to undertake and report on oversight. In practice, because these doctors have special learning needs there is much more monitoring

required than is part of our current mandate. The College believes a more clearly articulated policy of responsibility, agreed between the College and the employers, would assist Overseas-Trained Surgeons in their learning. This would require resources that would increase the costs of assessment. However, resourcing in this area would be fundamental to improving the skills and enhancing the career advancement of Overseas-Trained Surgeons.”

And further:

“The broad aspects of health care include the practice of safe and evidenced based care, the policies and procedures that are essential to safe health care through clinical governance, peer review and audit including a systems based approach, mentoring by and for staff, working in and leading teams and an ethical framework. When the College appraises Overseas-Trained Surgeons these are some of the areas assessed to ensure that in future all surgeons, whether Overseas-Trained Surgeons or Australasian-trained surgeons, will practice to the same standard in the provision of patient care. It will also ensure they interact with their colleagues in an integrated, cooperative fashion to achieve optimal health care.

The College is not prepared to accept any changes to the assessment of Overseas-Trained Surgeons if such change would compromise the quality of surgical care. While recognising that the administration of assessment processes could be further refined and reliability enhanced, the College considers that quality of surgical care must be maintained through its assessment procedures and principles.

Just as patients have the right to expect safe, competent surgical care from their surgeons, so the healthcare community has the right to know that they are interacting professionally with safe, competent surgeons.”

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

As part of the College’s regular review of its processes, continuing improvement and partly in response to the issues in the case of Dr Khalafalla, the College has implemented, and proposes to implement, a number of steps in relation to the Area of Need positions.

The College has implemented a process whereby, upon receipt of a report or formal concern regarding a candidate in an Area of Need position, a re-assessment is activated immediately, and any adverse re-assessment is provided to the relevant medical board or authority.

The College is to undertake a review of its documentation, to better clarify the description of the roles of the College for Area of Need oversight, particularly to clarify that responsibility for supervision rests with the employer and the medical board. Documentation will be reviewed to more accurately describe the role of the College and College representatives in the Area of Need process.

The College will, in consultation with medical boards, review processes to better document the conditions, roles and expectations in relation to Area of Need positions, particularly conditions or restrictions imposed or to be imposed by medical boards or authorities on Area of Need positions.

The College will review processes in relation to Area of Need positions, to ensure with subsequent appointments, new employers are aware of any particular reports or formal concerns documented in relation to an Area of Need candidate from prior Area of Need positions.

In consultation with medical boards and authorities, the College will consider providing medical boards and authorities automatically with a copy of each assessment or re-assessment made in relation to an Area of Need position. This may lead to better supervision of Area of Need positions by the medical boards and authorities in each State and Territory.

The College will review processes for the appointment of its supervisors (undertaking oversight), to ensure, as far as practicable, that they are independent of the employer.

The College is again seeking funding from the Commonwealth Government to ensure the Area of Need positions are initially placed in a Regional or Metropolitan Teaching Hospital so the assessment can be more thorough and the International Medical Graduate can establish a network of colleagues to provide support and peer review.”

Submission by Queensland Health

The Director-General, Queensland Health, submits:

“There has been significant strengthening of the requirements for the supervision of IMGs and of the supervisors of IMGs, since 2006. Nationally, the Joint Medical Boards Advisory Committee has produced a 'National Best Practice Position Statement' for the supervision of medical practitioners with conditional registration (October 2007) that is in draft format. If this is accepted by the Medical Boards as the best practice document, it will be adopted in Queensland and Queensland Health.

Further, informal advice from the Executive Officer of the Office of the Medical Board is that a bulletin is soon to be released and the content will relate to supervision.”

The RACS “acknowledges that the processing of the concerns about Dr Khalafalla could have been handled more expeditiously,” but points out the privacy and legal constraints imposed on the RACS (as a private organisation) in exchanging information, particularly of an adverse nature. The RACS argues that there is “the need for further protections for organisations such as the specialist Colleges, in being able to report information of an adverse nature, particularly in relation to an Area of Need candidates, without the fear of litigation or legal risk.”

10.29 Current assessment standards of the Royal Australasian College of Surgeons

In October 2006, the RACS introduced its *Specialist Assessment of International Medical Graduates in Australia* policy. This policy was updated in October 2007.

The RACS assessment of an IMG applicant focuses on education, training, quality, quantity and scope of clinical experience, level of formal assessment including specialist qualifications in surgery, recency of relevant practice and relevant professional skills and attributes in order to determine substantial comparability with Australian standards.

The assessment of an IMG consists of a document based assessment and may include a face-to-face semistructured panel interview.

The interview is only available to an IMG who is deemed from the document based assessment to provide sufficient evidence of specialist training.

The RACS also undertake an assessment of the Area of Need position to make a determination on whether the position should be approved. The assessment will include a review of the workplace infrastructure and professional support relating to the position description.

A 'Specialist Assessment' focuses on surgical qualifications and clinical experience in order to determine substantial comparability with a Surgeon who has trained in Australia.

An 'Area of Need Assessment' focuses on surgical qualifications and clinical experience in order to determine substantial comparability with a Surgeon who has trained in Australia with regard to the defined scope of practice. The level of experience of the IMG is assessed against a specified set of criteria derived from the requirements stated in the position description for the Area of Need position.

The steps in the assessment of IMGs for Area of Need positions are different for those used to assess for admission to Fellowship, and assessment for an Area of Need is not considered to be a determinant of admission to Fellowship. In the case of an Area of Need position, the College assess for substantial comparability in addition to comparability and scope of practice to be appointed to an Area of Need position.

An IMG will be deemed to have comparability for an Area of Need position if there is evidence of:

- (a) Recency of specialist surgical practice in the relevant specialty, comparable to that of an Australian or New Zealand trained Surgeon within the defined scope of practice relevant to the Area of Need position; and
- (b) Completion of a specialist training program comparable to the RACS programs including the competencies, skills and attributes relevant to those required for the Area of Need position.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

"This point demonstrates that the RACS has two processes. The first being for specialist admission as a fellow, and the second under Area of Need. Dr Khalafalla was considered by both processes and with RACS found not only him to be suitable against the Position Description and its criteria for an Area of Need position, but they also found that (subject to 12 month's further oversight) he would be eligible for recognition as a specialist and even may be granted fellowship without examination.

At that time, no higher commendation was made by any College except for the occasional exemption of an honorary fellowship to a distinguished foreigner. (And these were never awarded to Area of Need doctors). It was reasonable for Dr Margetts to rely on this knowledge and expertise in the same manner it was relied upon by the QMB, the AMC and the HIC without question or criticism."

Submission by the RACS

Dr David Hillis, Chief Executive Officer submits:

“Apart from assessment of International Medical Graduates, for Specialist recognition in Australia and New Zealand, the College also undertakes assessment of International Medical Graduates who may apply for Area of Need positions.

The Area of Need program, implemented by the Commonwealth and State Governments, is separate from the process by which International Medical Graduates may be assessed for Specialist recognition (based on comparability with Australian and New Zealand standards).

Candidates for Area of Need assessment must ultimately be registered with the medical board or medical registering authority in the particular State or Territory. The medical boards have responsibility for the regulation and registration of those candidates. The College conducts an assessment of an applicant, based on the requisite documentation provided to the College, which includes the position description and other documentation forwarded by the prospective employer. The College is only assessing the International Medical Graduate to ensure that they have the skills and experience to meet the particular requirements of the particular position.”

10.30 Health Quality and Complaints Commission opinion

In the HQCC's opinion, the RACS did not exercise sufficient diligence in:

- Supporting the grant and renewal of special purpose registration of Dr Abdalla Khalafalla as a Deemed Specialist in the Area of Need position at Mackay Base Hospital;
- Providing supervision and oversight of Dr Abdalla Khalafalla while practicing as a Deemed Specialist in an Area of Need position at Mackay Base Hospital; and
- Promptly withdrawing support for the special purpose registration of Dr Abdalla Khalafalla as a Deemed Specialist in an Area of Need position at Mackay Base Hospital.

The HQCC notes that the RACS has since reviewed and improved its processes, as advised in the submission (below) by the RACS to the draft investigation report. No further recommendation is therefore made at this time about the RACS processes.

The HQCC opines there were significant deficiencies in the management of Dr Khalafalla's clinical competence and performance at Mackay Base Hospital, and the delay in dealing with Dr Khalafalla's performance was unreasonable.

There were many factors that contributed to this, including the conflicting opinions and information which was available and circulating, and the ineffective communication between key stakeholders and decision makers. This emerged as the core issue in this investigation.

Submission by Dr Margetts

Hall Payne Lawyers on behalf of Dr Margetts submit:

“Dr Margetts had communication with at least 13 different people within RACS, few of whom seemed to have been briefed by the previous staff.

However, it must be noted that in the intervening years these communication difficulties have sought to have been remedied with the assistance of RACS and other bodies due to their assistance with the Safe Doctors - Fair System process. The lessons learnt from this matter have already been incorporated into this process which has been endorsed by all relevant stakeholders, including the HQCC.”

It is not difficult to see the pattern of persistent deficiencies in Dr Khalafalla's performance from the information assembled retrospectively by the HQCC, but this information could only be obtained from multiple sources and with considerable effort. There is a clear need for a more effective system of transferring crucial performance information between specialist colleges, medical boards and employing authorities.

Had such information been shared in this instance, the District Manager (as employer), the Executive Director Medical Services and the Director of Surgery would have been better informed in their employment decision, and could have resulted in earlier intervention and remedial action in this matter.

Although some of this poor communication may be due to inadequate administrative processes and lack of analysis of relevant numeric performance data trends by statistical methods of known effectiveness¹, the problem is made worse by understandable reticence based on legal or other constraints on sharing information.

10.31 Health Quality and Complaints Commission recommendation

The HQCC recommends the Queensland Government consider the introduction of legislation (with appropriate statutory protections and safeguards) to require information about unsatisfactory periods of supervision and any reduction of clinical privileges related to special purpose registrants be transferred between relevant employers, specialist colleges and all state and territory registration boards.

Given that this would affect national specialist colleges and all state registration boards, negotiation with Commonwealth and other state governments would be required.

¹ Spiegelhalter D, Grigg O, Kinsman R, Treasure T Risk adjusted sequential probability ratio tests: applications to Bristol, Shipman and adult cardiac surgery. International Journal for Quality in Healthcare 2003; 15(1): 7-13

11. Comments about other concerns raised by Mrs De-Anne Kelly MP

The HQCC was unable to complete an investigation into all concerns raised by Mrs Kelly as Mrs Kelly declined to disclose the source of the allegations or provide any further particulars of the allegations.

Mrs Kelly agreed to advise her constituents of the opportunity to raise their concerns directly with the HQCC, but none of Mrs Kelly's informants contacted the HQCC, and no further particulars of the allegations made by Mrs Kelly were forthcoming.

In addition to the matters already reported, the HQCC makes the following comments about other concerns raised.

11.1 That International Medical Graduates took too long to perform laparoscopic surgery

Evidence was provided by Dr Cruceru, Anaesthetist, Dr Roy, Director of Anaesthetics, and Ms Linda Wall, Elective Surgery Coordinator, which suggested that operations were generally taking longer than at other hospitals.

Dr Woodruff advised that some of the operations did seem to take longer than would usually be expected for procedures of the relevant type.

Submission by Dr Almehti

Quinlan Miller Treston Lawyers, on behalf of Dr Almehti, submit:

“The length of time that foreign trained doctors take to undertake laparoscopic surgery.

Dr Almehti states there is no scientific basis to this suggestion.

It is clear that Dr Almehti was embarking on an attempt to lift the experience level of those junior surgeons under his supervision in basic and advanced laparoscopic procedures. Dr Almehti states the evidence in relation to this is anecdotal and there is no evidence of a trend where procedures were taking longer.”

The HQCC makes no adverse comment, and there are insufficient grounds to warrant further investigation of this matter.

11.2 That Australian trained doctors were being forced out of Mackay Base Hospital through bullying and harassment

No evidence was found that Australian trained Registrars were forced to leave Mackay Base Hospital by bullying or harassment, it was the case that surgical Registrars on rotation were almost always the only Australian trained doctors within the Department of Surgery, with the exception of resident Medical Officers who rotated every ten weeks.

Dr Farooq complained about bullying and harassment by Dr Almehti consisting of unequal allocation of cases, delays in paying Dr Farooq's salary and responding to his emails.

Submission by Dr Margetts

Hall Payne Lawyers, on behalf of Dr Margetts, submit:

“This is in direct contradiction of the views expressed by Dr Farooq and captured in the file note made of his resignation, at least as far as Dr Margetts is concerned in the matter.”

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

- ***Allegations of bullying and harassment.***

Dr Almehdi notes the internal contradiction in Mrs Kelly's comments where she says Australian trained doctors were forced to leave Mackay Base Hospital and further states there is no evidence that Australian-trained registrars were forced to leave.

- ***Bullying of Dr Farooq.***

Dr Almehdi denies the allegations of bullying of Dr Farooq which allegedly consist of unequal allocation of cases, delays in paying Dr Farooq's salary and email.

Dr Almehdi states that any change in the allocation of cases was as a result of Dr Farooq's change in status from Director of Surgery to Visiting Medical Officer. Dr Almehdi notes there were occasions when he discussed with Dr Farooq when his list ran over into the public list into the afternoon which created a domino effect in delays resulting in the public list running into the night on many occasions. Dr Almehdi did not think this acceptable and in conversations with Dr Farooq highlighted this. It seems Dr Farooq has interpreted this as bullying.

In relation to the question of salary, Dr Almehdi upon becoming Director of Surgery some time thereafter noted that Dr Farooq's salary timesheets were going direct to the Finance Department and not being cleared by himself as Director of Surgery. In order to ensure no misplacement or mishandling of such matters would ensue in the future; Dr Almehdi forwarded an email to Dr Farooq asking him to confirm that the forms should be sent via the Director of Surgery. It again appears that Dr Farooq has misinterpreted this request as harassment.

The situation with Dr Farooq and the question of supervision was also highlighted by his nonavailability and his method in approaching the position of VMO.

Dr Almehdi states that while at all times he maintained professional courtesy towards Dr Farooq this, in his opinion, was not returned by Dr Farooq as evidence by correspondence with the College of Surgeons to which Dr Almehdi was not made privy and which impacted greatly upon the situation concerning Dr Khalafalla.

- ***Multi-ethnic background.***

Dr Almehdi first notes that Dr Crueru is an anaesthetist and does not work in the Department of Surgery.

Dr Almehdi does not understand the reference in the draft report of the absence of a uniform surgical technique within the Department.

He states notwithstanding the various backgrounds of the members of the hospital and he states that as Director of Surgery he attempted at all times to ensure professional and clinical level to the local standard are met. Dr Almehti submits there was no practice of unorthodox surgical techniques which was condoned and that it was always the priority of the Department to analyse outcome and technique during regular audit meetings. The standard of practice has always been that required by the Royal Australasian College of Surgeons.

And further:

“In relation to the suggestion that resident medical officers at morbidity and mortality meetings were challenged to an unreasonable degree and that this behaviour could be construed as bullying, Dr Almehti does not accept bullying occurred during these meetings, merely a reasonable degree of professional challenge to notions.”

The HQCC makes no adverse comment, and there are insufficient grounds to warrant further investigation of this matter.

11.3 That surgical patients in category 2 were being moved to category 1 to upskill surgeons but denying category 1 patients earlier operations

No particulars of this allegation were forthcoming from Mrs Kelly, or otherwise identified. As such, there were insufficient grounds to warrant any further investigation of this matter.

Submission by Dr Almehti

Quinlan Miller Treston Lawyers, on behalf of Dr Almehti, submit:

- ***Surgical patients in Category 2 being moved to Category 1 to up-skill surgeons but denying Category 1 patients' earlier operations. It is noted Category 1 patients are cancer patients or those in need of an urgent procedure for a painful or debilitating condition.***

“Dr Almehti relies upon the systems report of the Elective Surgery Coordinator which analyses the data over the years 2001 and 2006.

That report states the treatment of Category 1 patients has been nothing short of extraordinary and at no time have they had more than three long wait Category 1 patients in any given month. Category 2 patients had multiple ups and downs at the peak in December 2003 and January 2004.”

11.4 Promotion at Mackay Base Hospital based on patronage not merit

No particulars of this allegation were forthcoming from Mrs Kelly, or otherwise identified. As such, there were insufficient grounds to warrant any further investigation of this matter.

11.5 Deaths as a result of a lack of a system of review for pathology and biopsies

No particulars of this allegation were forthcoming from Mrs Kelly, or otherwise identified. As such, there were insufficient grounds to warrant any further investigation of this matter.

Submission by Dr Almehti

Quinlan Miller Treston Lawyers, on behalf of Dr Almehti, submit:

- **Deaths as a result of the lack of system review for pathology and biopsy.**

Dr Almehti notes that this is anecdotal only and is not based on evidence.

Mackay Base Hospital does not have a resident pathologist and relies upon private providers.

There is present a system of review of a combined meeting between the pathologists and surgeons on a monthly basis every first Friday of the month and also includes oncologists and radiotherapists visiting from Townsville.

Other review system which occurs is the monthly audit of admissions and morbidity and mortality. In each of these meetings the relevant pathologies arising from the previous month's procedures, including endoscopy, are discussed in detail.

Further, each consultant surgeon is directed to maintain a log of operating cases whereby biopsy results would return in print for him to counter sign and dictate his opinion or plan. This is usually done in the Outpatient Clinic.

Dr Almehti has made provision for a room to be designated a surgical meeting room so the system of review can be more easily facilitated.

In relation to the suggestion that resident medical officers at morbidity and mortality meetings were challenged to an unreasonable degree and that this behaviour could be construed as bullying, Dr Almehti does not accept bullying occurred during these meetings, merely a reasonable degree of professional challenge to notions."

11.6 Allegations that foreign trained doctors spoke together in a foreign language

HQCC investigators questioned a number of staff working within the Department of Surgery as to whether doctors spoke in a foreign language either between themselves or in the presence of patients.

The investigation disclosed that Dr Khalafalla and Dr Almehti, the Director of Surgery, did speak together in Arabic informally and also spoke in Arabic in the Operating Theatre and in front of patients. With the exception of one Medical Officer, staff interviewed said that this occurred relatively infrequently and that they did not seem particularly concerned that this happened.

One witness described an incident involving Patient 19 who was seriously ill following surgery by Dr Khalafalla, having suffered from a significant postoperative complication. Dr Khalafalla and Dr Almehti were yelling at each other in Arabic, and the Anaesthetist, Dr Roy, had to intervene to pacify the situation.

Submission by Dr Khalafalla

Flower & Hart Lawyers, on behalf of Dr Khalafalla, submit:

"In relation to the other professional conduct issues identified, our client can only respond generally in the absence of specific complaints or the records of particular patients."

And further:

“Our client would greet Dr Almehti in Arabic in the morning. Dr Almehti was Iraqi and our client is Egyptian. Although Arabic is spoken in both countries, the vocabulary and slang of the two languages spoken in these countries is different. English is a more precise language for that reason. Our client infrequently used Arabic with Dr Almehti. The staff interviewed said it was not a problem (except for one staff member). Our client did not yell at Dr Almehti in Arabic in treating [Patient 19]. Dr Roy and the witness have probably misinterpreted the discussion.”

Submission by Dr Almehti

Quinlan Miller Treston Lawyers, on behalf of Dr Almehti, submit:

“The evidence is anecdotal and the report itself states that with the exception of one officer, staff said speaking in foreign languages occurred infrequently. Dr Almehti contends that the emphasis placed on this in the draft report is out of proportion.

Dr Almehti states he did not condone speaking in Arabic in front of strangers that would not comprehend it.”

The HQCC makes no adverse comment, and there are insufficient grounds to warrant further investigation of this matter.

11.7 Inefficiencies in the operating rooms

Frustrations were expressed by a number of witnesses in relation to the lack of unity between teams working within the Department of Surgery, for example, Nurses, Anaesthetists and Surgeons.

Each team would blame the other for being late to commence the theatre list. In the expectation that one member of the team would be late, other members would arrive late and consequently theatre lists rarely started on time.

There was a lack of nursing staff in the hospital resulting in Theatre Nurses having to go to the Ward to bring patients to Theatre and delays in cleaning up operating rooms. This resulted in delays in setting up for the next surgical procedure.

There did not seem to be any clear direction given by the Director of Surgery when devising rosters. One trainee Registrar gave evidence that they drew up the roster when they arrived as there was none.

Joint meetings of all of the staff within the Department of Surgery did not occur. Opinions were expressed that if these had occurred, each team would have had a greater understanding of difficulties experienced by other members of teams.

There was poor communication with other staff within the operating rooms. For example if a doctor had been working late the previous night and therefore would not be able to commence work on time the following day, the fact was often not communicated to other staff. This resulted in unnecessary delays the next day.

However, the Intensive Care Unit Director at Mackay Base Hospital stated that he did not consider patient outcomes any worse at Mackay Base Hospital, Department of Surgery than elsewhere.

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

“Dr Almehdi again notes the report speaks of nurses, anaesthetists and surgeons working within the Department of Surgery. Dr Almehdi notes that both anaesthetists and the nurses do not fall under the Department of Surgery but have their own structure.

Dr Almehdi denies the assertion that there was no clear direction given by the Director of Surgery in relation to rosters. In relation to suggestions in the draft report as to lack of meetings and consultation, Dr Almehdi notes that as Director of Surgery he conducted upon his own initiative a regular Thursday morning meeting with the Nurse Unit Manager of the General Surgery Ward and the Nurse Educator on a regular basis with a view to discussing, conferring and analysing the condition of the ward patients and nurses surgical teams in all matters arising for that week.

Dr Almehdi notes also that the Department of Surgery was the first to launch interdepartmental meetings with other disciplines as a training and logistic exercise.”

The HQCC makes no adverse comment, and there are insufficient grounds to warrant further investigation of this matter.

11.8 Lack of Radiologists/Radiographers

One witness gave evidence that the hospital had only one Radiologist who attended the hospital even when he was supposed to be on leave. This apparently often resulted in delays in reporting.

According to Dr David Farlow, CT scans on occasions had to be sent to Townsville for a Radiologist to look at the scan resulting in a delay of a couple of hours in obtaining a definitive report.

Dr Almehdi spoke about the shortage of radiographers and raised concerns at the length of time a Radiographer would be required in laparoscopic procedures such as a laparoscopic cholecystectomy. However, he gave evidence that they had never had any difficulty in obtaining a Radiographer to provide X-ray services through such a procedure.

The HQCC makes no adverse comment, and there are insufficient grounds to warrant further investigation of this matter.

11.9 Other issues

The HQCC obtained evidence from a number of witnesses including Dr Farlow, Acting Medical Superintendent, Dr Almehdi, Director of Surgery and documentary evidence illustrating the high proportion of IMGs working at Mackay Base Hospital and particularly in the Department of Surgery.

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During the investigation, all interviewees were asked to comment on what they perceived to be the impact of the high proportion of IMGs working in the Department of Surgery. HQCC Investigators received a variety of responses but the common issues raised were:

- (a) Difficulties in communication, particularly over the telephone.
- (b) A lack of application of any uniform standard of surgical technique within the Department of Surgery. Although Dr Almehdi is a Fellow of the RACS, other surgeons are trained in places such as South Africa, Pakistan, Egypt and Eastern Europe and each Surgeon uses different techniques learned in different overseas hospitals.
- (c) Patients and nursing staff would often check diagnoses and other advice with Australian trained Registrars because there was a level of distrust of IMGs and a degree of prejudice against them.
- (d) Some staff said that it appeared that some foreign trained surgeons perceived there was little point in training female surgeons because they considered that female surgeons should not be working as surgeons.

One witness expressed frustration at the number of times she asked to assist in procedures such as cholecystectomies but was never provided with the opportunity to perform these procedures. The witness said this was in stark contrast to the number of similar procedures she performed at other hospitals during her surgical training.

A witness also gave examples of hearing inappropriate comments about females made by foreign trained Medical Officers made in front of other foreign trained Medical Officers, who did not take any action to contradict or protest about the comments.

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

“Female trainee.

Dr Almehdi notes these allegations are anecdotal and the complainant not identified.

Dr Almehdi states that [Trainee Surgeon 1] was the only female trainee who joined the Department since accreditation for advanced trainees.

On reviewing the OTAGO databank, Dr Almehdi states it is evident in the period between July 2005 and January 2006, [Trainee Surgeon 1] was the first operator in a total of 125 cases and assisted in a total of 83 cases. This does not include the number of endoscopies she performed, first as an assistant, then on her own. Of the total 52 cases of laparoscopic cholecystectomy performed in the Unit, she was involved in 24. Of these, she was assisting in 17 and was the first operator in 7. She was therefore involved in about 50% of the cases.

Dr Almehdi states this evidences that the anecdotal evidence placed before the investigation as to the status of female surgeons is incorrect. Dr Almehdi notes a further point that Mackay Base Hospital had only recently entered into the status of a teaching facility.

While acknowledging trainees needed to be able to practice and given time to do so with the help of supervisors, the strains and pressures placed on consultants to ensure the elective list is performed and cancellations minimised, is also indicative of the pressures placed on theatre time for young trainees.”

11.9.1 Health Quality and Complaints Commission opinion

The HQCC acknowledges the difficulty for female trainees in raising these concerns. It is essential that Queensland Health and the Royal Australasian College of Surgeons provide adequate support for trainees in general and females in particular, so that they may be able to fulfil their training without fear of prejudice or reprisal, should they need to report unacceptable behaviour by a supervisor or other senior colleague.

11.10 Other submissions

The HQCC notes the following further submission by Dr Almehdi.

Submission by Dr Almehdi

Quinlan Miller Treston Lawyers, on behalf of Dr Almehdi, submit:

“...there are other matters which have been raised in the report which may reflect poorly on Dr Almehdi and he wishes to comment.”

- ***The draft report quotes Deanne Kelly stating On 2 July he (Almehdi) wrote 'a broader spectrum of general surgical procedures was to be undertaken in the hospital by Dr K' and that he 'can start again doing abdominal procedures in the form of elective and emergency cases.'***

“Dr Almehdi notes this is a selective excerpt from the letter which goes on to say that Dr Khalafalla's introduction to surgical procedures be done in parallel with the original supervision clauses and under direct supervision and constant surveillance by the Director of Surgery.”

12. Summary of Health Quality and Complaints Commission opinion

In the HQCC's opinion:

- (a) The RACS held substantial information about the quality of surgical services provided by Dr Khalafalla, which could have alerted Mackay Base Hospital to the concerns that had been raised in relation to Dr Khalafalla's clinical performance while employed at Townsville General Hospital, Bendigo Health Care Group and Echuca Hospital.
- (b) It was reasonable for Dr Margetts to rely on the RACS support of Dr Khalafalla's ability to fulfil the requirements of the Area of Need at Mackay Base Hospital.
- (c) It seems there was an inadequate exchange of information between the RACS, the Medical Board of Queensland and Queensland Health to ensure that Dr Khalafalla's qualifications and competence were matched to the requirements of a special purpose Area of Need Deemed Specialist in surgery at Mackay Base Hospital.
- (d) The failure to ensure that crucial information about Dr Khalafalla's clinical performance history was shared between the RACS, the Medical Board of Queensland and the Mackay Base Hospital was the critical underlying systemic issue.
- (e) Although the term 'Deemed Specialist' is well defined by legislation, it is poorly understood in clinical practice by administrators, supervisors and other health professionals, especially by those who provide health services in conjunction with the IMG.
- (f) The granting of credentials to Dr Khalafalla to practice as a Deemed Specialist Surgeon at Mackay Base Hospital was not of a reasonable standard to protect the health and well being of users of surgical services at Mackay Base Hospital because:
 - The granting of formal credentials and privileges was unreasonably delayed;
 - There were unacceptable delays in reviewing credentials and privileges; and
 - Credentials and privileges were not properly communicated to Dr Khalafalla, and other hospital staff who reasonably needed to know.
- (g) The honesty and integrity of peer reporting and review in the credentialling process can be compromised without the protections of privilege.
- (h) There is no statutory obligation on supervisors to report unsatisfactory practice, unless the Medical Board of Queensland asks for the information. This carries a significant risk.
- (i) There is a risk of a conflict of interest in that in an Area of Need, the Director of Surgery may not want to lose the services of a Deemed Specialist in case the vacancy cannot be refilled.

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- (j) The RACS did not exercise sufficient diligence in:
- Supporting the grant and renewal of special purpose registration of Dr Abdalla Khalafalla as a Deemed Specialist in the Area of Need position at Mackay Base Hospital;
 - Providing supervision and oversight of Dr Khalafalla while practicing as a Deemed Specialist in an Area of Need position at Mackay Base Hospital;
 - Promptly withdrawing support for the special purpose registration of Dr Abdalla Khalafalla as a Deemed Specialist in an Area of Need position at Mackay Base Hospital.
- (k) There were significant deficiencies in the management of Dr Khalafalla's clinical competence and performance at Mackay Base Hospital, and the delay in dealing with Dr Khalafalla's performance was unreasonable.
- (l) There is a clear need for a more effective system of transferring crucial performance information between specialist colleges, medical boards and employing authorities.
- (m) The confusion as to whether or not Dr Khalafalla was appointed Acting Director of Surgery in the absence of Dr Almehti is of particular concern.
- (n) The letter dated 31 March 2006 jointly from Dr Margetts and Dr Almehti jointly replied to Dr Hillis, CEO of the RACS is misleading in that it states that:
- (i) On 2 August 2005 Dr Khalafalla initially received privileges for Surgery (general surgery, endoscopy and minor operations); and
 - (ii) The restriction in Dr Khalafalla's privileges whereby he was to perform "*Major surgery under direct supervision of a Fellow of the Royal Australasian College of Surgeons*" was decided at a Credentialling and Clinical Privileges committee meeting held in December 2005 whereas these restrictions had been decided at the meeting on 26 July 2005 and eventually communicated to Dr Khalafalla in writing on 30 August 2005.
- (o) Dr Khalafalla did perform major surgery that was beyond his credentialled scope of practice. At least some occurred after 9 November 2005, when Dr Khalafalla had been unequivocally informed of the need for direct supervision of his surgery by a member of the RACS.
- (p) The independent clinical review commissioned by the HQCC, and conducted by Dr Jon Cohen, confirmed:
- Dr Khalafalla's performance as a Staff Specialist at the Mackay Base Hospital was unsatisfactory; and
 - Dr Khalafalla "*should be placed in a surgical registrar position in a major teaching hospital for twelve months and at the end of that time he should be asked to sit the second part of the FRACS examination.*"
- (q) The quality of surgical services at Mackay Base Hospital was compromised while Dr Khalafalla was employed as a Deemed Specialist.

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- (r) The concentration and prevalence of complaints related to Dr Khalafalla's practice and the consistent complaint themes about surgical records and data are serious cause for concern.
- (s) It is apparent that whistleblowers became frustrated with inaction and had to resort to their federal Member of Parliament for support.

13. Summary of Health Quality and Complaints Commission recommendations

I. The HQCC recommends the Queensland Government:

- (a) Pursue, as a priority, an Australia-wide reporting system for tracking the performance of registered health professionals; and

Consultation with Queensland Health

“Queensland Health supports this recommendation and will pursue the matter in the context of the National Registration and Accreditation Scheme agreed by the Council of Australian Governments and being implemented by the Australian Health Ministers Conference. The Queensland Parliament lacks sufficient jurisdiction to implement this recommendation unilaterally.”

- (b) Consider the introduction of legislation (with appropriate statutory protections and safeguards) to:

- (i) Require information about unsatisfactory periods of supervision and any reduction of clinical privileges related to special purpose registrants be transferred between relevant employers, specialist colleges and all state and territory registration boards; and

Consultation with Queensland Health

“Queensland Health supports this recommendation and will pursue the matter in the context of the National Registration and Accreditation Scheme. The Queensland Parliament lacks sufficient jurisdiction to implement this recommendation unilaterally.”

- (ii) Provide the protections of privilege for health providers participating in the credentialing process in both public and private health sectors.

Consultation with Queensland Health

“Queensland Health supports this recommendation.”

II. The HQCC recommends Queensland Health:

- (a) Issue guidance to all Executive Directors and Directors to ensure that unsatisfactory periods of supervision and any reduction of clinical privileges related to special purpose registrants are promptly communicated to the Medical Board of Queensland and relevant specialist medical college;

Consultation with Queensland Health

“Queensland Health supports this recommendation and will provide appropriate guidance to all relevant staff by 15 August 2008.”

- (b) Issue guidance to all staff working with deemed specialists to improve the understanding of the term 'Deemed Specialist' and ensure those staff are aware of any restrictions on the practice of a Deemed Specialist;

Consultation with Queensland Health

"Queensland Health supports this recommendation and will provide appropriate guidance to all relevant staff by 15 August 2008."

- (c) Review their monitoring and oversight processes to ensure that internal witnesses are supported in expressing their concerns, without prejudice or reprisal; and

Consultation with Queensland Health

"Queensland Health supports this recommendation. A review will be completed by 31 October 2008."

- (d) Conduct a clinical audit of all cases of major surgery (as identified by Dr Woodruff) performed by Dr Khalafalla at Mackay Base Hospital without direct supervision by a Fellow of the RACS.

Consultation with Queensland Health

"Queensland Health supports this recommendation. Queensland Health has taken the following actions:

- *The 27 cases originally identified as requiring review are currently being audited by the Northern Area Health Service Clinical Governance Unit to ensure that appropriate follow up action has been taken.*
- *In June 2008, the Northern Area Health Service Clinical Governance Unit conducted an audit of all other identified major operations undertaken by Dr Khalafalla at Mackay, Townsville and Mount Isa. The audit found -*
 - c) *2 cases involving operations in Mackay and 3 cases involving operations in Mt Isa required review by a surgeon. These cases are being reviewed as part of the broader audit discussed below.*
 - d) *3 cases involving operations at Townsville which required review by a surgeon. These cases have been reviewed by Director of Surgery at Townsville Hospital (Dr Rossato). No issues requiring follow-up action were identified.*
- *Following receipt of the draft HQCC report, the clinical audit was extended to all procedures, whether major or minor, performed by Dr Khalafalla without direct supervision of a Fellow of the Royal Australasian College of Surgeons. The terms of reference for this clinical audit are attached. Review of the clinical files is being conducted by Northern Area Clinical Governance Unit staff led by the Medical Director of the Unit. Surgical advice will be sought on identified cases."*

- III. The HQCC recommends the RACS review their policies and procedures regarding the management of concerns and complaints pertaining to registrants under RACS oversight, to ensure that complainants are supported in expressing their concerns, without prejudice or reprisal.

14. Referral of matters by the Health Quality and Complaints Commission

Pursuant to section 87(1) of the *HQCC Act*, the HQCC will refer this investigation report to the Medical Board of Queensland and Queensland Health to investigate or take other appropriate action in relation to the conduct of registrants.

15. Acknowledgements

The HQCC wishes to make it clear that it acknowledges the important contribution that IMGs have made and continue to make to health services in Queensland. It is acknowledged that IMGs can face significant challenges adapting to Australia's culture and language, and the complexities of the health system.

Nothing in this report should be construed as diminishing the value of International Medical Graduates in the delivery of health services in Queensland.

16. Appendices

16.1 Appendix 1: Chronology of key events

1979	Dr Khalafalla obtained his primary medical qualification at Ain Shams University in Cairo, Egypt.
1980	Dr Khalafalla worked as an intern at Ain Shams University Hospitals in Cairo.
1981-82	Dr Khalafalla performed compulsory military service as a Surgical Officer at Al Helmia Military Hospital in Cairo for a further year, finishing in February 1982.
1982-85	Dr Khalafalla worked as a Registrar in General, Plastic and Reconstructive Surgery at Ain Shams Teaching Hospitals in Cairo until February 1985.
1986-96	Dr Khalafalla worked as a Registrar in Saudi Arabia in four hospitals.
1994	Dr Khalafalla became a Fellow of the Royal College of Surgeons Ireland (FRCS Ireland)
May 1994- Feb 1996	Dr Khalafalla worked as a Specialist General and Plastic Surgeon at Almana General Hospital, Alkhobar, Saudi Arabia.
Nov 1995	Dr Khalafalla approached the Medical Council of New Zealand to ascertain whether his basic medical qualification entitled him to practice medicine in New Zealand. RACS advised Dr Khalafalla that, <i>“(his) FRCS Ireland is reciprocal with the FRACS Part 1 examination (both sections). In order to present for the final examination for the Fellowship of the Royal Australasian College of Surgeons, (he) would need to obtain a position of employment in New Zealand or Australia at registrar level. From such a post (he) could apply for entry into the Advanced Surgical Training Scheme.”</i>
4 Apr 1997	Dr Khalafalla attended an interview with the RACS (NZ) panel of Surgical Specialists chaired by the Chairman of the NZ Committee of the Board in General Surgery and: <ul style="list-style-type: none"> • The panel could not assess his overall surgical exposure because his log book was only complete for one year. • The panel noted that the extent of major surgery undertaken in that time was equivalent to two to three months of an advanced surgical trainee in New Zealand. • The panel found Dr Khalafalla’s English and communication skills were excellent.

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	<ul style="list-style-type: none"> • Dr Khalafalla relied on the Medical Council of New Zealand's findings that his qualifications were equivalent and considered him likely to achieve the vocational registration after two years assessment in suitable posts. • During this time, the panel considered that Dr Khalafalla should present to the Board in General Surgery for permission to sit the FRACS Part 2 examination.
Nov 1997	The Medical Council of New Zealand advised Dr Khalafalla that he had been awarded a <i>"PASS in NZREX CLINICAL and NZREX OVERALL. You were awarded the following grades Psychiatry: B."</i>
Dec 1997 to Dec 1998	Dr Khalafalla commenced working in New Zealand as a Senior House Officer in General Surgery at Southland Hospital, Kew, Invercargill before being appointed as Registrar in General Surgery (Year 6) at the same hospital.
8 Jul 1998	Dr Khalafalla applied for admission to the Victorian/Tasmanian Combined Training Program in General Surgery.
7 Aug 1998	RACS (New Zealand) wrote to Dr Khalafalla stating that there was no reciprocity between Australia and New Zealand in relation to either medical registration or the assessment interview that Dr Khalafalla had attended with the RACS (NZ) panel of Surgical Specialists chaired by the Chairman of the NZ Committee of the Board in General Surgery on 4 April 1997
Dec 1998	Dr Khalafalla worked as a Medical Officer of Special Scale (MOSS) in the Emergency Department of Taranaki Base Hospital in New Zealand. Dr Khalafalla's resume does not give a finishing date for this position.
Sep 2000	Dr Khalafalla applied for applied for assessment by the RACS in Australia.
7 Feb 2001	Dr Khalafalla interviewed by the RACS and granted exemption for the Part 1 Basic Surgical Training Package.
Feb 2001	<p>Dr Khalafalla granted conditional registration as a Medical Practitioner in Queensland in February 2001 to fill the Area of Need position at Townsville General Hospital or any other public hospital authorised by the Medical Superintendent on a temporary basis.</p> <p>One of the conditions of registration was an interview which was conducted by Dr Andrew Johnson, Executive Director, Medical Services, Townsville General Hospital. Dr Johnson was satisfied that Dr Khalafalla <i>"possesses such qualifications that would, upon proof thereof to the satisfaction of the Medical Board, entitle him/her to be registered."</i></p>
Feb 2001 to Feb 2002	Dr Khalafalla worked as Rural Senior Registrar at Townsville General Hospital which included three monthly rotational appointments between Townsville General Hospital (under the supervision of the Director of Surgery Professor Peter Donnelly and Dr John Avramovic) and Mt Isa Base Hospital (under the supervision of Dr Ross Gallery).

	<p>RACS received the following assessment reports:</p> <ul style="list-style-type: none"> • February 2001: Professor Donnelly. <i>Overall rating 4 – above average, log book statistics 3 - satisfactory.</i> Identified deficiencies not circled ‘yes’ or ‘no.’ • 19 March 2001 -15 June 2001: Dr Gallery. <i>Overall rating 3, Log book 3 - satisfactory.</i> No identified deficiencies. • 15 June 1001 – 15 October 2001: Dr Barry Hicks. <i>Overall rating 3 satisfactory. Log book statistics not completed.</i> Identified deficiencies were noted to be “<i>Dr is from a different culture and this is evident in some relationships. Interpersonal relationships were discussed and attitudes changed and acceptable.</i>” • 15 October 2001 – 15 January 2002: Dr Gallery. <i>Overall rating 4 above average. Log book statistics 3 - satisfactory. No identified deficiencies.</i>
<p>25 Feb 2002</p>	<p>Dr Avramovic wrote to RACS raising several concerns about Dr Khalafalla’s surgical competence, citing three examples and passing on adverse comments made about Dr Khalafalla by three Surgeons. Dr Avramovic stated that his “<i>overall impression was that Dr Khalafalla should undergo a further year of supervision and assessment before an opinion as to his suitability to present for the final FRACS exam be determined.</i>”</p>
<p>Feb 2002 to Feb 2003</p>	<p>Dr Khalafalla worked as Principal Registrar of Bendigo Health Care Group acting in the capacity of junior consultant in surgery.</p> <p>The following the RACS assessment reports were submitted:-</p> <ul style="list-style-type: none"> • 2 February 2002 – 31 July 2002 (retrospective): Dr A Barling. <i>Overall rating 3+. Log Book statistics 3. Identified deficiencies were “endoscopic accreditation.”</i> These deficiencies were noted to have been discussed with Dr Khalafalla and correction was “<i>in progress.</i>” • 1 February 2002 – 31 July 2002 (retrospective): Dr Campbell. <i>Overall rating 3 satisfactory. Log Book statistics 3 satisfactory.</i> Identified deficiencies were “<i>communication with nursing staff</i>” and these were noted to have been discussed and corrected. • 31 July 2002 – 03 February 2003: Dr Campbell. <i>Overall rating between below average and satisfactory. Log book statistics satisfactory. Identified deficiencies were noted to lie in judgment, post-operative care and academic performance (i.e. knowledge of subject).</i> The deficiencies had been discussed with Dr Khalafalla but Dr Campbell was uncertain whether they had been corrected. • 31 July 2002 – 03 February 2003: Dr Barling. <i>Overall rating 2+ - 3. Log book statistics satisfactory.</i> Dr Barling noted deficiencies in clinical skills (assessment, history and examination, judgment), technical skills in surgical laparoscopy/endoscopy and considered that Dr Khalafalla was not yet ready to obtain his FRACS and would benefit from further supervised training.

<p>1 Apr 2003</p>	<p>Dr Khalafalla appointed as an Area of Need Specialist Echuca Regional Health <i>“subject to a degree of supervision and oversight being provided by the other surgeons in Echuca.”</i> Dr Khalafalla also continued to work one day a week at Bendigo Health Care Group on a regular basis under direct supervision.</p> <p>Whilst at Echuca, the following assessments were submitted to the RACS:</p> <ul style="list-style-type: none"> • 1 February 2003 – 15 May 2003 Dr Carol-Anne Moueta. <i>Satisfactory. Safe. Knows limitations. Happy to refer patients.</i> • 1 February 2003 – 1 May 2003 Dr Barling. <i>Overall rating satisfactory. Log book statistics satisfactory. Working hard at elevated level of responsibility and managing well. Has addressed issues of concern expressed on previous assessments. No identified deficiencies.</i> • 1 February 2003 – 1 May 2003 (Echuca) Dr Graeme Campbell. <i>Satisfactory. Log book statistics satisfactory. Has corrected previously identified deficiencies. Coping well with increased responsibility. Keep it up. No identified deficiencies.</i> • 1 February 2003 – 15 May 2003 Dr Graeme Campbell. <i>Satisfactory. No identified deficiencies.</i> • 1 May 2003 – 31 July 2003 Dr Graham Syme. <i>Satisfactory. No identified deficiencies.</i> • 1 May 2003 – 29 July 2003 Dr Graeme Campbell. <i>Satisfactory but raised concerns about communication and judgment in pre-operative booking of cases. Concerns to be addressed during an on-site visit in the next 4-6 weeks. To forward results of on-site assessment once completed.</i> • 1 July 2003 – 31 October 2003 Dr Graham Syme. <i>Satisfactory. No identified deficiencies.</i>
<p>Jun 2003</p>	<p>Bendigo Health Care Group raised concerns about Dr Khalafalla’s interpersonal skills with staff and hand washing. Echuca Regional Health also raised concerns which included selection of cases particularly after hours, and an increase in postoperative infections, unplanned overnight admissions, surgical day cases and Theatre cancellations following pre-anaesthetic assessment. In August 2003 particular cases were raised citing a <i>“lack of operative skill”</i> on the part of Dr Khalafalla.</p>
<p>Jul 2003</p>	<p>RACS was notified about concerns raised by Bendigo Health Care Group, and commented, <i>“This is not the first time that concerns have been raised with regards to this OTD’s performance. I feel Graeme Campbell will need to do an on-site inspection and evaluation to help resolve this issue.”</i></p>
<p>Oct 2003</p>	<p>Dr Khalafalla’s performance was assessed as unsatisfactory and the RACS supervisor called for a <i>“re-assessment of Dr Khalafalla’s status as far as RACS is concerned.”</i></p> <p>In a subsequent letter the RACS supervisor noted Dr Khalafalla’s positive reaction to the criticism and that he had shown marked improvement in his practice over a period of 20 months.</p>

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	<p>The RACS supervisor then supported Dr Khalafalla taking up a position as an Area of Need Surgeon in Sale, Victoria, commenting that <i>“I would hope that the College would support him if he can secure this position and I think that twelve months in one location with a regular on-site surgeon to provide oversight may well be enough to see him over the line as far as acceptability goes.”</i></p>
24 Nov 2003	<p>Dr Khalafalla attended an interview with the RACS. Following the interview, the RACS told Dr Khalafalla he should undertake a further 12 months of <i>“assessment under oversight.”</i> The RACS acknowledged that Dr Khalafalla had <i>“to date unsatisfactorily completed 30 months of assessment under oversight at Townsville, Bendigo and Echuca”</i> and if his performance was unsatisfactory during this 12 month period of assessment, <i>“the College will not arrange any further practice under oversight and recommend that [he] apply in open competition and if successful, undertake a period of further training in General Surgery and sit the Part II examination.”</i></p> <p>The RACS suggested a position as Area of Need General Surgeon at Bass Coast Regional Health.</p>
21 Mar 2004	<p>Latitudes Group International submitted an <i>“Application for Area of Need Certification”</i> for Mackay Base Hospital.</p>
6 Apr 2004	<p>Latitudes Group International introduced Dr Khalafalla to Mackay Base Hospital.</p> <p>Dr Margetts and Dr Farooq conducted a telephone interview with Dr Khalafalla. Dr Margetts sought references from Dr Graham Syme at Echuca Hospital and Dr Ross Gallery of Mt Isa Hospital.</p>
14 Apr 2004	<p>Dr Khalafalla accepted an offer of employment by the Mackay Base Hospital as a Staff Specialist, Department of Surgery, for a period of 12 months (with the possibility of an extension).</p>
15 Apr 2004	<p>Mackay Base Hospital requested Latitudes Group International seek Area of Need specialist registration for Dr Khalafalla’s position</p>
19 Apr 2004	<p>Dr Margetts requested RACS consider Dr Khalafalla’s suitability for the position of Staff Surgeon at Mackay Base Hospital with supervision by Dr Farooq and Dr Fitzgerald.</p>
6 May 2004	<p>RACS wrote to the Medical Board advising that the RACS supported Dr Khalafalla’s Area of Need appointment to Mackay Base Hospital and recommended that he undergo a 12 month period of assessment under oversight with the possibility of application to Fellowship under Article 21.</p>
25 May 2004	<p>Dr Khalafalla was granted special purpose registration for 12 months as a Medical Practitioner and Deemed Specialist for the Area of Need position at Mackay Base Hospital. The conditions imposed on Dr Khalafalla’s registration were those recommended by the RACS, namely that Dr Khalafalla should undertake a minimum of 12 months of assessment <i>‘under oversight’</i> in the specialty of General Surgery.</p>

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31 May 2004	Dr Khalafalla commenced employment at Mackay Base Hospital as a Senior Medical Officer in General Surgery.
3 Aug 2004	Dr Farooq raised concerns about the accuracy of an operation note made by Dr Khalafalla which indicated that Dr Farooq attended a difficult gall bladder dissection on 16 June 2004, when in fact Dr Farooq only came into the Theatre towards the end of the operation and was not scrubbed.
19 Oct 2004	Dr Khalafalla advised the RACS that his supervisor, Dr Cody Fitzgerald, was no longer practising in Mackay. Dr Khalafalla nominated other surgeons as possible supervisors.
22 Nov 2004	RACS wrote to Dr Khalafalla advising him of his responsibilities and nominating Dr Farooq and Dr Vigna-Rajah to provide oversight.
3 Dec 2004	Dr Khalafalla advised the RACS that Dr Vigna-Rajah was unable to mentor his work <i>“being offsite”</i> and suggested Dr Catherine Heathwood. The RACS expressed reservations about Dr Heathwood being only able to provide oversight at a distance given Dr Khalafalla’s previous reports. Dr Farooq expressed concerns at being solely responsible for providing Dr Khalafalla’s oversight, and the RACS nominate Dr Heathwood to provide oversight.
Dec 2004	RACS received two patient records raising concerns about the clinical performance of Dr Khalafalla.
23 Dec 2004	Dr Khalafalla’s contract of employment was extended from 31 May 2005 to 15 January 2006.
31 Dec 2004	<p>Dr Farooq completed two retrospective the RACS progress reports for Dr Khalafalla for the periods:</p> <ul style="list-style-type: none"> • 31 May to 31 August 2004; and • 1 September to 30 November 2004. <p>Both assessment reports indicated that Dr Khalafalla’s performance was satisfactory. In the May to August report, Dr Farooq stated a concern that Dr Khalafalla was too quick in performing laparoscopic and endoscopic procedures which might not be safe. However Dr Farooq subsequently noted that Dr Khalafalla had responded positively and was now performing therapeutic procedures more carefully and diagnostic procedures more thoroughly.</p>
27 Jan 2005	Dr Margetts granted Dr Khalafalla interim privileges in surgery at the Senior Medical Officer level for a period of six months.
28 Feb 2005	Dr Almehti completed the Medical Board <i>“Assessment Form for Special Purpose Registrants”</i> for the period 1 June 2004 to 28 February 2005. Dr Almehti described Dr Khalafalla’s performance as <i>“better than expected”</i> and did not list any areas requiring improvement.
1 Mar 2005	Dr Farooq resigned as Director of Surgery at Mackay Base Hospital but continued as a Visiting Medical Officer (VMO).

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	Dr Raad Almehti was appointed Director of Surgery.
20 Apr 2005	RACS wrote to the Medical Board of Queensland supporting Dr Khalafalla's ongoing specialist recognition in the Area of Need position of Staff Surgeon, General Surgery at Mackay Base Hospital for a further 12 months.
3 May 2005	A complaint was received about Dr Khalafalla's treatment of a patient who had suffered a torn bile duct. The allegation was that Dr Khalafalla was reluctant to recognise that a complication had occurred. The patient was transferred to Townsville Hospital for further treatment.
10 May 2005	Dr Khalafalla's special purpose registration as Medical Practitioner and Deemed Specialist was renewed until 27 April 2006.
22 May 2005	Dr Almehti met with Dr Khalafalla to discuss his morbidity figures and selected case studies. Dr Khalafalla was advised that he needed to pay more attention to minor details of surgery, resist the urge to rush, to discuss with the team regarding operation options, and to accept that high risk patients need broader discussion including Anaesthetics and Intensive Care Unit. They agreed to meet again in two months time.
31 May 2005	Dr Heathwood submitted her first progress report to the RACS for the period 1 December 2004 to 28 February 2005. Dr Heathwood identified problems with patient communication and log book figures. Dr Heathwood notified the RACS of concerns that had been raised within Mackay Base Hospital about Dr Khalafalla's communication with patients and colleagues, technical skills and patient management. Dr Heathwood stressed that her opportunity to supervise Dr Khalafalla had been limited. Dr Farooq declined to complete the final assessment report of the RACS for Dr Khalafalla for the period 1 March 2005 to 31 May 2005.
7 Jul 2005	There was a dispute in the operating rooms between Dr Khalafalla and a surgical PHO about treatment of a patient which resulted in the PHO being told by Dr Khalafalla to unscrub and leave the surgery. Dr Khalafalla informed Dr Sachdev, Acting Executive Director Medical Services, and the Director of Surgery that he was unhappy to be questioned by a junior doctor during surgery. Dr Khalafalla was counselled about appropriate and professional behaviour. Dr Khalafalla apologised to the PHO.
7 Jul 2005	Dr Margetts commences Secondment until 23 September 2005.
12 Jul 2005	Dr Sachdev, Acting Director Medical Services, extended Dr Khalafalla's interim privileges (granted on 27 January 2005) for a further three months.
19 Jul 2005	RACS advised Dr Khalafalla of Dr Farooq's resignation as his supervisor

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	and further advised Dr Khalafalla that the RACS required a progress report from Dr Heathwood for the period 28 February 2005 to 30 May 2005, a report from the current Director of Surgery and a log book summary for the period 1 December 2004 to 30 May 2005 so that the RACS could assess and make a recommendation in relation to his 12 month period of oversight assessment.
26 Jul 2005	Dr Khalafalla formally granted credentials and privileges in surgery (general, minor operations, endoscopy) be <i>“recommended for approval with the condition that major procedures be done following consultation and under the supervision of Dr Almehti.”</i>
2 Aug 2005	Dr Sachdev and Mr Peter Sladden, Acting District Manager, wrote to Dr Khalafalla advising of the decision of the credentialling meeting on 26 July 2005. The letter incorrectly advised that Dr Khalafalla had been granted privileges in <i>“Surgery (general surgery, endoscopy and minor ops).”</i> The condition about major procedures being done under supervision was omitted.
5 Aug 2005	Dr Almehti completed an assessment report for the RACS for the period 1 December 2004 to 31 May 2005 indicating that Dr Khalafalla’s progress was satisfactory. Dr Almehti noted that Dr Khalafalla had participated candidly in monthly surgical audit meetings.
9 – 11 Aug 2005	Dr Almehti was on leave and Dr Khalafalla claims he was appointed Acting Director of Surgery. Dr Almehti refutes this. While Dr Almehti was away, Dr Khalafalla performed general surgery without supervision. Dr Farooq and the Elective Surgery Coordinator raised concerns with the District Executive about Dr Khalafalla performing complex surgery without supervision, contrary to the condition placed on him by the hospital’s Credentialling Committee.
18 Aug 2005	Further concerns about Dr Khalafalla were raised. Dr Sachdev wrote to Dr Khalafalla stating <i>“you will recall that you have been credentialled to perform major surgery under supervision. To this end, can you please make sure that you do not put any major case on your elective lists when Dr Almehti is on leave and there is no other Fellow of the RACS available to supervise.”</i>
20 Aug 2005	Dr Pyke, Chairman of the Queensland Regional Board of General Surgery of the RACS requested the RACS Board review Dr Khalafalla’s because <i>“his operative ability and case selection is sub-standard to the point where the credentialling committee has become involved and limited his options in relation to unsupervised work.”</i> Dr Pyke also referred to allegations about retrospective falsification of operative notes to indicate the presence of Dr Khalafalla’s supervisors when they were not present. Dr Pyke suggested that the RACS Board would need to <i>“reassess his oversight status to downgrade it and suggested that Dr Khalafalla apply for SST with a shortened period of training.”</i>
23 Aug 2005	RACS decided to <i>“place things on hold until documentary evidence from Dr Pyke is forwarded in relation to new developments. We would then</i>

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	<i>need to re-assess and discuss at [Board in General Surgery].”</i>
25 Aug 2005	Dr Margetts raised the concerns about Dr Khalafalla with the Director of Surgery, Dr Almehti and the Acting Executive Director Medical Services (Dr Sachdev), and Acting District Manager (Mr Sladden). Dr Margetts recommended the RACS be involved.
29 Aug 2005	Dr Khalafalla was granted re-registration by the Medical Board of Queensland for a further period from 10 May 2005 to 27 April 2006 with the condition that he must undertake a minimum of 12 months assessment under oversight in the speciality of General Surgery.
30 Aug 2005	Dr Sachdev and Mr Sladden wrote to Dr Khalafalla attaching a <i>“slightly amended credentialling letter”</i> and apologised for <i>“omitting some details in the initial letter.”</i> The amended credentialling letter stated that Dr Khalafalla had been granted privileges in surgery (general surgery, endoscopy and minor operations) with the special conditions <i>“Major surgery to be performed under <u>direct</u> supervision of a Fellow of the Royal Australasian College of Surgeons.”</i>
Sep 2005	Dr Sachdev requested a check of the hospital database for complications from major surgery where Dr Khalafalla was the primary Surgeon. Dr Sachdev noted at the time that there were ongoing concerns about Dr Khalafalla’s emotional outbursts. The database search was restricted to the complication of postoperative haemorrhage and 26 patient files were sent to Dr John Hack for review.
23 Sep 2005	Dr Margetts returns from Secondment commenced 7 July 2005.
26 Sep 2005	Dr Chris Pyke and a ‘re-inspection team’ visited Mackay Base Hospital to reassess the surgical training program. Dr Pyke discussed with Dr Almehti <i>“some aspects to do with the College’s role in the oversight of Dr Khalafalla.”</i> Dr Pyke also had a discussion with Dr Margetts. It appears that as Dr Khalafalla was away, it was decided that it was not appropriate to discuss him in his absence.
7 Oct 2005	Dr Pyke wrote to the RACS in Melbourne stating that it had come to his attention that the hospital Credentialling Committee had placed restrictions on Dr Khalafalla’s freedom to work unsupervised and that <i>“confidential communication from sources at Mackay Base Hospital and the wider North Queensland surgical fraternity suggested that Dr Khalafalla may be working outside of the restrictions placed on him.”</i>
22 Oct 2005	RACS convened its Board in General Surgery meeting. It was noted that the Mackay Base Hospital had taken away Dr Khalafalla’s right to operate unsupervised and this was the fourth time Dr Khalafalla had been given 12 months oversight and failed. It was decided to refer the matter back to the IMG department for reassessment with a recommendation that the Area of Need assessment had been unsatisfactory.
1 Nov 2005	A confidential witness emailed Dr Pyke making a formal complaint about the care/services provided by Dr Khalafalla and referred specifically to

	alleged falsification of records.
3 Nov 2005	<p>Dr Hack noted in a draft report that he had reviewed 24 of the 26 patient files. Dr Hack stated that he understood these 26 files involved postoperative haemorrhage and that Dr Khalafalla had performed over 500 procedures in 14 months.</p> <p>Dr Hack discussed six particular cases. In short, Dr Hack said he had a sense of unease about the cases he had reviewed and felt that cumulatively the cases implied a potentially dangerous technique and, in particular, a failure to take the time to check for bleeding before finishing the surgery. Dr Hack said in two of the cases he had reviewed, the patients could have easily died had corrective action not been taken.</p> <p>Dr Hack recommended Dr Khalafalla's work practices, particularly surgical technique, be presented to the RACS for review. Dr Hack stated, <i>"I understand his work load has been limited to avoid more complex operations and this limitation should remain until RACS has reviewed his practice. It may be that he is not suited to abdominal surgery and his workload should be adjusted accordingly."</i></p>
4 Nov 2005	<p>Dr Weich, Director of Medicine and Intensive Care Unit, at Mackay Base Hospital brought four additional cases to the attention of Dr Margetts. These patient files were also forwarded to Dr Hack for review.</p> <p>Dr Almehdi verbally advised Dr Khalafalla that his scope of practice was further restricted in that, <i>"No elective abdominal surgery is to be performed. Emergency abdominal surgery is to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts."</i></p> <p>The RACS recommended that Dr Khalafalla should present for interview to determine whether Dr Khalafalla:</p> <ul style="list-style-type: none"> • Needed more formal training; or • Would be eligible for vocational registration in the speciality of general surgery following a maximum of two years of assessment, practice under oversight; and • Should present for the Part II examination in the specialty of general surgery. <p>The RACS noted Dr Khalafalla's age and the period of time which had elapsed since completion of his surgical training.</p>
9 Nov 2005	<p>Dr Margetts received Dr Hack's final report. Dr Margetts wrote to Dr Khalafalla advising that further restrictions had been imposed on his operating privileges including:</p> <ul style="list-style-type: none"> • <i>No elective abdominal surgery was to be performed; and</i> • <i>Emergency abdominal surgery was to be performed only after consultation with Dr Almehdi or Dr Farooq or Dr Margetts, until further notice.</i>
29 Nov 2005	<p>Dr Margetts forwarded Dr Hack's report to Dr Pyke and advised that Dr Khalafalla's privileges had been further restricted to exclude elective</p>

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	abdominal surgery pending review by the RACS. Dr Margetts also gave Dr Pyke a copy of Dr Khalafalla's response to Dr Hack's report.
14 Dec 2005	Dr Pyke provided copies of Dr Hack's report to the IMG Department of the RACS. Dr Pyke wrote to Drs Margetts and Almehti congratulating them both on the <i>"thorough, timely and ethical manner"</i> in which Mackay Base Hospital had undertaken the audit by Dr Hack.
5 Jan 2006	Dr Margetts had not received a reply from the RACS and he telephoned Dr Pyke. Dr Pyke said that he did not really see himself as being responsible for this issue but took the time to speak to the hospital. The minutes of that call noted the issues that were discussed and that Dr Pyke was to <i>"chase up timing of re-assessment of oversight status by the College."</i> The minutes suggest there were concerns that the RACS may need to change the degree of supervision from oversight assessment.
11 Jan 2006	Mackay Base Hospital extended Dr Khalafalla's employment contract from 15 January 2006 to 16 July 2006.
9 Feb 2006	<p>Dr Khalafalla attended an interview by the RACS in Melbourne. The RACS panel expressed concerns about Dr Khalafalla's lack of reflection, insight or acceptance that his performance was poor. The panel noted that Dr Khalafalla's log books and experience demonstrated that his scope of practice was limited and that his capacity to manage common general surgical problems was not at a level comparable to ANZCS.</p> <p>In summary, the RACS needed to have full access to the current review, but the preliminary judgment was that Dr Khalafalla was not of the standard required for approval as an independently practising Surgeon and the Area of Need position at Mackay Base Hospital was not suitable given the level of supervision required. The panel considered that Dr Khalafalla may be able to reach an improved standard but this would require a minimum of 12 months supervision at registrar level at a major metropolitan hospital. Further, Dr Khalafalla would only be granted permission to sit the Fellowship examinations if his practice standard was satisfactory.</p>
10 Feb 2006	Dr Almehti provided a positive assessment of Dr Khalafalla for the Medical Board for the period 27 April 2005 to 10 February 2006 noting that Dr Khalafalla's performance was consistent with or better than expected and <i>"Good results noted in areas of plastic and breast surgery."</i>
14 Feb 2006	The RACS Dean of Education, John Collins noted that Dr Khalafalla obtained the FRCSI (pre-intercollegiate status) after completing a variable array of surgical posts. Mr Collins noted that limitations had been placed on Dr Khalafalla's practice by the Mackay Base Hospital and that he was no longer able to undertake major surgery unless a supervising Surgeon was present. Mr Collins therefore assessed Dr Khalafalla as no longer appropriate for an Area of Need position.
22 Feb 2006	'Application for Area of Need Certification' was received by the Area of Need Team at the Medical Board requesting registration from 28 April

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	2006 to 27 April 2007. In the application, Dr Almehdi certified that Dr Khalafalla was able to fulfil the requirements of the attached position description for Senior Medical Officer.
15 Mar 2006	Dr Hillis, CEO of the RACS wrote to Dr Margetts and advised that the RACS panel had been unable to reach a final decision as they did not have enough information as to the reasons why Dr Khalafalla's privileges had been reduced. Dr Hillis sought details of the concerns that had given rise to "the original investigation," the current status of Dr Khalafalla's employment and whether Dr Khalafalla could fulfil his obligations in the Area of Need position.
31 Mar 2006	Dr Margetts and Dr Almehdi jointly replied to Dr Hillis. Dr Almehdi and Dr Margetts proposed that Dr Khalafalla's privileges be progressively reinstated and this was to be discussed at the forthcoming Clinical Privileges Meeting on 6 April 2006. The RACS was invited to submit any correspondence or comment for consideration at that meeting.
21 Apr 2006	Mackay Base Hospital wrote to the Medical Board of Queensland endorsing Dr Khalafalla's application for renewal of his special purpose registration saying " <i>Regular assessments indicate that Dr Khalafalla is hard working, reliable and displays sound clinical judgment and we are eager for him to continue working with us.</i> "
23 Apr 2006	Dr Hillis, CEO of the RACS, wrote to Dr Margetts advising that the RACS had supported Dr Khalafalla's continuation in the Area of Need position " <i>however, we have been waiting the outcome of the government's review before making our final recommendation.</i> " The letter stated, " <i>In order to assist us in making our recommendation, could you please provide elaboration on the nature of the interpersonal skills, how they were a 'key' contributing factor and how they affected Dr Khalafalla's operational skills?</i> "
24 Apr 2006	RACS advised the Medical Board of Queensland that the RACS had interviewed Dr Khalafalla and " <i>reviewed the position of Staff Specialist General Surgeon at Mackay Base Hospital</i> " and referred to concerns that had been raised about his clinical practice. Pending further information about those concerns, the RACS was prepared to support Dr Khalafalla's continued occupation of the position " <i>with limited scope</i> " until the decision about his reassessment had been resolved. This was the first indication that the Medical Board of Queensland received of any concerns about Dr Khalafalla's practice resulting in reduction of clinical privileges.
23 May 2006	The Medical Board of Queensland Registration Advisory Committee met to discuss Dr Khalafalla and recommended that: <ol style="list-style-type: none"> 1. Dr Khalafalla be issued with a Show Cause Notice imposing a condition as per email (to be updated following further advice from the College) and that he must provide copies of any reports of assessments undertaken by the College. 2. Mackay Base Hospital and the RACS be asked to explain why they failed to notify Medical Board of Queensland when concerns were

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	<p>raised about Dr Khalafalla in February 2006.</p> <p>The Show Cause Notice was never issued and the Medical Board of Queensland did not correspond with the Mackay Base Hospital.</p>
30 May 2006	<p>RACS informed the Medical Board of Queensland that it had been advised by Mackay Base Hospital that Dr Khalafalla's privileges had been reduced as follows:</p> <ul style="list-style-type: none"> • Major surgery is to be performed under <u>direct</u> supervision of a Fellow of the RACS; and • Exclusion from performing elective abdominal surgery. <p>This did not mention that Dr Khalafalla had been granted privileges to perform <i>"emergency abdominal surgery only after consultation with Dr Almehti or Dr Farooq or Dr Margetts."</i></p>
7 Jun 2006	<p>RACS wrote to Dr Margetts and advised that if Dr Khalafalla was excluded from major surgery and elective abdominal surgery, then oversight assessment was unable to continue and the College would need to reassess Dr Khalafalla's status with respect to further training. Before making its final decision, the RACS asked Dr Margetts to explain how Dr Khalafalla's interpersonal skills affected his operational skills.</p>
21 Jun 2006	<p>Patient complaint received about deep vein thrombosis following varicose veins surgery complicated by bleeding. The relevant surgery by Dr Khalafalla involved an alleged altercation with Anaesthetic staff in Theatre.</p>
25 Jun 2006	<p>Dr Farooq advised the RACS that he no longer wished to be involved in any discussions concerning Dr Khalafalla's scope of practice and gave the reason that he had a conflict of interest.</p>
27 Jun 2006	<p>Credentiaing Committee meeting held at Mackay Base Hospital but Dr Almehti and Dr Farooq were not present. Discussion of Dr Khalafalla's privileges was deferred.</p> <p>Dr Hack agreed to be the RACS representative at the Mackay Base Hospital Credentiaing Committee meeting, but he was on leave from 28 June 2006 to 4 August 2006. RACS notified the Medical Board of Queensland of this.</p>
29 Jun 2006	<p>Dr Khalafalla's contract was extended from 17 July 2006 to 25 August 2006 pending advertising for Area of Need Certification and in line with the expiry of his registration.</p>
2 Jul 2006	<p>Dr Almehti wrote to Dr Margetts expressing frustration about the situation and proposing that Dr Khalafalla's privileges be fully restored and that Dr Khalafalla operate as a Staff Specialist under direct supervision and constant surveillance by the Director of Surgery.</p> <p>Dr Khalafalla's operating privileges would include elective and emergency abdominal surgery, but would be under strict scrutiny and there would be</p>

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	a <i>“low threshold to have patients transferred to another facility for definitive management”</i> if time and the patient’s condition allowed it.
14 Jul 2006	Dr Margetts wrote to the RACS asking to <i>“meet with the key players face to face”</i> to discuss the progress of Dr Khalafalla’s review and <i>“the steps we need to take to resolve outstanding issues.”</i>
19 Jul 2006	Dr Margetts wrote to the RACS confirming that the current restrictions on Dr Khalafalla’s operating privileges would remain in place. The RACS wrote to Dr Almehti reminding him that Dr Hack had raised serious concerns with Mackay Base Hospital about Dr Khalafalla’s competence and it would therefore be unwise to alter Dr Khalafalla’s restrictions. The letter further stated that the process of review was being undertaken by the RACS.
1 Aug 2006	The Medical Board of Queensland Registration Advisory Committee recommended that the Medical Board of Queensland write to Mackay Base Hospital seeking an explanation as to why the Medical Board of Queensland had not been informed of the restrictions on Dr Khalafalla’s scope of practice. The Committee resolved to defer further consideration until further advice was provided by Mr Jim O’Dempsey, Executive Officer to Dr Cohn, Medical Board of Queensland Chair.
4 Aug 2006	The RACS decided that Dr Khalafalla needed a minimum of 12 months supervision at Registrar level at a major metropolitan hospital and if his practice was satisfactory, he might be permitted to sit the College Fellowship examination. The RACS advised Dr Khalafalla that neither the Area of Need position at Mackay Base Hospital nor any other Area of Need position in Australia were appropriate positions for him to occupy.
7 Aug 2006	The Medical Board of Queensland met.
9 Aug 2006	The Federal Member for Dawson, Mrs De-Anne Kelly MP, alleged in the Commonwealth House of Representatives that Dr Khalafalla operating outside the scope of his clinical practice.
10 Aug 2006	RACS notified Dr Khalafalla of their decision. The allegations made by Mrs Kelly were published in the media
14 Aug 2006	The Medical Board of Queensland made a resolution outside the ordinary meeting schedule to refuse Dr Khalafalla’s application for renewal of his special purpose registration as the Medical Board of Queensland was no longer satisfied that Dr Khalafalla was eligible for registration in the previously approved activity in terms of his qualifications and experience, having regard particularly to the advice from the RACS that it no longer considered that position appropriate for Dr Khalafalla.
15 Aug 2006	The Medical Board of Queensland advised Dr Khalafalla that his application for renewal of his special purpose registration to fill an Area of

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	Need as a Deemed Specialist in General Surgery for Mackay Health Service District was refused because the RACS did not consider Dr Khalafalla suitable for the position.
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