

IN THE MATTER OF  
THE BOARD OF INQUIRY  
INTO THE HOTEL QUARANTINE PROGRAM

**SUBMISSIONS ON BEHALF OF  
THE DEPARTMENT OF  
ENVIRONMENT, LAND, WATER  
AND PLANNING AND CHRIS  
EAGLE IN RESPONSE TO  
SUBMISSIONS OF COUNSEL  
ASSISTING**

1. The Department of Environment, Land, Water and Planning (**DELWP**) and Mr Chris Eagle seek to correct the following submission made by Counsel Assisting regarding the roles of Mr Chris Eagle and Mr Scott Falconer who acted in the role of Deputy State Controller – Health (**DSC-H**):

*“...Commissioner Crisp had placed great reliance on the role of Mr Eagle and his off-sider, Mr Falconer, who shared the role. They were between them the controller for the particular operation... Mr Eagle gave evidence that he understood his function to be quite a different one and in fact much more limited. He said that he had a coordination function...”<sup>1</sup>*

2. It is submitted that the Board should not accept or rely upon the extract of the submission made by Counsel Assisting, set out above, for two reasons.
3. First, the submission of Counsel Assisting implies a divergence between the evidence of Commissioner Crisp and Mr Eagle before the Board regarding the role of DSC-H held by Mr Eagle and Mr Falconer which, it is submitted, is not supported by the evidence before it.

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<sup>1</sup> Board of Inquiry transcript dated 28.09.2020, P-2206, [28]-[32].

4. Emergency Management Commissioner Andrew Crisp's evidence was that, from 28 March 2020 to mid-April 2020, the structure in place for Operation Soteria was set out in Appendix 4 of that plan.<sup>2</sup> Under Appendix 4, roles in the State Control Centre (**SCC**), which included the DSC-H, were described as monitoring and coordination.<sup>3</sup> It is important to recall that Mr Eagle and Mr Falconer each held the role on a rotating roster only in the very initial stages of Operation Soteria, between 29 March 2020 and 18 April 2020, after which time Mr Eagle shadowed Ms Pam Williams for a short transition period.<sup>4</sup>
5. Whilst Commissioner Crisp gave evidence that the DSC-H was in the control line,<sup>5</sup> he did not give evidence that the DSC-H was "*the controller for the particular operation*". This was a turn of phrase used by Counsel Assisting in her question which was directed at the DSC-H having "*specific responsibilities*".<sup>6</sup> Commissioner Crisp made clear that the DSC-H reported to State Controller – Health (**SC-H**),<sup>7</sup> and that the SC-H was responsible for the response to the emergency across the whole of Victoria.<sup>8</sup> The evidence of Commissioner Crisp that the DSC-H had authority to provide direction to agency commanders from departments outside the Department of Health and Human Services is not inconsistent with Mr Eagle's evidence of his co-ordination role under the direction of the SC-H.<sup>9</sup>
6. Nor did Commissioner Crisp give evidence that he placed "*great reliance*" on either Mr Eagle or Mr Falconer, in the short period they held the role of DSC-H. On a fair reading of his evidence, he had regular communications about the Operation with SC-Hs and DSC-Hs, amongst others.<sup>10</sup>

<sup>2</sup> Exhibit HQI0144\_P (First Witness Statement of Andrew Crisp) at DOJ.600.002.0029, [58].

<sup>3</sup> Operation Soteria Plan dated 28 March 2020 Appendix 4 Exhibit HQI0150\_RP (Attachments to Witness Statement of Chris Eagle) at DELW.0001.0020.0218. Commissioner Crisp identifies that this structure changed only after mid-April 2020: Exhibit HQI0144\_P (First Witness Statement of Andrew Crisp) at DOJ.600.002.0029, [58].

<sup>4</sup> Exhibit HQI0149\_RP (Witness Statement of Chris Eagle) at DELW.5000.0002.0003, [15].

<sup>5</sup> Board of Inquiry transcript dated 15.09.2020, P-1375, [21]-[22].

<sup>6</sup> Board of Inquiry transcript dated 15.09.2020, P-1375, [6]-[9].

<sup>7</sup> Board of Inquiry transcript dated 15.09.2020, P-1375, [21]-[22] and P-1395, [11]-[12].

<sup>8</sup> Board of Inquiry transcript dated 15.09.2020, P-1355, [26]-[32].

<sup>9</sup> Board of Inquiry transcript dated 15.09.2020, P-1375, [25] to P-1376, [5].

<sup>10</sup> Exhibit HQI0144\_P (First Witness Statement of Andrew Crisp) at DOJ.600.002.0011, [12(b)], DOJ.600.002.0027, [51]. DOJ.600.002.0028, [54].

7. The evidence of the two SC-Hs, Mr Jason Helps and Ms Andrea Spiteri, was consistent with Mr Eagle's evidence of the role of DSC-H whilst he and Mr Falconer shared it. Both gave evidence that the DSC-H was primarily a coordination role.<sup>11</sup> Both gave evidence that, during the period that Mr Eagle and Mr Falconer shared the role, the DSC-H reported to them.<sup>12</sup> Both accepted that the SC-H had overall responsibility.<sup>13</sup>
8. Secondly, it was never put to Mr Eagle, or to Commissioner Crisp, that there was any divergence between their perceptions of the role of DSC-H by Counsel Assisting or any other counsel. To the contrary, Counsel Assisting put to Mr Eagle that Commissioner Crisp had considered the DSC-H role as one of coordination:

*“And then at paragraph 20 you refer to escalating matters from the various agencies to the State Controller or to the State Agency Commander. Just pausing there, the evidence that the Board has heard today from Commissioner Crisp is that the model in use would have been within each agency, including DHHS as control agency, a vertical line of command within that agency that would have at its head an Agency Commander with each of those Agency Commanders then feeding into and being coordinated by you in your role as Deputy State Controller. Is that how you experienced the structure?”<sup>14</sup>*

<sup>11</sup> Mr Helps stated that a dedicated DSC-H would be appointed “to co-ordinate Operation Soteria” and take on “some of the day to day coordination” for “coordinating across various agencies”: Exhibit HQI0164\_RP (Witness Statement of Jason Helps) at [45] and [51]. Ms Spiteri also described the role as a “coordination role”: Board of Inquiry transcript dated 17.09.2020, P-1588, [15]-[20]. Mr Eagle gave consistent evidence: Exhibit HQI0149\_RP (Witness Statement of Chris Eagle) at DELW.5000.0002.0004-DELW.5000.0002.0007, [17]-[33].

<sup>12</sup> Board of Inquiry transcript dated 17.09.2020, P-1590 [25]. Exhibit HQI0164\_RP (Witness Statement of Jason Helps) at [51]. The reference to the “early stages” by Mr Helps in his witness statement is a reference to the entire period in which Mr Eagle and Mr Falconer were in the role, before it was transitioned to a new model as described further in his witness statement and that of Mr Eagle, Exhibit HQI0164\_RP (Witness Statement of Jason Helps) at [53]-[55] and Ex HQI0149\_RP (Witness Statement of Chris Eagle) at DELW.5000.0002.0003, [14]-[15].

<sup>13</sup> Exhibit HQI0164\_RP (Witness Statement of Jason Helps) at [45]. Exhibit HQI0162\_P (Witness Statement of Andrea Spiteri) at [39]. Board of Inquiry transcript dated 17.09.2020, P- 1586 [21]-[27], P-1595, [29].

<sup>14</sup> Board of Inquiry transcript dated 15.09.2020, P-1438, [10]-[17].

9. As a matter of procedural fairness, if Counsel Assisting intended to submit there was a divergence in the understandings of Mr Eagle and Commissioner Crisp about the role of DSC-H, it should have been put to them by Counsel Assisting. The Board should not rely upon the extracted submission in these circumstances.

**Jenny Firkin QC**  
**Sarah Keating**  
**Counsel for DELWP**

**Samuel Stafford**  
**Counsel for Chris Eagle**

**5 October 2020**