

WITNESS STATEMENT OF JACINDA DE WITTS

Name: Jacinda de Witts

Address: Level 24, 50 Lonsdale Street, Melbourne, Vic, 3000

Occupation: Deputy Secretary, Legal and Executive Services Division and General Counsel, Department of Health and Human Services

Date: 10 September 2020

1. I make this statement to the Board of Inquiry in response to **NTP-135**, the Notice to produce a statement in writing (**Notice**) dated 1 September 2020. This statement has been prepared with the assistance of lawyers and Departmental officers.
2. This statement is true and correct to the best of my knowledge and belief. I make this statement based on matters within my knowledge, and documents and records of the Department. I have also used and relied upon data and information produced or provided to me by officers within the Department.

QUESTIONS**Roles and Responsibilities**

Question 1: Please describe your relevant professional experience and qualifications.

3. My curriculum vitae, which contains comprehensive detail of my professional qualifications and employment history as at the time of making this statement, is available at DHS.1000.004.0001.

Question 2: What is your role within the Department of Health and Human Services (the Department) and for what are you and your branch ordinarily responsible?

4. My normal role at the Department is that of Deputy Secretary, Legal and Executive Services Division and General Counsel. The Legal and Executive Services Division is responsible for providing legal advice, undertaking key integrity functions, responding to freedom of information requests, and providing Ministerial support and Cabinet and parliamentary services.
5. In the period between 8 April and 8 August 2020, I was seconded to the position of Deputy Secretary, Public Health Emergency Operations and Coordination. On about 1 July 2020, this role was renamed Deputy Secretary, COVID-19 Public Health Division, when the functions I oversaw formally became a separate division known as the COVID-19 Public Health Division. For the purposes of this statement I will refer to my role during the whole of the secondment

- period as 'Deputy Secretary, COVID-19 Public Health Division' and the function I oversaw as the 'COVID-19 Public Health Division'.
6. During the period of 8 April to 8 August, my role was to provide Deputy Secretary oversight and executive input in relation to the COVID-19 public health team. I describe the functions of that team further at paragraph 10 below, and my role in further detail at paragraphs 9 and 12 to 15 below. It was not part of my role to undertake or approve public health advice myself, as that is not within my area of expertise and I was not undertaking any statutory functions in that regard.
 7. The role of Deputy Secretary, COVID-19 Public Health Division was created in response to the very rapid expansion in size and complexity of the department's contribution to the COVID-19 response. A decision was made by the Secretary on about 7 April 2020 to divide functional responsibilities as follows:
 - (a) the Regulation, Health Protection and Emergency Management Division would be responsible for the COVID-19 emergency accommodation function (reporting through the Operation Soteria command structure) and enforcement and compliance functions. That division also retained responsibility for non COVID-19 public health work; and
 - (b) the COVID-19 Public Health Division (initially called Public Health Emergency Operations and Coordination, as described at paragraph 5 above) would be responsible for managing the state-wide response to the critical public health risks from COVID-19, including the provision of public health advice to the department and other government agencies, infection prevention and control, case contact and outbreak management, physical distancing, public information and intelligence.
 8. In early February 2020, the COVID-19 pandemic was recognised as a Class 2 emergency under the *Emergency Management Act 2013*. The Chief Health Officer (CHO) or his delegate, as the Public Health Commander under the emergency management structure, appointed Deputy Public Health Commanders to lead key aspects of the COVID-19 public health response. The COVID-19 Public Health Command formed the core of my new Division. Members of the Public Health Command all reported to the CHO, who in turn had a dual reporting line, both to me and to the Deputy Secretary, Regulation, Health Protection and Emergency Management Division.
 9. The purpose of my role as Deputy Secretary, COVID-19 Public Health Division was to support the CHO and Public Health Command in scaling up and managing the rapidly growing public health team, and to ensure that team received all the logistics and other support it needed from the rest of the organisation, including from the legal team and corporate services functions, thereby allowing the public health team to focus on the challenges of the pandemic.

I saw my role as including supporting the CHO operationally with the executive functions of managing a branch with a large number of staff.

10. The COVID-19 Public Health Command was responsible for the following key functions, each of which had an associated team:
 - (a) Case, Contact and Outbreak Management, which was responsible for undertaking contact tracing and responding to outbreaks;
 - (b) Intelligence, which was responsible for undertaking surveillance, epidemiological modelling, informatics and situational reporting;
 - (c) Physical Distancing, which was responsible for formulating the public health directions required to manage the virus (but not for compliance with those directions, which was managed by the Enforcement and Compliance branch within the Regulation, Health Protection and Emergency Management Division);
 - (d) Pathology and Infection Prevention and Control Policy, which was responsible for advising on testing issues, working with public and interstate laboratories and research institutions, setting overarching infection prevention and control policies for the State, providing cleaning and personal protective equipment (PPE) policies (available publicly on the department's website) and providing specific advice on complex settings;
 - (e) Public Information, which was responsible for providing communications for the Victorian community and health and human services sectors on the COVID-19 pandemic (which included content input from the other teams as needed);
 - (f) Public Health Operation Coordination, which was responsible for providing corporate services (such as finance support, HR support, procurement and rostering) to the Division.
11. Additional teams were also added to the COVID-19 Public Health Division over time, including the outbreak squads (or rapid response units). The outbreak squad function works with a number of COVID-19 public health functions and with a range of other areas of the department. It works closely with the Case, Contact and Outbreak Management function in respect of outbreaks (with the squad lead reporting to the outbreak lead for the purposes of an outbreak). It also intersects with the community engagement and testing unit and draws on the expertise of the infection prevention and control team, referred to at paragraph 10(d) above. The function also coordinates its activities with relevant program areas within the department, such as the aged care and disability branches. Other teams added to the Division

- during my secondment were the COVID-19 directions information team, and a team to support the establishment of the Division.
12. During the period of 8 April to 8 August, my role was to provide Deputy Secretary oversight and executive input to support the delivery of these functions. While my role did not involve providing public health advice, a key part of the role was to ensure appropriate reporting occurred at Secretarial, Ministerial and Cabinet levels about the delivery of the public health function, as well as daily reporting on key intelligence and case information, and ensuring policy development work was undertaken to clearly enunciate the policy and strategy that underpinned material public health advice and decisions (such as the policy settings for the Stay at Home Directions).
 13. The role also included oversight of people management (and particularly structuring, fatigue management, rostering and rapid recruitment), secondments for key public health command roles and embedding the support provided by other State public health teams, negotiation or extension of key contracts, oversight of technology improvements, capacity and delivery of call centre and information functions, enhancements to logistics and management of budget, finance and risk management.
 14. In the mission structure put in place for the State health emergency, in which the Secretary to the department was the 'Mission Lead', my role was referred to as Scope Lead, Pandemic Containment. This is the same as the Deputy Secretary role referred to above.
 15. By way of example of the functions that I undertook in my role as Deputy Secretary, COVID-19 Public Health Division, I had oversight and management of:
 - (a) the stand up of the outbreak squad function, including recruitment of an outbreak squad lead and rapid recruitment of nurses;
 - (b) planning, procurement and roll out of a training program for the outbreak squad nurses, significantly enhancing outbreak squad capacity;
 - (c) arrangements with the Commonwealth and internal processes and systems to enable use of COVDSafe App data;
 - (d) responses to complex requests in relation to the operation of the public health directions (although requests for exemptions from hotel quarantine were managed by COVID-19 Enforcement and Compliance in the Regulation, Health Protection and Emergency Management Division);
 - (e) endorsement of a contract with a major technology supplier to implement process improvements and automated solutions in support of the COVID-19 pandemic response;

- (f) facilitating secondment arrangements with university and hospitals for respite support for the public health command;
 - (g) management of surge capacity, in particular staffing available under private hospitals agreements and from other departments and agencies;
 - (h) public reporting on material public health matters, including changes to testing criteria, changes to directions and outbreaks at workplace or retail facilities;
 - (i) reports to Parliament on the extensions of the state of emergency under the PHWA;
 - (j) normalizing reporting lines and structures to improve staff wellbeing and sustainability, including discussions with the relevant union on implementation of appropriate changes;
 - (k) regular reporting to Cabinet on key health emergency metrics, budget submissions to Cabinet and acquittals;
 - (l) in late June 2020, the Deputy Secretary, Regulation, Health Protection and Emergency Management Division and I were responsible for formally assigning staff from the Regulation, Health Protection and Emergency Management Division to the new COVID-19 Public Health Division.¹
16. During my secondment, I job-shared the Deputy Secretary role with Annalise Bamford from 6 May to 1 August, during which time I worked Wednesdays to Sundays and Annalise worked Saturdays to Wednesdays.
17. Following the end of my secondment on 8 August 2020, I returned to my normal role, as Deputy Secretary, Legal and Executive Services Division and General Counsel.
18. I understand that the COVID-19 Public Health Division was further restructured on 17 August and now includes four streams of work (being: Intelligence, Data and Corporate; Engagement and Testing; Case Management, Contact Tracing & Outbreak Management; Policy, Strategy and Information) under six Deputy Secretaries. The Division also has a newly created Office of the Chief Health Officer, led by the CHO.

Question 3: What role did you play in the Hotel Quarantine Program and for what were you responsible?

19. I was not directly involved in the Hotel Quarantine Program. I oversaw teams responsible for giving advice to Operation Soteria in two capacities, as set out below.

¹ DHS.0001.0012.1849

20. In my role as Deputy Secretary, Legal and Executive Services Division and General Counsel, being my substantive role, which I was in prior to 8 April and returned to on 8 August, the department's legal branch ultimately reported to me. In this role, I personally provided some legal advice in relation to the hotel quarantine program. I also supervised the provision of legal advice by lawyers within the Department and briefed counsel to provide advice. By way of example:

- (a) On 27 and 28 March 2020, following the National Cabinet meeting at which it was agreed that, from midnight on 28 March 2020, returning international passengers would be required to self-isolate in hotels for 14 days upon arrival into Australia, the legal branch was involved in providing advice on how that requirement would be reflected in legal instruments and in drafting relevant instruments including direction and detention notices to be issued to returned travellers.²
- (b) On 29 March 2020, the legal team provided advice on the requirements of the Public Health and Wellbeing Act 2008 (**PHWA**) with respect to Authorised Officers (**AOs**), as discussed in my response to Question 4, below.

² DHS.0001.0004.1702

21. In my role as Deputy Secretary, COVID-19 Public Health Division between 8 April and 8 August, public health experts within my Division gave advice to government and non-governmental entities throughout Victoria on a range of public health issues relating to COVID-19. This role included giving advice to Operation Soteria on a range of public health matters. Public health advice was always approved by the CHO, his delegates, or other public health experts through the Public Health Command structure, and was not required to be approved by me. (My role did not form part of the Public Health Command structure from an incident response perspective, noting the specialist expertise required in these areas. I also did not have statutory functions under the PHWA.) Advice provided by the COVID-19 public health team to Operation Soteria is discussed in my responses to Questions 5 to 9, below. Following the outbreaks at the Rydges and the Stamford Hotels, I was kept informed of, and was involved in reporting to the Secretary and the Minister on, the activities of the outbreak squads and Outbreak Management Teams, along with other outbreak response activities occurring in the State.
22. The CHO, whose Public Health Command was in my Division, was the officer who authorised the Deputy Chief Health Officer and the AOs to exercise emergency powers under the Act in a range of areas relating to the State's pandemic response, including the hotel quarantine program.

Daily reviews of detention

Question 4: To the best of your knowledge, how, and by whom, were the daily reviews required by section 200(6) of the *Public Health and Wellbeing Act 2008 (Vic)* conducted? Please provide details, including detail about what daily reviews entailed and copies of relevant documents which guided such reviews.

23. Section 200(6) of the PHWA requires an AO to review whether the continued detention of a person subject to detention is reasonably necessary to eliminate or reduce a serious risk to public health, once every 24 hours. On 29 March 2020, the department's legal team provided advice that an AO could complete that daily review function in a centralised way, and provided some template documents to be used by AOs for that centralised daily review.³
24. The advice of the department's legal team was informed by advice obtained from counsel as to what is required for a 'review' under s 200(6) and consideration of the *Charter of Rights and Responsibilities Act 2006*.
25. To the best of my recollection, neither I nor my team was involved in the implementation of daily reviews under s 200(6) of the PHWA, which would have been undertaken by AOs (outside the COVID-19 Public Health Division). I understand that the Commander,

³ DHS.0001.0014.1789. Copies of the template documents are at DHS.0001.0014.1806.

Enforcement and Compliance (Meena Naidu / Murray Smith / Leanne Hughson), reporting to the Deputy Secretary, Regulation, Health Protection and Emergency Management (Melissa Skilbeck) was involved in the oversight of those daily reviews.

Precautions and testing

Question 5: What:

(a) precautions did your Department take;

(b) advice did your Department receive,

with a view to limit or prevent community transmission of COVID-19 from quarantine hotels?

26. My response to this question focuses primarily on the role of the COVID-19 Public Health Division, of which I was Deputy Secretary between about 8 April and 8 August 2020.
27. My Division provided public health guidance to Operation Soteria about infection prevention and control and the use of Personal Protective Equipment from time to time, both through directing Operation Soteria to existing public health advice provided to Victorians, and through more specific resources and information provided in the hotel quarantine context.
28. By way of example I am informed that the public health team had input into the following guidance:
- (a) COVID-19 DHHS Physical Distancing and Public Health Compliance and Enforcement Plan (confidential internal draft plan) dated 4 April 2020;⁴
 - (b) PPE advice for hotel health care workers (HCW) for contact with COVID-19 quarantine clients dated 22 April 2020;⁵
 - (c) Guidelines for managing COVID-19 in mandatory quarantine dated 23 April 2020;⁶
 - (d) Operation Soteria Plan v2 dated 26 April 2020,⁷ which includes section 5 'Health and Welfare' dated 24 April 2020 approved by the Public Health Commander, including the 'Public Health Standards' and refers to the 'Guidelines for managing COVID-19 in mandatory quarantine';

⁴ DHS.0001.0001.0729

⁵ DHS.5000.0029.2256

⁶ DHS.5000.0118.8038

⁷ DHS.5000.0001.3583

- (e) COVID-19 Case and Contact Management Guide (version 11) dated 29 April 2020,⁸ which contains sections on hotel quarantine at 5.1.4 and 6.1.4, in the context of broader public health guidance;
- (f) Email advice on 27 April 2020 reiterating the applicability of publicly available cleaning and disinfection advice for non-healthcare settings⁹ to the hotel quarantine program and providing advice on specific questions raised by DJPR with respect to cleaning hotel rooms;¹⁰
- (g) PPE Advice for Hotel-Based Security Staff & AOs in Contact with Quarantined Clients dated 5 May 2020,¹¹ which was subsequently updated on 8 June 2020;¹²
- (h) Operation Soteria Plan v2.1 dated 8 May 2020,¹³ which includes section 5 'Health and Welfare' dated 8 May, including the 'Standards', 'Operational Guidelines' approved by the Public Health Commander;
- (i) Operation Soteria Plan v3 dated 26 May 2020,¹⁴ which includes section 5 'Health and Welfare' dated 1 June 2020, including the 'Standards', the 'Public Health Policy for COVID-19 in mandatory quarantine' and the 'Operational Guidelines', approved by the Public Health Commander;
- (j) Advice for cleaning requirements for hotels who are accommodating quarantined, close contacts and confirmed COVID-19 guests, last updated 19 June 2020.¹⁵

29. I understand the public health advice was adopted and applied by Operation Soteria, however I was not involved in the operation of the hotel quarantine program so am unable to provide any further information on implementation.

Precautions and advice by public health following outbreaks

30. Following notification to the department of the Rydges Hotel outbreak on 26 May 2020, I was copied into a number of emails between the public health experts in my Division in relation to the outbreak response (I was ordinarily copied on daily outbreak summaries). Immediate action was taken by the Case, Contact and Outbreak Management team, which provided

⁸ DHS.0001.0067.0001

⁹ DHS.0001.0015.0323.

¹⁰ DHS.5000.0023.0395

¹¹ DHS.5000.0003.9688

¹² DHS.0001.0003.0029

¹³ DHS.0001.0008.0517

¹⁴ DHS.0001.0001.2245

¹⁵ DHS.5000.0069.8348

recommendations for managing the outbreak and also commenced its own investigations of the circumstances of the transmission.¹⁶

31. Following notification to the department of the Stamford Hotel outbreak on 16 June 2020, I was again copied into a number of emails between the public health experts in my Division in relation to the outbreak response. I understand that department outbreak squad nurses visited the site following the stand-up of an Outbreak Management Team.
32. In the days and weeks following the outbreaks, I understand that outbreak squad nurses were involved in providing education to on-site staff in the context of their outbreak response role. I have been informed that, following the outbreaks, contracts held by my Division (enabling access to specialist public health expertise for the training of newly recruited outbreak squad nurses) were drawn on to provide additional support and training to hotel quarantine staff. For example, on 16 June 2020, I executed a contract engaging an external provider to deliver training.¹⁷ I am informed that Bruce Greaves of Health Education Collaborative Pty Ltd subsequently delivered training to security guards at the Stamford Hotel on 24 June 2020 as part of the response to the outbreak there.¹⁸
33. I understand that the Outbreak Management reports in respect of the outbreaks summarise precautions taken and advice provided in response, aimed at limiting community transmission. Dr Simon Crouch of the department and Dr Sarah McGuinness, who had been seconded to the department, have provided evidence to the Board in relation to outbreak management and in relation to the Outbreak Management reports.

Question 6: What was your Department's strategy in relation to COVID-19 testing of staff working at quarantine hotels?

34. The public health expert advice was that, in general, people without COVID-19 symptoms should not be tested except in special circumstances, such as close contacts of a confirmed case or a person recently returned from overseas travel. Therefore it is my understanding that broad-based periodic asymptomatic testing was not recommended by the public health experts.¹⁹ I am not aware of consideration having been given to undertaking regular asymptomatic testing of staff working at quarantine hotels.
35. Following the positive tests at the Rydges Hotel (and subsequently at the Stamford Hotel), the Case, Contacts and Outbreak Management team communicated with affected staff members

¹⁶ DHS.5000.0125.0355

¹⁷ DHS.0001.0025.0001

¹⁸ DHS.5000.0095.6935, DHS.5000.0095.6951

¹⁹ See, eg, DHHS guidance as at 14 April, at <https://www.dhhs.vic.gov.au/coronavirus-update-victoria-14-april-2020>; and AHPPC Guidance dated 14 May, at <https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-coronavirus-covid-19-statements-on-14-may-2020#statement-on-the-role-of-asymptomatic-testing>.

and provided advice as to who should be tested, which I understand included asymptomatic staff members (which is usual for an outbreak management testing regime).²⁰

Question 7: Were staff working at quarantine hotels, at any stage, given priority access to COVID-19 testing?

36. I am not aware of staff working at quarantine hotels generally being given priority access to COVID-19 testing and refer to my response to Question 6 above.
37. Following the outbreaks at each of the Rydges Hotel and the Stamford Hotel, the public health team provided advice on which staff working at quarantine hotels were required to be tested. I understand special arrangements were put in place for the testing of staff working at the relevant hotels to promote centralised and more efficient processing of COVID-19 test results.
38. It is my understanding that staff in the hotel quarantine program were able to access COVID-19 testing when required.

Training in Infection Control

Question 8: What resources and information did the Department provide about infection control to people (including private security staff, nurses, hotel staff and employees of the Victorian Public Service) engaged to work as part of the Hotel Quarantine Program? Please provide details, including when any information or resources were provided; please also provide any relevant documents.

39. I refer to my response to Question 5 above, in which I have set out advice and information provided about infection control in respect of the hotel quarantine program by the COVID-19 Public Health Division, including guidance documents into which the public health team had input.
40. I have also been informed that Operation Soteria engaged infection control consultants, who provided additional advice to Operation Soteria in the context of hotel quarantine and also developed materials. I understand that those consultants liaised with the public health team in my Division in respect of the key elements of that advice, such as PPE advice provided to hotel security.²¹

Question 9: Did the Department provide (or procure any other entity to provide) infection control advice and/or training to those engaged to work as part of the Hotel Quarantine Program (including private security staff, nurses, hotel staff and employees of the Victorian

²⁰ For example, following the Rydges outbreak, testing was recommended (and commenced) for all staff who attended the Rydges Hotel for 30 minutes or more on or after 11 May 2020: DHS.5000.0036.4829. Following the Stamford outbreak, testing was recommended for all staff who spent 30 minutes or more at the hotel between 1 June and 17 June: DHS.5000.0036.4004.

²¹ DHS.5000.0103.2354

Public Service)? Please provide details, including what any such training involved and when any such training was provided. Please also provide any relevant documents.

41. In addition to the matters set out in my response to Questions 5 and 8, above, I understand that the external infection control consultants engaged by Operation Soteria also providing training on infection control procedures.
42. As referenced in my response to Question 5, education was provided by outbreak squad nurses to staff at hotels following the Rydges outbreak. Training on PPE and infection control was also provided in June 2020 to security staff at the Stamford Hotel by an external consultant sourced through my Division, as noted at paragraph 32, above.

Question 10: Within the Department, who made decisions about:

(a) what resources and information; and

(b) what training,

would be provided to people engaged to work as part of the Hotel Quarantine Program?

43. Operation Soteria was a multi-agency response by the Victorian Government, with each agency involved responsible for making decisions with respect to its own staff and contractors. Within this department, I understand that the COVID-19 Accommodation Commander was in command with respect to all departmental staff working as part of the hotel quarantine program (other than AOs who reported to the Commander, COVID-19 Enforcement and Compliance). It is my understanding that the COVID-19 Accommodation Commander and the Commander, COVID-19 Enforcement and Compliance would each make decisions about the information, resources and training to be provided to the staff and contractors in their respective areas, taking into account the public health advice provided from time to time.
44. As described in my response to Question 5, following the first outbreak in hotel quarantine, outbreak squad nurses from the COVID-19 Public Health Division and an external consultant provided information and training to hotel quarantine staff.

Question 11: In your view, were the resources, information and training provided to people working in the Hotel Quarantine Program adequate? Why or why not?

45. I do not consider that I have the public health expertise (or information) to answer this question and I do not wish to speculate.

Outbreaks

Question 12: Do you hold any, and if so what views about the underlying causes of community transmission of COVID-19 from staff working at:

(a) the Stamford Plaza Hotel; and

(b) the Rydges Hotel in Carlton,

beyond those places?

46. I do not consider that I have the public health expertise to answer this question and I do not wish to speculate.

Question 13. What, if anything, do you consider that:

(a) the Department;

(b) other government departments or private organisations;

(c) you,

should have done differently, in relation to the Hotel Quarantine Program?

47. Given my limited involvement in the implementation of the hotel quarantine program, it is difficult for me to say what could or should have been done differently. From my general awareness of the program, I consider that it may have benefited from more streamlined contract management arrangements to enable contractual levers to be better exercised to execute the program.

Further Information

Question 14: If you wish to include any additional information in your witness statement, please set it out below.

48. In my opinion, the PHWA primarily contemplates a doctor/patient, therapeutic style response to individual communicable diseases. For example, a situation where one person will be in quarantine for an extended period. Although the legislation does allow for quarantine in the form of the hotel quarantine program, it is not well-adapted to a broad-brush quarantine program of this kind. The need to weigh up factors under the PHWA is challenging under the current legislative scheme where there is a need to systemise an approach to large numbers of returning travellers. It may be helpful to have legislation in the future that better facilitates public health protections on a scale of the nature of the hotel quarantine program, whilst balancing individual rights.

Signed at Melbourne

in the State of Victoria

on **10 September 2020**

A handwritten signature in black ink, reading "Jacinda de Witts". The signature is written in a cursive style with a horizontal line underneath the name.

Jacinda de Witts