

TRANSCRIPT OF PROCEEDINGS

INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM

BOARD: THE HONOURABLE JENNIFER COATE AO

DAY 1

10.00 AM, MONDAY, 20 JULY 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

BOARD: Good morning, Mr Neal.

MR NEAL: Good morning.

5 BOARD: Perhaps we will formally announce the session open.

SPEAKER: The Inquiry Into the COVID-19 Hotel Quarantine Program is now open.

BOARD: Thank you. Yes Mr Neal.

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MR NEAL: If the Board pleases, I announce my appearance as counsel assisting this Inquiry. Also appearing as counsel to assist the Board are Ms Ellyard, Mr Ihle, Mr Brnovic and Ms Moir.

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OPENING STATEMENT BY MR NEAL QC

MR NEAL: Today marks the first sitting of the public hearings of the COVID-19 Hotel Quarantine Inquiry. By an Order in Council made on 2 July of this year under section 53 of the *Inquiries Act*, you were appointed to constitute that Board of Inquiry.

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No evidence will be called before the Inquiry today. Presently, those assisting you are engaged in the process of obtaining and analysing relevant documents and information from a number of Government departments and private entities. Relevant information and evidence from members of the public who make contact with the Inquiry either through its website or its 1800 number is also being obtained and assessed. Evidentiary public hearings will commence on 6 August. It is on this latter date that public examination of witnesses is to occur.

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The purpose of today's hearing is to outline four matters: the scope and powers of this Inquiry, some of the issues which have become apparent to date, the steps that have already been taken by the Inquiry, and the future course of the Inquiry.

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Before moving to those matters, some context for the Inquiry is appropriate. On 16 March of this year the Minister for Health in the State of Victoria declared a state of emergency under the *Public Health and Wellbeing Act*. That declaration activated a range of public health and emergency powers. Acting under those powers and on the same date, the Chief Health Officer of this State issued a direction in the following terms:

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A person who arrives at an airport in Victoria on a flight that originated from a place outside of Australia, or on a connecting flight from such a flight, must travel from the airport to a premises that is suitable for the person to reside in for a period of 14 days.

Something that might be termed a residential quarantine regime.

5 Then two days later, on 18 March, the Deputy Chief Health Commissioner of this State issued a direction to people arriving in Victoria from overseas, advising them in the following terms: that they must go into immediate compulsory isolation for 14 days at a premises that is suitable for them to reside in. The direction also outlined this:

10 *Returnees must not leave their residence under any circumstances unless they have permission and returnees must not permit any other person to enter their room unless the person is authorised to be there for specific purposes.*

That might be called a more stringent form of the residential quarantine regime.

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Then on 27 March there was a media release from the Prime Minister that appears to have been a decision that came from an agreement reached in a body that has been described as the National Cabinet. This required the returning travellers arriving back in Australia undertake their mandatory 14-day isolation at designated facilities, for example, an hotel.

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25 Relevantly for the purposes of this Inquiry, it indicates that designated facilities will be determined by the relevant State and Territory Governments and implemented using State and Territory legislation and enforced by State and Territory Governments with support from the Australian Defence Force and the Australian Border Force, where necessary.

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30 Subject to confirmation to be sought by the evidence to this Inquiry, it is understood that the National Cabinet is made up of at least the Prime Minister and the heads of governments of each of the States and Territories.

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Then on 28 March of this year, the Victorian Deputy Chief Health Officer issued a further direction advising travellers returning to Australia on or after 28 March that they will be detained for a period of 14 days in a room at a designated hotel, hence the hotel quarantine regime.

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Amongst other conditions, that direction imposed this restriction:

40 *Detainees must not leave their room under any circumstances unless they have permission. Detainees must not permit other persons to enter their room unless that person is authorised to be there for specific purposes.*

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Under that regime and in the foregoing circumstances, the Hotel Quarantine Program emerged and is the focus of this Inquiry.

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It is anticipated that the Board will hear evidence that this program formed at least part of what is known as Operation Soteria inside Emergency Management Victoria.

It is also anticipated the Board will hear evidence of a scientific and medical nature about what has been understood about the spread of the virus from the Hotel Quarantine Program into the community.

5 The impact of the COVID-19 virus in the Victorian community and the various steps taken by Government agencies and public health officials in response to that impact are matters of profound and ongoing significance to this community. Understandably, there has been intense community interest and daily commentary in the media about this program.

10 Increasingly, over recent weeks, there has been growing and understandable community concern about transmission from that program into the general community.

15 With that context, may I return to the scope of the Inquiry.

This Inquiry relates specifically to the Hotel Quarantine Program established by the Victorian Government, which required all returned travellers to quarantine for at least 14 days in designated hotels. The program was established by way of directions made under the *Public Health and Wellbeing Act* on 28 March at a time when a large number of such travellers were returning to Victoria from overseas. Uncontroversially, those travellers were identified as posing the highest risk of infection.

20 To establish and implement the Hotel Quarantine Program, a range of contractual and other arrangements were entered into between Government departments, hotels, a number of private service providers, private security companies, medical services, transport and food providers.

25 It is anticipated in the course of the Inquiry that you will hear from various witnesses, that the purposes of the directions and the contractual arrangements entered into was to either eliminate or reduce the public health risk posed by COVID-19 by containing its spread from returned travellers into the community.

30 As set out in the Order in Council establishing this Inquiry, information already available to the Inquiry suggests the possibility of a link between many of the cases of coronavirus identified in the Victorian community in the past few weeks and persons who were quarantined under the Hotel Quarantine Program.

35 Comments made by the Chief Health Officer to the media have suggested that it may even be that every case of COVID-19 in Victoria in recent weeks could be sourced to the Hotel Quarantine Program. Those assisting you are in the process of obtaining the necessary material and documents and witnesses to put before the Board on that very issue.

40 It is appropriate to refer the Board to its formal Terms of Reference. The Order in Council instituting this Inquiry requires the Board to inquire into the following:

5 *The decisions and actions of Victorian Government agencies, hotel operators and Private Service Providers, including their staff/contractors and other relevant personnel involved in the Hotel Quarantine Program and the COVID-19 Quarantine Containment effort.*

Communications between Victorian Government agencies, hotel operators and Private Service Providers relating to the COVID-19 Quarantine Containment.

10 *The contractual arrangements in place across Victorian Government agencies, hotel operators and Private Service Providers as they relate to the COVID-19 Quarantine Containment.*

15 *The information, guidance, training and equipment provided to those involved in the Hotel Quarantine Program; and whether that training, guidance and equipment was followed and properly executed.*

20 The Terms of Reference further require you to: inquire into, report and recommend on the policies, protocols and procedures used by those working in the Hotel Quarantine Program and, lastly, the Terms of Reference require that any other matters necessary to satisfactorily resolve the foregoing matters already referred to.

25 Turning to the powers of this Board, the Board's function is to inquire into, report on and make appropriate recommendations on the matters set out in its Terms of Reference. This Board may conduct its inquiry in my manner that it considers appropriate. That said, it must act consistently with the *Inquiries Act*, with other relevant legislation, the Order itself establishing this Inquiry and the requirements of natural justice.

30 Significantly, the Board is not bound by the rules of evidence. It may inform itself on any matter it sees fit. It can receive evidence under oath and it may conduct hearings.

35 This means that the Inquiry can and will receive information in a variety of ways and from a variety of sources and may adopt procedures which are best suited to the timely receipt and analysis of such documents and information. These procedures will ensure that the persons and bodies whose actions are being examined will have an appropriate opportunity to explain those actions and decisions and to respond to any potential criticism before any finding is made.

40 This Board has the power to require the production of documents and other things and to require a person to attend to give evidence. A person who provides documents, information or evidence to the Inquiry has the same protection and immunity as a witness in the Supreme Court. Furthermore, it is an offence for an employer to take any detrimental action against an employee because the employee
45 has given information to this Board of Inquiry.

Subject only to limited exception, the *Inquiries Act* requires that evidence given and information provided is not admissible in evidence or otherwise able to be used against a person in other proceedings.

5 In some cases, a person who receives a Notice to Produce documents or to give evidence may object to the Notice and the *Inquiries Act* sets out the circumstances in which a person may claim a reasonable excuse for failing to comply. The Inquiry has established a process by which such claims will be assessed.

10 In other cases, information and documents might be provided but an application made that there be a restriction on its publication. The Inquiry has the power to make orders to prevent publication of information in a range of circumstances, including where the information is sensitive or where publication could cause prejudice or harm to a person or to legal proceedings.

15 Again, the Board has established a process by which such claims are to be assessed if and when they are made.

20 Taking the Board now to the steps taken so far. A number of Government departments and agencies have been identified already as of interest to the Board. It is worthwhile putting those on record. They are as follows: the Department of Health and Human Services, the Department of Jobs, Precincts and Regions, the Department of Treasury and Finance, the Department of Justice and Community Safety, the Department of Environment, Land, Water and Planning, the Department of Transport, the Department of Premier and Cabinet, Victoria Police, Emergency Management Victoria and Ambulance Victoria.

25 In addition, a number of private entities, including hotels and private security companies, appear to have been engaged in the Hotel Quarantine Program and are of interest to the Inquiry.

30 At this stage, they relevantly include the following: the Travel Lodge Hotel Melbourne, the Stamford Plaza Melbourne, Rydges on Swanston, ParkRoyal Hotel, Melbourne Airport, Holiday Inn Melbourne, Four Points by Sheraton Melbourne, Wilson Security Pty Ltd, United Risk Management Pty Ltd, Unified Security Group Australia Pty Ltd, Ultimate Protection Services Pty Ltd, MSS Security Pty Ltd, Elite Protection Services Australia Pty Ltd, Australian Protection Group Pty Ltd, the Security Hub Pty Ltd.

40 The Board has written to all of those identified Government agencies and private entities to place them on notice that it regards their decisions and conduct as falling within its Terms of Reference. It has also asked each of them to provide what has been called an "Initial Response". That Initial Response is to outline any shortcomings which that entity has identified in its own decisions and the conduct of its employees and contractors; how any such shortcomings have already been addressed, any changes made by the entity to how they are carrying out their respective roles in the Hotel Quarantine Program, and the reasons for such changes.

The Inquiry sought those initial responses so as to identify areas of potential conflict and potential consensus between the various persons and agencies being examined by the Inquiry in order to avoid unnecessary duplication of such reviews and operational changes as may have occurred. If there is agreement on such issues, which the Inquiry is not called upon to investigate, that will enable this Inquiry to focus its attention on more contentious issues.

Initial Responses have indeed been received from a number of departments and entities. Amongst those responses are a range of perspectives about what worked well and what worked less well, and a lot of useful information about the structure of the hotel quarantine system and the key people who will be able to assist this Inquiry with more detailed responses as the Inquiry proceeds.

Without in any way pre-empting the scope of this Inquiry, some of the matters which have emerged from those initial responses as relevant factors to the Inquiry are: the existence and content of any response plans for this form of emergency; what was known about the infectious nature of COVID-19; the speed with which the Hotel Quarantine system had to be established and the implications of that speed; the basis upon which decisions were made to implement the Hotel Quarantine Program in its original form; and by whom those decisions were made, implemented and overseen; resourcing issues, including the number and classes of personnel required to put the system into effect; decision-making around contractual arrangements including the content of those contracts; the suitability of service providers under those contracts; the oversight by suitably qualified persons of those contractual arrangements; what concerns and complaints emerged concerning the Hotel Quarantine Program; to whom they were reported and how they were addressed; the creation and review of structures, lines of accountability, policies, practices and procedures within Government agencies; the control and coordination of the hotel quarantine between different Government agencies; the training, supervision and resourcing of security guards engaged in the Hotel Quarantine Program, and the extent of testing of those involved in and potentially exposed to infection by that program.

Notices to Produce, that is formal notices, in relation to all documents relevant to the Inquiry's Terms of Reference have been served on each of the Government and the private entities. The timeline for replying to most of those notices will be 24 July or, in the case of the Government agencies who elect to produce documents in tranches, by 24 July and 31 July.

It is anticipated that a very large volume of documents will be received and will require analysis and review.

Already, this Inquiry has produced practice directions. Those practice directions issued under the *Inquiries Act* govern, first of all, how documents will be received and managed; how a personal body may seek leave to appear at the evidentiary public hearings; how those evidentiary public hearings will be conducted.

Moving to the future course of this Inquiry, by the end of this month the Inquiry expects to receive responses to the Notices to Produce issued to the Government and private agencies. The documents received will be analysed and we anticipate questions arising from those documents will be investigated in the public hearings.

5 The actual evidentiary public hearings will be held commencing on 6 August.

The scope of the matters to be examined at the evidentiary public hearings will be set by the Inquiry and published in advance of those hearings. Counsel assisting will call witnesses to give evidence at those hearings. The witnesses are anticipated to include the following: relevant medical experts regarding the nature and spread of COVID-19 and how that spread can be managed in the setting of quarantine; relevant decision makers from within Government; relevant Government officials performing functions in the Hotel Quarantine Program; hotel operators; private service providers; persons employed or engaged by those hotels and private service providers; and persons who were actually subject to quarantine.

The process of identifying witnesses has already begun and will continue as the documents are received and analysed. In all cases, witness statements will be prepared by either counsel assisting or by the legal representatives of those who are appearing in consultation with counsel assisting.

This Inquiry is required to report by 25 September of this year. That timeframe means that short timelines have been set for all steps leading up to the evidentiary hearings, so that the evidence received in those hearings may be assessed and included in the Inquiry's report. Counsel assisting thanks all parties and relevant persons in anticipation of their assistance in meeting those timelines.

If the Board pleases.

30 BOARD: Thank you, Mr Neal. You can return to the Bar table, if you wish. Thank you.

I should say at the outset to counsel, and indeed, to any members of counsel or legal representatives appearing before the Inquiry in the future, that it is my wish for everyone to remain seated when they address the Board. I think particularly in these circumstances it's difficult for cameras and microphones in particular to be trying to track people as they are sitting or standing. I know the natural inclination may well be to get to your feet, so I ask you to please remain seated, and that will go for those who join us online as we commence the evidentiary hearings.

As has been said by counsel assisting, Mr Neal, senior counsel assisting the Inquiry, today marks the first sitting of the public hearings of the COVID-19 Hotel Quarantine Program Inquiry. Both myself as that Board and those assisting me in this task have a keen understanding of the importance of this Inquiry to the people of Victoria.

For this reason, and given the circumstances of current COVID-19 restrictions, we

have arranged for these public hearings to be live-streamed through our website, so there is an identifiable portal on our website that will allow anyone to enter in there and track the public hearings.

- 5 The transcripts of each day's proceedings, once available, will be published on the website. That is subject, of course, always to any orders to the contrary. And, similarly, any documents that formally become part of the evidence before this Inquiry will be published on the website, again subject to any orders to the contrary.
- 10 It has been made clear, I think, both through those assisting the Board and today again by Mr Neal, that there will be no witnesses called today.

The taking of evidence will commence, as you have now heard, on 6 August at 10.00 am. So the first witnesses to this Inquiry will be called on that day.

- 15 Public hearings will generally be held from 10.00 am until 1.00 pm and then 2.00 pm until 4.00 pm. But that is subject to any necessary variations, which we will always endeavour to announce prior, to enable people to suitably organise themselves. The Inquiry team will endeavour to publish a list of topics to be examined in the public hearing in advance as well; as well as a list of witnesses who will attend and give evidence in response to those identified topics.
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- Subject to any changes to public health directions made under the *Public Health and Wellbeing Act* or by leave granted by exception, to keep everybody safe, only designated officers of the Inquiry will be physically present during the public hearings. Persons granted leave to appear, of which I will say something more shortly, will appear and participate via an online video platform.
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- As you have heard from Mr Neal, subject to my ultimate control, counsel assisting will determine who is to be called as a witness at the public hearings.
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- For those of you unfamiliar with how Inquiries are run, they are to be distinguished from what I will call normal court cases, sometimes referred to by lawyers as adversarial proceedings. In these more familiar sorts of cases, each party to the contest before the court or tribunal will bring their witnesses along and put them before the court or the tribunal to bolster their side of the case. There are no sides, as such, in an Inquiry. Its conduct is controlled by the Board, not by any interested party granted leave to be included in aspects of the Board's work.
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- As to the questioning of witnesses by those granted leave as interested parties, there are now detailed directions contained in paragraphs 16 to 26 of the Practice Directions referred to by Mr Neal in his opening address, indeed contained in Practice Direction 3 issued on 15 July and also now published on the Inquiry website under that heading. That Practice Direction sets out the process for the examination and cross-examination of witnesses for both the interest and understanding of all following this Inquiry, and, indeed, for those granted leave to understand how any questioning is to be contained.
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Similarly, there are directions set out in Practice Direction 2 as to who will be considered an interested party and how that is to be decided and the process for making such an application.

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My task as the Board is to inquire into and report upon the matters set out in the Terms of Reference issued on 2 July, as has been detailed by Mr Neal and is also published on our website, the Terms of Reference. Included in my tasks are to make any recommendations appropriate in relation to the findings of this Board of Inquiry.

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Counsel assisting has explained that a number of Government agencies and relevant private operators of interest to the Inquiry have already been contacted by those assisting the Board. The Inquiry has also established various ways in which members of the public can provide relevant information, including by writing to the Post Office box, the email address or calling the 1800 number on the website.

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The Inquiry is, as you have heard, in its information-gathering phase at present. The next stage will be the public hearings, at which time the examination of relevant witnesses will commence and be conducted. Again, as you have heard, that will commence on 6 August.

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This Inquiry has been established by the Premier of Victoria as authorised by the Governor in Council to perform its task as set out in its Terms of Reference.

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To get this done, I expect no less than full, frank and timely cooperation from all relevant Government departments, entities and persons to enable me to do my job for the people of Victoria.

The further sitting of this Inquiry is now adjourned to 6 August.

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THE HEARING ADJOURNED AT 10.33 AM UNTIL 10.00 AM ON THURSDAY, 6 AUGUST 2020

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