

TRANSCRIPT OF PROCEEDINGS

INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM

BOARD: THE HONOURABLE JENNIFER COATE AO

DAY 27

2.00 PM, TUESDAY, 20 OCTOBER 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: Yes, Mr Neal, good afternoon.

MR NEAL QC: Good afternoon, Madam Chair. May I commence?

5 CHAIR: Yes, please proceed.

MR NEAL QC: Madam Chair, the purpose of today's extraordinary hearing is to both update and clarify the progress of the Inquiry's work since the close of the public hearing on 28 September and to have the Board consider the consequences of what has occurred since that day.

You will recall, Madam Chair, on 28 September the Board heard closing submissions by Counsel Assisting. The directions you made at that time allowed other parties with leave to appear to make written submissions seven days thereafter. Submissions were in fact received by 15 parties by 5 October. Since that date, there have been two discrete developments which bear upon the work of the Inquiry and its progress towards its reporting date of 6 November. The first development relates to the state of the evidence as at 28 September 2020, regarding the engagement of private security to guard those in quarantine. It will be recalled that the former Chief Commissioner of Police, Mr Ashton, had given evidence that he had sent text messages to his Federal Counterpart, Commissioner Kershaw, at 1.22 pm on 27 March, to the effect that he had advised that private security would be used and, some 10 minutes later, a further text to Commissioner Kershaw that he thought "the deal was set up by our DPC".

Mr Ashton's further evidence was that earlier that day, at 1.16 pm, he had sent a text message to Mr Eccles, the then Secretary of the DPC, querying a suggestion that airport arrivals were to be guarded by police and seeking Mr Eccles' comment. Mr Ashton's evidence was that he didn't receive a text reply to that message and could not recall whether Mr Eccles or some other person telephoned him with the information regarding the use of private security that he had passed on to Commissioner Kershaw.

In the wake of submissions received by some of the parties, further information was sought and obtained. As has now been well understood, a response was received particularly from the Department of Premier and Cabinet which included details of phone records from Mr Eccles. Mr Eccles' telephone records show indeed he telephoned Mr Ashton at 1.17 pm on 27 March in a call that lasted 135 seconds. Having obtained this further information, the Inquiry team requested certain parties to provide further answers on affidavit to questions directed to the issue of the decision to engage private security contractors in the Hotel Quarantine Program and to provide further documents relating to that issue.

Madam Chair, it should be emphasised at this point that the relevant parties who are being asked to address such questions are being asked to address novel material not the subject of previous evidence. There is accordingly no basis for inferring or even speculating that any view has been formed about the veracity or otherwise of the

evidence previously given previously by any parties on the topic of the engagement of private security. The material outstanding on this issue falls due variously from today's date up until 23 October.

5 The second development to which I referred concerns emails which have not
previously been produced to the Board. On 15 October, in response to a specific
request from the Board, solicitors acting for the Department of Health and Human
Services provided two emails. These documents had not been previously produced
10 to the Board, despite there being served on the Department notices to produce
encompassing the breadth of the Board's Terms of Reference. In the urgency of the
moment, Solicitors Assisting you took the expedient course of issuing yet a further
Notice to Produce, after which time the documents in question were produced.

In the first instance, what has been produced is two emails which relate to two
15 discrete issues. The first email concerns or constitutes a six-page chain commencing
on Monday, 30 March 2020 at 5.23 pm and ending on Thursday, 2 July at 8.14 pm.
This chain of emails concerns a discussion between numerous officials of the
Department of Health and Human Services and starts in the first instance as a
20 conversation concerning what smoking policies should be adopted for those in
detention under Operation Soteria. Most significantly, the penultimate email in this
chain is from Dr Finn Romanes, the then Deputy Health Commander - Planning and
is dated 1 April. It is addressed to a large number of DHHS officials. The subject
heading of Dr Romanes' email is "Information: Chain of command --- people in
25 detention". In its covering letter producing this and the next email to which I will
shortly refer, DHHS' solicitors advised:

*In the context of a review of up to 500,000 documents, the enclosed documents
were not considered relevant to a Notice to Produce and not critical as defined
30 by the Board. We also note the considerably tight time frames of this Inquiry.*

In the view of those assisting you, Madam Chair, this document on its face goes to
35 matters which occupied a very considerable amount of the Board's time and you may
consider it adds some weight in one direction or another to your deliberations as to
who was in charge of the detention regime.

For that reason, Madam Chair, I now tender that email, being a six-page email chain,
commencing with an email dated 30 March 2020 at 5.23 pm from the Deputy
40 Director - Strategy and Policy at DHHS and ending with an email from State
Controller - Health, dated Thursday, 2 July 2020 at 8.14 pm.

CHAIR: I will mark that email chain as Exhibit 229, Mr Neal. Thank you.

45 **EXHIBIT #229 - SIX-PAGE EMAIL CHAIN, DATED 30 MARCH 2020 TO 2
JULY 2020**

MR NEAL QC: Madam Chair, a second email was also produced in response to the transaction I have just mentioned. That document consists of a four-page email chain commencing on 27 March 2020 at 5.22 pm and finishing on Friday, 27 March 2020 at 6.46 pm.

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The contents of this email chain concern a query from a Commonwealth official directed to the Chief Health Officer, raising a number of questions concerning arrangements in place in Victoria to implement the decision of National Cabinet to require overseas arrivals to self-isolate in hotels for 14 days.

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One of the seven questions was: what security arrangements were in place to ensure compliance with quarantine arrangements? The penultimate email in the chain is from Mr Braedan Hogan, Deputy Director - Strategy and Policy at DHHS. In this penultimate email, he advises the Commonwealth officials, amongst other things, that:

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Private security has been contracted to provide security of the hotels, with escalation arrangements to VicPol as needed.

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Professor Sutton is included in copy to this penultimate email and himself by separate email acknowledges its receipt with the words, "Thanks so much, Braedan."

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On its face, this email has relevance to the time at which Professor Sutton had knowledge of the use of private security within the hotel program. His evidence before the Inquiry was that he was unaware of it until media reports concerning the outbreak of the Rydges Hotel in May of this year came to his attention.

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For that reason, Madam Chair, I also tender that email chain, being four pages, commencing with an email from the senior director of the Commonwealth COVID Task Force to Professor Sutton, dated 27 March at 17.22 and concluding with an email from Professor Sutton at 6.46 pm on that same date.

CHAIR: Exhibit 230.

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EXHIBIT #230 - FOUR-PAGE EMAIL CHAIN, DATED 27 MARCH 2020

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MR NEAL QC: Thank you, Madam Chair.

Madam Chair, as a result of receiving those two emails in particular, those assisting you are in the process of seeking a response in the form of an affidavit from Professor Sutton to specific questions posed by the Board and focusing on those emails.

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According to the statutory requirements, that response will be due some seven days after it is served. It is expected that that will occur shortly.

Madam Chair, an explanation was sought as to the non-production of those two emails, in the form of a written request to the solicitors acting for DHHS. That response in the form of a letter, dated 19 October, arrived yesterday and I consider it should also be formally tendered to you. For the sake of clarity then, Madam Chair, I tender firstly a two-page letter dated 16 October 2020 from Solicitors Assisting to the solicitors for DHHS.

CHAIR: Exhibit 231.

EXHIBIT #231 - LETTER DATED 16 OCTOBER 2020 FROM SOLICITORS ASSISTING TO SOLICITORS FOR DHHS

MR NEAL QC: An eight-page letter dated 19 October 2020 from the solicitors for DHHS to Solicitors Assisting.

CHAIR: Exhibit 232.

EXHIBIT #232 - LETTER DATED 19 OCTOBER 2020 FROM SOLICITORS FOR DHHS TO SOLICITORS ASSISTING

MR NEAL QC: Madam Chair, that letter from the solicitors for DHHS itself encloses two further emails which, for the sake of completeness, I also wish to tender. The first of those is a seven-page email chain commencing with an email from the Deputy Director - Strategy and Policy at DHHS, dated Monday, 30 March 2020 at 5.23 pm and concluding with an email from the same person, dated 1 April 2020 at 20.07.

CHAIR: Exhibit 233.

EXHIBIT #233 - SEVEN-PAGE EMAIL CHAIN DATED 30 MARCH 2020 TO 1 APRIL 2020

MR NEAL QC: The second, a six-page email chain commencing with an email from the Deputy Director - Strategy and Policy of DHHS, dated Monday, 30 March 2020 at 5.23 pm and concluding with an email from Dr Finn Romanes at 1950 on the same date.

CHAIR: Exhibit 234.

EXHIBIT #234 - SIX-PAGE EMAIL CHAIN, DATED 30 MARCH 2020

5 MR NEAL QC: Thank you, Madam Chair. Lastly, Madam Chair, I note that the
letter from the solicitors for DHHS of 19 October also adverts at page 6 to "two other
emails" in their possession. The Board yesterday also requested production of these
two emails. The Board has received, and I tender now, those two emails. Firstly, a
two-page email exchange headed "Governance of mandatory detention
10 implementation", being an email from Dr Finn Romanes dated 31 March 2020 at
3.12 pm, and an email from Ms Merrin Bamert of the same date at 3.21 pm.

CHAIR: Exhibit 235.

15 **EXHIBIT #235 - TWO-PAGE EMAIL CHAIN, DATED 31 MARCH 2020**

MR NEAL QC: Secondly, a four-page email exchange, starting with an email from
a representative of Ambulance Victoria dated 6 April at 4.07 pm, addressed to
20 Professor Sutton, and ending with an email from Andrea Spiteri, dated 6 April 2020
at 17.06.

CHAIR: Exhibit 236.

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EXHIBIT #236 - FOUR-PAGE EMAIL CHAIN, DATED 6 APRIL 2020

MR NEAL QC: Madam Chair, this newly tendered material and various material the
30 Board either has or is awaiting will be provided to parties with leave to appear and
placed on the exhibit list on the Board's website in due course.

Other than that, Madam Chair, it remains to be said that the contents of the various
material required by the Board remains for some time yet unknown and it would be
35 premature to propose to you now how appropriately to deal with those new pieces of
information coming into the Board's possession only since the date of close of its
public hearing.

Madam Chair, those are the matters that I wish to put before you today by way of
40 update and clarification. Otherwise we are in the Board's hands.

CHAIR: Yes, thank you, Mr Neal. I should clarify, Mr Neal, for those watching and
obviously for the benefit of --- to make clear for parties with leave to appear, that
they are not present today in the virtual hearing room that is being conducted for this
45 sitting, and confirm that the parties with leave to appear were put on notice about this
sitting but were also --- it was also indicated to them that they were not required to
attend today for the purposes of the process that's just taken place.

As now the parties have heard, upon receipt of this further email material that has been provided through the legal representatives for the Department of Health and Human Services across these last days, as you have referred to them, including up
5 until yesterday, and I understand this morning, as you have indicated, Mr Neal, a formal explanation was sought as to how this situation has arisen and, as you have now indicated, that formal explanation was delivered late yesterday afternoon.

Of course, that is now part of the documents that have been included in the evidence
10 before the Board, as you have heard me indicate by way of giving those documents exhibit numbers. I confirm that there is still further material being collected.

To the parties with leave to appear, and of course to all of those who have been following this Inquiry, after receipt of this further material that is being sought and
15 only at that point will I be in a position to determine what, if anything, further needs to occur. The parties with leave to appear will be kept advised accordingly and of course any necessary proper process requirements will be addressed.

Most unfortunately, of course, these new developments, it has to be said, may
20 unsettle the due date for the report but I am unable to be clear about that at this stage, absent the material called for being delivered. I can assure all that as soon as I am in receipt of the outstanding material, if the report date is affected and needs to be extended, I will advise the Premier and seek any necessary extension.

25 That is the point at which I will leave the situation today, Mr Neal. Thank you for your attendance and for your assistance.

MR NEAL QC: If the Board please.

30 CHAIR: Thank you.

HEARING ADJOURNED AT 2.19 PM

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