

**BOARD OF INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM**

**AFFIDAVIT OF BRETT SUTTON**

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Filed on behalf of the Department of Health and Human Services

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I, **BRETT SUTTON** of 50 Lonsdale Street Melbourne in the State of Victoria, Chief Health Officer, Department of Health and Human Services Victoria, solemnly, sincerely and truly affirm and declare that:

1. I am the Victorian Chief Health Officer (**CHO**). I was appointed CHO in March 2019.
2. I make this affidavit to the Board of Inquiry in response to **NTP-166**, the Notice to produce an affidavit (**Notice**). This affidavit has been prepared with the assistance of lawyers and Departmental officers.
3. This affidavit is true and correct to the best of my knowledge and belief.
4. I make this affidavit based on matters within my knowledge and documents and records of the Department of Health and Human Services (the **Department**). I have also used and relied upon data and information produced or provided to me by officers within the Department.
5. I have already made a statement, which I signed on 13 August 2020 (DHS.9999.0002.0001, exhibit 153) (**my statement**). I have adopted terms in this statement that I defined in my statement.
6. I gave evidence to the Board of Inquiry on 16 September 2020.

**QUESTIONS**

**The 'Chain of Command Emails' - Ex 229 (DHS.5000.0133.6518)**

1. ***When did you first become aware of the existence of: (a) the Chain of Command emails; (b) the: (i) fact; (ii) contents; or (iii) substance, of the email by Dr Finn Romanes dated 1 April 2020 at or around 8.03pm?***

***Please provide details including as to how, in what circumstances and by whom this information was first, and if applicable each time it was subsequently, brought to your attention.***

*Greg Corbett*

*Brett Sutton*

7. I first became aware of Dr Romanes' email dated 1 April 2020 found in exhibit 229, sent at 1 April 2020 at 8.03pm (**Dr Romanes' email**) on or shortly after it was sent to me (by way of a blind copy) on 1 April 2020.
8. I also received a copy of the same email chain that is exhibit 229 from the Department on 16 October 2020 and was informed that it had been produced to the Board the night before. Now produced and shown to me and marked BS-1 is a copy of an email from **REDACTED** **REDA** to me on 16 October 2020 at 7.56am.<sup>1</sup> I was provided exhibit 229 (once it had been marked as an exhibit) by **REDACTED** by email to me and others on 20 October 2020.

**The 'VIC Hotel Quarantine Arrangements Emails' – Ex 230 (DHS.0001.00123.0011)**

**2. Do you accept that:**

- (a) ***you were sent the first email in the 'VIC Hotel Quarantine Arrangements Emails' chain at or around 5:22pm on 27 March 2020?***
- (b) ***You subsequently forwarded that email to Braedan Hogan (and others) at or around 5:52pm that same day?***
- (c) ***At or around 6:39pm, also on that same day, you replied to an email in that chain whereby you directed other recipients to Ms Alison McMillan as the Commonwealth contact for the matters requiring response?***
- (d) ***You were cc'd into the substantive response, which was an email sent at or around 6:43pm on 27 March 2020 from Braedan Hogan to Ms Jeffery and Ms McMillan?***
- (e) ***At or around 6:45pm on 27 March 2020 you acknowledged and thanked Mr Hogan for the substantive response sent by him at or around 6:43pm?***
- (f) ***At or around 7:39pm on 27 March 2020, you forwarded the substantive response sent by Mr Hogan, along with an acknowledgement from Ms Jeffreys (sic) to ahppc.secretariat@health.gov.au?***

9. I accept that I received the first email in the 'Vic Hotel Quarantine Arrangements Emails' at or around 5.22pm on 27 March 2020 and that I forwarded that email at or around 5.52pm that same day.
10. I also accept the matters in questions 2(c)-(f) inclusive.
- 3. *If yes, to [2](e) and/or (f) above, please explain your purpose in sending each of those emails and what it was you were trying to convey by doing so.***
11. I received and still receive many email inquiries. Unless they directly fall within my area of responsibility or request or require of me a direct response, my usual process is to try to forward them to the person with the relevant decision-making responsibility.

<sup>1</sup> Note: the exhibit will be DHS.5000.0163.4083

12. As can be seen in the chain, Ms Jeffery, from the Commonwealth Department of Home Affairs had contacted me to seek details on the operationalisation and implementation of National Cabinet's policy of mandatory quarantine.
13. I would have known from looking at the first couple of questions that I needed to forward it on to be addressed. I do not recall if I read down to question 4.
14. I forwarded Ms Jeffery's email to Mr Hogan, who I was aware at the time was the Deputy Director Strategy and Policy (and later given the title and role DHHS Agency Commander) and was involved in the decisions relating to Operation Soteria. I saw Mr Hogan as the 'point person' for matters concerning operational arrangements and as being the person best placed to provide information about operational matters to the Commonwealth. I also copied in the Deputy CHO, Dr van Diemen.
15. I asked Mr Hogan to respond directly to Ms Jeffery, copying me. I did not ask Mr Hogan to run his proposed response by me, as operational aspects of Operation Soteria were not within my area of responsibility. I asked him to copy me to his response so that I could see he had responded and the Commonwealth's request for information had been answered.
16. In response to my email to Mr Hogan, Dr van Diemen emailed me at 5.55pm (part of exhibit 230), by way of an update, stating that "Braedan, Jason and DJPR crew are onto it." Braedan refers to Mr Hogan, Jason refers to Jason Helps, the State Controller (with Andrea Spiteri). As the Board has heard, DJPR had responsibilities in relation to hotels and other services.
17. I replied to Dr van Diemen (at 6.39pm), thanking her for advising me that they were attending to the email and explaining that Alison McMillan was the Commonwealth contact for the response and providing the recipients with her email address. Again, the purpose of my doing this was to facilitate the communication of the information to Ms McMillan directly, including because I did not need to see or approve it first.
18. At 6.43pm, Mr Hogan replied to Ms Jeffery's email at 5.22pm and her questions (**Mr Hogan's email**). As I anticipated and requested, Mr Hogan sent his email to Ms Jeffery and Ms McMillan directly. I was copied in to that email, as I requested.
19. I skimmed Mr Hogan's email only to satisfy myself that the questions asked had been answered. I did not read it; I saw that there were responses in red font, so I was aware that responses had been provided but I did not read them. As I was not expecting to have an operational role, I did not feel that I needed to have any awareness of the details provided to the Commonwealth about operational aspects of the hotel quarantine arrangements.
20. I responded to Mr Hogan's email, two minutes later, at 6.45pm, with "Thanks so much, Braedan". In doing this, I was acknowledging and thanking Mr Hogan for having responded and addressing an email which had originally come to me.

21. At 7.39pm, I forwarded the email chain, including a further email from Ms Jeffery, to the AHPPC Secretariat, with no content in my email. I wanted to make sure that as Mr Hogan's email went to the Commonwealth contact, Ms McMillan, that it also went to AHPPC. I thought that the AHPPC secretariat should have a record of Victoria's response about hotel quarantine operational arrangements given the enquiry had come from the Commonwealth and there had been a national decision for arrivals to enter hotel quarantine. The secretariat is the focal point for all AHPPC matters, sits on the AHPPC teleconferences and circulates relevant information.
4. **At any time prior to:**
- (a) **you sending your email at or around 6:45pm on 27 March 2020;**
- (b) **the signing of your initial statement to the Inquiry on 13 August 2020; and/or**
- (c) **you giving your evidence to the Inquiry on 16 September 2020,**
- did you read the email sent by Mr Hogan at or around 6.43pm on 27 March 2020?**
22. No, I did not read the content of Mr Hogan's email prior to sending my reply at 6.45pm, signing my statement to the inquiry on 13 August 2020 or giving my evidence to the Board on 16 September 2020. It was not brought to my attention in the preparation of my evidence.
5. **At any time between 27 March 2020 and: (a) the signing of your initial statement to the Inquiry on 13 August 2020; and/or (b) you giving your evidence to the Inquiry on 16 September 2020, did the: (i) fact; (ii) contents; or (iii) substance, of the email sent by Mr Hogan at or around 6.43pm on 27 March 2020 come to your attention?**
- If yes to any part of the above, please provide details including as to how, in what circumstances and by whom this information was brought to your attention.**
23. No - as to paragraph 4 of Mr Hogan's email, I refer to my answers to questions 2-4 above. As I stated in my evidence to the Board,<sup>2</sup> I was not aware of the use of private security guards until after the outbreak at the Rydges Hotel.
6. **At any time between 27 March 2020 and: (a) the signing of your initial statement to the Inquiry on 13 August 2020; and/or (b) you giving your evidence to the Inquiry on 16 September 2020, did you recall the: (i) fact; (ii) content; or (iii) substance, of the email sent by Mr Hogan at or around 6.43pm on 27 March 2020? If so, what did you recall of the email and when did you recall it?**
24. No, I did not recall the fact, content or substance of Mr Hogan's email in relation to the use of private security guards at any time prior to signing my statement or giving evidence.
7. **Unless addressed in answer to the preceding questions, provide details as to when and in what circumstances you first recalled any aspect of the email sent by Mr**

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<sup>2</sup> T1493.43

**Hogan at or around 6.43pm on 27 March 2020?**

25. I have answered this question in response to question 21.

**The 'Smoking policy – Operation Soteria Emails' – Ex 234 (DHS.5000.00111.8323)**

8. **Look at Exhibit 234 (DHS.5000.00111.8323), which includes an email by Dr Finn Romanes at or around 7:50pm on 1 April 2020 entitled 'Smoking policy - Operation Soteria'.**

(a) **Did you receive (by way of BCC, or otherwise) this email: (i) on 1 April 2020; (ii) at any other, and if so which time?**

(b) **When, in what circumstances, and by which means did you first become aware of its existence?**

26. I am informed by solicitors at the Department and believe that, based on the Department's forensic analysis of the electronic copy of exhibit 234, it is a draft and was not sent.

27. I did not receive exhibit 234 on 1 April 2020.

28. I first received a copy of exhibit 234 on 20 October 2020.

9. **Do you agree that much of the substance of the email referred to in [8] (above) is the same as the email sent by Dr Finn Romanes dated 1 April 2020 at or around 8.03pm which comprises part of the Chain of Command Emails (Ex 229)?**

29. I agree that exhibit 229 (which I received) and exhibit 234 (the draft email) refer to similar matters.

10. **The emails by Dr Finn Romanes dated 1 April 2020 at or around: (a) 7.50pm; and (b) 8.03pm, each include the following**

***"Just an important reminder: all policy and oversight of people in detention is being handled in a strict chain of command [...]"***

10A. **Prior to: (a) 7.50pm; and (b) 8.03pm, on 1 April 2020 did you hold any, and if so, what view about the chain of command regarding policy and oversight of people in detention in the Hotel Quarantine Program? If so, what was it; how was that view formed and upon what information and belief was it based?**

30. Prior to 8.03pm on 1 April 2020 (and prior to 7.50pm on 1 April 2020), my understanding and awareness of the chain of command of people in detention in the Hotel Quarantine Program can be found in my statement, which I explain in part below.

31. I had also held and expressed a view, prior to 1 April 2020, that I should have been appointed the State Controller.<sup>3</sup> At the same time, immediately before and on 1 April 2020, I was aware of the decisions to both appoint and place Andrea Spiteri and then also Jason Helps to that role.

<sup>3</sup> T1485.35-1486.18.



32. There was a chain of command within the Public Health – Incident Management Team, which applied to matters within that team’s remit. I describe that team and aspects of its structure in my statement.<sup>4</sup>
33. While Dr van Diemen as DCHO reported to me as CHO, she also reported to the State Controller in her role as Public Health Commander in Operation Soteria.<sup>5</sup> In this way, the command roles for the Hotel Quarantine Program were not in the PH-IMT but were under the State Controllers within the emergency management framework.
34. On 29 March 2020, I had received an email from Ms Skilbeck advising me of the Department’s COVID-19 Governance Structure. The structure shows the State Control Team, the State Controllers and the Public Health Commander. I am shown with a dotted line to the State Controller. The structure does not specifically refer to hotel quarantine but does show that I was not in direct command of State Control and response.
35. Now produced and shown to me is exhibit BS-2 being Ms Skilbeck’s email to me of 29 March 2020 and its attachment, the COVID-19 Governance Structure.
36. I also received an email from Dr Romanes on 31 March 2020 (exhibit 235) which referred to the chain of command for directions and exemptions in relation to mandatory detention implementation. In that email, Dr Romanes set out the following:

***Proposed -***

***Directions and exemptions<sup>177</sup><sub>SEP</sub>***

*The Chief Health Officer and Deputy Chief Health Officer have instituted this Direction. The following roles are involved in the oversight of the mandatory detention intervention:*

- Deputy Chief Health Officer - issuing of Directions including the detention direction;<sup>177</sup><sub>SEP</sub>*
- Deputy Public Health Commander Planning —initial advice to DCHO/PHC on exemption requests where allowed or relevant; ...*

37. The email in exhibit 235 adopts a similar chain of command to that found in exhibit 229 and its heading, “Directions and exemptions”, makes clear that it was a proposal and was only related to that area, not more broadly.
38. That is the context in which I received the email at exhibit 229.
39. In my view, the only way in which the chain of command Dr Romanes set out in his email might have applied in the hotel quarantine context at that time is in relation to the granting of

<sup>4</sup> My statement, paragraphs 28, 34-36, 121, 170-171.

<sup>5</sup> See my statement at paragraphs 171-172.

exemptions from detention. I note that Dr Romanes' email followed on from earlier emails in the chain concerning smoking breaks.

40. To my knowledge, the chain of command Dr Romanes set out in his email did not operate in Operation Soteria more broadly. While matters concerning the directions for detention, and exemptions from those directions were determined under the PHWA by the Public Health Commander, the Deputy Public Health Commander, the Director Health Regulation and Reform and senior Authorised Officers), the chain of command set out in that email did not apply more widely, even if that was what Dr Romanes wanted or thought was appropriate, because it was not the structure that was established by the Operation Soteria Plans or under the emergency management arrangements.

**10B. At any (and if so which) times in the Hotel Quarantine Program was: (a) policy; and/or (b) oversight, of people in detention handled in the chain of command there set-out? Why? Why not?**

41. If the question is asked interpreting Dr Romanes' email as referring to policy or oversight of people in hotel quarantine generally being handled by the chain of command referred to in his email, then the answer is "No".
42. As at 1 April 2020, the policy and oversight of people in detention was partly handled pursuant to the chain of command in Dr Romanes' email in relation to the granting of exemptions.
43. Otherwise, and consistently with my earlier evidence, I did not consider myself to be and was not the overall head of a chain of command in relation to Operation Soteria generally.
44. In response to the Board's question about my role in planning, approving or running the hotel quarantine program, I gave evidence, at paragraph 119 of my statement, as follows:

*119. I was not directly involved in the operational planning, approving or running of the Victorian hotel quarantine program. However I was involved in elements of the framework supporting the programs, including the oversight of directions issued under the PHWA in relation to implementation of the mandatory 14 day quarantine requirement, the appointment of AOs to perform roles required in relation to persons in hotel quarantine, and the oversight of some of the health and welfare considerations relating to the population in quarantine.* <sup>[11]</sup><sub>[SEP]</sub>

45. Even within the area of directions and exemptions from directions, it was rare that matters were escalated to me. On occasion, they were and I provided my perspective on the exemption requests.

46. On many occasions, I was emailed directly in relation to obtaining an exemption from detention, and I forwarded those requests on to the dedicated email address for such matters or to Dr van Diemen.
47. For the most part the way in which exemptions decisions were made were as set out in my statement, at paragraphs 209-212 and, of those directly reporting to me, Dr van Diemen or Dr Romanes.

*Overall governance and chain of command*

48. Otherwise, while I do not know in detail how policy or oversight of people in detention was handled in the Hotel Quarantine Program, I was aware that there was another management structure, in Operation Soteria and under the State Controller and Operation Soteria Commander.
49. I was, for example, aware of the Operation Soteria Plans which described the overall governance of the program, including the roles of other agencies. But I had not read the detail of the Plan, as it was a matter for Operation Soteria. To me, the Operation Soteria Plan was focused on DJPR, the emergency management branch within DHHS and the administrative and logistical tasks of the program. The initial draft of this plan was not shared with me during its development.
50. However, I understood that the Operation Soteria Plan articulated the governance and chain of command that applied in relation to hotel quarantine, rather than as pursuant to Dr Romanes' email.
51. As time went on, including after a death in hotel quarantine on 11 April 2020, Dr van Diemen and I strengthened our view that as the directions had been issued under the PHWA (and following my advice to the Minister of the need for a state of emergency), we had an ethical and moral obligation in relation to the health and welfare of returned travellers in hotel quarantine (I discuss this in paragraph 159 of my statement).
52. This prompted Dr van Diemen, with my support, to seek more involvement of public health in health and welfare in the running of the program, through the insertion of health and welfare standards in the Operation Soteria Plan.
53. For these reasons, I would not agree that either at 1 April or later, policy and oversight of people in hotel quarantine was handled according to the chain of command in relation to Operation Soteria in the way it is described in Dr Romanes' email. As I have explained, that chain of command did not apply to hotel quarantine in any general sense outside of the making of directions for detention, and exemptions.



**10C. Do you agree that at any (and if so which) times in the Hotel Quarantine Program the: (a) policy; and/or (b) oversight, of people in detention should have been handled in the chain of command there set-out? Why? Why not?**

54. I have answered this question above. As explained, I had a view that the Chief Health Officer should have been the State Controller and I expressed that view. As State Controller, the CHO would then have been the head of the chain of command broadly in relation to the operation of the program. I was also of the view that when you create a command structure, that is where the intelligence is held, because problems or operational experiences are reported within that structure and so lessons can be learned. Not being in that command structure, I could not see that information.
55. However, as the Board has heard, the decision to appoint me as State Controller was not taken.

**11. In each of the emails by Dr Finn Romanes dated 1 April 2020 Dr Romanes, directs:**

**(a) at or around 7.50pm:**

***“No policies, directions, exemptions, reporting, meetings to agree policy on these people or other activity outside this chain please.”***

**and**

**(b) at or around 8.03pm:**

***“No policies, directions, exemptions, reporting, meetings to agree policy on these people or other activity outside this chain please, unless requested or overseen by the chain.”***

***[emphases as per original]***

**11A. Do you believe that these directions were complied with at any, and if so which, times during the Hotel Quarantine Program? Why? Why Not?**

56. Policies, directions, reporting and meetings were not determined, as far as I am aware, pursuant to the chain of command in Dr Romanes' email, other than in two ways.
57. First, as I explain above, I believe that, in relation to exemptions, exemptions were initially granted in accordance with the exemptions process described in the evidence of Dr van Diemen and Dr Romanes, where that process included a chain of command as contemplated by Dr Romanes' email.
58. Second, I approved some but not all public health policies. For example, I approved the Outbreak Management Plan. However, other leads in my team also drafted and oversaw the preparation of key policies, such as the Case, Contact and Outbreak Management Guidelines and the COVID-19 Physical Distancing Plan.

59. The policy responsibility for health and wellbeing thus remained within PH-IMT but the operationalisation of those polices, and thus the chain of command for their implementation, then transferred to Operation Soteria.
- 11B. Do you believe that these directions should have been complied with at any, and if so which, times during the Hotel Quarantine Program? Why? Why Not?**
60. I answer this question above.
61. In my view, public health command (me as CHO, the DCHO / PHC and Deputy Public Health Commanders) having an operational line of sight into Operation Soteria would have been beneficial. I gave that evidence in my statement, at paragraph 160 and to the Board.<sup>6</sup>
- 12. Dr Romanes also identified in his email sent at or around 8.03pm on 1 April 2020 (Part of Ex 229 – ‘Chain of Command Emails’) that:**
- “[T]he Department (of Health and Human Services) and its staff ... [were] administering this detention regime on behalf of the Deputy Chief Health Officer and Chief Health Officer”.**
- Do you agree that the DHHS administered the Hotel Quarantine detention regime on behalf of the Chief Health Officer and/or the Deputy Chief Health Officer (either in those roles, or otherwise)? Please provide reasons for your answer.**
62. I disagree that the Department administered the hotel quarantine program on my behalf or on behalf of Dr van Diemen other than in the sense that the hotel quarantine program had been stood up, and had to be operated, to give effect to the Direction and Detention Notice issued by Dr van Diemen on 28 March 2020.<sup>7</sup> That notice was issued under the emergency powers in s 200 of the PHWA, which were enlivened by the Minister for Health’s Declaration of a State of Emergency on 16 March 2020. As required by the PHWA, I advised the Minister in relation to the making of that declaration.<sup>8</sup>
63. Further, I appointed Dr van Diemen as an authorised officer and authorised her to exercise the emergency powers in s 200 of the PHWA, which included the power to detain any group of persons in an emergency area for a period necessary to eliminate or reduce a serious risk to public health.<sup>9</sup>

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<sup>6</sup> See, for example, T1485.35:

A. I had a view that the position of State Controller is a not insignificant one with respect to the application of controls for the management of an emergency or incident, including a pandemic, and that the position has line of sight of operational elements that I, as Chief Health Officer and accountable with all of the powers that I’m exercising under the *Public Health and Wellbeing Act*, that it’s important for me to have line of sight of the application of those controls and to be appropriately aware, you know, to have situational awareness of those operational activities.

<sup>7</sup> Found in exhibit 155, and identified in footnote 35 of my statement.

<sup>8</sup> My statement, paragraph 23.

<sup>9</sup> My statement, paragraphs 42 and 241 and the instrument of authorization to Dr van Diemen is found in the attachments to my statement, footnote 23, DHS.0001.0011.0741.

64. As the Board has heard, National Cabinet announced the federal government's policy of mandatory quarantine for returning travellers. While Dr van Diemen made the Detention and Direction Notice, the Victorian Government, through the Department and other Departments and agencies, implemented the Notice and gave effect to its requirements. I do not consider that the program was run on my behalf.
65. While Operation Soteria was managing the program pursuant to the Direction and Detention Notice, in terms of how they did that, and how the State gave operational life to the program, I do not consider that it was done on my behalf. Dr van Diemen and I were empowered to make certain decisions under the PHWA but did not administer the program.
66. Dr van Diemen and I were both aware that in making the Direction and Detention Notice, there were important considerations requiring the balancing of human rights (required by both the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the consideration of principles in the PHWA) relating to the returned travellers' welfare.
67. We were aware that, without an operational line of sight, we had a limited ability to ensure we were comfortable with how the program was being managed, in relation to health and welfare. As a result, I supported Dr van Diemen to push for more involvement, which happened to some extent, as Dr van Diemen explained in her evidence.
- 13. At or around late March – early April 2020, were you involved in any, and if so what communications and/or discussions concerning: (a) the Smoking policy - Operation Soteria Emails, (b) the Chain of Command Emails, and/or (c) the concept of chain of command generally in regard to people in hotel quarantine detention, with: (i) Dr Finn Romanes; (ii) Dr Annaliese van Diemen; (iii) any other, and if so which members of the Public Health Team, DHHS; (iv) any, and if so, which recipients included in the Chain of Command Emails; and/or (v) anyone else (and if so, whom)?**
- Please provide details of each those communications, including copies of all emails, notes, correspondence and records of such.**
68. When the Prime Minister announced National Cabinet's decision to require mandatory quarantine of returning international travellers, everyone was scrambling to see how the requirement would be operationalised. There was, as the Board has heard, very little time between the announcement on 27 March 2020 and the first planes landing early on the morning of 29 March 2020.
69. I do not recall any discussions specifically about the Chain of Command emails. I recall in or around mid-April, discussing with Dr van Diemen and Dr Romanes public health being more involved in Operation Soteria.

70. It is not my practice to keep extensive notes of such conversations and of those notes that I do keep, in the form of follow up emails, I have checked my emails and do not have anything else in relation to the Chain of Command emails (and smoking breaks).
71. I do not have a specific memory of emailing about chain of command generally, in terms of advising or commenting on how general chain of command applied. I may have received emails on this topic.
72. I understand that the Department will conduct database searches to locate any further emails in the period from late March 2020 to early April 2020 sent or copied to me or sent by me relating to the concept of chain of command for hotel quarantine detention and that any further relevant emails which are located will be provided to the Board.
73. As I referred to in paragraph 159 of my statement, Dr van Diemen, Dr Romanes and I felt an ethical and moral obligation in relation to the health and welfare of returned travellers, but we also learnt very early on that a command structure had been put in place for emergency management under the State Controller to operate the program, as the operational lead.
74. Dr van Diemen, Dr Romanes and I discussed between us and continued to advocate with Operation Soteria, over the early days, to have input into important policies and ensure to the fullest extent possible to have public health objectives addressed. We were focused on health and welfare aspects of the program, including people needing to smoke (the issue that prompted Dr Romanes' email) and needing fresh air and physical exercise.
75. I did not discuss Dr Romanes' email with him but I did discuss with him the issue of embedding public health operational oversight in Operation Soteria. We discussed how we could ensure that I and the public health team, could have further insight into, and input into, matters concerning the health and welfare of the people being detained under the PHWA.
76. I do not recall discussing these issues without anyone outside the public health team.
14. ***At any time between 1 April 2020 and: (a) the signing of your initial statement to the Inquiry on 13 August 2020; and/or (b) you giving your evidence to the Inquiry on 16 September 2020, did you recall, become aware of or have regard to: (i) the fact; (ii) any contents; or (iii) the substance, of the Smoking policy - Operation Soteria Emails, the Chain of Command Emails, and/or communications in which you had been involved concerning the concept of chain of command generally in regard to people in hotel quarantine detention?***
77. I was aware of Dr Romanes' email before I signed my statement and gave evidence. As I explain, however, to the extent it described the chain of command as having general application, I knew his email did not reflect the actual position and so did not address it in my evidence.

78. I understand that the Department will conduct database searches to locate any further emails in the period from late 1 April 2020 to 16 September 2020 sent or copied to me or sent by me relating to the concept of chain of command for hotel quarantine detention and that any further relevant emails which are located will be provided to the Board.

**15. If yes to any part of the previous question: (a) What did you recall of these emails and/or communications? (b) When, and in what circumstances did you recall each aspect?(c) To what extent did these emails and/or communications inform the: (i) contents of your statement dated 13 August 2020; or (ii) the evidence you gave to the Board on 16 September 2020?**

79. I refer to my answer to question 14.

80. To the extent that my evidence addressed exemptions, I explained in my statement that exemptions could be granted by Authorised Officers<sup>10</sup> and the process was “managed by Enforcement and Compliance with the final approval being given by the Public Health Commander”.<sup>11</sup> In giving this evidence, I did not consider Dr Romanes’ email.

#### Security Guards

**16. In an email sent by Noel Cleaves at or around 11.46am on 1 April 2020, which forms part of the Smoking policy - Operation Soteria Emails and the Chain of Command Emails, (Ex 233 and 234), reference is made to “security guards” within the Hotel Quarantine Program.**

**(a) Did you read the email chain? Why? Why not?**

**(b) Did you ever, and if so when did you have regard to the reference to “security guards” made by Mr Cleaves?**

**(c) To what did you consider Mr Cleaves was there referring?**

81. My awareness of exhibit 229 was only in respect of Dr Romanes’ email in that chain and I did not read the earlier emails in that chain, which had not been sent to me in any event. I could see that Dr Romanes was adding me in as blind carbon copy in relation to chain of command specifically and not in relation to the smoking policy as detailed. I have no recollection of scrolling down and seeing Mr Cleaves’ email and have no recollection of seeing that part of his email.

82. I therefore did not form a view about what Mr Cleaves was referring to in his email.

83. As I have explained, I did not read exhibit 234, which I understand was never sent.

**17. Do you accept that there is an apparent inconsistency in your evidence to the Inquiry and the contents of:**

<sup>10</sup> My statement, paragraph 209.

<sup>11</sup> My statement, paragraph 211.



- (a) *the VIC Hotel Quarantine Arrangements Emails (Ex 230);*
- (b) *the Chain of Command Emails (Ex 229), and/or*
- (c) *the Smoking policy - operation Soteria Emails (Ex 234),*

***in that each of those chains include emails which suggests that the use of private security contractors/security guards in the Hotel Quarantine Program was a matter brought to your attention in late March - early April 2020, yet your evidence to the Inquiry was that you did not become aware of the use of private security contractors until after the outbreak at the Rydges Hotel in late May 2020? Please explain your answer.***

84. I accept that there is an apparent inconsistency. I do however stand by my evidence that I was not aware of the use of private security guards until the outbreak occurred. Although I accept that private security was referred to in emails that I received, I did not read or register the information that private security guards were being used in hotel quarantine.
85. I recall being asked by counsel for Unified Security Group (Australia) Pty Ltd, about whether if I had been involved in making a decision to use private security, I might have better foreseen the risks of using private security and I stated:

*Q. And had you been aware that they were being used at the commencement of the Hotel Quarantine Program, would you have raised the same concerns about security guards being used that you raised in Exhibit 159 that Counsel Assisting took you to, which is an email between yourself and Professor Murphy on or about 21 June?*

*A. I don't think so. I think the wisdom we have in hindsight is a key element here. I'm not sure anyone at the point in time of decision-making around hotel quarantine commencement might have been able to foreshadow some of the complexities of that workforce. I certainly wouldn't have had sufficient familiarity with it to have made some of the conclusions that I can make now by virtue of having seen some of those complexities play out. I would have obviously brought a public health view, but I certainly couldn't say that I would have had the same level of concerns or understood what those concerns to be back at that point in time, in late March.<sup>12</sup>*

86. If I had explicit and absolute awareness of private security being contracted, I do not think I would have raised it after becoming aware, because I was neither a part of the discussions with Emergency Management Victoria, DJPR and Operation Soteria nor did I have a decision-making role with regard to their involvement in Hotel Quarantine.
87. Further, at that time, the use of private security was not considered controversial or risky from a public health point of view. At that time, I did not have a view about the use of private security in the program. I did not have a sufficient understanding of that workforce for its use to have raised a flag with me, or to consider them to be an inappropriate workforce. I did not

<sup>12</sup> T1504.37-1505.2

know, for example, that they would be used for cleaning, or if just standing outside to report on people remaining in their rooms, or, as Mr Cleaves has raised in his email, escorting individuals for smoking or exercise breaks.

88. I also refer to paragraph 81 above in relation to exhibit 229.

89. I did not read and did not register the detail of Mr Hogan's email (in exhibit 230), including because I did not consider myself to be in a relevant position of operational command to know the details of his answers.

**18. At any time between 27 March and 25 May 2020:**

**(a) Did you attend any of the hotel sites where people were being detained pursuant to powers, authorisation, or delegations which vest within your office as Chief Health Officer?**

**(b) Did you observe security guards at any Hotel Quarantine site between 27 March and 25 May 2020?**

***In answering these questions provide details of all occasions and sites visited, the purpose of such visits and anyone that you interacted with on those visits.***

90. I did not visit any of the hotel sites where people were being detained during the program and never observed guards at hotels between 27 March 2020 and 25 May 2020.

**19. Do you maintain your evidence that you "did not know that security guards were being used (in the Hotel Quarantine Program) until after the outbreaks" at the Rydges Hotel in late May 2020?**

91. Yes.

92. At paragraph 247 of my statement, I gave evidence that:

*I have not been involved in giving directions, instructions or guidance to private security contractors. As explained, prior to the outbreaks I was not aware that security guards were being used. I oversaw the provision of general IPC / PPE advice that could apply across Victorian workplaces and settings, but did not provide Operation Soteria with advice specific to security guards. <sup>[13]</sup>*

93. I confirmed this evidence in my oral evidence to the Board.<sup>13</sup>

**20. Having regard to your answers to the questions above (especially questions 6 – 11) and/or the contents of your statement dated 13 August 2020 (especially at paragraph 159) do you consider that you should have known prior to the outbreak at Rydges that private security contractors had been engaged in the Hotel Quarantine Program?**

***Please provide reasons for your answer.***

<sup>13</sup> T1493.43.

94. As I have stated, I was not involved in the operational management of the hotel quarantine program and did not visit any of the hotels in that program.
95. I accept that it is arguable that I *should* have known given that it was mentioned in emails that I received.
96. My daily work at that time was extremely busy and I was working very long hours. I was usually meeting with AHPPC for two hours daily. While there were not as many formal internal meetings as there are now, we spent considerable time in *ad hoc* meetings and so I had many meetings and discussions. 27 March 2020 was also the day before our peak day in the first wave of the epidemic, so it was an extremely busy time. I was involved in deciding and assessing general state-wide restrictions.
97. I was also receiving a huge volume of emails every day and I needed to prioritise reading and paying close attention to those matters that were my direct responsibility, being ones on which I needed to take action or make decision or have an awareness of. Where emails (or parts of chains) related to matters outside my area of responsibility, I did not focus on them beyond ensuring that any email that had been directed to me, but should be handled by someone else, was sent to the appropriate person for action, I simply did not have time to focus on matters that were outside my area of responsibility as I was already fully stretched (as was everyone) handling the matters that were in my area of responsibility. The result of this is that I did not read or absorb references to private security in emails I received.
98. Whether that approach warrants criticism is a matter that is really for the Board to determine.

#### Disclosure of Relevant Material to the Inquiry

21. ***Have you, at any time, been involved in or been aware of any discussions or communications regarding:***
- (a) ***the relevance of: (i) the Chain of Command Emails (Ex 229), (ii) the VIC Hotel Quarantine Arrangements Emails (Ex 230); and/or (iii) the Smoking policy - Operation Soteria Emails (Ex 234), to the Hotel Quarantine Inquiry; and/or***
- (b) ***whether any of these emails: (i) were: or (ii) were not, to be produced to the Hotel Quarantine Inquiry?***

***If yes to any part of this question, please provide details of the substance of each such communication including identification of who was involved, when and in what circumstances they occurred. Please also provide copies of all emails, notes, correspondence and records of such.***

99. The only discussions I have had in relation to the relevance of exhibits 229, 230 or 234 to the Hotel Quarantine Inquiry or whether they were or were not produced to the Board were on 30 September 2020 and 1 October 2020, and were only in relation to exhibit 230.

100. The substance of my discussions with the Department lawyers and Minter Ellison in relation to exhibit 230 was as follows.
101. I recall that Rebecca Bedford phoned me and left a voicemail on 30 September 2020 and we then had a subsequent telephone call.
102. At the time, I did not have a copy of the email before me but she told me of the substance of the email. She told me that it referenced the use of private security in hotel quarantine. After our discussion she emailed me a copy of exhibit 230, and we then discussed the email the following day, when I had it in front of me on my computer screen.
103. I said I had a recollection of that email, for example, that it had come from Home Affairs or from the AHPPC Secretariat and I had a recollection that I had sent it to Mr Hogan, that he had responded and that I had thanked him.
104. I told Ms Bedford that I stood by my evidence. I said that I did not consider that Mr Hogan's email or my reply (exhibit 230) would have changed my statement or my evidence to the Board.
105. I felt and still feel that my evidence to the Board on this question of my awareness of the use of private security to hotel quarantine was truthful, in that I was not aware of their use until after the outbreaks.
106. I told Ms Bedford that I did not consider that I needed to change, clarify or explain my evidence. Reflecting that my evidence was that I did not have awareness of the use of guards until after the outbreaks, I considered that exhibit 230 did not change my evidence. I do not recall discussing whether it should be produced to the Board. As is set out below in my answer to question 22, I did not consider it was my role to determine what documents should be produced to the Board.
107. I do not recall discussing exhibit 229 and whether it should be produced to the Board.
108. I have only discussed exhibits 229 and 234 with my solicitors in the context of responding to NTP 166 and preparing this affidavit.

**22. Did you "instruct" MinterEllison, solicitors for DHHS, that:**

**(a) any, and if so, which of the emails; and/or**

**(b) the fact or contents of any, and if so which, communications or discussions;**

**referred to in these questions, or in your full and complete answers to them, "did not need to be provided to the Board", or otherwise give instructions to that effect?**

**If so, please provide details of each such instruction given, the timing of it, to whom it was given, and the bases and reasons for you so giving each of those instructions?**

109. I refer to and repeat my answer to question 21 in relation to exhibit 230.
110. It was not my role to give instructions on behalf of the Department about document production.
111. I did not instruct Minter Ellison or solicitors to the Department that the emails (in exhibit 230) not be produced. As set out in my answer to question 21, my discussion with Ms Bedford was about the bearing of exhibit 230 on my evidence; it was not about production more generally. My natural view was it was for Minter Ellison and the Department to determine what is in scope of requests issued by the Board and what was appropriate.
112. I saw draft copies of Minter Ellison's letter to the Board dated 19 October 2020 and in the limited time I had to review the draft, which I did while also being involved in a separate meeting, I agreed with the content of the letter, in so far as it addressed exhibit 230, and I was content for it to be sent to the Board. In reviewing the letter, I did not take it that I was instructing Minter Ellison to not produce exhibit 230 to the Board.
113. I thought that the paragraphs dealing with my evidence were consistent with my discussions with Minter Ellison, as set out in my answer to question 21. I did not make any changes to the proposed letter, other than correcting typographical errors.

#### Further question from the Board

114. By email to Minter Ellison on 3 November 2020, the Board has asked me to address an email chain, DHS.0001.0128.6863, in this affidavit.
115. The last email in that chain is an email sent on 31 July 2020 from my executive assistant, **REDACTED** to me asking me to endorse the release of attached emails to the Department team coordinating the Hotel Quarantine Inquiry response (**REDACTED** email).
116. In response to **REDACTED** email, on 1 August 2020, I asked **REDACTED** for clarification as to what I was endorsing. I asked for guidance whether it was 'relevance, sensitivity, committee-in-confidence release?' Now produced and shown to me and marked BS-3 is a copy of my email dated 1 August 2020. My email was copied to Annalise Bamford and **REDACTED**.
117. In response to my email, Ms Bamford, who was the Acting Deputy Secretary for the COVID-19 Public Health Division replied. Now produced and shown to me and marked BS-4 is a copy of her reply to me.
118. I recall discussing **REDACTED** email with **REDACTED** and advising **REDACTED** that it was fine to send the emails to the Department team coordinating the Hotel Quarantine Inquiry response.



- 119. I have not been able to locate any further email I sent or received in relation to REDACTED email and am informed and believe that the Department has also been unable to find any further email.
- 120. Other than as above, I do not recall anyone else raising the enquiry with me again or discussing it with anyone in the Department, and I do not know what happened after telling REDACTED that the bundle could be sent to the Department team.
- 121. I did not open any of the attachments to REDACTED email.
- 122. I have been asked to consider the fact of this email as it relates to questions 4, 5, 6, 7, 17, 19, 20, 21 and 22. I have done so and they do not change my answers to those questions.

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

**Affirmed** at Melbourne

in the State of Victoria

on 4 November 2020

(signature of person swearing or affirming the affidavit contents, to be signed in front of the authorised affidavit taker)

Before me Gregory John Carfoot

(signature of authorised affidavit taker)

**MINTER ELLISON**

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An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

(name of authorised affidavit taker)

on 4 November 2020

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** to take an affidavit.

In accordance with the **Oaths and Affirmations Act 2018**:

- a) this affidavit was electronically signed by the deponent and by the authorised affidavit taker;
- b) the authorised affidavit taker administered and witnessed the affirmation taken by the deponent in respect of this affidavit by audio-visual link;
- c) the authorised affidavit taker witnessed the signature of the affidavit by the deponent by audio-visual link; and
- d) this affidavit is an electronic copy of the affidavit, not an original.