

TRANSCRIPT OF PROCEEDINGS

INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM

BOARD: THE HONOURABLE JENNIFER COATE AO

DAY 2

2.00 PM, WEDNESDAY, 5 AUGUST 2020

MELBOURNE, VICTORIA

MR A. NEAL QC appears with MS R. ELLYARD, MR B. IHLE, MR S. BRNOVIC and MS J. MOIR as counsel assisting the Board of Inquiry

CHAIR: Good afternoon, Mr Neal.

5 This extraordinary sitting has been called on to address the impact of the State of Disaster declared for Victoria on Sunday and the Stage 4 restrictions delineated yesterday that have and will impact upon a multitude of workplaces across the State.

10 This Inquiry into the Hotel Quarantine Program is one such workplace and it too has been required to consider how it should conduct itself to ensure the safety of all members of the Inquiry team, members of support staff providing technical services, and indeed staff in the building in which we have set up our hearing room.

My first consideration has been the safety of all of those who we have working with us and supporting us as this virus continues to spread through our community.

15 On July 20, when Counsel Assisting set out the Terms of Reference and I made my opening remarks, metropolitan Melbourne had been put into lockdown under Stage 3 restrictions.

20 To adhere to those restrictions, and consistent with the way a number of courts and tribunals had been running, I had only those staff necessary to assist me with the running of the Inquiry in the hearing room physically present with me on that day. That hearing before you was conducted using all of the safety protocols and directions then in place for Stage 3.

25 I endeavoured to make clear then, and I repeat now, I am acutely aware, as are those assisting me, of the community's need to understand what has happened in the Hotel Quarantine Program and the ramifications of it for all of us.

30 Up until a declaration of the State of Disaster and consequent Stage 4 restrictions for workplaces announced yesterday, as you know, we were ready to proceed with the first three medical and scientific witnesses tomorrow. All of the preparations for tomorrow were planned around having me, Counsel Assisting, and the necessary Inquiry and technical staff physically present in this hearing room to assist with the management of the hearing and of those witnesses. All witnesses and legal
35 representatives were to appear remotely.

40 Unlike a number of courts and tribunals operating virtual hearing rooms, this Inquiry is, and will be, a very document-intensive process with live-streaming and running transcript and multiple parties. For this reason we had planned to operate our hearing room with those necessary staff physically present and Counsel Assisting physically present.

45 In the wake of the State of Disaster and the Stage 4 workplace restrictions announced yesterday and operational at midnight tonight, and in consultation with Counsel Assisting and the senior staff to the Inquiry yesterday, I came to the view that I cannot prioritise proceeding tomorrow in the way intended over the safety of the staff and Counsel who would necessarily have to be physically present in our current

structure.

5 Whilst this Board is neither a court nor a tribunal, I understand that in the wake of the State of Disaster being declared, and the Stage 4 restrictions being activated at midnight tonight, most courts are proposing now to transition almost entirely, if not entirely, into virtual hearing rooms consistent with the Stage 4 restrictions. It is my view that we must now do so too.

10 Our advice from the technical support to the Inquiry is that this can be done. However, that transition involves considerable technological work to be adjusted and familiarisation with how each of us will be required to operate that technology remotely. This cannot be achieved satisfactorily by 10.00 am tomorrow.

15 For this reason, we have rearranged for the three witnesses from whom we were due to hear tomorrow, Professor Grayson, Professor Howden and Dr Alpren, to now be before the Inquiry on 17 and 18 August.

20 From that time, we will conduct the remainder of the public hearings of the Inquiry in a completely remote virtual hearing room so as to: keep everyone safe; comply with Stage 4 restrictions as we understand them; and most critically, not be responsible for exposing any of our workforce, support staff or those working in this building to the risks of this highly infectious and dangerous virus that continues to spread daily through our community.

25 I have one aim only in this Inquiry: to conduct it with the forensic rigour and completeness that is expected of me and that is rightly deserved by the people of Victoria.

30 This brings me to the second part of what I want to tell you today.

In addition to the impact on when and how witnesses will be called at public hearings, the increasing imposition of restrictions since I was appointed on 2 July has had a considerable impact on the Inquiry more generally.

35 When I was appointed to this Inquiry on 2 July, Victoria was under Stage 2 restrictions. By the time this Inquiry opened, metropolitan Melbourne was in Stage 3 restrictions and had been so for two weeks leading up to that day.

40 Those restrictions meant that our staff have been almost entirely working remotely using online document management platforms from their homes.

45 You will recall that on 20 July we indicated that a number of private and public entities had been issued with Notices to Produce documents within their possession and relevant to the Terms of Reference of the Hotel Quarantine Inquiry.

This is a power available to the Inquiry to compel documents from entities and agencies that are the focus of the Inquiry to ensure, after proper examination and

analysis of those documents, witnesses can be examined with the forensic rigour expected of the Board's work.

5 It was expected that a large number of documents would become available on 24 July and then further documents by 31 July. Given the tight timeframes within which the Inquiry is working, it was emphasised that compliance was critical to the Inquiry's work.

10 Unfortunately, and I accept that this is due to the complexities of many other workplaces working remotely, and under the strains of responding indeed themselves to the immediate pandemic demands, large numbers of documents were not received within the requested timeframes. Further, in a significant number of cases, documents have been received subject to broad claims for confidentiality which will need to be assessed before the Inquiry can make use of those documents for the
15 purposes of the public examination of witnesses.

The Inquiry has now received over 106,000 pages of documents from Government Departments and private entities. As at Sunday 2 August, 87,000 pages of documents had been uploaded onto our document management system and a further
20 19,000 pages of documents were still being uploaded. Despite requests by the Inquiry legal team and detailed protocols about how categories of documents were to be electronically provided, there has been a variance in compliance amongst Departments and entities with how this has been done.

25 This, too, has created considerable extra work and complexity for the Inquiry's document management team. Each member of that team, of course, is also working remotely.

30 This situation caused the members of Counsel Assisting me to express considerable concern to me on Sunday 2 August, as to whether it would be possible in these circumstances to conduct the public hearing, with the necessary, thorough forensic examination of witnesses in the timeframe that was set for the report to the Governor.

35 The declaration of the State of Disaster on Sunday and the move to Stage 4 restrictions has only compounded that situation.

This Inquiry, of such magnitude and importance, must not suffer from being rushed through a less than thorough process.

40 For all of these reasons, I wrote to the Premier on Monday 3 August, requesting a six-week extension to the return of the report for this Inquiry. I have now been advised that extension has been granted this day.

45 As I have said, I am acutely aware, as are those assisting me, of the community's need to have a thorough understanding of what has happened in the Hotel Quarantine Program and the ramifications.

I acknowledge this extra time for reporting will cause frustration and distress to many. This brings me to the question of whether those who are being asked questions publicly about matters are constrained by the existence of this Inquiry from answering any questions or making any comments about what they knew or what they did with respect to matters within the Terms of Reference of this Inquiry.

This Board of Inquiry is not a court. Under law, unlike a court, there is no general restriction or prohibition which would prevent a person from commenting publicly or answering questions to which they know the answers on matters which are the subject of examination by this Board of Inquiry.

In seeking this necessary extension of six weeks to complete our work, there is some comfort at least in understanding that there are currently no international arrivals into Victoria and that the Hotel Quarantine Program, as it relates to that cohort of persons, is accordingly in abeyance in this State. I also understand, to the extent that there are any people in quarantine in Victoria, that process is substantially different to and under different Departmental management than the Hotel Quarantine Program into which I am inquiring.

I wanted to appear before you today to tell you what is happening to your Inquiry. I want you to be assured that it is my intention, and the intention of those assisting me, to examine every aspect of what has happened within our Terms of Reference. Whilst starting with an examination of the medical and scientific evidence on 17 August, the Inquiry will move to examine: how and why and by whom decisions were made; when those decisions were made to set up the program in the way in which it was structured; what level of planning preceded the establishment of the program; how it was proposed to operate, including its oversight, administration and coordination; what actually happened on the ground, in the hotels where the program was operating; who understood what and when about problems in the program structure and operation; and what actions were taken to address those problems when and how they were being identified.

It is anticipated that witnesses from private entities through to the most senior levels of Government will be examined publicly in this Inquiry. If relevant Ministers are the source of information needed by the Inquiry, then they will be requested to appear.

As I said, I am determined in this Inquiry to conduct it with the forensic rigour and completeness that is expected of me and that is the only outcome that you should expect.

I adjourn now to 17 August for the first three witnesses to commence.

THE HEARING ADJOURNED UNTIL 17 AUGUST 2020