

TRANSCRIPT OF PROCEEDINGS

**IN THE MATTER OF THE ROYAL COMMISSION INTO
NATIONAL NATURAL DISASTER ARRANGEMENTS**

DAY 30 TRANSCRIPT

Continued from Wednesday, 5 August 2020, DAY 29

CANBERRA

10:00 AM, THURSDAY, 6 AUGUST 2020

**MS D HOGAN-DORAN SC, MR T GLOVER AND MR A TOCKLEY appear
as Counsel Assisting**

<RESUMING 9:00 AM>

COMMISSIONER BINSKIN: Mr Tokley, good morning.

5 MR TOKLEY QC: Good morning. Chair, good morning, Commissioners.

COMMISSIONER BINSKIN: It's the Constitution.

10 MR TOKLEY QC: It's the Constitution this morning.

COMMISSIONER BINSKIN: Been looking forward to this.

15 MR TOKLEY QC: It's the vibe, your Honours. Commissioners, this morning I will be summarising the responses that were received to the Issues Paper. Term of Reference C in this Commission's Letters Patent directs this Commission to inquire into several matters concerning the legal framework, for attending to national emergencies. Term of Reference C in particular asks whether changes are needed to the nation's legal framework for the involvement of the Commonwealth in responding to national emergencies, including in relation to the following:

20 *"(i) thresholds for, and any obstacles to, State or Territory requests for Commonwealth assistance; (ii) whether the Commonwealth Government should have the power to declare a state of national emergency; (iii) how any such national declaration would interact with State and Territory emergency management*
25 *frameworks; and (iv), whether in the circumstances of such a national declaration, the Commonwealth Government should have clearer authority to take action, including, but without limitation, through the deployment of the Australian Defence Force in the national interest."*

30 It is immediately apparent that the Term of Reference C uses the expression "national emergency" and not "natural disaster". The concept of a national emergency can be broader than a natural disaster. For example, a national emergency might embrace an event such as a terrorist attack which is something that not a natural disaster event or a disaster. Another feature to point out is the use of the word
35 "national" in the Term of Reference. There is a question of how national an emergency has to be, in order to engage the declaration that is contemplated by Term of Reference C. That is, need it be on a national scale or must the response be in the national interest or some other measure of significance?

40 To illustrate, in in some scenarios it could mean multi-level and/or Australia-wide. In others, it could mean something more geographically confined but of such importance to our economic and psychological wellbeing because of the proportion of the population affected; for example, a significant tsunami or earthquake directly impacting one of Australia's most populous cities.

45 It's almost trite to say that Term of Reference C raises matters of importance and significance to Australia as a whole. Accordingly, in order to explore the matter, on

8 May this year the Royal Commission published an Issues Paper entitled “Constitutional Framework for the Declaration of a State of National Emergency”. The Issues Paper invited submissions on three questions which the operator will now display. If I could please have document RCN.900.106.0001. And, Commissioners, you will see the three questions displayed there.

The Commission received 18 responses to the Issues Paper. In particular, responses were received from the Commonwealth of Australia, the States of New South Wales, Queensland, South Australia, Victoria and Western Australia, as well as from eminent constitutional law practitioners, academics and members of the public. The key issues arising out of those responses will be summarised shortly. To facilitate consideration of the Issues Paper, the Office of the Royal Commission published a Background Paper entitled “Constitutional Issues and National Natural Disaster Arrangements” on 22 May this year.

The background paper provided further detail on certain topics, particularly in relation to the external affairs power in the Commonwealth Constitution, under which the Commonwealth Parliament can make laws to implement international agreements to which Australia is a party.

I propose now to summarise the themes arising from the responses to the Issues Paper. I propose to do so by way of theme rather than summarising the answers to the questions posed. The responses represented a diverse range of issues – sorry, views on the issues. First, many submissions made the point that it was somewhat difficult to answer questions posed in the Issues Paper as to the existence of the power to make a declaration of a national emergency in the abstract. This is because the Commonwealth Constitution contains no explicit or express head of legislative power that has as its subject matter or purpose national emergencies or natural disasters.

In order to understand why our Commonwealth Constitution does not have any express mention of national emergencies or natural disasters, it is useful and helpful to have regard to some history of its drafting. As was mentioned in some of the responses to the Issues Paper, at the time of federation, catastrophic fires were a well known colony-specific issue, with catastrophic fires burning in Victoria while the Constitution text itself was being debated. Indeed, a Victorian Royal Commission report on relevant issues was published just before federation.

There were other matters of more concern that were a feature of the convention debates which it could be surmised drew the attention of the participants. The framers of the Constitution assigned to the Commonwealth Parliament the minimum capacities to establish a national polity. Their starting point was that response to, and prevention of, natural disasters was essentially a local matter and that a stand-alone power was not to be provided to the Commonwealth Parliament, other than to assist the Commonwealth Parliament to appropriate funds to assist States.

While some countries' constitutions include a framework for dealing with emergencies, none of the constitutions on which Australia's Constitution was based included express emergency powers. This might have influenced the omission of such powers in the Commonwealth Constitution in its final form. Of course, the drafting history of our Constitution is not determinative of whether the Commonwealth is able to make a declaration of a national emergency, it is the words of the Constitution itself that are ultimately determinative. Further, it was known when the Constitution was drafted that the executive power contained in section 61 of the Constitution would be developed as the nation grew or developed.

There are two other matters of overarching relevance or significance that have a bearing upon the discussion that follows that I wish to mention. The first matter is one that is recognised in most of the submissions and underlying most of the submissions. It is one that is, in one sense, very obvious but it has significant implications for and informs discussions of matters. It is the nature of federation and federalism; a concept of federalism underlies discussion about the respective roles and responsibilities for the Commonwealth and the States.

In one sense, it may be said to be the vibe of the Constitution. The conception of federalism in both its legal and political dimensions clearly has a bearing upon one's perception of the respective roles and responsibilities of the actors: The Commonwealth, the States and Territories within the federation. The continued existence of the States is a given. Their respective roles and responsibilities and their evolution have always been the subject of different points of view. These views informed the discussion in many of the submissions in relation to the preferable distribution of responsibilities from a policy perspective as well as in relation to the extent of the Commonwealth's power under the Constitution.

The second matter is that climate affects all of Australia. Climate is not constrained by the legal or political boundaries of the federation. As the Commission has already heard, it necessarily plays a role in many natural disasters. Some submissions highlighted that the changing global climate will lead to a need to respond with increasing speed and agility to more frequent and potentially more severe natural disasters.

The first theme for review is the Commonwealth's executive power and the express incidental power. The Issues Paper considered whether a declaration of a state of national emergency could be made by the Commonwealth, (a) without legislation relying only on the Commonwealth's executive power in section 61 of the constitution, or (b), with legislation, where the legislation would rely on the executive power, together with the express incidental power contained in section 51(xxxix) of the Constitution. The express incidental power enables the Commonwealth to legislate in aid of the executive power. Starting first with section 61, section 61 is as follows:

"The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative and extends to the execution and maintenance of this Constitution and of the laws of the Commonwealth."

5 The executive power can also be exercised by Ministers, commissioned by the Governor-General and their officers and oh officials in the name of the Crown.

10 Section 61 is said to comprise several different types of categories of non-statutory power. First, powers defined by reference to the prerogatives of the Crown properly attributable to the Commonwealth. Secondly, powers defined by the capacities of the Commonwealth, common to legal persons. And, thirdly, what is called the inherent authority derived from the character and status of the Commonwealth as a national government which is sometimes referred to as the nationhood power, although sometimes questions are raised as to its labelling as such.

15 The most accepted formulation of the so-called nationhood power referred to just then was put forward by Sir Anthony Mason, as he then, was in the AAP case and accepted subsequently by the majority of the High Court in *Pape v Commissioner of Taxation*, otherwise known as *Pape's case*. That formulation is that it empowers the Commonwealth to engage in activities peculiarly adapted to the government of the nation which cannot otherwise be carried out for the benefit of the nation.

20 In *Pape's case*, a majority of the High Court, French CJ and their Honours Gummow, Crennan and Bell JJ, concluded that a payment of a tax bonus during the Global Financial Crisis was supported by the executive power of the Commonwealth combined with the legislative incidental power in section 51(xxxix). Their Honours Justices Gummow, Crennan and Bell JJ relevantly said at paragraphs 233 and 242 of the judgment that:

30 *"The Executive Government is the arm of government capable of and empowered to respond to a crisis, be it a war, natural disaster or a financial crisis on the scale here. This power has its roots in the executive power exercised in the United Kingdom up to the time of the adoption of the Constitution but in form today in Australia it is a power to act on behalf of the federal polity."*

35 At paragraph 242 they adopted the words of Sir Antony Mason in the AAP case when they said:

40 *"The present is an example of the engagement by the Executive Government in activities peculiarly adapted to the government of the country and which otherwise could not be carried on for the public benefit."*

45 The passages reflect a view of the federation that I mentioned earlier as a fundamental underlying consideration to any discussion. It was this aspect of the executive power that the submissions generally treated as most relevant to the question of whether the Commonwealth has power to declare a state of national emergency. It was suggested that the nationhood power is best thought of as being

derived from, or sourced in, section 61 of the Constitution, rather than as being implied in the Constitution separately from section 61 or other powers.

5 It is important to understand, as some of the submissions point out, that Pape's case was not a case concerned with a natural disaster but with an economic crisis. Accordingly, the decision does not of itself establish a binding judicial precedent for dealing with natural disasters. Moreover, it is a feature of the common law system that judicial exigesis - I will get it right one time - exigesis - thank you - of meaning occurs over time often involving the views of several different judges holding sway
10 at various points in time.

In this vein submissions pointed out that it is difficult to apply judicial statements about the nationhood power with certainty or precision. Because of the importance of the Pape decision, I will spend a little bit of time on it. In relation to the Pape
15 decision, some submissions emphasised in varying degrees of detail that the majority judgments in Pape held that: (a) the executive power extends to activities peculiarly adapted to the government of the country and which otherwise could not be carried on for the benefit of the nation; (b) the power is most clearly exercisable in areas in which Commonwealth legislative or executive action involved no real competition
20 with State, executive or legislative competence.

In relation to the fiscal stimulus measures under consideration in Pape, only the Commonwealth had the resources needed to respond to the measure, and there was no suggestion that the measure involved any real competition with State legislative
25 or executive competence. The submissions provided by the State of New South Wales had a somewhat extended treatment of the case, and also made several other points. First, that Chief Justice French in the majority in writing and separately, warned that the power was not a general power to manage the economy. Secondly, the majority did not consider the executive power to extend to whatever activity or
30 enterprise the executive deems to be in the national interest. Nonetheless, three of the judges, writing together in the plurality, appeared to rely on the notion of a national emergency as engaging the power.

The three judges did not classify this non-statutory executive power to engage in
35 activities as a nationhood power, and one judge in the majority drew a distinction between this aspect of the executive power and an implied nationhood power. The submission observed that the decision has resulted in some confusion as to the source of the power, its relationship to other forms of executive power, and the limits that apply to it, but that the precise nature of the relationship between the executive
40 power and the implied nationhood power may be academic for the purposes of determining when the power is engaged.

A number of submissions cautioned against taking an unduly broad view of what the Commonwealth could do in reliance on Pape's case in this context. A number of
45 submissions noted that it was decided by a 4-3 majority. A number of submissions pointed out that, by contrast to the situation in Pape, the States are clearly in the field of natural disaster response, such that there are limits to what the Commonwealth

could do without competing with State legislative or executive competence. This is particularly so in relation to Commonwealth action beyond mere spending.

5 One submission cautioned against placing too much reliance on the reference in Pape to natural disasters. The caution is based on the notion that the Constitution confers on the Commonwealth express powers relating to war and the economy, but expressed no powers on the Commonwealth with respect to natural disasters. The caution goes to whether a crisis for which there are no supporting powers under the Constitution, natural disasters, would be treated in a similar way to crises for which
10 there are supporting powers: war and financial crises.

The submission of the State of New South Wales noted that the majority judgments in Pape did not delineate the bounds of what might be considered to be a national emergency so as to enliven the executive and legislative power, and that dissenting
15 judgments cast doubt on the scope of the Commonwealth powers to respond to national emergencies, and raised questions about the role of the court relating to executive or legislative responses to national emergencies.

20 What, then, can the Commonwealth do in reliance on the executive power? There was a general consensus in the submissions that the scope of the nationhood power and the extent to which it could be relied upon by the Commonwealth in taking particular actions in the event of a national natural disaster was uncertain. One submission made the point that such uncertainty is highly undesirable in the area of a natural disaster response. Commissioners, that may well be so for both policy and
25 practical reasons.

30 However, with the exception of the State of Western Australia's submission, most submissions agreed or at least did not dispute the position put forward in the Issues Paper that the Commonwealth could rely on the executive power to at least make a declaration of a state of national emergency that was symbolic; that is, galvanising in nature and gave rise to no further consequences. Beyond that, a number of submissions considered that legislation would likely be needed to enable significant legal consequences to flow from the declaration depending upon what those
35 consequences were.

40 Accordingly, it is appropriate to have regard also to the Commonwealth's legislative powers and specifically those heads of power in section 51 of the Constitution as a means to support legislation providing for certain measures to address the natural disaster depending upon the nature of those measures. The Issues Paper and Background Paper mentioned a number of heads of legislative power that would likely be of most relevance in this context, including the external affairs power section 51(xxix), the Territories power section 122, the corporations power, section 51(xx) and the trade and commerce power in section 51(i).

45 Other submissions also noted the potential relevance of other powers; namely, the quarantine power in section 51(ix) in the case of a pandemic; a banking power in section 51(viii) in the case of attack on the financial system; and the

Commonwealth's power to regulate itself, for example, to marshal its own resources. Unfortunately, it would consume considerable time to review those heads of power in any detail. However, the following can be said about the reach of the Commonwealth's legislative powers.

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First, all of the submissions that dealt with the Commonwealth's legislative power appear to accepted that a combination of powers or, as it has been called, a smorgasbord or patchwork quilt can be used and none of the submissions cast doubt upon that approach from a constitutional perspective. The technique has been used previously and the technique was upheld by some High Court decisions, including in the WorkChoices case in 2006.

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Most of the submissions discuss the Commonwealth's legislative powers, and make the point that there may well be gaps in the coverage of any legislative scheme based on Commonwealth heads of legislative power; that is the Commonwealth legislation would be piecemeal rather than comprehensive, or the heads of power relied upon to support the law might not support its application in every situation that arises.

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In light of the potential for gaps or the uncertainty as to the extent of the Commonwealth's power to legislate in relation to responding to a natural disaster, some of the submissions favour an approach that involves cooperation between the Commonwealth and the States in the event it is established that there is a need for a reform. Several submissions recommended developing a new national legislative framework in collaboration with the States and Territories for the purpose of providing a clearer framework for cooperation, and clarifying the existence and scope of the Commonwealth's power to assist in the form of a uniform law enacted by the Commonwealth in reliance on referrals of power by the States and the Federal Parliament under section 51(xxxvii) of the Constitution.

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The Commonwealth's submission noted that Commonwealth laws on many important matters including corporations, terrorism, personal property, securities, fair work and redress for institutional child sexual abuse have been enacted based on referral from the States. The main advantages put forward for such an approach included (a) remove any uncertainty or doubts about the extent of Commonwealth power; (b) enable the broadest range of Commonwealth responses in the event of a disaster; and (c) emphasise the nature of Australia's cooperative response.

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In conclusion, the most important propositions emerging from the submissions are as follows. First, there appeared to be a broad consensus that the Commonwealth could declare a state of natural emergency that had merely symbolic effect without needing to enact legislation, but that legislation would likely be needed in the event that significant legal consequences were to follow from the declaration. Various views were expressed as to the scope for relying on the executive power combined with the express incidental power to legislate for these legal consequences following from the declaration.

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5 However, there was broad consensus that the precise scope for legislating in reliance on the executive power combined with the express incidental power was uncertain. Further, a number of submissions indicated that the legislation, supported by other heads of legislative power, might be needed in order to impose coercive obligations on people.

10 Secondly, there appeared to be broad consensus that the Commonwealth would have some scope to legislate in relation to responding to natural disasters relying on one or more of its heads of legislative power, such as the corporations power, trade and commerce power, and so on. However, there also appeared to be a broad consensus there would be some gaps in terms of what the Commonwealth could do in reliance on these powers.

15 Thirdly, there was strong support in a number of submissions that pursuing Commonwealth legislation based on a referral of powers including to avoid such uncertainty and gaps as mentioned above. A number of submissions also referred to the possibility of pursuing alternative forms of cooperative Commonwealth/State legislative schemes in order to achieve this.

20 And fourthly, and finally, there was a broad consensus that a number of limitations in the Constitution, both those inherent in particular heads of power and separate express or implied limitations in the Constitution would be relevant to consider in developing any Commonwealth legislation in this area. Thank you, Chairs. Thank you Chair and Commissioners for listening.

25 COMMISSIONER BINSKIN: Thank you for taking us through all that. I think that has been very important. One thing to note in all that: it doesn't appear that the Constitution took into account the growing expectation of the Australian population over time for a Commonwealth response or action in many areas, I would say.

30 MR TOKLEY QC: That's correct, Chair.

COMMISSIONER BINSKIN: Thank you. Please continue.

35 COMMISSIONER BENNETT: I just have one quick question. Mr Tokley, did any of the submissions deal with the Commonwealth's power to put conditions on financial assistance?

40 MR TOKLEY QC: No, I don't think so.

COMMISSIONER BENNETT: Thank you.

MR TOKLEY QC: I will check, but not in express terms, no.

45 COMMISSIONER BINSKIN: Okay. Thank you. Please continue.

MR TOKLEY QC: Thank you, Chair. Thank you, Commissioners. There are some documents to tender for this morning's hearing and if I could, the documents listed in the tender list provided by Counsel Assisting can be found at volume 1, tab A of your bundle of documents. And the documents in the tender list include for each witness either a submission and/or an organisational response to a Notice issued by the Commission. And I seek to tender the documents in the tender list as a bulk tender and I seek a direction from you that the documents identified in the tender list, together with the documents' identification number, be recorded on the transcript as the documents tendered today.

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COMMISSIONER BINSKIN: Okay. So we go 30.1 through to 30.16. Is that --

MR TOKLEY QC: That's correct.

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COMMISSIONER BINSKIN: That's correct. Okay. We will take all those and documents in between listed in the tender list as exhibits today. Thank you.

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<EXHIBIT 30.1 SUBMISSIONS IN RESPONSE TO ISSUES PAPER 1: CONSTITUTIONAL FRAMEWORK FOR THE DECLARATION OF A NATIONAL EMERGENCY, DOCUMENTS 30.1.1 TO 30.1.17>

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<EXHIBIT 30.2 PERSPECTIVES OF FORMER DIRECTORS-GENERAL OF EMERGENCY MANAGEMENT, DOCUMENTS 30.2.1 TO 30.2.3>

<EXHIBIT 30.3 CURRICULUM VITAE OF MR CAMPBELL DARBY>

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<EXHIBIT 30.4 NATIONAL COORDINATION/DECISION-MAKING: ORGANISATIONAL AND CONSTITUTIONAL THEORY DOCUMENTS 30.4.1 TO 30.4.9>

<EXHIBIT 30.5 LAUREATE PROFESSOR EMERITUS CHERYL SAUNDERS AO DOCUMENTS 30.5.1 AND 30.5.2>

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<EXHIBIT 30.6 OTHER MATERIALS RELEVANT TO NATIONAL COORDINATION/DECISION-MAKING, DOCUMENTS 30.6.1 TO 30.6.12>

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<EXHIBIT 30.7 ROLE OF THE COMMONWEALTH IN NATURAL DISASTERS, DEPARTMENT OF HOME AFFAIRS DOCUMENTS 30.7.1 AND 30.7.2>

<EXHIBIT 30.8 ROLE OF THE COMMONWEALTH IN NATURAL DISASTERS DEPARTMENT OF PRIME MINISTER AND CABINET DOCUMENTS 30.8.1 TO 30.8.3>

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<EXHIBIT 30.9 OTHER MATERIALS ATTORNEY-GENERAL'S DEPARTMENT DOCUMENTS 30.9.1>

<EXHIBIT 30.10 STATE OF NEW SOUTH WALES STATE OF EMERGENCY DOCUMENTS 30.10.1 TO 30.10.9>

5 <EXHIBIT 30.11 STATE OF QUEENSLAND STATE OF EMERGENCY DOCUMENTS 30.11.1 TO 30.11.9>

<EXHIBIT 30.12 SOUTH AUSTRALIA STATE OF EMERGENCY DOCUMENTS 30.12.1 TO 30.12.21>

10 <EXHIBIT 30.13 STATE OF TASMANIA STATE OF EMERGENCY DOCUMENTS 30.13.1 TO 30.13.3>

<EXHIBIT 30.14 WESTERN AUSTRALIA STATE OF EMERGENCY DOCUMENTS 30.14.1>

15 <EXHIBIT 30.15 VICTORIA STATE OF EMERGENCY DOCUMENT 30.15.1>

<EXHIBIT 30.16 AUSTRALIAN CAPITAL TERRITORY STATE OF EMERGENCY DOCUMENTS 30.16.1 TO 30.16.9>

20 MR TOKLEY QC: Thank you.

COMMISSIONER BINSKIN: Also, I notice that you referred to the Constitution there, Mr Tokley. Can you show me that, because I think most people expected you to wheel it in on a trolley, and it sits in that document there.

MR TOKLEY QC: Yes, it's a handy pocket sized version.

30 COMMISSIONER BINSKIN: For those that should need it, yes. But --

MR TOKLEY QC: For those needing it, and wonderful bedtime reading, if I may say so.

35 COMMISSIONER BINSKIN: No, but I think it's important because I think most people would expect it to be a far bigger document than what's quite concise on that.

COMMISSIONER BENNETT: It may well have been as originally signed.

40 COMMISSIONER BINSKIN: It may well have been. I know you can get it online --

MR TOKLEY QC: Yes.

COMMISSIONER BINSKIN: -- and reference it, but I think it just puts a lot of it in a lot of perspective as well.

45 MR TOKLEY QC: Yes, and I think the original price for this was only \$2, so immensely affordable.

COMMISSIONER BINSKIN: I hope not drafting the Constitution. Just a book.

MR TOKLEY QC: No, no, just a little book.

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COMMISSIONER BINSKIN: Thank you very much. Thank you for taking us through that. It's a good context for the rest of the day.

MR TOKLEY QC: Commissioners, my colleague, Ms Dominique Hogan-Doran of Senior Counsel, will be taking the rest of the day.

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COMMISSIONER BINSKIN: Taking the rest of the day in a seamless transition.

MR TOKLEY QC: Thank you.

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COMMISSIONER BINSKIN: Thank you.

MS HOGAN-DORAN SC: Although, Chair, I feel inadequate because I didn't bring my pocket copy of the Constitution.

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COMMISSIONER BINSKIN: I know that have it, but I think that was a very worthwhile summary. So Ms Hogan-Doran, welcome. Welcome to the chair.

MS HOGAN-DORAN SC: Commissioners, we have a number of witnesses today, as you know. Our first witness is Dr Christine Owen. She will be followed by Mr Mark Crossweller and Mr Campbell Darby, and then we will break for morning tea. Then we will have Professor Cheryl Saunders until lunchtime, and then this afternoon Secretaries Pezzullo and Gaetjens. I call Christine Owen.

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COMMISSIONER BINSKIN: Professor Owen, good morning. Thank you for joining us.

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ASSOC PROF OWEN: Good morning. Thank you for the opportunity.

COMMISSIONER BINSKIN: No, we appreciate your time. Thank you.

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MS HOGAN-DORAN SC: Professor Owen, will you take an oath or an affirmation?

ASSOC PROF OWEN: I will take an oath.

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<CHRISTINE OWEN, SWORN>

<EXAMINATION BY MS HOGAN-DORAN SC

MS HOGAN-DORAN SC: Dr Owen, thank you for joining us today. You're a senior researcher at the University of Tasmania and you're investigating communication, coordination and collaborative practices in safety, critical and high consequence

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environments, which seems a very large undertaking, if I may. The Commissioners have a copy of your CV at RCN.900.103.0001. That's exhibit 30.4.9. But just before I ask you some questions if I could just get you to describe at a high level, some of the research interests that you've had and the contributions that you've made to emergency management.

ASSOC PROF OWEN: Okay. So my initial beginnings were in the aviation industry. I became involved in exploring technological, cultural and organisational change in the aviation air traffic services sector. From that, I started to get involved in looking at work practices in emergency medicine and in other high consequence domains. And from 2005, I've been involved in investigating a range of teamwork and coordination issues in the fire and emergency services sector. That includes working, at times, with various public safety organisations. I've done some work in Queensland with Queensland Police through the Australian Institute of Police Management, and I also prepare and support professional capability development with AFAC and the Australian Institute of Disaster Resilience.

MS HOGAN-DORAN SC: Thank you. I'm going to come in a moment to the broader question I want to pursue with you today, which is strategic emergency management. But if I could just begin with some of the work that you've done and your observations in relation to - in emergency management arrangements, there is often a process of after-action reviews. And we've heard evidence of a number of emergency services, indeed nearly all of them now, having introduced what they call lessons management frameworks. I just seek your insights as to the utility of those arrangements and how can governments or academia better support emergency management organisations to learn lessons from their experiences of previous emergencies and disasters?

ASSOC PROF OWEN: Okay. That's a kind of rather a large one.

MS HOGAN-DORAN SC: Yes, it is.

ASSOC PROF OWEN: I think - I think one of the things I've noticed in the past 15 years is the degree to which there has been a maturing and an opening up and an interest in learning lessons, identifying through after-action reviews, and they've taken a number of different vehicles, but that's also in the context of, I think, a defensiveness within the fire and emergency services sector of feeling like they are sometimes responsible for outcomes that are beyond their control, and that they are kind of judged in the media. And, in particular, you know, rightly or wrongly, you know, there's a focus in on the outcomes as if it was bleedingly obvious right from the get-go in the moment of doing something, making a decision with ambiguous information, with conflicting information, with competing tensions, with fatigue, stress, degraded conditions, and so on. And that that then means that if you're just looking at what happened at the end it's not taking into account those aspects of it. So that's kind of one, I think, aspect in terms of after-action reviews.

I've been involved over the years in a number of internal reviews, and some of those have taken different formats. So one, for example, after the Dunalley fires in 2013, and a similar approach was taken some years later to look at the firefighter deaths in the Linton fire, was to do a staff ride. So to take people back to the site, if you like.

5 It's a kind of military historical approach to learning and capability, to understand the critical decisions that were being taken by people in the field, in the heat of the moment, in the fog of war, if you like. And then to try and unpack that in a way that isn't as socially defensive, but actually trying to get people to better understand what was working in the system for them or not, as the case may be; where did kind of

10 breakdowns start to occur so that others may learn.

And I think, in Australia, that's an increasing vehicle for understanding what goes on, and that in that case, it has actually been particularly helpful. In contrast, I've also sat in on after-action reviews where nothing has been written down, and in part that's

15 because of, again, a defensiveness about how might critical reflection actually be taken out of context or misused. But, having said that, and if I can give another example of being involved in looking at the Tropical Cyclone Debbie and the subsequent flooding events in Queensland, there was an intentional appreciative inquiry approach taken there, and that, I think, to a large degree that was very

20 beneficial.

I will sum up by also just noting that within the broader sector, I think there has been an increasing momentum in trying to understand what we can learn. And people talk about, just because somebody has had an insight it doesn't actually mean learning has

25 occurred unless something has actually changed.

MS HOGAN-DORAN SC: One of the --

ASSOC PROF OWEN: And so it's not good enough for an author of a publication or

30 an after-action review or a report to actually say, "Here are the insights, we have now changed." Although sometimes in this industry, there is not a lot of attention paid to implementation, and the concerns about some of the complexities with that. But, broadly, there's an increasing appetite, I think, for learning lessons and for lessons management. I've facilitated a national lessons management forum for the past

35 couple of years. It has been going for a few years longer than that. And, increasingly, there's a number of jurisdictions nationally that come together to actually share what they know, to critically reflect on a range of novel as well as routine problems, and that recent work in updating the Lessons Management Handbook as a resource that's on the, I think, AIDR Knowledge Hub, is actually supporting, as an infrastructure,

40 that kind of process.

MS HOGAN-DORAN SC: Now, thank you so much for that response, Professor Owen. In relation to the work that you've done, I might just have noted for the Commissioners because they do have it but I want to move on to a related topic,

45 published in the Institute of Public Administration, Australia in 2018 is a research and evaluation piece titled "Enhancing Learning in Emergency Services Organisational Work", which is RCN.900.100.0031 which you co-authored with

Benjamin Brooks and Steven Curnin and Chris Bearman, the first two from your university, and Mr Bearman from Central Queensland University.

5 I just want to flag, one of the matters that you raise in that publication is that there's a risk that the guidelines and directives that have been identified to try to manage risk within these emergency organisations has the risk of, or the counterproductive response of stifling learning by creating risk averse cultures. Is that something that you perceive of the lessons management framework or in the way that you have described the lessons management processes can seek to arrest that potential
10 counter-productive outcome?

ASSOC PROF OWEN: I think the - there are a number of cultural and structural factors at play. One is, by very nature in fire and emergency services, they tend to be quite reactive and responsive. That's their mode of operation. And then to move into
15 a critically reflective stance where we might take even a near miss or an accident and replay it as a potential opportunity to learn from, you know, can become challenging. And I think in relation to that notion of what becomes risk averse is that - and, you know, in many complex organisations a change in one part of the organisation can actually lead to more problems somewhere else.

20 So I think part of the problem in after-action reviews and in inquiries is that we can come up with a range of different recommendations but, in fact, they can be contradictory to each other. They can then create other problems and bottlenecks further down the track, and in some of those cases things just become too hard; you
25 know, it's just too complex. So the notion of things then becoming risk averse is the concern about letting the community down, about not wanting to be seen to be doing the wrong thing, as well as in that particular paper, it talks about the pace of change that has actually been occurring within this particular sector, especially over the past five or eight years, that people now talk about having no down time, no time between
30 seasons to actually be able to stop and think about how they might be re-changing things and rearranging them so that, you know, there might be better outcomes.

MS HOGAN-DORAN SC: You mentioned the Cyclone Debbie review. I will just note for the Commissioners that's exhibit 18.2.23 and a review action plan of
35 18.2.28. I'm reminded by Mr Glover that that was tendered during our IGEM day, as we called it. You recently chaired a panel of the Victorian and Queensland Inspector-Generals of Emergency Management. The Victorian IGEM has recently provided his report to the Victorian Government on the 2019-2020 bushfires and the Royal Commission awaits receipt of that report. In your opinion, what is the
40 importance or value of the role of the IGEM in the emergency management frameworks?

ASSOC PROF OWEN: It's a good question and I think that there are a number of other aspects in terms of - sorry, I just had an interruption downstairs,
45 unexpected - that in addition to the Inspector-Generals, for example, there have been, in the case of Victoria, especially post-Black Saturday, there has been an increasing

role for what they've called kind of real-time performance monitoring that has been going on.

5 Now, initially within the sector that kind of scrutiny was regarded as - you know, people felt quite kind of defensive about it and defensive about well, what's an IGEM going to be looking at and are they going to beat us over the head with a stick again? And so I think what has actually happened and is evolving in both of those jurisdictions is both an acceptance that having someone look over your shoulder isn't actually to imply that you don't know how to do your job or that you're doing it
10 wrongly, but actually in the case of monitoring and quality assurance, which in part, in large part is the IGEM role is actually kind of reassurance and a calibration and a feedback mechanism, particularly for people who are involved in real-time performance monitoring, to actually provide a resource and a support for those people rather than another big stick.

15 MS HOGAN-DORAN SC: So is having an IGEM more than just giving communities confidence in the performance of the emergency managers?

20 ASSOC PROF OWEN: I would believe so. I think that if I - and I'm linking in my own thought process here towards one of the AFAC initiatives is the Emergency Management Professionalisation Scheme.

MS HOGAN-DORAN SC: Yes.

25 ASSOC PROF OWEN: And it strikes me that thinking about IGEMs in a quality assurance feedback monitoring role, and the idea of what a profession has in terms of the ways that it reviews itself, the standards that it might set, the accountabilities in terms of how it checks audits, kind of what performance is occurring is, in fact the IGEM role. Also of note, though, in that presentation, that webinar, that both IGEMs
30 spoke about the journey that they have been on, which included moving from - and these are my words not theirs - but moving from a kind of post hoc, well, what actually happened, what went wrong approach, potentially, to a more appreciative inquiry, you know, what lessons can we learn from this in order to continue to sustain good practice to identify where there might have been slips and lapses that
35 we got away with at the time that could have turned into something far worse, as well as what we can actually learn for improvement.

MS HOGAN-DORAN SC: Thank you, Professor Owen. What I want to take you to now is that broader question of strategic level emergency management and how that
40 differs in context and content, operational and tactical level responsibilities and then what's the importance for that. If we can have just identified to the Commissioners and have shown, this is the publication from the International Journal of Disasters in 2017, which you co-authored, "Addressing Challenges for Future Strategic Level Emergency Management Reframing Networking and Capacity Building". That's
45 RCN.900.100.0013, which is exhibit 30.4.3. I will just have that identified for the benefit of the transcript.

While that's being brought up, Professor Owen, RCN.900.100.0013 - thank you, operator. While that's just being brought up, could you just, as a preliminary point, explain for the Commissioners' benefit how strategic level emergency management differs in its context and its content, operational and tactical level responsibilities and what importance does that then have for evaluation?

ASSOC PROF OWEN: Okay. Can I address the question with a posttered history of kind of how --

MS HOGAN-DORAN SC: Please.

ASSOC PROF OWEN: -- the forms of emergency management organising has evolved? So basically, as I mentioned earlier, I started looking at local level incident management teams and teamwork and information flows in the first phase of the work with the CRC. That was kind of about 2005. Contextually, it was also just a few years after the national adoption of the - what's now known as AIIMS, and I know that that has been discussed, the Australasian Inter-Service Incident Management System. And so it was kind of interesting to see a few kind of variations of that in the early days. There were some jurisdictions who weren't on board with it, there were others who had embraced it.

At that point, how we managed an emergency was framed up as there's an incident controller. There are four other people in an incident - a local level incident management team, operations logistics planning, and they might, if things kind of get complicated or go on for a while, need sub-units within them, so we have situation within planning and resources in and so on. And so then events were larger and there was then a bit of inquiry into well, how was it that people at a regional level and a State level were accessing that information? How were they supporting it?

And, in particular, after Black Saturday, there was a lot of work done in Victoria about better understanding the regional footprint. And I've been observing the Commission's hearings for the past few days and I know that discussion about resource sharing has come up, and, in fact, what's the focus there at a regional level is actually to organise - you might have multiple incident management teams, for example, operating within a particular region and then how does that feed up to a State level.

I recall being involved in an internal review at the time about, you know, well, certainly post-Black Saturday, let's just say, and making the observation that what seemed to be happening was that the roles and responsibilities at the local level were being duplicated at the regional level and then duplicated again at the State level. And so the question was: well, how is that adding value rather than just adding up number of fire trucks, number of personnel, etcetera?

Within the agencies they were already looking at that, and so a variety of different roles and responsibilities have since morphed and evolved within those arrangements. And having then been involved in looking at what happens above the

local incident management team, I've also observed a number of State Operation Centres, and I know they've been briefly mentioned in the last couple of days. And one of the things that struck me is that people, at the time, had a maturity within the sector of understanding what kind of professional development and training was needed to undertake the roles at a local incident management level.

There was patchy involvement in trying to think about what the roles and skills and tasks are and skill sets might be for operating differently, especially given that people typically end up at a State Operation Centre coming, not always, but typically through the ranks of being an operations officer or an incident controller and then taking it up to that State level. But sometimes we were observing challenges when, say if push comes to shove and things are starting to get particularly stressful or there's pressure from other sources - like Ministers or Premiers wanting to know what's going on - to, particularly at a State level, reverting back to becoming tactical and micromanaging. And trying - and in some cases subverting the organising information flows that were supposed to be helping them by going through the back door to get information.

And so we spent some time within the industry identifying: well, what is similar and different about these particular roles and responsibilities? They're not - they're not duplicated. And so, at a strategic level, the - the crisis leadership attributes are quite different. They're not at the immediate responsive approach. They're about trying to understand what that whole-of-government need is to be thinking about consequence management - and I know Emergency Management Victoria have done a lot of work in articulating recently what, you know, the primary, secondary, tertiary consequences, the immediate, medium, long-term impacts might be. And that also then raises a question about the level of communication and ambassadorial skills and diplomacy skills that might be required for trying to get the best out of the people that you're working with.

Because the other thing I think is important to identify is that at a State - even without thinking about kind of cross-State borders, a major event being operated out of a State Operation Centre involves hundreds of people. And that of those hundreds of people, frequently there are many, many liaison officers from different organisations. So at a State level there's a need for people to be having input and providing information to telecommunications utilities. They are playing their response role.

It's not just the fire and emergency services responders on the grounds who are involved in the event. They, telcos are responsible for getting those community warnings out. There's issues around infrastructure, gas, electricity. Within those agencies or sectors, there has been a considerable devolution. So you can't even talk about a gas provider, you've got to talk about 18 different parts and various others who might be involved. There are issues, indirect issues, communities of interest, tourism, tourism Ministers, ministerial liaison people, and so on.

So, hence, you can't at that point think that - and a State operations officer or a State response manager or a duty officer, or whatever they call themselves, depending on what jurisdiction you're in, nevertheless then have to bring those people to the table and try and get the best out of them. And I noticed in Mr Murphy's comments
5 yesterday that each of those representatives within a State Operation Centre are also running their own operations centre. So the police have theirs, the telcos have theirs, health have theirs. And in relation to health, they too might be having their own emergency in terms of, you know, where are the 000 calls coming from, can they reach those people, for example. So some of those issues, apologies for going on.

10 MS HOGAN-DORAN SC: I think you've covered quite a number of the core challenges which were identified in the research. In fact, I think you've expanded beyond those. If I could just have those shown to the Commissioners. 0015, operator, if we have that document back up, 0015, and have the core challenges identified just
15 in that. Thank you. So this is a study that was undertaken. The methodology included interviews and workshops with Australia's senior emergency managers. And I will just capture these for the transcript because I think you've dealt with many of them, that the core challenges confronting these strategic level emergency managers was increasingly complex to context; the environmental, social and technological change;
20 the tensions between political drivers and operational realities; the role of emergency management and community resilience; measures of effectiveness and information systems and social media. All different ways of identifying some of the - the many challenges that they must operate within, which I think captures a lot of what you've already said.

25 What I want to take you to in the time available, so that the Commissioners can ask any questions they have, is at 0026 which is the conclusion, is a neat way of capturing the things I want to address. In the first paragraph there, operator, how to address those challenges, those core challenges. I will just wait for that to be brought
30 up. Thank you. What you've done is, I think you've touched on the last there which is:

"To develop the capacity of strategic level emergency managers."

35 You've picked up the need for them to adapt into ambassadorial and diplomacy skills, and work within that political environment that they must have, as well as responding to community expectations. I think you started to talk, edge into this second matter there of adopting a network governance approach, and then reframing ultimately emergency management as a part of disaster risk reduction. In the time
40 that we have available, if I could just invite you to address those two matters to provide some explanation or insights for the Commissioners on how that work then all pulls together.

45 ASSOC PROF OWEN: Okay. Thank you. So the idea of - and that was work co-authored with Steve Curnin and Karyn Bosomworth, so we kind of spent some time thinking about these implications - is that to recognise that trying to come up with yet another mammoth organisational bureaucratic structure where everything,

you know, was being coordinated and decided upon, is not going to work for the reasons I was just explaining in terms of all of those various organisations, public and private, and jurisdictions having their own legislations, their own accountabilities and so on.

5

So then the question becomes: well, how might those organisations best work together? And I think in the commentary that has been made over the past few days, people have kind of stuck pretty solidly to my authority's within my State. And, interestingly, some have made reference to the political sphere and those kind of relationships. But mostly it's about how do you make sure that you're sharing relevant information and acting in a coordinated way but providing autonomy to various units of organisations to be able to get on and do what they do.

And in relation to that idea about network governance, I just wanted to observe that Australia isn't alone in facing this particular conundrum. There has been a lot of work that has been undertaken in the US at the Harvard Kennedy School of Crisis Leadership looking at exactly this issue. And there's a recent paper that has come out that talks about how, you know, the kind of organisational frameworks that might have served us well 40 or 50 years ago - and I would put these kind of AIIMS kind of approaches in that to some degree - is that - that they are not serving us well in an environment with the speed of challenges and the need for flexibility and agility.

So the question then is: how do we decentralise decision-making about relevant issues in a way that don't - doesn't create bottlenecks but, in fact, allows people in their communities of interest to get on and do what they do. The idea about reframing emergency management as a component of disaster risk reduction has, you know, some differences of opinion that, in part, the emergency services response sector is seen as having to clean up a lot, or in the interview comments that are listed in that paper, that they end up needing to be responding to other public policy decisions that have been taken about flood plains and about not putting infrastructure into levy banks and so on.

But there's also an issue here that is about: well, where does the funding for emergency management go? Does it go to people who are clearly and tangibly responding to crises? Or does it go into creating resilience in infrastructure and in communities that mean that there's no need, or there's little need for - for those emergency responders in the first place? And, of course, you know, I think there's probably a bit of disquiet within the emergency services sector about that.

But having said that, and it's since this paper has been written, and I make the - observe that it's 2016 and, in fact, you know, it was based on material that had been completed in 2014 and the publisher took about 18 months to get it to publish; that in the most recent few years, there has been a lot of work within emergency services agencies about community engagement, and about how might not only community engagement, but how might emergency services people work with communities so that they're not in a situation where they need to be rescued or in crisis.

And I will use the opportunity, if I can, since we're talking about this, to - I was thinking yesterday about the question that has been asked here in relation to, you know, how decisions are made if there's a need, or really limited resources, and there might be jurisdictions squabbling over where they go. And two things come to mind. One is, in the context of disaster risk reduction, and even in the context of escalating events, what happens if there are no resources? What happens if, you know, the cavalry from interstate or internationally doesn't come? What then might happen?

And then how might, in a disaster risk reduction context and community engagement, we think about self-organising emergent groups? You know, we talk about the mud army, we talk about the tensions in Tasmania at the time of the Dunalley fires between the "We Can Help" Facebook group, for example. So I think we should expand our views of seeing emergency management and emergency response as something that simply the province of the fire and emergency services sector, and that we've got resources who have done certain firefighting training actually coming in and supporting different communities.

I'm thinking also of a case where, and I don't know the degree to which the Commission has looked at volunteering, but just very briefly, there are - in large part, most jurisdictions would call on volunteers to be supporting, like a reserve if you like, and those people are seen as an extension of the fire and emergency service. In other jurisdictions they've taken a different approach to recognising that people in communities might have an interest in just supporting and protecting their patch, and so they have provided resources and empowerment and materials to those people in their cul-de-sac at the end of a ridge to actually be able to defend that.

So the necessary resources from a firefighting perspective may not be needed in that particular area. So - and I think that in terms of framing emergency management in terms of disaster risk reduction, there's a lot more that can be done.

MS HOGAN-DORAN SC: Thank you so much, Professor Owen, and thank you also for the discussions that we have had in days leading up to this morning's session. I note the - I need to make time for the Commissioners to ask some questions but just capturing what you've done in terms of synthesising the evidence, your observations on the evidence that we've heard this week and marrying that with the research that you've done, it does sound like we're not just looking at a whole-of-government question, but a whole-of-society question?

ASSOC PROF OWEN: Yes, I would agree.

MS HOGAN-DORAN SC: All right, Chair..

COMMISSIONER BINSKIN: Dr Owen, thank you this morning. In fact, you've distilled a lot of it and brought it a lot together and we appreciate that. We've talked amongst the Commission a lot about, just because you identify a lesson, doesn't mean it has been learnt. In fact, been I've involved in a lot of lessons over the years

that don't seem to be learnt but get identified over and over again. So we are very conscious of that, and we are very conscious that the Commission won't be making recommendations that lead to something being done different. We're looking at things being done better. And so we're definitely – we're definitely looking at that distinction.

Can I just ask one particular question, and you alluded to it but I would really like to you try and give me a little bit more insight if you could, or comment, and it comes from the fact that in a previous life, being involved with large, complex operation centres and bringing it all together, watching people come in and they get operational centre capture, and you just watch their eyes open and they get dragged into it. Could you make a comment or an observation, please, on issues of jurisdictional strategic level leadership getting dragged into those operational day-to-day issues, and the traps that may be encountered and getting dragged into just looking at life through that lens. Does that question make sense?

ASSOC PROF OWEN: Yes, it does, and some immediate examples come to mind.

COMMISSIONER BINSKIN: Yes, me too, by the way.

ASSOC PROF OWEN: And I think - and I think - like, again if we just broaden the scope here of kind of roles and responsibilities, and how problems might be solved collectively and collaboratively. The examples that come to mind are ones where you've got a Premier or a Minister on the phone who wants to know exactly what's happening in a particular location. That then sets the wheels turning, and suddenly we've got people on - on an incident ground who should be getting on and doing the job, trying to double-check their counting, so that the Minister can make a comment about the number of resources that are available in a particular place.

So suddenly everybody's diverted because of a particular request rather than, you know, being able to have some boundaries around how - where the questions might be, how to respond to that, because when people are at a State level, they too can get wrapped up in that and then wanting to micromanage. So I think that there's - there are some capability issues. There's potentially some policy issues around how do we actually put boundaries around, you know, what can be provided when? And certainly some of the information technologies actually now I think are better in terms of providing support for that.

But I think it's also about assisting people to recognise what are the right questions to be asking, and to be taking a - a more higher level approach rather than wanting to know exactly how that person is managing that particular event, because they might do it differently. So I think there's - and ironically, having mentioned some of the information technologies, I've also observed that sometimes, if you get a - a situation where you've actually got a visual in a State Operation Centre of what might be going on on the ground in a particular place, people get wrapped up and start kind of looking at that as if they were there.

And I have a - an anecdote from being involved or being involved with a colleague who was observing a - a critical hostage exercise, and the people in the State ops centre were so obsessed, kind of, with what was going on at a particular location, they didn't notice on another screen that hostages had actually been captured and taken away. Now, that's an example simply of how we can become distracted, we can engage in tunnel vision and, under those circumstances, we've actually kind of lost the plot.

10 COMMISSIONER BINSKIN: No, and I've seen that as well in an operational sense as well. And so then that's getting dragged down into the operations. Can you make a comment then on the ability then, if you're getting dragged down, to make those overall strategic level decisions more broader than that operation itself? Have you seen anything in that, in lessons that you might have drawn out?

15 ASSOC PROF OWEN: I think that, again, there's a lot of work happening within the jurisdictions on - an aide-mémoire templates that are asking a different set of questions. So it's easy, you know, to start to think about the tangible, you know, what might we, you know, count up in terms of resources or phone calls or - and so on. But there are other kinds of questions that can be asked that actually start to lift the level of conversation.

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25 And just on that, and again at an exercising perspective, one of the things that I've noticed that makes a big difference to how effective a strategic level can be is whether the - the State response manager is actually asking a question about what can other liaison people bring to a particular problem that they might have, and actually leaving how they address that particular problem to them, and rather than saying, "I need X satellites here" because the State response manager thinks that that's the answer to the problem. You would be familiar, with your military background, in some of the work in mission command, for example.

30 COMMISSIONER BINSKIN: Yes.

35 ASSOC PROF OWEN: And that's about approaches where, you know, at a - where we're having self-organising units that are operating within a bigger scope and a bigger intent, the commander's intent. That's actually people are trained in being able to identify those broader objectives, and allowing people to be able to respond to them in their own way rather than micromanaging or specifying the tasks they ought to do in order to address that.

40 But on that, I've observed in jurisdictions both good examples of that practice and poorer ones. And so, again, I think the issue here is if you're going to introduce some kind of change in decision-making that supports interoperational governance, then how do you actually make sure that people are skilled up and confident about their role within that broader complex system?

45 COMMISSIONER BINSKIN: Yes, and I appreciate that. I think in the military term you're referring to some of the more centralised command, decentralised execution,

within the bounds of the - and probably one more thing, I think if I can summarise also, if everyone is looking at today, who's looking at tomorrow? Who's looking at next week?

5 ASSOC PROF OWEN: Yes.

COMMISSIONER BINSKIN: Okay. I've taken a lot of your time. I appreciate you giving a little bit more insight there. I will ask Commissioner Bennett for any questions.

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COMMISSIONER BENNETT: Thank you. Just one observation. You made the comment about what might be, if there's no resources what might be the case, and I don't know if you have been watching all of the Royal Commission evidence, but there have been some lovely examples of what has happened where, for example, at Lobethal in South Australia, where there were no resources available and how the local community responded. You might find that interesting to check that evidence out for your own sake because, of course, what comes to mind today is Beirut may well be finding itself in part of that situation.

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20 But the question I have for you is just one. Going back to the question of an IGEM and, of course, it's the concept of an inspector-general of Emergency Management, there has been a lot of focus on an IGEM looking at the response phase but an IGEM is also, for all the other parts that you've discussed and identified, there's also questions of mitigation, resilience and the distribution of funding and assistance during the recovery phase.

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Can you comment on the role that you might see, for example, for a national IGEM in that situation, not getting into the constitutional issues that we looked at before, but perhaps not looking so much at response but the role, the potential role of an IGEM in the broader questions of emergency management?

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ASSOC PROF OWEN: There's – so if we were looking at the role of an IGEM at a national level, which I think could be really interesting, it would also be useful, I think, to start to explore the ways in which even, you know, the whole quality assurance and monitoring approach is being undertaken across jurisdictions. You know, not all of them have IGEMs but they certainly have, you know, quality assurance and monitoring approaches. What might we learn in terms of the similarities and differences there? How might an IGEM, even at a State level, provide the enabling conditions for some of the conversations that need to happen around mitigation and preparedness?

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I'm reminded that - and for some reason your comment reminded me that at a national level the - the Commonwealth used to fund the Australian Emergency Management Institute, and it provided a national capability development role for people from various State jurisdictions to come together to share what they knew, to learn in a variety of different accredited and professional development contexts. Those people from different State jurisdictions included the uniforms as well as

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police, some military, some humanitarian aid organisations, Local Government and so on.

5 And by putting all of those people into a particular space, they at least, even if it wasn't the direct intention, had the opportunity to learn about each other and to learn about how things might have been similar or different across various borders. I think Australia lost some momentum when that was de-funded with the incoming government and I'm - I know that there are a variety of reasons for it. But the need for that kind of national coordinating around capability development and thinking, 10 leaving aside just, you know, how an operational response mode might operate, I think would be a really important step forward.

COMMISSIONER BENNETT: Thank you very much.

15 COMMISSIONER BINSKIN: Commissioner Macintosh?

COMMISSIONER MACINTOSH: Thanks, Chair. Thanks, Professor Owen. I was really interested in the article that you wrote with Karyn Bosomworth, I think is her name, and other colleagues, and particularly comments in there about incoherency in 20 the policy arrangements that we currently have and the inconsistency in the incentives that we're sending people which are impeding resilience. And I think the story reported there by a senior emergency person is how we tell the individual in communities that it's their responsibility to be resilient and be prepared, yet when disasters occur they turn up - when, in that case you're describing how when there's a 25 flood they turn up with helicopters and all sorts of other equipment to help people, and that scenario is impeding resilience.

And I just wondered whether you had - your research had thrown up the extent to which that is actually occurring; the extent to which those inconsistencies in policy 30 messaging, in policy incentives, is actually impeding resilience?

ASSOC PROF OWEN: I think, again, somebody used the word the "vibe" before, in times you're talking about the Constitution. I think we're on a journey, and I know that that's a kind of phrase gets thrown around. But I have noted that over time there 35 seems to be a little bit more coordination in what the messaging is that occurs at a State disaster level to the various political representatives, for example, to how aspects might be rolled out. But I think there's also some issues in here about community expectations, and I noted in the opening address that that came up as, you know, one of the growing issues around what the expectations of what the 40 Commonwealth or State Governments or Local Governments might actually be doing.

And I suspect that there's a lot of work that's needed in just clarifying the environments that people live in, what can reasonably be expected, and not taking 45 potentially cheap shots if, for example, the helicopter doesn't drop bread at that particular flooded location. You know, so I think there's still the capacity for mixed messaging, and I think there are still differences in understanding around what

shared responsibility, what community resilience even means. And, you know, in the future there are going to be particular issues that we would be better to get proactive about rather than trying to deal with them in the moment.

5 COMMISSIONER MACINTOSH: Thank you. And I hope you're keeping warm down there in Tasmania with the snow.

ASSOC PROF OWEN: You've got no idea.

10 COMMISSIONER BINSKIN: Yes, we do. It was minus 4 here this morning, so we've got an idea. Professor Owen, thank you very much, we appreciate it. It has been a very beneficial session. I must say you've got the best office I think I've seen this week too behind you.

15 ASSOC PROF OWEN: Okay. Thank you.

COMMISSIONER BINSKIN: Ms Hogan-Doran?

20 MS HOGAN-DORAN SC: Thank you, Chair. There's nothing from parties with leave, so may Dr Owen be released from her summons?

COMMISSIONER BINSKIN: Dr Owen, thank you very much, we appreciate it and you're released from your summons. Thank you.

25 ASSOC PROF OWEN: Thank you.

MS HOGAN-DORAN SC: Commissioner, the next panel is ready so we will call them. I call Mr Mark Crowweller AFSM and Mr Campbell Darby DSC AM.

30 COMMISSIONER BINSKIN: Mr Crowweller, please don't stop on our behalf. Mr Darby, good to see you again. Thank you for joining us this morning.

MR DARBY: Commissioner, good to see you.

35 MS HOGAN-DORAN SC: Both Mr Crowweller and Mr Darby will affirm.

<MARK CROWWELLER, AFFIRMED>

<CAMPBELL DARBY, AFFIRMED>

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<EXAMINATION BY MS HOGAN-DORAN SC

45 MS HOGAN-DORAN SC: Good morning, gentlemen. Just for the benefit of the other Commissioners, if you could each - I will go to you first, Mr Darby and then you, Mr Crowweller - just outline your background and what has brought you here today?

MR DARBY: Thank you, Counsel, and good morning Commissioners. My background is fairly long-term military. I then transitioned into the Northern Territory Government where I was involved in strategic emergency management. I was the Territory's Recovery Coordinator; a number of other portfolios up there around security, major events, etcetera. And I then transitioned from there to become Director-General of Emergency Management Australia. I'm Mark Crossweller's predecessor, and that was at the time of the 2010-11 floods, the Japanese tsunami, etcetera. And since then I've been privately consulting in the area of emergency management, whole-of-government crisis coordination with both the Commonwealth and a number of States and Territories.

MS HOGAN-DORAN SC: Thank you so much Mr Darby. And I just note, Commissioners, that Mr Darby's extended résumé is at DAR.500.001.0001 Mr Crossweller, I will go to you.

MR CROSWELLER: Thanks, Counsel. Good morning. Mark Crossweller. I commenced in emergency management in 1985 as a volunteer firefighter in the New South Wales Bushfire Brigades as a volunteer for about 10 years and simultaneously was in the engineering and consulting industry. In 1994 I came on staff full-time as an Inspector; 1996, a Superintendent; '98 as Assistant Commissioner; 2009 as Commissioner and 2012 as Director-General of EMA. That totals - and then in March 2018 the head of the National Resilience Task Force, also from the Federal Government. That's in total, about 35 years in the sector.

MS HOGAN-DORAN SC: Thank you, Mr Crossweller - sorry, I interrupted you. Keep going.

MR CROSWELLER: I can tell you what I'm doing now. So I'm now Director of Ethical Intelligence which is my own advisory company, senior advisor to KPMG, and director of the Bushfire Natural Hazards CRC.

MS HOGAN-DORAN SC: Thank you so much. And, Commissioners, Mr Crossweller's résumé is at RCN.900.102.0001. What I will do, gentlemen, is just come to you both in the first instance focusing on your prior roles as Director-Generals of EMA. We heard some evidence - I'm not sure whether you were able to hear the evidence of Dr Owen or any of the other evidence during the course of this week, but one of the questions we explored with Dr Owen, and I put to your successor, Mr Cameron, yesterday, was the idea of reframing emergency management within the broader risk reduction and resilience frameworks.

I wondered whether if you could provide to the Commissioners some insights as to how (a) that question, and then (b) how EMA could best facilitate that going forward? It's a large question to start but I have confidence you will be able to engage. And I might go to you first, Mr Crossweller.

MR CROSWELLER: Thank you, Counsel. I think the first thing I would say is that we can't respond our way out of these problems. I think response is a critical factor,

of course. And does it need strategic uplift in the face of what we experienced last Summer and will continue to experience probably in a more intense and a more frequent way into the future? Then the answer is absolutely yes. But the difficulty is that only seeing in that context without looking at the broader risk reduction
5 resilience, will continue I think to lead to systemic failures in how we deal with those problems.

So response is essentially the last risk treatment action that we have available to us, and if we don't incorporate more strategic considerations of risk reduction in our - in
10 our institutional policies, particularly about where and how we place ourselves upon the landscape going forward and in anticipation of such effects, then I think again we will end up in a bit of a pickle. Resilience also, it's not possible to be resilient if risk reduction is not enacted at the highest level and enacted systemically, because without reducing harms in the system, then it's almost impossible to be resilient to
15 the production of harm and the uncontrolled production of harm.

So we find in these environments that the capacity for response or its effectiveness actually drops off in the worst of circumstance. And by way of practical example, aircraft can't fly, firefighters can't get in. In the flooding context, the same thing
20 happens: aircraft rarely could get up because they get socked in, and floodboats can't launch. So the capabilities actually, as much as they're immense and we can invest more in them and they're useful for the purpose, actually become degraded in the worst of circumstances. So that forces us to rely even more systemically on the risk reduction that we've undertaken prior to the day of the event and the extent to which
25 citizens and systems and institutions can be resilient to those effects.

So it has to be seen in that totality, I think, Counsel. And, to that extent, I think EMA, or its emerging entity, would need to take forward that totality of responsibility, I think. But it does extend well beyond emergency management, Just
30 on emergency policy at the jurisdictional or State and Territory level, Local Government level as well of course, and also at the national level. So I think with what we're facing going forward, to see this only as an emergency management problem would be remiss.

We would probably end up, probably end up in a worse space in five to 10 years if we did that, if we don't take a more systemic and strategic view of risk creation, risk reduction and the necessary systemic resilience that we need to put in place to deal with these effects, particularly when response gets degraded in the worst of
35 circumstance. I would probably finish by saying that resilience is admirable and necessary but it also has a limit. Particularly – during the course of my career, I'm
40 really yet to find someone who wasn't trying to do the best they could in the worst of circumstance. And whether they met the resilience standards that the government had set for them is a different question and whether they could, in fact, even meet those standards is another question yet again. But they do do the best they can.

45 They turn to institutions for support when they become highly vulnerable, so the resilience runs out or they hit a limit. It does concern me that increasingly the

capacity for institutional support in that circumstance isn't there. And I think there has been a degradation in the structural, social and economic supports for resilience over the last 20 to 30 years which is showing up now where people are turning for assistance and help and it's not there perhaps to the extent to which it could be. And I think this season really highlighted that.

Some of the narrative in the media was the governments can do no more; you know, where literally headlines were saying "Expect people to die, catastrophic conditions are about to manifest, people should abandon their localities and follow instructions" and so it goes on. That sort of leaves this profound public policy question: is that an acceptable position to be in into the future? And I think the answer has to be no. So there has to be systemic and institutional responses to this in concert with, you know, greater awareness at the level of the citizenry, but also helping them to reach the capacity to meet the resilience standards that we hope that they will achieve.

That has to be dealt with in its totality systemically going forward and being led at the national level and carried across all levels of government in order to make sure that we're properly positioned for the inevitability of these things into the future. Because there is - we've published on inevitability now for six or seven years, not to be dramatic because I think it's simply a fact of life, I think. And, you know, my last final point, because I already said final point, governments are the insurers of last resort and really we can't trade off risk on the basis of rarity because we don't have all the controls to do that in natural hazards. And, therefore, we have to accept the manifest consequence of the catastrophic end of a disaster, and make sure we understand it and, to the extent in which we are able, position for it. And governments particularly cannot escape that responsibility.

MS HOGAN-DORAN SC: Mr Darby --

MR CROSWELLER: Thanks, Counsel, I'll leave it.

MS HOGAN-DORAN SC: Thank you, Mr Crosweller. Mr Darby, I will come to you. I did ask the question in the context of how EMA can best facilitate that going forward and, of course, that was your experience, if you wanted to speak to the whole-of-government perspective which, of course, means we're talking first Minister level, please feel free.

MR DARBY: Thank you, Counsel. I'm very much on the same page with Mark on this, that I'm not too sure EMA is the body to facilitate this unless there is significant change to the scope and role of EMA. I believe that if we leave these broader whole-of-government strategic policy issues that need to be undertaken to achieve the risk reduction framework in the resilience that we're seeking, we leave it in an emergency management context, I think will fail. We went through a lot of pain in 2011 with a National - National Disaster Resilience Framework with some good work was done in that.

That was looking at whole-of-government issues around community education, around planning, around insurance, but we didn't achieve all the things that we could have done in that. It was a major undertaking, almost akin to some macro-economic reform, but we didn't get where we needed to get with that. The sort of things that are
5 needed to be undertaken in this space, as Mark says, are really whole-of-government issues around legislation. They cut across levels of government where Local Government has a major part to play in it.

10 And I think unless - unless EMA and the scope of EMA and what it's expected to do changes - and you might even need to change the name of it, because as soon as you put the "emergency" bit in it, you could say there's not much in a name but it means everything, and people will immediately go back to see EMA doing the things that it used to do and it's much broader than that. We were just having a conversation, I was
15 talking about Queensland and the Queensland Recovery Task Force which is a statutory agency sitting outside of government but with a legal remit to really look at how to mitigate risk, how to rebuild after recoveries. And they're the ones who are taking on this whole - or the whole of the Queensland Government, sitting outside an emergency management space. And it seems to be one area which is really working really well in Queensland. Thank you.

20 MS HOGAN-DORAN SC: That role of an external - external input or review, I'm not sure to what extent this raises the same issue. We've had some earlier questions from the Commissioners today concerning the role of IGEMs and the role at a State level, and the idea that perhaps there might be some role for a Commonwealth IGEM
25 or some kind of broader agency that takes on this sort of not just assurance issues but broader issues. Is that what you had in mind, Mr Darby, or are you speaking to a different intent?

30 MR DARBY: I'm probably speaking to a different intent, in that I don't necessarily know that it needs to be a statutory authority in that sense, but I'm not too sure that sitting it under a single department is probably the way to go. We've spoken a lot about the Australian and New Zealand Emergency Management Committee which we sort of conceived to undertake some of these things but like most committee
35 bureaucratic structures, I think it is in need of a significant refresh. Most bureaucratic organisations over time tend to become a little bit stale, a little bit too big, a little bit unable to be quite as adaptive as they should be, and I think that's one organisation that could be in need of significant refresh.

40 I'm not too sure at the national level a statutory authority would achieve what you want, but it needs input, strong input, from all First Ministers' Departments and even in Prime Minister and Cabinet I think to make sure that there is an ongoing ability to report back so the political level can see what is being achieved with the objectives that are being put in place.

45 MS HOGAN-DORAN SC: Mr Crossweller, there's a proposal which we've heard in evidence, in respect of ANZEMC that the Commissioners and Chief Officers Strategic Committee, which is presently a subcommittee of AFAC be brought in

under and repositioned under ANZEMC. What's your view of that proposal, particularly in light of what Mr Darby has just said in respect of ANZEMC itself?

5 MR CROSWELLER: I think it needs to be repositioned in the governance context. I think ultimately where that sits – the reference to ANZEMC is because it's the existing governance framework. But I would probably argue that the full answer to that question lies in the government's response to strategic - to the structural adjustments to governance. I set it up with AFAC with Stuart Ellis, the CEO at the time because we had anticipated the need for a greater level of coordination in
10 real-time in complex environments of potentially conflating events. And it's probably fair to say, I think, that politically and democratically we took it as far as we could given the appetite for that sort of coordination at the time.

15 And I think at the time, you know, there was much, at the government level, for example, much emphasis on the activities of ISIS and counterterrorism, and there was a lot happening in the space of national security, and so I think the window of looking through catastrophic natural hazards was not necessarily fully open, but given the context that we're all that probably makes sense. So it has done some good work. It needs to continue, of course, that dynamic nature, and having commissioners and chiefs at the highest level coming together quickly and making those decisions is
20 important.

However, I think with an increasingly complex environment and conflating environment, for example, we hadn't really contemplated - I think we had
25 contemplated in discussions when I was director-general, but the underlying impacts of pandemic, for example, and the other thing that's happened this season, of course, which has been not necessarily overt which is the significance of cyber threat and cyber attack, cyber intrusion, does warrant an even higher level of resource allocation, perhaps even beyond commissioners, to the political level, in times that
30 we may not necessarily be able to foresee or foreshadow in specific terms but I think we can probably foreshadow more generally.

So I think there is a need to bring it into a more accountable governance structure. I think it has proved its worth. I do think there is a level of complexity in the operating
35 environment going forward that requires perhaps another layer, or a more sophisticated consideration of those hard decisions about resource allocation. And COVID-19 gives us a bit of an insight into that. COVID-19, of course, is a global rupture, a global event. You know, would a natural - a series of natural hazards conflated with cyber and national security give you the same global effects?
40 Probably not, but with probably give governments enough of a headache to need to come together in a similar way.

MS HOGAN-DORAN SC: Mr Darby, you've had experience in providing strategic reviews in relation to counterterrorism, and I will just come to you in terms of your
45 insights in relation to the work of CCOSC and its proposal that it be put into ANZEMC in that broader context that Mr Crossweller has just raised. MR DARBY: I mean, what Mark says is exactly right; that the governance structures will determine

which way you go with this. And I'm not too sure whether the ANZEMC, as it sits at the moment, is the right body. It would need to be significantly operationalised, similar to the way AHPPC is – fits between a policy-making body and an operational sort of advice - advisory body. We need to be careful that that CCOSC group doesn't
5 start stepping into the policy space, and they weren't set up to do that, but I think there is a bit of a danger that the way AFAC is conceived, there is almost automatic conflicts of interest in that.

One, conflicts of interest between what jurisdictions might be doing; secondly,
10 conflicts of interest that AFAC is a body which is funded by the agencies themselves and then you end up with a situation where agency heads are using AFAC to lobby against their own particular governments. Could be, I'm not saying it happens but it's one of those things that we always had some concerns about over bringing AFAC fully into the ANZ Emergency Management Committee when it was - when it was
15 first conceived.

So there are some of the concerns in it. I think I spoke about, before about the National Counterterrorism Committee and how it was, I thought, quite a capable
20 body that actually achieved a huge amount of work in terms of interoperability, building national counterterrorism capability, building connections between jurisdictions, about levelling out where the capability was nationally, so that where the highest risks were, the highest areas of vulnerability were in terms of terrorism attacks were best protected as they could be; where Deputy Commissioners and First Minister representatives, in most cases, left their particular jurisdictional
25 requirements priorities at the door.

If there was something which is a - a hard line or a red line for a particular jurisdiction, then the rest of the jurisdictions would work together to say: okay, we understand for X jurisdiction, you would not be happy to sign up to that, so how can
30 we actually get to a point where everybody would be happy? And that worked because there was particularly good leadership, particularly good personality leadership. It was run out of Prime Minister and Cabinet at the national level, and the Commonwealth threw a significant amount of seed money on the table to bring the States and Territories to the table, and it worked well.

35 MS HOGAN-DORAN SC: I might just turn now to just some of the - and pause and just look at some of the work you're doing now, Mr Darby. As I understand, you're undertaking a strategic review of the efficacy of new and emerging telephony-based emergency warnings technologies, and I will just have the Terms of Reference of that work brought up, HAF.0003.0001.0584. We've heard some evidence in the
40 course of the inquiry of the Commission in relation to community messaging, community warnings. We had some panels with the telecommunications providers where an issue emerged in relation to carrier roaming between carriers in an emergency context. How does this work that you're undertaking fit within that
45 broader scope of issues?

MR DARBY: Thank you, Counsel. This work is essentially forward looking. It's looking to see where telephony based warnings should be in four or five, six years time. So to do that I've actually got to look and see what we're doing now, where we're at now, what's working, what's not working. It's true to say that emergency alert, what we're using now, is actually a functioning system. It will never be perfect because anybody who's dealt with anything to do with radios or phones know they can be a little bit fickle or a little bit capricious. So there are improvements that are going on at the moment. There's another version which is going to come out within the next sort of six months.

10 There are some challenges in that. We are still dealing with three telecommunications authorities who are providing that capability. I haven't yet had my stakeholder engagement with those telcos, but I understand the request to do multi-carrier roaming is something which is out there, and I will be having those discussions to see how that - how we can actually make that work going forward.

15 Suffice to say, I think the EA, as it sits at the moment, does have some issues. It isn't particularly - it doesn't service the culturally and linguistically diverse communities particularly well. There are issues for remote areas. There are some issues around redundancy or when systems go down due to floods or fires that you're not necessarily going to be able to get as much penetration of communities as you might wish. So we're looking to see how we can both improve the capability and the capacity of the system.

20 The bottom line question really is: what scope do we want for telephony based warnings in the future? What concept of operations do we envisage? How much information do we need to give communities? What is the cut-off line between enough information as against too much information where people switch off from alerts or see another alert on their phone and say "Oh, it's just another alert" where it's actually an alert where you want to drive them to action, you want them to leave an area, you want them to do something.

25 So there will be a trade-off between the technological risks for using other particular technologies or media versus the cost involved. And whatever we do in the future has to mesh and be almost seamless with all the other ways that warnings are pushed out. So the telephony-based warnings are only going to be a small part of overall communications and warning systems where education at the front end is really going to be critical, because unless people are educated about what they might expect to see on a warning then they're not going to necessarily react or respond in the way you want them. So there's a degree of education which has got to go upfront before you even get to the fact of sending out a warning via a telephony-based system.

30 MS HOGAN-DORAN SC: Can I ask you a question on one aspect of that. I appreciate or I understand that your strategic review is perhaps more at the technology level and the capacity or capability, but in terms of the content, I think you've just picked up on it there, the content of the warning that is being delivered is, in terms of is it a call to action or is it provision of information more broadly? Is that

part of your review or at least something about which you've made some observations?

5 MR DARBY: That - a strict reading of the Terms of Reference would say it's probably not part of the review but it's something that I will be considering, because it comes down to what you want in terms of the capability of what you're putting out there.

10 MS HOGAN-DORAN SC: Right.

MR DARBY: Do you perhaps need to have a different level where there is just a general warning or information to say "Beware, there is a fire in your general area" and you have a different notification system or something different which really is the alert as a call to action. So these two things might work in harness together to say 15 educate, or a little bit of education first or a little bit of beware, and then the actual warning. How you achieve that in a technology sense, I'm not too sure.

The other aspect of it as well, which I didn't mention, is around governance. And I think possibly this is where I think the Commonwealth has - has missed out because 20 it has actually almost outsourced the governance and development of these systems to the States and Territories, where my view would be that the Commonwealth probably needs to have a stronger lead role in this because they have most of the levers around the legislation and the regulation to actually bring carriers on board to get what they want in terms of community service and public safety.

25 MS HOGAN-DORAN SC: And just looking at the scope of your reviews, this is the last question I want to ask about it, paragraph 2 requires you to "undertake an assessment of international capabilities in telephony based warning systems and emerging technological applications". I don't know where you're up to within your 30 review, but where does Australia presently sit as against international capabilities?

MR DARBY: I think we sit probably in the top two-thirds. So there are different capabilities out there.

35 COMMISSIONER BINSKIN: That's a pretty broad

MR DARBY: Different ways we're in the top 30 per cent.

40 COMMISSIONER BINSKIN: That's pretty broad target, yes.

MR DARBY: Yes. My apologies. I think we are in the top 30 per cent, I would say, but there are many different capabilities out there, and things are changing quite rapidly. Australia went to a system of using SMS text messages, and some of the principles within that were that people couldn't turn them off. We had to be able to 45 audit to see whether people received those text messages. That puts a bit of an issue in the whole system because SMS messages are the lowest priority and it takes longer to get them through. You can only put a certain amount of data in that, at the

moment 161 characters, although that will be changing. So there are some capability limitations in the system.

5 Other nations have gone to, what they call, a cell-based warning where the actual telephone provider just push it out directly from their cell tower to all mobiles within that area. But we still have to take account of those people who still only have landlines and have the ability to send a voice message to a landline in the area as well. So I think our capabilities are quite good but it's an area where technology is moving quite quickly, and my request to do an overseas world trip to talk to a lot of
10 people was very quickly rejected.

MS HOGAN-DORAN SC: Of course, as circumstances would find us, it's now impossible for you to do so, given the travel restrictions on Australians.

15 MR DARBY: Yes.

MS HOGAN-DORAN SC: Because of the COVID-19 pandemic. When is your review expected to be completed, Mr Darby?

20 MR DARBY: I was hoping to have a first draft in by the end of November, a final draft in January, and reporting to the ANZEMC in February. As you mentioned, COVID is making that a bit more difficult because I do need, I think, to get a number of people around the table to workshop what it is we want out of any future system, which is actually slowing down my progress in this regard.

25 MS HOGAN-DORAN SC: Thank you, Mr Darby. Mr Crossweller, before I come to the - well, perhaps it's a good segue to it - the National Disaster Risk Reduction Framework and the work that you've done in that area, I just want to get some insights from you in relation to - we've heard evidence today and we've heard some
30 questions about community resilience and community receptiveness to messaging from government, both in the preparedness or in the prior phase and then we've just spoken with Mr Darby about the messaging they receive in circumstances of emergency and crisis. In - what are your reflections in terms of the community's receptiveness to that kind of messaging from government and institutions?

35 MR CROSWELLER: I think, certainly my research in my PhD study showed that accuracy was a big issue, and I think the one way mode of communication can be quite directive, and the - the situational awareness of that information can be limited or even perhaps inaccurate or out of date. I think free and full access to information
40 is fundamental to public trust. And the systems have certainly improved since 2009 - the Victorian bushfires, for example, and the and floods in Queensland. So you've got to give credit to governments in the sector for the really sort of strategic uplift in warnings. But it has hit yet again another limit which is the reliability, the accuracy and the contemporaneous nature of the information.

45 And I think that's where the next piece of work is, really. And I think the other piece of work is it needs to be interactive. I think citizens see a lot, sense a lot and feel a lot

and want to tell somebody. Now, sometimes when it's critical or urgent, that's 000, of course. But often it isn't. And our capacity to analyse that intelligence and use it in such a way that it can be useful for warnings is not yet - it doesn't yet exist in the sector, but I think it needs to. Some of the advice I'm giving the private sector and
5 other entities at the moment is to say: look, there's a rich amount of information and intelligence that exists in these incident grounds that the community holds and first responders hold as well, for example, which isn't able to be channelled or harnessed in any meaningful way or analysed or processed or turned into intelligence. And I think we need to think seriously about making sure that happens because
10 information - you know, one of the greatest sources of human suffering is ignorance, of course, and how do you dispel your ignorance? Well, become more knowledgeable.

If we can help citizens to become more knowledgeable at the time and prior to the
15 time, I think that kind of helps the - helps us to position as best as we can for what we're about to experience. Even, you know, our understanding of the risk landscape is not as good as it could be in terms of risk knowledge about flood, fire, storm and cyclone across Australia is reasonably good. I'm not saying it's bad. But does it, for example, adequately take into account the effects of climate change going forward
20 and the adaptation and challenges in that regard? Well, no, it doesn't. It's very immature in that respect because the knowledge is not able to be produced because the data is not necessarily accessible or available, and the methods for analysing it aren't finalised or standardised.

So I think knowledge, intelligence, information is a - needs strategic uplift, and is a new frontier for this sector to improve the capacity for people to make informed decisions. So if we're really going to focus in on resilience, and we need to of course, subject to those structural supports and things we talked about earlier, then
25 knowledge is key to this. And there's plenty of evidence through previous
30 commissions of inquiry that highlighted that the knowledge was just deficient; it was either antiquated or inaccurate or, you know, there's a whole lot of problems with it.

And unfortunately, I think that it's so critical to public trust that it just can't - you can't ignore it and you can't underinvest in it. And I think the interactive nature is
35 something we really need to explore much more profoundly. People do want to tell us what they're seeing or how they're feeling about it or what they're - even what they're sensing. So people just sense things are not going well or things are not right and they want to tell somebody, we should be up to listening to that because that's a rich form of intelligence, and if human beings kind of feel as though things are going
40 bad, it's probably because it is. And our traditional means of picking up that sort of information - well, we don't have them really. We're not able to tap into that. So I think it's a gap that we could do well to address.

MS HOGAN-DORAN SC: Mr Darby, is there something you would like to
45 comment on that aspect of Mr Crossweller's response?

MR DARBY: No, I think Mark is right. We haven't yet been able to tap into these rich sources of information. And there's a natural reluctance, I think, some of the time to accept that the information you're getting is imperfect and, therefore, you shouldn't use it, which I think is probably the wrong way to approach it. Sometimes
5 if you have information there and you're getting enough sources, as long as you can determine those sources are slightly different and it's not just repeats of a single source, then that is actually a good way to say: we've got something happening here, we need to respond, we don't know exactly what it is but we have a good sense it will be X and, therefore, we need to take some action.

10

MS HOGAN-DORAN SC: Mr Crowweller, I want to come to now, in the time available, to your work on the National Disaster Risk Reduction Framework and your insights as to how its implementation can be progressed from here?

15 MR CROSWELLER: Yes. So I think - I think key - key to the framework implementation is a strong strategic partnership with the private sector and governments about how to move risk reduction forward. I mean, it's not - you know, risk reduction at the citizen level is a microcosm of the problem, really. I think it's
20 institutions that design societies and ultimately make decisions about where and how we place ourselves upon the landscape. And if those settings are more mature and more informed by climate and disaster risk, then I think we stand a better chance of resisting or persisting or absorbing or transforming from these effects. But the mechanism isn't really there for that dialogue. And so for many a year, sensibly, so I think we've heard right back to the National Strategy for Disaster Resilience, a call
25 for public and private partnerships, and dialogue and responsibilities and accountabilities - all the words you hear in bureaucracy - but there's no governance to give effect to that and there's no monitoring of implementation.

30 Now, the private sector is diverse, of course, incredibly, and governments, you know, comparatively speaking are centralised or much easier to corral. But there are peak industry bodies, captains of industry, representative groups that we I think ought to tap into more often and more formally, and allow them to provide advice to government at the highest level about not only where they see the problems but about how they collectively solve some of these things.

35

When I headed the task force, there was an incredible willingness to do that, we consulted with - I think it was over 100 entities in the formation of the framework and a very small number of those were governments, of course, and the vast majority were from the private sector or the community sector. And the willingness was
40 unambiguous to continue to work with government on strategising and implementing risk reduction. Unfortunately, we were time limited, of course, and scope limited; we weren't able to provide sufficient advice on some of those governance arrangements and what they might look like. And it may well be difficult for governments to contemplate such matters because, you know, the trading of the equities of power,
45 wealth and resource are always contested in these spaces.

But I think there needs to be put on the table sensibly, if we're going to ask the private sector to be responsible for its part of risk reduction, I think we've got to give them a voice and be prepared to hear them in the context of constitutional and statutory responsibilities to governments, and the democratic processes that liberate those things, they're just as important if not even more so.

But there is no dialogue in an ongoing sense, there's no capacity to monitor, nor to report, nor to influence, nor to shape. So it's one thing to write a plan or a framework and engage the private sector in what needs to happen: it's quite something else to make sure it does. So we run the risk of falling into the trap of writing a great document. I think we've all collectively participated in doing that and COAG endorsed it I think earlier this year which is, I think, a testament to the efforts of those 120 organisations. But it will mean for a little if we can't continue to monitor its implementation.

So there has been some planning done, as I understand it, through EMA and ANZEMC. And that's progressive, of course, but I've talked to the private sector since and there is essentially no dialogue or conversation now happening with the private sector about next steps and what that might look like. So I think, given the systemic and strategic nature of the problem, the key to this is a governance framing that allows that ongoing dialogue and, you know, sensible willing accountabilities and responsibilities. It doesn't need statutory oversight, I don't think. There's enough goodwill in the system, I think, to pursue these things for the benefit of greater society but we need to put the governance in place to make it happen.

MS HOGAN-DORAN SC: Mr Darby, I might come to you, and just as I was listening to Mr Crossweller I was wondering if there were other models on which this could be – this proposal could be informed. We had some evidence earlier this week from Jane Halton who is the Commissioner of the National COVID Coordination Commission which has now become an advisory board to Cabinet. Do you have any insights in relation to Mr Crossweller's observations?

MR DARBY: No, Mark's - I think Mark's right on the money. It is - it is a really, really challenging space because you are cutting across jurisdictions, across levels of government and across agencies and protectionism in a number of areas, and it's very, very difficult. And it needs to be a little bit of the carrot and stick approach. Mark is right that it needs reportable objectives to actually achieve some of these things. And it needs a transparency about where - what risks it is that you are trying to - trying to mitigate or reduce, which sometimes are not always clear to people who are working on it because the picture seems quite big.

There was a lot of work done on National Emergency Risk Assessment Guidelines where some States have signed up to those. Others have adopted them for their own means and they've become so complex that a Local Government, for example, just have not get the wherewithal in terms of resources to action them. To my mind, somebody has got to pay along the line here somewhere, whether it's the taxpayer paying directly, whether it's the extra cost to private industry for building regulations

or planning decisions or insurance, but it all comes together somewhere. And you only have limited resources and the National Emergency Risk Assessment Guidelines spoke about how you use those resources, those limited resources, to best reduce the risk in your environment. And I'm not too sure all States and Territories
5 continuously look at where their risks are and how they apply those limited resources they have.

In many cases, I think most of it is done on the basis of traditional custom and practice. If you examine or look at, for example, the urban environment where there
10 has been a lot of work gone on to make buildings safer, local alarms, fire prevention systems, etcetera, the urban environment is actually very, very safe. But there hasn't been necessarily a reduction in the resources that are provided to the urban fire service or in terms of expanding, significantly expanding what they do to take
15 pressure off resources in other areas. So it's this balance of where you actually put your limited resources against the most appropriate risk to reduce those risks.

MS HOGAN-DORAN SC: I think you've both spoken to the issues of a sort of more whole of society taking in the private sector and the community on - I don't like this word but I will use it - journey, in terms of taking a more holistic approach. One
20 thing I haven't raised with you both is to what extent, at least in crisis circumstances - I think what you're talking to, Mr Crowweller, is something more sustaining than across both in peacetime and war time, so to speak - but in the crisis circumstance, what is your view as to the role of the National Crisis Committee?

25 One of the things that stands out in stark contrast to what might be thought the National Crisis Committee does, which is the vertical as across all governments, that it only met twice in the last fire season. What is a committee like that or some kind of organising body that can coordinate the national response to disasters of national consequence? I'm not sure who wants to go first. Mr Crowweller.

30 MR CROSWELLER: Sorry, I didn't mean to interrupt. It's an excellent question, Counsel. I think because, or at least historically - I mean, after this Commission it could be different - but the Commonwealth has only ever had a moral and political mandate in this space, not a constitutional one, unlike some of the other
35 responsibilities in national security and elsewhere, and I think that has tended to maintain the focus of that accountability at the State level. And so there's not really an impetus to elevate these things to the National Crisis Committee on that basis alone. And I think last summer was, I think, clearly a need to do that, but - but I think traditionally, culturally there has been a reticence to actually make that happen.

40 I don't see that going away quickly, to be perfectly honest about it. But I think we need to - we need to come back and think about that because, as we've mentioned, I think the Commission has heard on numerous occasions, how complex this is all getting, of course, in crisis and the competing nature for the resources, and I think
45 also the citizen or the electorate's expectation of political cohesion and coordination and support which has clearly been demonstrated in COVID-19 to great beneficial effect to both governments and citizens.

It really needs to be brought into this space under that, if you like, notion of goodwill or sense of responsibility to the broader society. So - so I think there is some cultural constraints here and we need to re-contextualise within culture the fact that we
5 cannot continue to see these things as small and maintained within jurisdictions because it suits us to see it that way, when clearly the presenting conditions and the crisis is suggesting something otherwise.

10 I think the south coast of New South Wales proved that, it was a very difficult time for the Prime Minister and the State of New South Wales, about the activation of Defence resource. I think - I think that was the right decision by the Prime Minister and I understand the concerns of New South Wales. But the pressure on the Prime Minister to act on behalf of the nation was phenomenal and, having briefed three
15 Prime Ministers, I can well understand what that would have been like.

I think if we had a more contextualised understanding as to what was unfolding from that perspective, we perhaps would have avoided that situation and the National Crisis Committee could have come together perhaps a little bit earlier. So, look, I'm treading on egg shells here, of course. But I do think everybody did the best they
20 could. I think everybody's concerns were valid. But I think what the environment showed and the crisis showed was that our arrangements and our cultural understanding of the environment weren't working. And it pushed us beyond our limits of understanding, and it pushed us beyond our governance arrangements and even pushed us beyond our Constitution, really. So I don't think there's any fault
25 there or blame or finger-pointing, I think that would be futile. But I do think it highlights the fact that we crossed a threshold of our understanding of these environments that we weren't adequately prepared for, and those things are going to happen again and probably in a more complex way.

30 So there is a role for a National Crisis Committee. I think the national - the national arrangements for governance, now that the Prime Minister has recently put in place, in part help to answer that question, and I think there needs to be a bureaucratic response in support of the National Cabinet that allows this pathway to open up quickly and seamlessly. In crisis response, of course, the thing which we will
35 probably miss the opportunity to see in this Commission is the recovery, and I think the recovery effort is equally if not more complex and probably needs coordination at the national level over an even longer period of time, and so I think that's worth contemplating. More than worth contemplating, I think we should act on it.

40 MS HOGAN-DORAN SC: Thank you, Mr Crowweller. Mr Darby, I will go to you and then I'm going to go to the Commissioners for their questions.

MR DARBY: Look, thanks, Counsel. I think my - my time since involvement in the National Crisis Committee, I probably shouldn't comment too much. It was set up to
45 do exactly those things you talk about, and I'm not too sure why it possibly only met on those limited number of occasions. I think the national arrangements have come a

long way since my time. There's a lot more acceptance of States and Territories about how they interact with the Commonwealth.

5 In the past there used to be a strong resistance to even the Commonwealth going out and doing preseason briefings to understand what the risks might be, where the shortfalls might be for particular States and Territories. There was a reluctance of a State or Territory to admit they didn't have all the capabilities and capacity they needed. But I think we've moved on a long way from there in these days and a lot of things Mark put in place to address that are working well. And I'm not too sure why
10 the National Crisis Committee didn't meet more regularly to advise upwards towards the National Cabinet.

15 I always had a view that we had all these arrangements at the bureaucratic level, but there was nothing at a political level to actually have an operational or a crisis sort of arrangement where the Prime Minister and Premiers got together quite quickly to discuss crisis matters. And that seems to have been overcome quite quickly in this event. So it is there and it can work well and it should work well with people coming together quite quickly to address issues of national significance in disasters.

20 MS HOGAN-DORAN SC: Certainly the material that has been made available to the Commission supports that the National Crisis Committee has met frequently during the pandemic. I might now go to the Commissioners.

25 COMMISSIONER BINSKIN: Yes. Thank you for that. Noting the time, I've just got one question and it will be for Mr Crosweller, just to build on what he was talking about: frameworks. We've discovered more frameworks than you can point a stick at with the Commission, to be quite honest, and when we go down the path of what happened with the framework quite often they were endorsed and everyone patted each other on the back and it was done. And when you ask what's happened since
30 then, the answer is normally crickets in the night. It hasn't progressed which is what you were alluding to.

35 When you're talking about who should monitor the implementation, all too often everyone looks at government to do that - a level of government to do that. Noting all the bodies that have been a part of the implementation or the development of the latest framework that you've been involved with, is there a role for industry to come together to monitor implementation and drive implementation? Does it just have to be government or actually is there another way of doing this?

40 MR CROSWELLER: Thank you, Commissioner. It's an excellent question and the answer is absolutely. I think the willingness of the peak bodies and the big players particularly, for example, back in finance and insurance which I dealt extensively with, were more than up for that challenge. They couldn't find the pathway of dialogue with the government around partnership. And it wasn't about, you know, I
45 mean there were people in the system wanted government to pay for everything but that's easily dealt with.

COMMISSIONER BINSKIN: We found a few of them too.

5 MR CROSWELLER: But the leaders and the shapers and the influencers and the private sector really do understand their role as heads of industry and want to do something about it, but they can't find the pathway to dialogue or partnership. And I think, if I'm understanding you correctly, Commissioner, this is, in every sense of the word, a partnership and how do you - how do you operationalise that partnership and give it legitimacy and give it longevity. I think they would welcome that.

10 I think the old - the frameworks that, you know, they help to guide the policy direction but they don't really do a lot if people aren't allowed to continue to participate within them and be held to account for them. And governments, and particularly some bureaucrats are reluctant to give up the power - the equities of power in this space to allow the private sector to do what it is they need to do. And I think if we're going to talk about public/private partnerships we've got to put in place the mechanisms to make that happen. And that is trading on some of those equities, and I don't see a problem with that. I really don't.

20 COMMISSIONER BINSKIN: No. Thank you. I appreciate that insight. Commissioner Bennett?

25 COMMISSIONER BENNETT: No, thank you. I think all of my questions have pretty well been covered from what you both said, so I'm very appreciative of that. Thank you.

30 COMMISSIONER MACINTOSH: No, nothing from me. I think Mr Darby put his finger on the pulse when he said the biggest obstacle to change here, is that there are costs and they don't go anywhere and someone's ultimately got to pay. But other than that, that was a comment. So thank you very much.

35 COMMISSIONER BINSKIN: So Mr Crossweller and Mr Darby, once again good to see you again, thank you for taking the time with us this morning. Again you've added another a little part of the jigsaw puzzle but a very important part of bringing this together. So thank you both very much. Ms Hogan-Doran.

MR DARBY: Thanks, Commissioner.

MS HOGAN-DORAN SC: Nothing from parties with leave, Commissioner.

40 COMMISSIONER BINSKIN: Nothing with parties. So we will --

MS HOGAN-DORAN SC: Be released.

45 COMMISSIONER BINSKIN: Be released, so Mr Darby and Mr Crossweller, you are released from your summons. We appreciate your time. Thank you.

MR DARBY: Thank you.

COMMISSIONER BINSKIN: And with that, we will adjourn until 11.30 Canberra time.

5 MS HOGAN-DORAN SC: Thank you, Chair.

COMMISSIONER BINSKIN: On time. Thank you.

<ADJOURNED 11:14 PM>

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<RESUMING 11:31 AM>

COMMISSIONER BINSKIN: Ms Hogan-Doran.

15 MS HOGAN-DORAN SC: Thank you, Chair. Our next witness is Laureate Professor Emeritus Cheryl Saunders AO who is the Co-Director of Studies, Government Law and Co-Director of Studies, Public and International Law at the University of Melbourne. I call Professor Saunders.

20 COMMISSIONER BINSKIN: Professor Saunders, good morning. Thank you for joining us.

PROFESSOR SAUNDERS: Good morning. It's a pleasure.

25 **<CHERYL SAUNDERS, AFFIRMED>**

<EXAMINATION BY MS HOGAN-DORAN SC>

30 MS HOGAN-DORAN SC: Professor Saunders, thank you for making yourself available today. And for the benefit of the Commissioners, I understand you've been teaching at the University of Melbourne a masters course in, of all things, multilevel government and tomorrow you will be teaching on emergency powers. I feel like asking you just to repeat the lectures that you're giving in the course of today. So thank you for making yourself available.

35

PROFESSOR SAUNDERS: Yes, I'm happy to be here.

40 MS HOGAN-DORAN SC: Thank you. A large question, which I did give some notice, about two minutes. Could you describe for the benefit of the Commissioners, at a high level, the nature of the Commonwealth as a federal polity, including how that impacts on the areas of responsibility within the polity and decision-making within the polity?

45 PROFESSOR SAUNDERS: Sure. Well, as we all know, Australia is a federation, it has a central government and six to eight constituent units, however you want to count the Territory in that. We've got a form of federation that divides legislative and executive power between the - between the levels of government. And each of the

levels of government has its own institutional structure and its own democratic relationship with the Australian people, or a section of the Australian people, through a parliamentary structure, each with its own Cabinet, Parliament, electoral system and so on.

5

It's a form of federation that's sometimes described in the literature as dualist because each level of government administers its own legislation. But from the standpoint of your concern, it's relevant because both in the particular emergency that this Commission is looking at, the bushfires and for that matter the current health and economic emergency, power is divided between the levels of governments in ways that mean that they both have relevant powers to be brought to bear on the solution. And it's not - it's not just a question of power. I think we also need to talk about capability and knowledge.

10

So each also has knowledge about what's going on and what needs to be done to solve the crisis, and each has some capability and experience and institutional structures in dealing with it. So the way in which Australia is set up, and for that matter many other countries around the world are set up, means that in order to solve certain kinds of national emergencies, you really need the efforts of both and perhaps all three levels of government to be brought to bear on the problem.

20

MS HOGAN-DORAN SC: And you've spoken of that sort of dual responsibility in terms of the allocation of powers and also that each level of government has its own capability and knowledge that it brings to the process of decision-making. What impact does that have for, in a sense, multilevel decision-making, coordination of that multilevel decision-making within our federal structure? Is that anticipated by our federal structure, at least in the context of the crisis?

25

PROFESSOR SAUNDERS: In some respects, yes. The federal structure that we sort of have from 1900 does have some cooperative techniques in it; for example, the power to refer legislative power from one level of government to another, the arrangements for the Loan Council, the arrangements for doing things collaboratively in Australia that only the imperial power could have done in 1900. There's a number of those mechanisms.

30

35

But, interestingly enough, all of those mechanisms assume that the - the democratic process of each level of government will continue to operate; the idea that the level of government is elected by, and accountable back to, a particular electorate. So there are some procedures within the constitution but, as we all know, very many procedures for collaboration have grown up outside the constitution, although they aren't necessarily consistent with it.

40

MS HOGAN-DORAN SC: You've talked about the levels of responsibility or both levels, the Commonwealth and the States and Territories have responsibilities, but we often hear the expression that the States have primary responsibility for certain matters. What is the significance of that for decision-making in our polity?

45

PROFESSOR SAUNDERS: Well, I mean, it depends very much on - I mean, we're talking in the abstract here and that makes it complicated. The way in which powers are divided in our system is that the Commonwealth is allocated powers, those listed powers largely in section 51, and the States have the unlisted residue. But equally
5 significantly almost all of those powers in section 51 are concurrent, so that they can be exercised by either the Commonwealth or the States with arrangements for Commonwealth primacy in the event of inconsistency.

10 And so if we take quarantine, the currently topical example, I mean that's a concurrent power, which - and we can see how both levels of government are presently exercising that power directly, not as a matter of delegation from each other, because they are both operating under that same umbrella. If there were an inconsistency, the Commonwealth would prevail, Commonwealth law would prevail,
15 and so that would be an area in which you wouldn't say the State have - the States have primacy.

But if you're operating in an area that is not obviously an area of concurrent power, say education, the Commonwealth has a big role in education largely through funding, but it's clearly primarily a State responsibility. Similarly, the
20 Commonwealth has a role in land management, in all sorts of things, but most of those things are primarily things that the States deal with on the ground. And it may be that the Commonwealth becomes involved because - to complete a particular project; Commonwealth money, or power or influence is necessary, or it may be that in some way Commonwealth legislative power intrudes into the area, as it does, for
25 example, with bringing migrants into Australia with particular educational qualifications.

30 So it's a, you know, it's a complex picture we're talking about, but I think it's - I think it is quite helpful sometimes to think in terms of primacy because it tells you where the responsibility falls and the extent to - and the way in which collaboration should work.

MS HOGAN-DORAN SC: The title of this Royal Commission, although it has been looking through the prism of the most recent experience of the 2019-2020 bushfire
35 season is National Natural Disaster Arrangements. Where do natural disasters fit within our Commonwealth Constitution and federal construct?

PROFESSOR SAUNDERS: Well, there's nothing in section 51 to talk about natural disasters. So, on that basis, they - you know, they are a State matter. But, again, it's
40 not helpful necessarily to make those generalisations because you've got to disaggregate the nature of the disaster and what the response calls for. So if we take the COVID situation, for example, it's quite clear that the States have responsibility for hospitals, many health arrangements, deciding whether or not businesses are open, deciding whether or not the State shuts down, all of those things.

45 But to make the health response practicable in this context it has been absolutely critical that the Commonwealth coordinate the purchase of supplies and so on; that

Commonwealth responsibility for aspects of health, hospital funding, health insurance, all of that stuff, is taken into account; that income support has been available for people who - you know the story as well as I do. I mean, it's an absolutely classic case of the way in which each level of government has had a lot to do to coordinate what, by and large, has been a fairly effective response to this global pandemic, and I say that even from the State of Victoria.

MS HOGAN-DORAN SC: Just focusing on one particular aspect, focusing further on one particular aspect, of the recent experience, you've written recently on the role and future of the National Cabinet, and the Commission has received a copy of your paper published at the University of Melbourne School of Government, Governing During Crises, entitled "A New Federalism? The Role and Future of National Cabinet". That's RCN.900.083.0001. I wanted to ask you some questions, if I may, about National Cabinet: first, to look at its construction and then I will return with some additional questions about its performance. How does National Cabinet differ from COAG, the Council of Australian Governments, and previous cooperative federal structures?

PROFESSOR SAUNDERS: Well, you know, Australia has got to have a long history of intergovernmental meetings. They preceded federation. There were premiers' conferences even before federation occurred. And since federation we've gone through various iterations. For a long while there was a thing just called the Premiers' Conference. After a while that turned into the Heads of Government Meeting, and you only have to think about the acronym to see why that didn't last terribly long, and then --

MS HOGAN-DORAN SC: Add it to the list.

PROFESSOR SAUNDERS: -- COAG became invented and now we have the National Cabinet. I mean, they're all very similar in one sense, and that sense is that they bring together the heads of government, the elected heads of government from around the country. So the similarity between the National Cabinet and all of those bodies is that their primary actors have been the Prime Minister and the Premiers and Chief Ministers of the States and Territories.

Sometimes there are other people involved. Occasionally - I mean, the council of - what do you call it - the Australian Local Government Association head, for example, has been a member of COAG. From time to time we have other countries involved; New Zealand participates, Papua New Guinea has participated. But those are, in a sense, frills. The primary purpose is to bring together the heads of government to make decisions about whatever it's thought necessary to make decisions about.

MS HOGAN-DORAN SC: And, at least in its recent experience, has it been successful in allowing that decision-making to be made quickly or more quickly than might otherwise happen or has it been more than just speed that has been the virtue of National Cabinet, do you think?

PROFESSOR SAUNDERS: Look, I think timing depends a little bit - in fact, I think effectiveness depends on what they're trying to do. So even though my answer to you suggests that National Cabinet looks just like COAG in many - in many respects. In fact, it operates quite differently to COAG. And it's a little bit worth reflecting on why that might be.

Now, one answer is it's actually dealing with something that needs to be dealt with. It's dealing with something that is a real priority for Australians. It matters to Australians. Australians will notice whether it's being dealt with effectively or not; as for that matter will the rest of the world. Everybody who's a participant in the National Cabinet agrees that this needs to be done. And one of their, I think – noteworthy achievements is that right from the outset they agreed broadly on what the goals were, at least as far as those of us who are outside the process can see.

They seem to have agreed that the goal here was to flatten the curve; that in the short term that was going to have economic consequences, but nevertheless let's deal with the health crisis and try and manage the economic consequences on the way. They seem to agree also that there would need to be local variations because the pandemic was manifesting itself in different parts of the country. Different parts of the country had different attributes to deal with, different challenges, different strengths to bring to bear on handling this problem. And that's also part of the, sort of the federal story.

And so that there was a sense of a unity of purpose and I think that that's one of the big differences between what we're presently seeing in the National Cabinet and what we saw before in COAG, because it wasn't obvious that there was unity of purpose always in COAG. There were things on the agenda, but the things on the agenda were things that very often needed to be done. In the eyes of particular people, they might have been urgent, but in the scale of priorities across the country and across systems of government they were perhaps not top of the priorities.

So I think in comparing COAG and National Cabinet we need to partly take account of the difference in the things that National Cabinet is presently dealing with as opposed to the things COAG routinely dealt with, and that then in turn feeds into the way in which these two bodies have operated. So it was often said that COAG was a pretty heavily bureaucratised body. Issues that were to be discussed by the heads of government were worked up through various levels of public service meetings from the various participating jurisdictions so that by the time they finally reached the politicians, it was all a bit of a fait accompli. And then there were questions, I suspect, about how wholeheartedly some of those decisions were being implemented in the various jurisdictions.

Whereas with the urgency that attends the pandemic and, for that matter, attended the bushfires, there's no time to muck around with multiple bureaucratic levels. You go to where the decision-making needs to be done and it's done. So I think that has been another important distinction, and I recall the Premier of Western Australia saying at quite an early stage in the National Cabinet process that one of the good things about

National Cabinet was that there were less - there was less bureaucracy involved. But I think that's partly also the nature of the questions

5 MS HOGAN-DORAN SC: So, of course, some of the bodies that sat below COAG were not just public servants but were Ministers. There were Ministerial Councils and other groups such as the Council of Attorneys-General and Ministers of Emergency - Police and Emergency Management, both from Australia and New Zealand. What's the importance of having those sitting under the National Cabinet structure? They're not presently - it seems it's in a position of either flux or transition.
10 What's your insight or understanding of that, Professor Saunders?

PROFESSOR SAUNDERS: Well, again, you know, it's not new that we've got Ministerial Councils, line Ministers getting together in areas of interest. And it's interesting, the way you put it, saying that they're under the - under the National
15 Cabinet which in a sort of a way they are, but I guess that was a COAG invention, the idea that you had COAG at the top and then there are all these COAG councils underneath.

Whereas hitherto my impression was - and I have never even thought about it in
20 hierarchical terms before - my impression was you just had these Ministerial Councils. You know, it was convenient for the agricultural Ministers to get together from time to time and talk about whether foot and mouth was an Australia-wide problem or just operating in particular States. It was convenient for education Ministers to get together to talk about grants. It's convenient for the - for
25 Attorneys-General to get together, and for that matters it's convenient for emergency Ministers to get together sometimes.

And so all of those councils, some of them are very - have a very long lineage again. I mean, the agriculture Ministers go back to at least the 1920s, for example. But
30 under the COAG there was sort of an attempt to build them into a pyramid, you're quite right. And the situation we're in at the moment with the National Cabinet is that my impression was that the National Cabinet was formed not quite by spontaneous combustion but certainly pretty - pretty speedily in the wake of a COAG meeting to respond to COVID-19 with relatively little thought given to structure, as opposed to
35 function and just dealing with the problem.

And then, because it worked so well - and if I can just sort of digress a little bit. It worked well because it was dealing with the problem, but in order to deal with the
40 problem it had to do something that I had been hoping would happen in Australia for a long time. There had to be actually mutual - a mutual understanding that each level of government had a role to play here, and you could talk about it in terms of mutual respect, you could talk about it in terms of saying we need to collaborate and reach agreement where possible, but sometimes it's also appropriate for local responses to be run.
45

So National Cabinet was very successful, I think, in the culture of collaboration it managed - managed to engender. And so as the success of the National Cabinet, both

in functional and sort of conceptual terms became obvious, so the idea that you somehow had to deal with the rest of the COAG Council seems to have been born. And there - there is a sort of a notional list of things that should be the subject of intergovernmental meetings, which came out in that press release about a month ago, and there is currently a process underway for working out what to do with the rest of these councils, not all of which were part of the COAG structure. There were others called ministerial forums that were not.

So that's quite a big exercise that's going on at the moment. And it will be very interesting to see how it pans out. I will also be putting a submission to that, and I hope that they consider not just structure and decision-making rules, but the sorts of things that should go to intergovernmental decision-making forums and the way in which those forums would be conducted so as to ensure that everybody buys in, and everybody sort of owns the process and the outcome.

So it's early days yet, but whatever they do, I don't imagine those arrangements are going to be set in stone. There has never been any formal framework for intergovernmental decision-making in Australia. There's a question whether there should be. But the habit for the last 120 years has been to change the titles and compositions, etcetera, of Ministerial Councils when that suits government priorities and as times change. And I imagine that, to some extent, whatever the future holds, that will continue.

MS HOGAN-DORAN SC: Commissioners, the reference to the media release is exhibit 27.23.4 which is PMC.0001.0002.0446. You've mentioned the future. How do you see the role of the National Cabinet into the future? You've been very positive about the outcomes of it. But do you have any concerns about any aspects of the processes that might be important to take into account for the National Cabinet, were it to take on a role in relation to natural disasters in the future?

PROFESSOR SAUNDERS: Not - I think the intention is that the National Cabinet, or something like that, will continue, and I think that there's now enough experience with how that has worked with the current heads of government to suggest that it will have a good start. But I think there are a number of questions. I mean, one is: will this spirit of happy cooperation and collaboration and acceptance of the value of diversity and innovation, will all of that continue when the matter that's being dealt with is not so critical?

Now, from your perspective of dealing with National Natural Disaster Arrangements, they're generally critical. So I think that we could hope, at least, that the National Cabinet would respond in the - in a similar way to any really serious natural disaster. But that's not the ordinary bread and butter of intergovernmental deliberation in Australia. Usually it's something much more mundane. Very often it's something that is a priority for one level of government but not another. And one of the challenges is to ensure that this culture of - federal culture, if you like, can be replicated more widely.

The second issue, and it may be in the material that you've distributed to the Commissioners, is I have some concerns both about the term "National Cabinet" and about its current position in the - in the Federal Cabinet system. I don't think that the term "Cabinet" is apt. I do - I do think in Australian - in the Australian context, we've come to accept that "national" probably works to refer to an intergovernmental forum. But I think "Cabinet" is a confusion because that's not normally the concept of a Cabinet and there's enough confusion around the term "Cabinet" in Australia because of its complete absence from the Commonwealth Constitution, without adding to it by putting another completely different body called "Cabinet" into the mix comprised of people who have quite separate responsibilities to their own Cabinets around the country.

So I have thought that the term "Cabinet" is complicated. I don't want to be too hung up on terminology, but if they could change it, I wish they would. But more complicated still, I think, is the fact that it's sometimes said to be now part of the Commonwealth Cabinet for its system, and I can't see how that can possibly sensibly be the case. It really can't be a subcommittee of the Commonwealth Cabinet. And I think it's worth unpacking what the rationale for that is. And the rationales - I've been given two, one by you I might say and I think it's probably absolutely right - that it has been rolled into the Commonwealth Cabinet system in order to ensure that there's some degree of culture of Cabinet confidentiality between the members, and that it also - that also serves to protect instruments and other information before National Cabinet from, for example, the Commonwealth's freedom of information legislation.

But I have two answers to that. One, or the first, the idea of confidentiality, I don't think there has ever been an issue in Australian intergovernmental forums. I think they've developed a culture of their own just like any such body does. If you want it to work, you need trust between members, and trust between members means not going out and blabbing about what your fellow Premier did to the next passing journalist. And so I think that there is that solidarity anyway within these intergovernmental forums and I think it's appropriate for us to build on that, not try and equate it to some other different kind of body.

And as for the freedom of information point, there is already some protection for intergovernmental information in freedom of information legislation. It may not be strong enough to deal with the sorts of things that National Cabinet might deal with, particularly in the emergency context. It depends on how frank you think that elected people should be with the public in an emergency context. I mean, I think the experience of COVID is that frankness is actually quite helpful. But the general point is if you need better protection for intergovernmental forums in freedom of information and other related legislation, then provide it. It's not beyond us to do that. Rather than mixing this up with the Commonwealth Cabinet system, that would be my - my response.

MS HOGAN-DORAN SC: There's a final matter I wanted to take you to before I hand it over to the Commissioners, is just the broader piece - and I think you've

5 already touched on it - but do you have any comments to make about reform to the national federation arrangements more generally, having regard to the principal concern we have in this Royal Commission which is governing during crises, in crises involved or triggered by natural disasters of a national consequence or on a national scale or which are compounding and consecutive and thus creating enormous --

10 PROFESSOR SAUNDERS: Yes, sorry, go on. Well, culturally I - you know, I would encourage us to somehow keep this arrangement going. I think there are all sorts of things that might be done to encourage that. One of the things that I've played with in the past, for example, is having a support structure that's dedicated to the intergovernmental machinery, rather than just running it out of the Prime Minister's Department, or out of the Commonwealth Line Department, which is what has, for the most part, happened in the past and tends inevitably to ensure that it's a Commonwealth agenda that's being run.

15 I think if you really want buy in an ownership of these arrangements and commitment of them, we think you need to think about how that is achieved for the institutional structure as a whole. One question that might come up is how emergency Ministers fit into an essentially heads of government operation. I think that's, you know, can be dealt with either in the hierarchical way that you and I were discussing a moment ago, or adopting a more imaginative process of the kind that they have, for example, in the European Union whereby a council, a ministerial council, is constituted differently, depending on what the issue is to be dealt with, and so that might be useful for some of the other areas of line responsibility.

20 But for natural disasters, at the end of the day, if it's a significant natural disaster of the kind that the Commission is talking about, at the end of the day you're going to want the heads of government, heads of jurisdiction involved. I mean, we saw that during the bushfires. Certainly, you did have emergency Ministers and police Ministers and so on addressing press conferences, but more often than not, you had the Premier there, and - and the same was true at the Commonwealth level. So that I think - I think that that issue is less significant in the sort of natural disaster area that you're talking about.

25 MS HOGAN-DORAN SC: Thank you so much, Professor Saunders, Commissioners.

30 PROFESSOR SAUNDERS: Can I just add one quick comment to that, sorry? And sorry to interrupt. I do think also to emphasise the relative leanness of the - the National Cabinet during the present crisis has been useful. I remember an occasion during the height of the bushfires when someone said to the Premier of Victoria, you know, "Should there be a COAG meeting?" and he said, "No, I need to be here dealing with the bushfires." And I think - and that was - I listened to that and I thought that's absolutely right: you need a COAG meeting like you need a hole in the head at this point.

But if that had been - if there had been a National Cabinet type of arrangement whereby they were doing it on Zoom, or whatever the Zoom equivalent is for the National Cabinet, and were able to do it fairly speedily and were able to only deal with the stuff that actually needed to be dealt with in that forum, that would have
5 been rather different, I think. So I think that element of National Cabinet needs to be brought in as well.

MS HOGAN-DORAN SC: Thank you so much. Thank you for that addition.
Commissioners?

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COMMISSIONER BINSKIN: I'd also note it's pretty grim if the Premier has got to man a hose out at the fire too. So different levels. In regard to the Constitution, Professor Saunders, is the National Cabinet, the way it has come together, recognition that with the many complex situations that are currently facing us,
15 regardless of which jurisdiction has primary responsibility, acknowledges that there are very few areas, if any, where one jurisdiction has sole responsibility for a response?

PROFESSOR SAUNDERS: Yes, but the National Cabinet is not the - that has been the fact for decades. There's nothing novel about the current situation in that regard. So the idea that --

COMMISSIONER BINSKIN: Sorry, I will just jump in, because most of the paperwork and arguments we see always revolve around this primary responsibility,
25 but I don't think they ever - I've seen anything that comes forward with sole responsibility. So that's why I'm just wondering if that's why this has come together to try and address those issues?

PROFESSOR SAUNDERS: No, I don't think so, because I think again the primary responsibility, everybody has got some finger in most pies. The story is a familiar story. I don't know whether you've received a copy of the paper that I wrote with some colleagues for the Australian Public Service Review about operating together. But we drew a sort of - I can't do it online for you, but we drew a sort of a wedge there to say that there's very little of significant policy import of Australia at the
35 moment in which there is some intergovernmental involvement.

But with this wedge, sometimes the wedge has a greater State involvement at the top of the wedge than Commonwealth involvement, and sometimes if the wedge is in reverse, the Commonwealth has more to do. So if you take immigration as an
40 example, immigration is all - it's clearly primarily a Commonwealth responsibility, but insofar as States provide schools and housing, it's helpful for the States to have something to say about immigration numbers. So you can just see how that primacy things works out.

COMMISSIONER BINSKIN: Thank you for that, and I appreciate it. And we will actually source a copy of that document.

MS HOGAN-DORAN SC: We're just looking it up.

COMMISSIONER BINSKIN: We're just looking it up, but before the end we will get back to you on that one. Commissioner Macintosh?

5

COMMISSIONER MACINTOSH: Thanks, Chair. Thanks, Professor Saunders.

In your evidence you've described how there's somewhat of a split in inter-government relations. You've got the noncrisis situation where it's arguably defined by contestation, and I suppose to some extent that's both natural and

10 desirable that the contestation between jurisdictions and between political parties and even within political parties keeps us strong. And then we have the crisis situation where you need leaders to put aside those differences and come together for a single purpose.

15 I was wondering, given that division in intergovernmental relations and that history, would there be any merit in reserving the National Cabinet for those crisis situations rather than trying to create the National Cabinet as the catch-all for all situations?

20 PROFESSOR SAUNDERS: Well, I mean, it's an interesting thought, one that deserves consideration. My hesitation with it is that - it's twofold really. I don't think that the divide is quite as binary as you have just described, that on the one hand you have natural disasters or crises where we're all in, and on the other it's contested. I think there's quite a lot of things that are not crises but are not particularly contested and can usefully be dealt with in a national way.

25

But I think then that - that sort of very large and amorphous category eventually tails off into things that actually are completely the priority of one government and the others aren't so fussed about it. So I do think that there is value. I do think that there is real value in keeping intergovernmental processes and, in particular, the time of the leaders of jurisdictions for things that really matter. And they might be crises or they might be other things. But to keep them for things that really matter rather than trying to load a whole lot of other stuff onto that agenda that could be dealt with by the jurisdictions just doing their own thing or could be dealt with at other ministerial levels. So that's one answer to your question.

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35 The other - the other answer is that on the premise that you put, we would be having the National Cabinet for crises and the other arrangements for everything else. Well, I've been very critical of the other arrangements. So I - I've been wanting them to change in the direction of a more collaborative, more focused set of engagements between jurisdictions. So even if you were to go down that path of saying, "Let's have both National Cabinet and COAG", I would want to see changes in COAG because I don't think it was really serving the Australian people terribly well.

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COMMISSIONER MACINTOSH: Thanks very much. We could talk about this all day but I suppose we must move on.

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PROFESSOR SAUNDERS: We could, indeed.

COMMISSIONER BINSKIN: Commissioner Bennett.

5 COMMISSIONER BENNETT: Thanks. Thanks, Professor Saunders. Look, a lot of
this conversation, we've covered matters of theory, practice, reality and pragmatism,
and you've covered a lot of factors that go that way. On the basis of two premises,
which you may agree with or disagree with, I would like you to tell me something,
and that is, one can pass legislation but often it's not a question of the - I mean, you
10 can get it through Parliament, but it's not a question of the legislation but how it's
applied in practice and how let's say, the Commonwealth Government passes
legislation and how it chooses to apply it, and also accepting the fact what might be
called beneficial legislation may also be in the eye of the beholder.

15 The question I have for you is, as a practical matter, where the Federal Government
has made decisions that are in the national space, how often have there been
challenges by the States on a constitutional basis? I mean, one can think of
WorkChoices, for example, which was, one would have thought, that's where I
thought about the eye of the beholder. You know, WorkChoices could have been
20 thought a good idea from some and not of others. But looking at the sort of thing
we're talking about here, which is a national natural disaster, and bearing in mind
that you've got that two stage process, can you think of comparable cases where there
have actually been State - I don't mean individual challenges - but State challenges,
you know, to the constitutionality of that sort of legislation? Because, obviously,
25 there are a lot of cases where theoretically one could have that argument, but
realistically and practically there has not been that challenge. So I'm just wondering
just whether, in terms of High Court jurisprudence, you could help me with that?

PROFESSOR SAUNDERS: Well, when you say decisions in the national space,
30 what does that mean?

COMMISSIONER BENNETT: Well, a decision that, a Commonwealth decision - I
mean we talked about primary responsibility or others. I don't mean
something - something that might have tangential section 51 application but doesn't
35 cover the whole of the subject matter of the legislation, something that clearly is
legislation that it purports to cover the country as a whole, whereas - and there could
have been a constitutional challenge, if you really sat down there and said: well, not
all of this is encompassed by existing constitutional power, or where a State could
argue that it was not a matter that was within the federal power within the
40 Constitution. Just looking back at High Court challenges, State based High Court
challenges, have there actually been many?

PROFESSOR SAUNDERS: Well, no, but that's not the way the Commonwealth
45 drafts its legislation. I mean, the Commonwealth does draft its legislation to try to
bring it within the section 51 ambit.

COMMISSIONER BENNETT: Sorry, it may try to do so. Obviously,
Commonwealth legislation is drafted with an eye to Commonwealth - what the

Commonwealth can do. But that's what I mean about the eye of the beholder. But there might also be - and we had a discussion in the opening this morning that if you take the smorgasbord or potpourri of section 51, and the Commonwealth has drafted legislation that arguably there might be covered by those powers, but there could also
5 arguably be a lacuna in that legislation where strictly which strictly, if you sat down and analysed, it was not encompassed by that power.

I mean, I know I'm talking theoretically, but I'm looking back at High Court
10 jurisprudence and I know it's not an exam question, but can you think of many cases where there has been that sort of challenge by the States where they could have founded a challenge if you look at the legislation but they've chosen, dealing with reality and pragmatism, not to do that?

PROFESSOR SAUNDERS: Maybe. Look, I haven't gone and looked at the
15 numbers. And there's not that many constitutional cases ever decided and not so many run by the States. But, again, I would say it's, you know, it's not just the States that can challenge things. It doesn't seem to me to be a terribly sensible practice to pass legislation with constitutional with holes in it, running the risk at some stage
20 some body affected by that legislation might challenge its constitutionality.

COMMISSIONER BENNETT: I know --

PROFESSOR SAUNDERS: So that seems to be a very doubtful way of proceeding.

COMMISSIONER BENNETT: I wasn't suggesting it was a good idea. I was just
25 wondering about, bearing in mind that we do have a federal system and there's consciousness on the part of the States and the Commonwealth as to the role - as to the different balances within the power and to government responsibility, I know - and I know that individuals can challenge obviously, but I was just
30 wondering whether there were any cases? I'm not saying it's a good idea to do it that way or to rely upon it.

PROFESSOR SAUNDERS: Yes.

COMMISSIONER BENNETT: Just ask you if you have any --

PROFESSOR SAUNDERS: Well, apart from the most recent, as you say,
40 is WorkChoices; maybe Spence more recently in a slightly different context. I mean, the States will challenge when the States care, is the answer.

COMMISSIONER BENNETT: Yes, but there haven't been that many cases where it
has happened?

PROFESSOR SAUNDERS: No.

COMMISSIONER BENNETT: No. Thank you. I just wanted to get your assistance
45 on that. Thank you very much indeed.

COMMISSIONER BINSKIN: Professor Saunders, thank you. Can we get credit points for your course after this?

5 PROFESSOR SAUNDERS: You will be very welcome there. 4 o'clock tomorrow afternoon, I'm expecting you all.

COMMISSIONER BINSKIN: Thank you very much. It has been very beneficial. You've given us another angle on this and we really do appreciate it. And for the
10 record, that wasn't a Royal Commission putting pressure on a professor to get credits for a course that they're not enrolled in. I just want to make sure that the full probity issues are understood here.

PROFESSOR SAUNDERS: Thank you very much. Very nice to meet you all.
15

COMMISSIONER BINSKIN: I'm looking forward to meeting you in person at some stage. Ms Hogan-Doran?

MS HOGAN-DORAN SC: Nothing from parties with leave have been
20 communicated.

COMMISSIONER BINSKIN: Okay.

MS HOGAN-DORAN SC: Thank you, Chair. May Professor Saunders be released
25 from her summons? Thank you.

COMMISSIONER BINSKIN: Professor Saunders, you may be released from your summons. Thank you very much for spending the time with us, I know your time is precious; we appreciate it. Thank you.
30

PROFESSOR SAUNDERS: Thanks very much. Bye-bye.

COMMISSIONER BINSKIN: Thank you. So with that I think we're adjourning until
35 1300, is that right?

MS HOGAN-DORAN SC: Yes.

COMMISSIONER BINSKIN: So we will adjourn now and we're back in here 1300
40 Canberra time. Thank you.

<ADJOURNED 12:18 PM>

<RESUMING 1:01 PM>

45 COMMISSIONER BINSKIN: Ms Hogan-Doran?

MS HOGAN-DORAN SC: Thank you, Chair, I call the Secretary of the Department of Home Affairs of the Commonwealth, Mr Michael Pezzullo, AO.

5 COMMISSIONER BINSKIN: Secretary Pezzullo, good to see you again. Thank you for joining us. We appreciate it.

MR PEZZULLO: Commissioners.

10 MS HOGAN-DORAN SC: Associate, Mr Pezzullo will take an oath.

<MICHAEL PEZZULLO, SWORN>

<EXAMINATION BY MS HOGAN-DORAN SC

15 MS HOGAN-DORAN SC: Mr Pezzullo, thank you for giving us your time this afternoon. Do you have a copy of your statement dated 31 July 2020 with you?

MR PEZZULLO: Yes, I do, Counsel.

20 MS HOGAN-DORAN SC: And are the contents of that statement true and correct, to the best of your knowledge and belief?

MR PEZZULLO: Yes, it is.

25 MS HOGAN-DORAN SC: I will just get for the Commissioners what your role is as Secretary of the Department of Home Affairs, which I understand you were appointed to on 20 December 2017?

30 MR PEZZULLO: Counsel, that is correct. I've been the Secretary to this Department since that time. This department is an amalgam of a number of functions that were announced by Prime Minister Turnbull, then Prime Minister Turnbull, in July of 2017. In short order, it brings together the immigration, customs, border functions. They're all set out - functions otherwise are set out in my statement, so I won't go
35 over them. Obviously, as Secretary to the Department I'm the leader and the manager of the workforce of the Department, and I'm the accountable authority under the relevant legislation for budget.

I've also got a particular role in advising the Home Affairs Minister, the Minister for
40 Emergency Management, which is most apposite for today, and the Acting Immigration Minister in the policy realm that I operate in. I'm also responsible for coordinating a number of cross-Commonwealth relevant arrangements, such as the Crisis Management Framework, which no doubt we will get to in a moment. I'm also a member of the Secretaries' Board and, therefore, along with Secretary Gaetjens, who's our Chair am responsible for the stewardship and collective leadership of the
45 public service.

MS HOGAN-DORAN SC: Thank you, Mr Pezzullo. Could we go to Mr Pezzullo's statement, which is HAF.8004.0001.0001 at 0004. And paragraph 18, I might just start there, if I may, Mr Pezzullo, and I'm having that paragraph shown to the Commissioners and displayed on the public broadcast. In this paragraph, you identify
5 the centres of excellence, as you describe them, within the Department, such as the Critical Infrastructure Centre, EMA and the NCM which enable the Department to work hand-in-glove with our Commonwealth colleagues as well as the State and Territories and industry.

10 What I would like to do is just to take in particular those three components, that is EMA, then NCM, and then the Critical Infrastructure Centre and policy development in that particular area. Just commencing with EMA, I'm not sure if you were able to be either here or be briefed on the evidence this morning, of former
15 Director-Generals of EMA, Mr Mark Crossweller and Mr Cam Darby, and yesterday the current Director-General of EMA, Mr Rob Cameron, but what is the current ambit of the work of EMA and what future do you see it could have to support a national response to national natural disasters?

MR PEZZULLO: The ambit, Counsel, has always been described as all-hazards. In
20 my experience coming into the Department as the leader of the Department from December 2017, I found it to be the case that they were very heavily invested and supremely well connected in what I would describe as the fire and emergency services world: very, very well connected indeed. And notwithstanding the fact that the Director-General of that function, whether it was in this Department or in the
25 Attorney-General's Department or, in days of old, in the Defence Department, tended to be a second or third, or in some cases, fourth tier officer in bureaucratic terms was always considered to be a peer of, and worked alongside, Commissioners of fire, rural - fire especially - and emergency services.

30 So whilst the ambit is all-hazards, it been very much focused - and it's a function Australia's climate, our topography, and so on and so forth, to really focus on fire, flood, storm, etcetera. And they do that very well and, no doubt, we can further explore that as we get into these - into this discussion. The thing that we've bolted on since over the last two and a half years, is an ability to truly operate across all
35 hazards. So one of the first stress tests that we did of our arrangements, two and a half years ago actually, was on pandemic. How would we partner up with the Department of Health, with its National Incident Room, its ability to respond to and anticipate pandemic crises? What would be the role of EMA in that context? Because obviously you're not dealing with the fire and emergency services Commissioners,
40 you're dealing with a completely different ecosystem of stakeholders, as it were.

So what EMA has evolved over the last two years is into very much a node that that can lock into, whether it's a fire, storm or a flood vector, if you think of these threats as vectors, pandemic - and I will get to the NCM in a moment because we had to
45 bolster the EMA to deal with the massive magnitude of scale of the global pandemic, but I'll get to that when I speak about that NCM. Or hypothetically, if we were to be the subject of a massive cyber attack, how would they partner with the Australian

Signals Directorate in the Cyber Security Centre over at Defence, not to deal with the cyber attack itself - think of that as the vector - how would they bring those common core skills of situational awareness, rapid response, crisis coordination, the tasking clearing house for the ADF in so responding to a cyber attack.

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Often they are the same issues. Telecommunications are down. Food supplies have been impaired. People can't get access to medicine. The power is out. So they are sectors. So the discipline that we've introduced in the last two years, which Mr Cameron may have - did, in fact, speak about, I will use my own terms but essentially goes to the same construct, is, irrespective of vector, what are your series of sectoral responses. And then obviously in relation to each vector, who is your key partner? A fire, a flood, a storm, cyber attack, pandemic, a geomagnetic storm would be something different again and, God forbid, a massive agricultural catastrophe such as the introduction of foot and mouth into Australia.

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And so one of the ways in which we think about EMA now, you are the node that brings those disciplines together and then depending on the vector you partner on to different parts of both government and industry.

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MS HOGAN-DORAN SC: You mentioned the National Incident Room and also the arrangements for cyber security. To what extent is EMA's Crisis Coordination Centre still a central organising arrangement or location for the coordination of sectors and for responding to these different vectors, to adopt your terminology, in circumstances of crisis?

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MR PEZZULLO: Short of a military conflict - so leave aside war - every other crisis, the Crisis Coordination Centre, or the CCC as we obviously refer to it, is the central node that then docks into, whether it's a National Incident Room, the Australian Cyber Security Centre. I will give you one practical example, Counsel, to amplify that point. If the Director-General of the Australian Signals Directorate and particularly the Director of the Australian Cyber Security Centre wishes to amplify an urgent message about a massive ransomware attack or a massive cyber attack, Ms Bradshaw, the head of the Cyber Security Centre, will dock immediately into the CCC.

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She will amplify an alert to her technical stakeholders. She will then be able to have that message amplified by the CCC at the National Crisis Coordination Centre into its stakeholders. And so to take that example she can reach a wider audience. She can also work with Director-General Cameron to convene then a sectoral set of meetings - I will get to the NCM in a moment, because NCM plays a slightly different role, but will get to that when you asked me about it - and she can, whichever sector is being affected by this cyber event, so just to take that example, she can use the CCC mechanism to dock in, whether it's supermarkets, and so on and so forth. And indeed the division of labour that we have is that the specialist crisis responder, a pandemic responder or a cyber responder, they can actually focus on what they need to do, deal with the cyber attack, deal with the clinical implications of the - and the medical issues arising out of the pandemic, leave us to worry about

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stockpiles logistics, supermarkets, getting medicines to vulnerable people and the like.

5 MS HOGAN-DORAN SC: You've described the interconnections between the different centres or nodes within the Commonwealth Government in terms of responding to crisis. How well connected are Commonwealth nodes or Commonwealth centres with the respective State and Territory operational centres?

10 MR PEZZULLO: Very well in most vectors. So I will use a couple of examples to amplify that point. One suggestion that I intend to make to the Commissioners through you, Counsel, is that I think that there is an opportunity here, particularly with the creation of the National Cabinet - that no doubt we will get to - for the States and Territories to think about bringing their Home Affairs-like capabilities together - but we will get to that no doubt in a moment - but vector by vector, nodes
15 are very well connected.

So, for instance, EMA's connectivity to the commissioners and Chief Officers and their command centres, EMA also plugs in if it's a police or CT incident through the Federal Police, and also directly into the incident response centres; very well
20 connected with the ADF interstate crisis emergency centres as well. So I would contend to this Commission, vector by vector these connections are very, very good. The question in my mind, an open question indeed, is now that we have the National Cabinet, the national coordinating mechanism, is there a gap that could be remediated relatively straightforwardly by having Home Affairs reporting to the
25 Department of Prime Minister and Cabinet perhaps, also connecting up First Ministers' Departments. Now, we've done that through the NCM where Premiers have obviously --

30 MS HOGAN-DORAN SC: Yes, can I come to the NCM because --

MR PEZZULLO: Indeed, thank you.

35 MS HOGAN-DORAN SC: -- prior to the terrible COVID pandemic, the coordinating mechanism appeared to be the National Crisis Committee on a vertical level and as across the Commonwealth Government, the Australian Government Crisis Coordination Committee. The NCM seems to be, have at its foundation what was the structure of the NCC but it's not clear - sorry, I withdraw that. It appears to be much more than that. Is that right? And, so if, in what ways?

40 MR PEZZULLO: Yes, your observation is very astute. In fact, when the Prime Minister asked for advice about how best to plug in or link in with Premiers' offices, Premiers themselves, heads of Premiers' departments and Chief Ministers' departments, the advice that we gave him through the Home Affairs Minister and the Emergency Management Minister was to do a relatively minor adaptation. So, in
45 doctrine, you're absolutely right. The National Crisis Committee is essentially an apparatus that has emerged over 20 years, after 9/11, the Bali attacks, and the more

prevalent terrorist attacks that we saw 10 or 15 years ago, connectivity, though, is essentially the same.

5 The difference being, because COVID was going to be such a wide societal and economic impact, in the way that, with the exception of 9/11 itself, terrorism attacks have been much more localised, we have to build in deeper connections to industry, supply chains, supermarkets, providers of essential supply such as hand sanitisers. So yes, we adapted the National Crisis Committee, the Commonwealth version of which is known as the Australian Government Crisis Committee. Secretary Gaetjens and I
10 intend, once we get through both the Bushfire Royal Commission process, COVID which is ongoing, we do just to mark the spot intend to rewrite the doctrine so that the NCM, which has become the reality, a very useful reality, pragmatically and practically used by the Prime Minister and the Premiers, we want to then retrofit that back into doctrine. Regrettably, sometimes, Counsel, doctrine is thought to be the
15 limitation on reality. In this case we've created the reality. We will get to the doctrine in due course.

MS HOGAN-DORAN SC: Can we go to paragraph 16 which is at the top of the page, just for some further, to use your word, amplification of the points you're
20 making there, Secretary Pezzullo, what we see here is, in the second sentence, reference to:

"Stand up the NCM (and taskforces therein) to coordinate the non-health aspects of the Commonwealth's response to the COVID-19 pandemic."
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Can I just get some sense from you of what are the task forces that you're referring to there, and noting that they are directed to the non-health aspects of the Commonwealth's response?

30 MR PEZZULLO: Thank you, Counsel. I should make just a very brief preambular point that will only take two sentences. For reasons that I perhaps alluded to too obliquely before, we decided to create the NCM, for the moment at least, as – both parallel to but connected it to EMA simply so that EMA could - back in March you will recall we were still dealing with the aftermath of bushfires. So I didn't want to
35 take the focus off. As the pandemic started to emerge, we created as an equivalent divisional structure, the NCM. In functional terms within my department, they work together, and one Deputy Secretary, Mr Grigson, is the Chief Coordinating Deputy who links up with industry and governments in relation to the matters I'm about to describe. So I should have made that clear.

40 MS HOGAN-DORAN SC: Thank you.

MR PEZZULLO: And in the aftermath of both the Royal Commission's initial report plus in addition to what the Australian Government is going to be considering in
45 terms of future functionality, in effect we will bolt those two functions together. So I should have marked that spot earlier, Counsel. But in terms of the taskforces themselves, they range from everything from supermarkets, rural workforce, the

permits and permissions around interstate border - intra - sorry, interstate, domestic that is, border movement. So how do you ensure that freight, for instance, keeps crossing State borders as the sovereign States were able to put in place border closures, how do we manage that? There was a telco working group. There are a
5 number of others that I will no doubt not recall and I will give you a full list in writing if you so wish.

MS HOGAN-DORAN SC: Yes, please.

10 MR PEZZULLO: Would we have enough bandwidth, for instance, through Telstra and nbn to support working from home and schooling from home? So the number of - to go back to my central model of vectors and sectors - there are a number of sectoral committees and task forces, the NCM being the lynching - the central
15 lynching point of that processes. And so the Prime Minister and the Premiers could quickly mobilise advice and get advice on: are the supermarkets going to be stocked? Do we have enough bandwidth? If everyone is logging on from home to do their schooling for their kids and for work purposes, are the systems going to crash? So, again, it was one node with tentacles into each of those vectors.

20 MS HOGAN-DORAN SC: I want to come later in the piece to the Critical Infrastructure Strategy. But it does sound like the taskforces have had at least some echo of the TISN arrangements; that is the Trusted Information Security - sorry, Sharing. There's too many acronyms in this Royal Commission. But nevertheless that was a sectoral relationship between government and private industry and to also
25 where there are government agencies at a State and Territory level that are responsible for either essential services or essential infrastructure. Was that used to inform the creation of the task forces or were the creation of the task forces more just a response to the circumstances as the pandemic unfolded? That is, reactive to that as opposed to being building on the pre-existing structures and relationships?

30 MR PEZZULLO: Counsel, both. The TISN supplied us with critical intelligence about how different sectors operated. Noting TISN pre-dates all of this, it goes back to the work done on infrastructure protection in the aftermath of 9/11. And most western governments tended to develop a civil contingencies or infrastructure
35 protection regime, sometimes codified in statute, sometimes through regulation, sometimes through these information sharing arrangements. Australia has had a mixture of both.

40 What that information sharing portal and database gave us was incredibly rich insights into how ports work, supply chains, trucking logistics, that can be used for a multiplicity of purposes, whether there's a cyber attack, whether there's a pandemic, to go back to the vectors point. So we adapted that intelligence. But the TISN itself and the work of the Critical Infrastructure Centre itself, it's more related to regulatory
45 affairs.

MS HOGAN-DORAN SC: I see.

MR PEZZULLO: But what we did is we took that intelligence - and the benefit, of course, it's all in one Department so we can move resources and experts and specialists around - and we created operational taskforces that leveraged that rich data and that rich intelligence picture; essentially of how Australian logistics supply chains and the economy, essentially works.

MS HOGAN-DORAN SC: How does the NCM and their taskforces differ to the National COVID Coordination Commission? How do they differ and how do they relate?

MR PEZZULLO: Well, I've had the benefit of being a Commissioner on that Commission as well. So also I can ensure that the bridging works. Mr Power and his commissioners have been tasked to look at longer-term reconstruction and recovery. That is their principal mandate. The Prime Minister has made that clear both when he established the Commission recently and he recently reset it with the new Commissioners and an even clearer terms of reference around advising government on, if you will, reconstruction. However - and Mr Power and I, and Mr Gaetjens is also a commissioner, agreed from the outset to the extent that the commissioners could use their personal contacts, their networks, their deep insight into retail, wholesale, trucking, telecommunications, to the extent that they could assist the NCM with troubleshooting and immediate response, their assistance was more than welcomed. It was actually, in some cases, game changing. But it's not to be confused with actually running the crisis coordination work. That's our job. The commission is very much focussed on how do we build a stronger economy coming out of COVID.

MS HOGAN-DORAN SC: While we still have on display here, I'm not sure it's being displayed to you, but in paragraph 16 the latter half of it refers to the concurrent surging of staff to other Commonwealth agencies. And I just want to get a sense what has happened within your Department in relation to the staffing and redeployment or surging, and what kind of flexibility there would be for that going forward into other national natural disasters?

MR PEZZULLO: Well, the advantage of having the scale of our Department, which is roughly 14,000 strong - but that's inclusive of the Australian Border Force, which is an operational agency that operates obviously at our ports, our sea ports and elsewhere, so they've obviously got very operational work to do. But save that, there's 14,000 staff. With the adjustments that we've been able to make, because obviously visa applications have dried up, if not completely then largely, our staff are multi-talented. They are generalist public servants first and then they are specialists in their realm second.

So we were able to create an internal surge or reserve workforce. At its peak there was well over a thousand. When I say "peak" in the March/April period. We were able to redeploy a number of those staff. I'm not sure, Counsel, and I will need to check, whether every single officer on that list of a thousand was on every single day deployed. But at its peak we had available to us at least a thousand officers, some of

whom staffed up the NCM, and they worked on everything from supermarkets to telcos and all the other matters that we discussed earlier.

5 In other cases they were able to be deployed as a reserve force to Services Australia particularly when JobSeeker was first implemented in helping in registering
10 Australians into that system, many of whom had never applied for benefits of that nature before. And so obviously a talented visa officer, a citizenship processing officer, in an emergency - and you can't sustain this because obviously you want your visa system to be optimally staffed, and so on and so forth - but in an
15 emergency you do re-prioritise. And public servants have got the ability to bring problem-solving, good record-keeping, good decision-making skills, the ability to match identities and the like, and that can be deployed either internally within the department to shore up EMA and/or NCM or externally such as into Services Australia.

15 MS HOGAN-DORAN SC: So you speak there, and you've just spoken now about surging staff into other Commonwealth agencies, to what extent has, or could, Commonwealth public servants be, I guess, seconded to support State and Territory arrangements or staffing, or even private sector? Is that possible within the
20 Australian Public Service environment?

MR PEZZULLO: Yes, it is. And indeed we have a current operation on foot. In fact, it's referred to at the very, in the last sentence or the last clause of that sentence there, I make reference there to the Victorian Aged Care Response Centre. Victoria
25 requested assistance. Sorry, I withdraw that. The Federal Health Department that is responsible for the oversight and regulation of aged care homes and residences came to an agreement with the Victorian Health Department which is, of course, responsible for public health. So we needed to put a - a surge team in to assist with command, control, communications, triaging what was happening in those nursing
30 homes. You would have seen public reports, in some homes the entire workforce had to be stood down because of COVID infection.

MS HOGAN-DORAN SC: Yes.

35 MR PEZZULLO: So that required an emergency response. We had a combination of EMA officers, federal health, federal - sorry, Victorian health, I should say, Victorian emergency management, working as a joint team cross-jurisdictionally to bring stability to the workforce and other issues that need to be put back in place to support those residents in those nursing homes. So the answer to your question is,
40 yes, we ensured all these appropriate legal immunities and legal powers were in place, and we did it very much in rapid order.

MS HOGAN-DORAN SC: I will take it in reverse order and ask you to what extent
45 this, first in relation to staff and then in relation to the NCM, the national COVID coordinating mechanism, to what extent would the approach and experience with COVID be able to be utilised in natural disasters? So just looking at the question of staffing to begin with?

MR PEZZULLO: Certainly with staffing, you would have a fixed core group whose day job was command, control, coordination, crisis management irrespective of vector. To us, again short of a war involving military conflict - and even the term
5 "natural hazards" for us is not ambiguous but we have soft edges around it - because a massive cyber attack occasioned by human actors, or just a systems outage that is so profound - this is in a sense artificial, it's not natural - but the consequences of having the internet down, supplies disrupted, traffic lights out and the like would be just as dramatic as if - as if an earthquake had hit a major city.

10 So "natural" for us is a sort of elastic concept. In terms of staffing, you do need people who are professionally and deeply trained in those disciplines that I mentioned. And then what you need to do is, depending on the nature of the crisis, is to be able to surge people around them, partly because they get fatigued, they need
15 relief as well. So there are people who come in and do a night shift, for instance, to monitor systems, to write reports. You can draw those staff from your surge list and it is important to have professionals, both professionals who are expert in the vector, be it a fire, a terrorist vector, cyber, pandemic, you need people who are deeply expert in the vector. And you also need people who are deeply expert in relevant
20 sectors to form your core element, around which you can put other staff to assist.

MS HOGAN-DORAN SC: In relation to the NCM, if one were to apply that to natural disasters in a broader sense, and certainly national natural disasters, is the mobilisation of resources one of supporting the States and Territories, or is it broader
25 than that, is in terms of the way it is operated from COVID and to go forward?

MR PEZZULLO: Counsel, it's always going to depend on the scale of the catastrophe. So if you were - in fact, I might take this top-down rather than bottom-up. A catastrophe that hit the nation, either in terms of its immediate impact
30 or consequences - and there are some catastrophes which regrettably start to look like the last book of the Bible in terms of their apocalyptic dimensions, and we obviously need to think about those, we plan for those. They have very extreme consequences that are of very low likelihood but we would not be doing our jobs if we didn't think about those. A massive cyber attack I've mentioned on several occasions.

35 Imagine doing COVID, as difficult as that has been, with a persistent outage of electricity. That would be, frankly, far worse. Imagine - and again we are paid to be - in our trade, we're called black hats, we need to think through with our colleagues in the Defence Department particularly - imagine a bioweapon, and I
40 don't use that term lightly, I use it in a very defined fashion, imagine a coded virus that was designed to kill at a particular rate of lethality in relation to which a vaccine was actually - had been engineered but was being withheld.

45 There are going to be - and then, of course, there's the outbreak of war, which is very clearly a national function. There are some catastrophes, mercifully rarely occurring, that would be of such a character that only the Commonwealth in its nationhood role would have the capacity and, indeed the reach, the resources and probably in a deep

sense the constitutional responsibility to lead on. And in that context the National Cabinet's role would be to mobilise across the nation where, no doubt, in those sorts of scenarios - and I don't use those scenarios lightly and I certainly don't wish to raise anxiety by speculating in almost science fiction-like scenarios - but they are credible enough low probability eventualities that we do need to think about those. So that's at the very top end; clear role for the – clear leadership role for the Commonwealth, the Prime Minister, in circumstances up to and including war.

10 The next tier down in my way of thinking about it, are catastrophic incidents which are either confined to a State but of such a profound impact that there are national consequences which have affected our ports or our electricity system, our supplies and distribution. So the immediate response might well be within the ambit of a State, with a Premier, an emergency services coordinator responding, but the impacts say - think of the attack on 9/11 which was an attack on buildings in New York City and elsewhere, but they had such a profound impact in terms of the national aviation system, for instance.

20 President Bush had no - had no alternative obviously other than that - other than to step in and say, "The Mayor has got an element of this under control, the State Governor is doing other things, I need to attend to things like further attacks coming and/or what happens with aircraft that are in - that are in the air." Shared responsibilities, very clearly so. So again, I would see the National Cabinet as having still catastrophic but not quite existential category, a key role to play.

25 And then there's probably a tier - and I don't want to tier these in a way to suggest a lack of importance, because if a town is burnt out or people are impacted and they're still recovering after a bushfire that is quite localised, that is dreadful for them and our hearts, of course, go out to them and we try to do whatever we can for the reconstruction. But then in that tier that I'm about to describe you've got a clearly localised impact well within the ambit and the constitutional remit of the State in question, and the Commonwealth role there is very much to be in support, to provide resources as requested.

35 It doesn't prevent the Commonwealth, as Mr Cameron has made clear, from positioning resources and maybe anticipating a request - and maybe we can get to that when we speak about the changes that we made to our posture after 1 January just past in terms of bushfires pushing liaison officers forward. But in that first category - and again I wish to make it clear to the Commissioners I don't seek to diminish the importance of that third category - it's still - it's the one that's most prevalent in terms of probability, and the one that's probably likely to impact on people the most often, that's where the Commonwealth supports.

45 MS HOGAN-DORAN SC: Just coming to COMDISPLAN and the pragmatic or practical approach as it was described by Mr Cameron yesterday to its interpretation, what's the plan with COMDISPLAN, going forward?

MR PEZZULLO: In light of the advent of COVID, the establishment of the National Cabinet, the NCM, the - the fusing of the NCM and EMA functions that I certainly am contemplating in discussions that I'm having with Ministers, we will work with the States and Territories directly recognising new realities and to write that into the doctrine that's contained in that plan.

MS HOGAN-DORAN SC: I see. All right. Paragraph 9 of your statement, if I may. So far, your responses have been very focused on the sort of response phase of an emergency, and I just wanted to now look at broader issues of preparedness, resilience and recovery from all hazards. Although you've identified these three different tiers, you make the observation in paragraph 9 is, to quote:

"A stronger case for greater centralisation of decision-making in relation to preparedness, response, resilience and recovery from all hazards."

And I just invite you, if you could just clarify how that sits with the three tiers and recognition of that third tier in that context?

MR PEZZULLO: I think - and I've been focused principally on responding on the day or the immediate aftermath. Your responses are going to be better honed with deeper preparation, training and exercising. I don't want to be glib about this but it's no different from sport or any other endeavour in life. The more preparation you do, the more planning and training you do, the better off you are on the day, although obviously you need to adjust on the day.

Depending on the risk register, that I laid out earlier, those matters that are most profoundly less likely to occur but most profoundly impact across the nation, are the ones where financial leadership is always going to be, in a democracy, the key. Whether it's a massive terrorist incident, whether it's a massive outbreak of an agricultural disease, a bio strike along the lines that I described, having preset plans - you're not going to slavishly follow them exactly because on the day you will need to adjust - but having preset plans, set preparedness standards, preset doctrine and preset communications protocols, driven from the top down, because inevitably with those sorts of scenarios for the Premiers and the Chief Ministers, either collectively or in a couple of cases perhaps one or two States have been most impacted, are always going to take an immediate direct interest.

As you then work through that hierarchy of risk, it's probably the case that civil leadership is not required to allocate resources or to direct the response. But they need to be assured in the preparedness sense, almost from an audit and assurance point of view, that those plans are in place. So whichever way you cut it, you've got to work out ways to thread all of these vectors and these sector response plans ultimately back to our democratic leadership. And it's just going to be a function of, as we go forward, vector by vector, sector by sector, what is the best ministerial arrangement and what is the best Commonwealth/State/Territory official arrangement to ensure that that governance and that democratic accountability has been put in place.

MS HOGAN-DORAN SC: In the final sentence in the first two clauses you say:

5 *"Within the framework of the nation's constitutional framework and the distribution of powers across the federation, Australia must have in place national civil contingency arrangements."*

Just pausing there, what do you mean by "national civil contingency arrangements"?

10 MR PEZZULLO: All of the contingencies that I've been describing from the most existential to the catastrophic, to the - I certainly don't want to diminish them as mundane, but the more regular occurring, they all fit within - and perhaps this is my defence planning background showing - they will fit in the realm of contingencies. And a contingency is a risk materialised. So its likelihood and its consequential
15 impact and what it means both for those immediately impacted and for those who suffer downstream impacts. So that is a contingency.

How you deal with those contingencies, flood, fire, agricultural risk, pandemic, cyber, is the contingency framework and obviously my - in my submission I contend
20 that that framework is best managed on a national basis, noting that as you work through that contingency hierarchy, as you get to localised impacts well within the resources and province of a State you don't need national arrangements to intervene or to direct. But sometimes you need those national arrangements to be poised to support.

25 MS HOGAN-DORAN SC: Can we go now to paragraph 20 of your statement which is on page 0005, operator. I want to now shift from the focus on hazards in the arrangement and look in particular at a particular vulnerability, which is critical infrastructure. And you say here:

30 *"In 2019 the Australian Government and industry started work on updating the Critical Infrastructure Resilience Strategy."*

35 Just pausing in that respect, what's the status of that work and what is the work directed to achieving?

MR PEZZULLO: In two parts - and today is very opportune because the Prime Minister and the Home Affairs Minister just announced the cyber dimension of what I'm about to describe. So the Critical Infrastructure Resilience Strategy for reasons
40 that I mentioned earlier when I was discussing TISN, is very much built on a regulatory model which is what are the obligations under law, principally the Security of Critical Infrastructure Act, known as SOCI. What are the obligations under the law for owners and operators to do certain things in a way that can be assured through a typical and quite orthodox regulatory compliance framework?
45 Ownership arrangements in line with foreign investment rules for instance. The requirement for workers in critical functions to hold either Australian security clearances or Australian citizenship. That is what I've described as a regulatory

model. It is not an operator's model. It's not able to be deployed in a fluid, flexible fashion in the way that I - as I suggested earlier.

5 We're able to take that information, put it through the NCM to actually then address real world questions like: for all of that is the network going to break tonight when everyone's children are at home being home schooled? So the framework that the Department inherited was very fit for purpose for regulatory and compliance purposes outside of cyber; remedying that for cyber has now been achieved with the announcements made earlier today by the Prime Minister.

10 MS HOGAN-DORAN SC: Yes.

15 MR PEZZULLO: He has announced that we will be changing the regulatory framework to put obligations onto critical infrastructure operators in relation to cyber vulnerabilities. And then the other dimension of the strategy will formally - where the doctrine will catch up to the reality is, how do we operationalise those networks and the deep connections that we have with infrastructure operators in that very day-to-day way that I mentioned earlier?

20 MS HOGAN-DORAN SC: So that's the announcements today in relation to the additional funding as part of the cybersecurity strategy. You go on to say in the next sentence that:

25 *"The Department is progressing initial work on uplifting the security and resilience of our critical infrastructure and systems of national significance, including by ensuring that the Australian Government has the best information available to make judgments in times of crisis."*

30 Is that speaking to something slightly different and, if so, what?

35 MR PEZZULLO: No, it's an extension of the point just made, and your reference to the announcement today on the funding was an element of it. But for these purposes, the more impactful point or the more central point will be the obligations. And this will be subject to the Parliament of course considering the legislation I'm about to describe, and obviously seeing fit to pass it. But assuming that the Parliament sees fit to turn its mind to this legislation in a positive fashion, and I think the Minister made it clear that it is his intention to have this legislation through by Christmas, the new critical infrastructure legislation that replaces the current statute that's on the books would do several things.

40 It would require critical infrastructure operators, particularly a key subset and those operators of Systems of National Significance, they will need to be set out in a regulatory instrument. So I don't want to preempt that. But you can imagine what are the key essentials that are delivered to us through Systems of National Significance?
45 Power, water, gas, banking. Now I don't want to be prescriptive with that list because I don't want to presume where the Parliament will get to with that legislation, nor what a future Minister might choose to regulate by way of

instrument. But for illustrative purposes, those systems of national significance, or SONS to use the acronym, will be a subset of that critical infrastructure. So I just draw attention to the fact that that will be done by regulatory force.

5 MS HOGAN-DORAN SC: I see.

MR PEZZULLO: The funding to which you referred to, Counsel, is then the funding that will be given to the AFC and to other parts of government to work with those operators to detect threats to their network, principally of a cyber character. And then
10 the other thing it will do in the physical realm is to enhance our information collection through the TISN that I mentioned earlier. We've got a full spectrum dataset that goes to both cybre variables and physical variables.

MS HOGAN-DORAN SC: Now, I'm not sure if it's related to the partnerships with
15 industry point, or it's something separate. You refer, by way of footnote, if we can just take you to footnote 3, an approach to market has been made by the Department in relation to some opportunities. What is that referring to for those who aren't able to click on that link?

MR PEZZULLO: I will have to - I will just have to remind myself of the actual
20 request that we put out, but it was a - and I will correct this as I - as I need to. As I recall it, it was to gain information on how to further improve the information sharing network arrangements that we have with industry, to get that information into single - into a single portal. If I need to correct that evidence, I will.

MS HOGAN-DORAN SC: That's all right. I was hoping you would be able to assist
25 me, Mr Pezzullo, because I successfully left my copy of that printout in my office and I didn't have time to read it. But, between us, we will get there. Now, in relation to the issue about information sharing, before I come to the Critical
30 Infrastructure Centre and other aspects of that, there's a point you make in paragraph 10 about a concept of embedding of active feedback.

MR PEZZULLO: I'm sorry, Counsel, paragraph?

35 MS HOGAN-DORAN SC: 10. Paragraph 10 on page 2 --

MR PEZZULLO: Thank you.

MS HOGAN-DORAN SC: -- in the statement - sorry about that.

40

MR PEZZULLO: No, thank you.

MS HOGAN-DORAN SC: I just don't connected. You refer to the concept of
45 embedding active feedback loops:

"A concept referring to the cycle whereby information is exchanged between the central body and devolved operations, which exchange in turn increases the efficacy of the overall effect – effort."

5 And I was trying to understand whether that was linked in any way to the information sharing opportunities that you were just describing or is it something entirely different?

10 MR PEZZULLO: No, it's on point. The information sharing to which I was referring to is a sectoral point about industry sectors.

MS HOGAN-DORAN SC: I see.

15 MR PEZZULLO: But obviously with these feedback loops, and to take schools as an example, in some cases and we have to think about post-pandemic, how to ensure that this occurs also with State and Territory governments, if we need to, for instance, ever again have all of our children at home - take that example, home schooling - you need a combination both of State Government information about the profile of their demography in their schools, how many children they've got, where
20 they are. And you need to then combine that with sectoral information that would come from Telstra, nbn, Optus and others. And the role of the EMA function, by which I, for these purposes, mean EMA plus NCM would be to mill all that information together and then to provide advice up to the National Cabinet or to relevant Ministers, if it had been delegated to Ministers to say: we think, for instance,
25 take that example between industry and the State school systems we can cope and/or we can't, and this is what we intend to do about it. So feedback both from industry but also from other key sectors such as State and Territory instrumentalities.

30 MS HOGAN-DORAN SC: Perhaps, if I understand what you've said correctly, and to adopt the parlance that we've pursued in this Royal Commission this week, to create a better sense of national situational awareness for the purposes of decision-making at a national level?

35 MR PEZZULLO: Yes.

MS HOGAN-DORAN SC: I see. I skipped away from it but I want to come back to it. To what extent is this effort to be housed within that centre of excellence that we began with, which was the Critical Infrastructure Centre, and how does that relate to EMA? Because I understand that's a separate part within the Department more
40 broadly, but not necessarily tied presently to EMA's functionality?

MR PEZZULLO: Well, it is insofar as it's the same group manager or deputy secretaries responsible for both. So there's a structural nexus between the EMA and the CIC or the Critical Infrastructure Centre. They will specialise - sorry, I withdraw
45 that. They specialise, present tense, in two different but connected realms. The CIC works in that regulatory realm of which I was speaking before. So, to take an example, the CIC works with the Treasury in assisting the Treasury when it does

foreign investment screening. So they have deep sectoral expertise in banking, roads, power, water, all the sectors that we've been referring to.

5 The CIC does not duplicate the EMA's role. They are regulators and policy and compliance officers. So, for instance, they can be tapped by the Treasury who might have a foreign investment proposal before them to say: what are your understandings of the vulnerabilities, Australia's strategic interests in this power grid or this water system or this traffic management system? Where EMA gets value in tapping into the CIC is on that same data; not from the point of view of regulation or, you know, 10 approving a foreign investment proposal but that same expertise can also be very useful in terms of dealing with questions like freight and logistics.

15 How to ensure that we get food into supermarkets, including in remote localities; that example I used earlier. How much strain can we put on the telco system to school our kids at home? We have specialists in the CIC who typically would be working on regulatory questions, legislative questions, policy questions. They can be mobilised though as specialist experts to assist EMA with those day-to-day operational questions as well.

20 MS HOGAN-DORAN SC: Now --

MR PEZZULLO: So they are complementary and connected.

25 MS HOGAN-DORAN SC: I see. Thank you, Secretary Pezzullo. I've been handed the document that I successfully failed to bring in with me which is that link that we were mentioning before. To remind you, it's a – an information document published by the Department of Home Affairs titled “Critical Infrastructure and Systems of National Significance Mapping and Analysis”, identifying that the Department was seeking technical advice and expertise on the development of a national critical 30 infrastructure and systems of national significance mapping and analysis capability. That application --

MR PEZZULLO: Yes.

35 MS HOGAN-DORAN SC: -- close - that application closed on 26 June. What's the status of that work?

40 MR PEZZULLO: That will be - that will support the work that I mentioned earlier to create the new regulatory scheme, use the bureaucratic shorthand of the SOCI SONS Scheme. SOCI standing for Security of Critical Infrastructure Act, SOCI, and sits within the new Act, as I mentioned earlier, will be a subset of critical infrastructure of exceptional sensitivity to the nation known as SONS, Systems of National Significance. And that mapping exercise will serve that dual purpose of which I - to which I just referred, both for regulatory reasons - that is to say, a Minister for Home 45 Affairs will be presented with regulatory considerations to designate certain infrastructure for certain purposes, which might go to who can own it and operate it, the nationality.

In other words, you might have to be an Australian citizen to operate certain parts of infrastructure. What cyber protection you are mandatorily required and you're obligated to have. And that goes to the cyber announcement that I described to you earlier that the Prime Minister made just a few brief hours ago. And that same mapping tool will give us an even richer picture of operational connectivity that will be of tremendous value to EMA as well. That, just to be clear, Counsel, is a derivative benefit of that tender.

10 MS HOGAN-DORAN SC: I see. And just noting that it would at its mature end, say the capability, the map, would allow analysis - the mapping would allow analysis of the critical infrastructure and Systems of National Significance, locations, vulnerabilities, criticality and interdependence. One of the other points that is made in this, and I will have entered into the system and provided for tender,
15 Commissioners, but once mature, the capability could also be used to inform a variety of decision-making including infrastructure planning and development and risk reduction measures?

MR PEZZULLO: Yes.

20 MS HOGAN-DORAN SC: The way that that is put, it sounds like that's not necessarily the starting intent but is a potential end point; that it would add in a capability for risk reduction measures. Is that right?

25 MR PEZZULLO: Well, its primary purpose is as I've described it, but it's such a rich document - and you can imagine elements of it will have to be highly classified because, in effect, it will be the crown jewels of, in a sense, how Australia works logistically. Once you've got that, you would obviously reuse that for several purposes. And you would have to obviously redact sensitive information for different
30 levels of usage. For its primary purpose, just so that the procurement auditors understand that we're spending money on things that have been appropriated, it's primary purpose is to create a map that would support the - presuming, of course, the Parliament sees fit to pass the legislation that I described earlier - it will provide a map so that a Minister for Home Affairs, under the designation power that I've
35 described, would designate critical infrastructure for the purposes of protection, certain cyber standards; things of that nature.

It would assist the Treasurer in - here's another derivative purpose that goes to your point - it would assist a Treasurer in making decisions under the Foreign
40 Acquisitions and Takeover Act. It also could - and we will have to work through the protocols for sharing this information - but it could help Commonwealth and State Planning Ministers in terms of the resilience of infrastructure, understanding the sensitivities of intermodal connections or connections where roads and data and cables all meet, so to have that planning benefit as well. It would help disaster
45 planners think about recovery and resilience and, as I said earlier, it would help EMA think about how to protect infrastructure, a variety of vectors, whether it's an earthquake, fires, storms, tsunami, and the like.

MS HOGAN-DORAN SC: Thank you very much, Secretary Pezzullo. I note the time and I want to give the Commissioners some time to ask any questions they have of you and I might do that now.

5

COMMISSIONER BINSKIN: No, that was great, Secretary Pezzullo, we appreciate that and all the thought that you've given us. I'm going to put you on a bit of a spot and look backwards to the '19-'20 fire season and what went on. And I will give you a chance to think about it as I sort of step through. And rather than look at what was in place then - because that's clearly irrelevant now as we move forward - how this whole new framework or mechanism would overlay it. So we go back to early last year, predictions are this is going to be the worst season on record from all the climate predictions.

15 The drought has been going. The Northern Territory starts to burn as it normally does sort of towards the end of the dry, not a lot of population spaces out there. But then Queensland starts to burn. Fires move south, into New South Wales, further south into the Blue Mountains. South Australia lights off in Adelaide Hills and Kangaroo Island. It continues to burn south around the back of Sydney. Further south, Gippsland starts to burn. We have fires in Tasmania, although a bit smaller. Our main lines of communication with WA on the ground are cut off with Norseman fires, and the like, there. And then as we come into the new year we have fires around the ACT, Orroral Valley.

25 Smoke has been pervading all this for a couple of months, national health issues. And then as we get to the end of all this, we start to have COVID roll in on top of it. So I'm hoping that gave you a chance to have just a quick think, but at a higher level how would this new format work to be able to look to address the issues that would come out of that at a national coordination level?

30

MR PEZZULLO: Well look, thank you, Commissioner. And thank you for running through that narrative, it did allow me to gather my thoughts, but it is something that I also have given thought to. Look, I don't want to presume, I don't want to place myself in the shoes of the Prime Minister or the Premiers, but I would assume, knowing all we know now, knowing the machinery that we've built from - both through the bushfire period, those phases that you've described, and recalling, of course, that the ADF was directed to take a more forward leaning posture in terms of pushing forward joint task force, and I think you've taken evidence on that so I don't need to rehearse that

40

COMMISSIONER BINSKIN: No, we have.

MR PEZZULLO: So I'm going to build that into this - I'm going to build that into this equation. If you had a time machine that, in a sense went backwards to maybe roughly around now, August/September I think - and I don't want to speak for the Prime Minister - but I would assume now that he's got this machinery in place with his colleagues, the fellow leaders of the nation, you would start with a National

45

Cabinet meeting on the extreme weather risks that we're facing. You would have at that committee a number of - at that meeting rather, a number of feeder pieces of advice from the health side, the AHPPC around smoke impacts and the like, because they have a role there.

5 The commissioners and Chief Officers, I know that you've taken advice, would be ready and primed through - either through DGMA or through the Minister for Emergency Management to give their frank views about resource, given that the fire seasons are also extending in the northern hemisphere to a greater extent. So the traditional model of swinging aircraft between hemispheres, I know is something
10 very much on their minds. And you'd also have in this context - we didn't know about COVID, but let's imagine if you had a concurrent other potentially catastrophic risk, you would have that advice.

15 So you'd walk into the National Cabinet in roughly, you would think, August/September. You would have a briefing from the Director-General of EMA. And if I had a time machine, I'm assuming that EMA and NCM have come together for this purpose, there would be a question in my mind - and I give advice on this point about whether a Minister or a group of Ministers perhaps, not so much moderated but were party to that because the Ministers - and I know you've taken
20 some evidence on in a Westminster system, what is the role of the Ministers in this equation.

I think of it like this: the health minister in COVID is having his own networked arrangement with the State Health Ministers and they consult the AHPPC. But the
25 AHPPC's advice goes directly into the National Cabinet. So I'm going to take a little bit of a gamble here and think that the Prime Minister and the Premiers and the Chief Ministers would want to hear directly from the officers, not secretaries of departments, the actual officers themselves. They get a briefing and they'd say: okay, how bad could it get in terms of concurrency of events, cross-border?

30 How are we going for fleets? Retardant? Do you have enough bombers? How are we placed in terms of international crews, and so on, and so forth. The DG in that context, with - and again, for this purpose, Commissioner, I'm connecting the EMA and the NCM function would almost certainly get some homework out of that
35 meeting. You and I have been in those sorts of meetings many times at the federal level out of the National Security Committee and there would be comebacks about telcos, supermarkets and so forth.

I think the other construct that we haven't touched on, there would be some kind of
40 institutionalisation at the national level which I know is on the government's mind about some kind of recovery and reconstructions - I won't call it an agency I will call a function. And I think Mr Gaetjens is - made some comments about that in his statement and no doubt he will be willing to speak to that. I think the recovery lead will also be involved in that discussion because you've got to be both prepared to
45 take the blow, you've got to be prepared to take the blow and stand back up, and then you've got to be prepared to build back.

What would I think happen then? Commissioners, at the National Cabinet, would make a number of binding decisions because of the way the National Cabinet is working. Constitutionally they are pooling their sovereignty. And so, in effect, nine sovereign governments would say: okay, we've heard about the risk, we've heard
5 about the preparedness side, we've heard about the concurrency side. We've taken advice from our experts, the Chiefs of the fire and emergency services about pooled resources.

The PM might well say: I will have a separate offline discussion with the Premiers of
10 New South Wales and Victoria about maybe some border issues, about if the fire gets into the Snowys, for instance, how we might work together. And we would get a series of directions that would come out of the National Cabinet, as actual decisions of the National Cabinet. I would then envisage that DGMA would broker, coordinate, facilitate the implementation of those decisions. And where it been
15 decided, much like COVID, that a matter was purely within the remit, confidence and reach of its jurisdiction, there would be more of a watching brief.

But where it was either cross-boundary, cross-jurisdictional or required the pooling of resources - let's say we were short on bombers, I've got no doubt in that construct
20 DGMA would then be tasked to solve that problem and would either go and source those assets, obviously working - I mean, currently we have the AFAC, we have the synchronisation and concurrency mechanism that's set up under the AFAC. We are going to need to think about how a not-for-profit body works within the sort of governance arrangements that I've just sketched out. But that's as best as I can do
25 with the time machine that you've afforded me with your question.

COMMISSIONER BINSKIN: No, I appreciate that, and it was good just to bring it all together into a context that I think people can recognise, so I appreciate that very
30 much. I will go to Commissioner Bennett for a question.

COMMISSIONER BENNETT: Thank you. And Mr Pezzullo, I just want to clarify one aspect of the matters that you just discussed with the Chair. We heard from Professor Murphy about how this worked from his perspective, and he very
35 conveniently said you collapse five layers of bureaucracy. And one of the things that he described was you actually go out to your - that the person who's going to present to National Cabinet goes out to be other interested jurisdictions and synthesises the collaborative view, and then comes to National Cabinet with both the consensus view and, if there's not a full consensus, with a dissenting view if that's a strongly held one.
40

So I take it that that's the sort of thing that you're thinking about. But it also sounds as if what you're saying is there would need to be a series of Professor Murphys, both from preparation and perhaps operational roles, depending upon the state of the emergency and the actual questions being asked, not a single person who could do all
45 that; is that correct?

MR PEZZULLO: Commissioner, that is correct. So to give you two very quick examples. Professor Murphy is a dear colleague of mine, has become increasingly so over the last six months. There's only one of him but his particular expertise - and Brendan - Professor Murphy would be the first to say "I have particular sectoral expertise in my domain", which is the public health domain, "and my vector", to use the language that I've been using through these comments, "is pandemic".

Professor Murphy would defer to and would yield to the head of our cyber agency to say, "If Australia had received a massive cyber attack, yes, there might be some health consequences of that and I've got to be party to that" but the National Cabinet would want to hear from the head of cyber about what, if it was a preparatory meeting, what is the risk? If it was an incident meeting, "Okay, what's going on, how bad is the attack, can you break it." And they might then want to hear from the head of EMA about dealing with the sectoral consequences.

The one - and I will conclude on this, Commissioner - the one common node is probably EMA regarding sectors because there's no point replicating that National Coordination Mechanism, because if food supply is not getting into supermarkets for one reason, then it doesn't matter that they're not getting in for another reason. The challenge is: how do you get food into supermarkets? So that's the one common node and then depending on the risk that's materialised through a vector, you then bolt on the Professor Murphy equivalent, and I'm happy to use that shorthand as well, but each of those vectors, depending on what the nature of the risk that's hit you, is.

COMMISSIONER BENNETT: Thank you. I should make it clear, as we would say in our parlance, Professor Murphy, as he then was, as the CMO, rather than Professor Murphy. But I've got two other very short questions. There was some discussion about your paragraph 9 and questions of assurance. Do you see a role, and I'm not - functionally, rather than at the moment with how it's instigated for an IGEM?

MR PEZZULLO: I'm sorry, Commissioner, for a?

COMMISSIONER BENNETT: For an Inspector-General, an IGEM. An Inspector-General for Emergency Management?

MR PEZZULLO: Not directly insofar as - if you take emergency management not to be synonymous with fire and emergency services, where - I know those services, quite properly, like police and customs have Inspectors-General, if you take the EM function in the way that I've been describing it - which is really about command, control, communication, situational awareness, the discipline around common operating pictures, the ability to support the National Cabinet in the way that I've been describing - I'm not convinced that you need an Inspector-General for that profession or that professional discipline beyond the integrity measures.

And we here, in Home Affairs, are under a single integrity and corruption framework in any event because of the sensitive materials that we handle. I'm not sure that you need an Inspector-General for that function. Whether you need an inspector-general

for fire, emergency services, counterterrorism, policing, is really a matter of those functions and the statutory constructions that sit around those functions. And I'm sorry if that's a little bit unclear.

5 COMMISSIONER BENNETT: No, no, no. It is quite clear. There was always a possibility perhaps an Inspector-General to deal with - it wouldn't need to be an
Inspector-General. Perhaps assurances vis-à-vis recovery. I mean, that's a slightly
different angle to it, the way the services operate. But I'll leave it at that. I've got one
10 more question for you and I think another matter is the question of stockpiles for
natural disasters. Do you have a view on the need for, or the advisability of, either a
broad or narrow - I mean, fire retardants is an example that has been used so far as,
you know, fires are concerned because that's imported, and, you know, there are
transport issues and, of course, supply issues with that. Do you have any view on the
15 question of the advisability of developing some sort of stockpiling in that, to deal
with that sort of problem?

MR PEZZULLO: I do, Commissioner, and if I can just very briefly emphasise, just
very quickly going back to my last answer, in dismembering or disentangling
emergency management from fire and emergency services, I mean absolutely no
20 disrespect to the terrific work that's done by, and the deep expertise that's contained
in the fire and emergency services world for nothing but the most sincere admiration
for them. In saying that the functions have become collapsed, that's really around
governance accountability and trying to differentiate the functions rather than in any
way suggesting any disrespect to the wonderful professionals in that world, and the
25 volunteers who do so much work to protect --

COMMISSIONER BENNETT: Absolutely.

COMMISSIONER BINSKIN: And we didn't take it that way.,
30

COMMISSIONER BENNETT: No.

COMMISSIONER BINSKIN: We took it that you were talking at the national level
in these sorts of areas.
35

MR PEZZULLO: Yes.

COMMISSIONER BENNETT: Yes, but thank you for clarifying that.

40 MR PEZZULLO: And on the question --

COMMISSIONER BENNETT: We've also heard a lot of evidence about the
amazing work that they have done and the ways in which they operate. So thank you
for that clarification, but back to stockpiles.
45

MR PEZZULLO: So stockpiles, Commissioner, I have a very strong personal view
and I very much concur with the evidence given to you by Professor

or Dr Halton - sorry, Ms Halton I should say, got to remember what her title is. Look, I strongly support Ms Halton. I think whether off the back of bushfires we needed to confront this question, that's almost moot. Given COVID, the world is going into very deep recession if not worse. Global supply chains, the distribution of manufacturing, when you combine that with the changing profile of both disaster and climate risk, the benefits that we get from interconnectivity, but the risks that is placed on us by things like cyber attacks on highly connected systems, I think whether, in response to your recommendations, whether in response to similar recommendations that are likely to come from the National COVID Commission that I mentioned earlier in response to Counsel's questions - because I know this is on their mind as well - and whether it's sector specific, so leave - save the medical stockpile that's particular to health - whether it's about retardants, UAVs, sensors for dealing with fires, the retardants that were mentioned, hand sanitisers - I will leave toilet paper to one side. That has been overdone in any number of

15 COMMISSIONER BENNETT: Everyone is trying to leave toilet paper to one side.

MR PEZZULLO: I think the nation - and, look, this is not a function of bushfires per se. It's a function of the dramatic disruption that now the world economy is going to go through, where supply chains will take a long time to recover. What the impacts on global manufacturing are likely to be, I think still remains to be seen. So independently of bushfires I think COVID has created a circumstance where we need to seriously think about both domestic manufacturing in limited and targeted ways, sovereign capability and, yes, stockpiles for those geo-strategic and geo-economic reasons. So the answer is yes.

COMMISSIONER BENNETT: Thank you very much for that. Thank you, Mr Pezzullo.

30 COMMISSIONER BINSKIN: Commissioner Macintosh?

COMMISSIONER MACINTOSH: Thanks, Chair. Thank you, Mr Pezzullo. I fully understand the logic of why Home Affairs was created: the idea of bringing together multiple functions within the one Department. We've heard during the course of our inquiry some counter views that EMA has effectively been lost in a mega department, and I wonder whether you might comment on that?

MR PEZZULLO: It's just simply wrong.

40 COMMISSIONER MACINTOSH: That's a simple response. My next question then is about --

MR PEZZULLO: Well, sorry, look, I will add to it only because Mr Cameron has dealt with the facts. I'm on all the encrypted communications where I see the traffic involving the PM because, as you can imagine, the Prime Minister would expect me to be aware. He tasks directly. He gets information directly. We're a very flat - to use management speak - we're a very flat networked team. In fact, I have people as we

are speaking, Commissioner, at the moment working with the Prime Minister's office and with Prime Minister's Department and with the Victorian Government to work through some issues around supermarkets and the delivery of goods. It doesn't go through me. I'm not a bottleneck. My headquarters is not a bottleneck. And I reject it, from well meaning people that just simply are not seized of the facts.

COMMISSIONER MACINTOSH: Thank you very much for that. My next question is about COMDISPLAN along similar lines. We've heard that there were some inefficiencies in the processes for making requests for Commonwealth assistance during the fire season, and I just wondered whether you had views or insights on whether you would firstly sort of agree with that and whether there's any steps being taken or thought given to how those inefficiencies might be ironed out?

MR PEZZULLO: Perhaps a lead to my answer might have been discernible from what I said to Counsel earlier. In these circumstances, which I know it's a hackneyed phrase, are unprecedented, doctrine is only ever going to be a starting point. Regrettably, in bureaucracy - and I use that as a universal term, I don't specify any particular bureaucracy, and I'm using it almost in sociological terms as Max Weber or someone would have described it. Middle ranking and even quite senior officers prefer doctrine because steps are set out. And that's good for normal business. Leadership is about disrupting doctrine and in catching doctrine up later.

So when it became apparent through the course of December through to January for the reason that Mr Cameron has put before this Commission that, in a sense, we had to throw the rule book out and start to anticipate requests including - and I think Counsel took some witnesses through the exact letter of the doctrine that you have to have exhausted all other possibilities. When something's burning or when you're the subject of a global pandemic or when you're the subject of another catastrophe, human or natural, the last thing you should rely on is a rigid rule book that has lost all contact with the enemy.

So the better course is to take charge of the situation, put in place modified arrangements which - which Mr Cameron did with the, not only the strong blessing of his departmental leadership but at the direct - at the direction of our, more importantly, democratically elected political leaders, and that also includes the joint teams that went in from the ADF to start to scope out the needs. And that shift in posture, as you know Commissioner, I gathered from the evidence, occurred on 1 January. As I said to Counsel earlier, we will now write that into doctrine. Doctrine can only ever be a theoretical construct and that is taught at staff colleges and it's very important because we accept that it can cover 90 per cent of reality, it has done a really good job. The problem is it doesn't cover that 10 per cent of reality that really hits you in the face hard.

COMMISSIONER MACINTOSH: Yes. Thank you. And thank you, Chair. I have no further questions.

COMMISSIONER BINSKIN: Thank you, Secretary Pezzullo. I know you're a very busy person so we're finished with our questions. I will just go back to Ms Hogan-Doran, anything from parties?

5 MS HOGAN-DORAN SC: Nothing from parties with leave. Could Mr Pezzullo, Secretary Pezzullo be released from the summons? Thank you.

COMMISSIONER BINSKIN: Secretary Pezzullo, you can be released from your summons. We appreciate the insight that you've given us. Thank you very much.

10

MR PEZZULLO: Thank you.

MS HOGAN-DORAN SC: The next witness is slated for 2.30.

15 COMMISSIONER BINSKIN: Okay. We will take an adjournment until 2.30 Canberra time.

<ADJOURNED 2:16 PM>

20 **<RESUMING 2:31 PM>**

COMMISSIONER BINSKIN: Ms Hogan-Doran?

25 MS HOGAN-DORAN SC: Yes, Commissioner, the next witness is Mr Gaetjens who is the Secretary of the Department of Prime Minister and Cabinet. I call Philip Gaetjens.

30 COMMISSIONER BINSKIN: Secretary Gaetjens, good to see you. Thank you for taking time out, I know what is a very busy schedule. We appreciate you giving us that time. We will keep it as short as possible so you can get back to your day job. But, once again, thank you.

MS HOGAN-DORAN SC: Secretary Gaetjens will take an affirmation.

35 **<PHILIP GAETJENS, AFFIRMED>**

<EXAMINATION BY MS HOGAN-DORAN SC

40 MS HOGAN-DORAN SC: Secretary Gaetjens, have you prepared a statement dated 3 August 2020 and do you have that with you?

MR GAETJENS: I do, Counsel.

45 MS HOGAN-DORAN SC: And are the contents of that statement true and correct to the best of your knowledge and belief?

MR GAETJENS: Correct.

MS HOGAN-DORAN SC: Just --

MR GAETJENS: Yes.

5

MS HOGAN-DORAN SC: Just for the assistance of the Commissioners, could you describe to them the role and function that you have as Secretary of the Department of Prime Minister and Cabinet?

10 MR GAETJENS: Counsel, as Secretary of the Department of Prime Minister and Cabinet, I consider myself to have several hats on. One is, if you like, chief policy advisor to the Prime Minister. I am the head of the public service. I am the CEO of the Department of Prime Minister and Cabinet, and also the head of the portfolio for the other agencies that exist in the portfolio other than the Department. And we work
15 in a collaborative fashion with other Departments.

Again, we support the Prime Minister in his capacity as the Chairman of Cabinet. So our job is not only to look at the running of Cabinet and the involvement of Ministers within it, but also to provide the Chair with briefing strategy that helps him run the
20 meeting very well. So it's a - it's a wide job but one that's very enjoyable and it involves doing things that allow me to give you evidence like today and, for example, able to tell you about National Cabinet, for example.

MS HOGAN-DORAN SC: What background did you bring to the role?
25

MR GAETJENS: I am now, I think, into my 40 something or other, more than 40 years in the public service. Spent most of that time in Canberra, but starting off in the Bureau of Transport Economics, actually as a graduate. I came up through line agencies. In 1990 was in the Department of Prime Minister and Cabinet earlier,
30 actually. Then went to South Australia to work in its Treasury and Finance Department. I came back. I was chief of staff to a former Treasurer. Then spent a couple of months in Treasury. Spent two and a half years at APEC as a diplomat helping the secretariat run that body.

35 I was then working in the - as Secretary of the New South Wales Department of Treasury in 2011 to 2015. Then came back to Canberra after four years of commuting; became the current Prime Minister's chief of staff when he was Treasurer. And then in August 2018 was head of the Federal Department of Treasury, and since September last year, head of this department.

40

MS HOGAN-DORAN SC: You've had quite a year in that role with the COVID-19 global pandemic. As head of the public service, how, in your opinion, has the public service responded to this incredible challenge?

45 MR GAETJENS: In my judgment, I think it has done a great job keeping services going, and it has, I think, done a great job in a couple of ways. One is to look - each individual, I think, with guidance from Departments, has taken a very good attitude

to looking after themselves, and their families so that they can continue to be in service, so I think there has been a focus on overall wellbeing. Within that I think there has also been a focus, and a much greater focus than I've seen previously, in terms of helping each other to help out, including redeployment within agencies and redeployment across agencies. For example, through work the Public Service
5 Commission did, there were more than 2000 public servants redeployed to Services Australia to help with the large increase in people seeking welfare support.

We have helped staff with bespoke functions and purposes within Departments. The
10 National Incident Room, which is a very important crisis response role that has taken place in the Department of Health, has been staffed by people other than in that department who have been able to bring in their own skills to help them. So I think it has been an individual effort. It has been a collective effort, vertically and
15 horizontally. I think the secretaries, as a group, have met very frequently as a secretaries board - these days remotely, of course. And I think another plus that came into this was the formation, informally late last year, of what we call the Chief Operating Officer Committee, so that we have chief operating officers within departments, not just performing their own role to fulfil the operational requirements of their departments, but to take a horizontal role across the public service.

20 Secretaries, as a group, have really come to the realisation that we want to run the public service as an APS enterprise, so that we are not only acting as individual Departments but we are acting as subsidiaries of an overall group, if you like. And I think that approach is making us think and act a lot more to help each other and to
25 use the scale and scope of the public service to do things better.

MS HOGAN-DORAN SC: It may be self-evident but do you think that the experience of the public service responding by both through surge and taking on different roles and being both dynamic and flexible about it, places Australia in a
30 better position were it to face other natural disasters or catastrophes?

MR GAETJENS: I think every learning and experience we can take adds to the benefits for future possible events. So I think one thing that helped us in response to COVID-19 was, in fact, what happened in the bushfires; where there are again
35 responses within levels of government to provide support and resources where those resources are needed. And I think those exercises and real events - not just exercises, but - provide ongoing examples of where we must and have acted, how that action works, how it could be improved, and that can then lead into the handling and management of future events.

40 MS HOGAN-DORAN SC: I have a couple of questions which I might be - you may be assisted and the Commissioners as well, if I have shown paragraph 17 of your statement. We've touched on one already which is the public service response to the COVID-19 pandemic and how that might inform a national approach for the future.
45 One of the matters that we heard some evidence of just a moment ago from Secretary Pezzullo was that he and you have joined the National COVID Coordination Commission. So I'd just like to get some sense from you, if I may, to understand

how that economic, social policy government response - has that performed in your view, and what lesson is there from that for a future national disaster response?

5 MR GAETJENS: Counsel, I think the National COVID Coordination Commission, now called the National COVID Commission, and the board has recently been added to with the breadth of their experience, broadened. The Commission was set up, I think, to actually provide to the Prime Minister the ability to connect directly with a group of business people who had actually willingly given up their time to contribute. And it provided them to do two things. One, I think, was to use their
10 networks to provide practical advice. For example, we have people like Paul Little who has been very much involved in logistics and freight.

15 So we've got people with real hands-on experience that can provide us with hands-on and a practical approach to how to solve things. In an experience like COVID - and, in fact, I would relate the same thing to bushfires and disasters - you need to actually transport people to where the event is happening. You need to get people in and out. You need to get goods in and out. And people who actually do this for a living can actually provide governments with very useful advice about that.

20 And what they do is then add and supplement to the advice that the public service provides as well. This is not to say one is better than the other and one should replace each other, but they are, in fact, complementary and they add to each other. And you can speak to some very - some people with very sharp knowledge and practice and experience that can actually relate an event or a circumstance to something that
25 they've handled before. Then the Coordination Commission was involved with the handling the outbreak in the - I think it was the Coles Laverton distribution centre, and people actually had knowledge of how those things work.

30 MS HOGAN-DORAN SC: I see.

MR GAETJENS: So it provides another avenue not only for direct advice to the Prime Minister but for the Prime Minister to use the Commission to go out to use their own networks and experience and help solve a problem. Now, what I think the advisory board has been tasked to do now, and it has expanded, is to go a bit more
35 into recovery mode, because yes, we have Victoria going through a situation at the moment, but the rest of Australia needs to keep on continuing with the recovery. So that - that's part of the reason and I think it's working very, very well and the Prime Minister, I know, has appreciated the input he has received from those people.

40 MS HOGAN-DORAN SC: It sounds like what is being constructed is a holistic, not just whole of government but a whole of society approach to informing the situational awareness and thus improving the decision-making to respond to the pandemic. Is that a fair assessment of what has occurred?

45 MR GAETJENS: I think that's correct, Counsel, and I - I wouldn't - so I would not just say it's the COVID Commission - well, not just the COVID, but the whole of society is constructed by the aggregate impact of many parts. I think so the public

service can provide the work with the policy stuff they do. Ministers, I think, again are widely connected within the community. They can bring community perspective as well as official advice that they receive from their departments. They actually bring in business people that have lots of experience in particular areas; also helps for direct advice and the Prime Minister can use them as a sounding board and to bounce off ideas, issues.

So I think through the aggregate combination of policy, business experience, operational responses, and using the architecture that already exists within government, both within levels of government and between levels of government, the combination of those things does add up to, again, not just the public service response but a response that takes into account community, business, other views.

MS HOGAN-DORAN SC: We heard earlier this morning some evidence from Mr Mark Crossweller who's the former Director-General of EMA and was head of the National Resilience Taskforce about involvement of the private sector in the implementation of the Natural Disaster Risk Reduction Framework. Is there, do you think, in light of the experience of COVID, an appetite for establishing a dialogue with the private sector as, in a sense, in partnership to help implement, to ensure the implementation of that framework?

MR GAETJENS: The answer is yes, and I think for several reasons. One is, I think in events like bushfires and COVID-19, Australians do want to help each other. There is support - again, using some of the supply chain issues and that Coles Laverton one, other competing businesses were helping to say if that centre doesn't work, we can do things ourselves interstate to actually help States that are in trouble. So there is a willingness to support, and I think that can be used to be of great value.

And it also means that in some areas private sector involvement can, in fact, address real issues at the points of contention, rather than doing it arm's length away through government. I think there should be a contiguous link, if you like, between the government and the private sector. Secondly, in the COVID space, for example, private hospitals have helped. And the reason for that is that - and one of the reasons for, for example, the - a cancellation of elective surgery sometimes is to actually then allow the private hospital space to be available should that be required.

So, at the moment in Victoria, there has been a movement of patients from aged care homes into private hospitals. So that has helped the process. So I think there is both a willingness and an extension of the capability that the whole of Australia can provide through deep connections and involvement and collaboration with the private sector.

MS HOGAN-DORAN SC: You foreshadowed earlier in terms of the important role that National Cabinet, the creation of National Cabinet has had in the COVID-19 pandemic. Could we go to paragraph 10 of Mr Gaetjens's statement, it's on page 2 of your statement, Mr Gaetjens. That's going to be zoomed into on the screen if that's of assistance to you.

MR GAETJENS: Thank you.

5 MS HOGAN-DORAN SC: The matters that you identify there, the shared sense of purpose, the frequency of the meetings, their confidential nature, their direct tasking and access to expert advice, and their flexibility has contributed to the effective coordinated national decision-making by that body. Just one aspect that that doesn't address and I just want to get a sense from you as a preliminary step, is what have been the factors or inputs that have enabled there to be appropriate and adequate situational awareness? That is, insights into what is happening so that those decisions
10 can then be made?

15 MR GAETJENS: A couple of things, Counsel. In terms of the - again, for a national event like COVID, the situational awareness, in terms of the health aspects - and this is what National Cabinet has been focusing on mainly - there is the expert advice from AHPPC which involves the Chief Health Officers from each State. So they know, through the networks and the public health units in each State and Territory, what is happening in their jurisdiction. By having the Premiers and Chief Ministers there, they not only take into account that advice, but all the other advices that they receive either from their Ministers or from their Health Departments.
20

Other Departments with respect to - yes, the object or subject of the matter is health, but the impacts of the health situation transfer out to many, many areas of society. So they get that feedback loop in terms of cause of problem versus impact of problem and how to handle it. They were able - in terms of situational awareness then, by
25 being able to meet together and have expert advice, they could compare and contrast what was happening in their own jurisdiction to others, which allowed, if you like, a pretty quick comparison of what they were doing, what others were doing, and if there was a difference, why that difference occurred. And that could obviously be explained by either different case numbers or the geography and context of their own
30 jurisdiction.

So I think they were some of the things that came in. And, again, if there were any gaps in knowledge that they had - this goes to the direct tasking point - the leaders themselves - and I emphasise as well the leaders don't just have, you know, a
35 portfolio position, they are the leaders of the jurisdiction. So they take that very high level view. They, and again I think being leaders, they can themselves assemble priorities that goes to the health and then beyond health matters. And tasking can arise from those meetings directly.

40 And another thing I would say, frankly, was the - and I think I made this point to the Senate - the transparency of National Cabinet outcomes has probably been the most transparent I have seen in the time I've been in public service at State and Commonwealth level of information being made public to the community within hours of that meeting, and that basically happens through the Prime Minister's press
45 conferences after Cabinet and then the Premiers and Chief Ministers' press conferences as well.

MS HOGAN-DORAN SC: In your observation, how important - you've spoken of transparency, how important has the confidential nature of the discussions been to facilitating those outcomes?

5 MR GAETJENS: Critical. I think the - the nature of the six - six States, two Territories, the Prime Minister meeting in a room - and I think they have said this publicly, but the fact that they are in that room, there has been no leaking from that room, there has been no breach of confidentiality. To actually then take the confidence of that to know that they can talk on practically anything, and it remains
10 in confidence, but it leads to outcomes that occur. And again, I think - I think it was Kitchener, wasn't it, who said, "You don't necessarily need to look at the sausage making, it's the outcome that matters." And I think that, combined with - so the confidentiality and the solidarity of discussions in the room makes it very important, or it did make it very important on, every occasion actually for each of the members
15 of National Cabinet to have confidence in the Prime Minister going out and announcing pretty clearly what happened in those - the outcomes of the discussions in those meetings without going into the detail of those discussions.

MS HOGAN-DORAN SC: Can we go to paragraph 11, please, operator.

20 In paragraph 11, Mr Gaetjens, you speak to the issue of, "If and when governments are faced with responding to a large-scale natural disaster particularly those which affect multiple jurisdictions", you say in your opinion that "National Cabinet could play a very beneficial role in supporting national leadership and coordinated decision-making". It's the next proposition that I wanted to ask you some questions
25 about:

"Direct access to expert advice relevant to the unfolding disaster would be essential."

30 You gave the example earlier of the expert medical health - public health advice that has been conveyed to National Cabinet by the Chief Medical Officer and we heard from Professor Murphy yesterday. One question that has emerged in the course of this, of course, is when translating that to circumstances which consider broader national emergencies involving natural disasters, involving bushfires and/or other
35 kinds of natural hazards, there's a range of experts that might be available to inform National Cabinet. Do you have any thoughts on how that might be - is that an impediment to adopting that structure for the future in national natural disasters or are there ways to streamline that to enable it to nonetheless proceed?

40 MR GAETJENS: I don't think it necessarily needs to be an impediment but care needs to be taken in selecting - that the right people are there. So again, I - and I'm no expert in this either, by the way, but I am sure that there would be people who would be experts in drought versus experts in flood, or be experts in infectious diseases versus other diseases. In the case of the Australian Health Protection
45 Principles, the AHPPC, they, in fact, are the lead group which - sorry, who are supported, I think, by five other groups, who, in fact, look at more focused ideas that come up to AHPPC.

And as much as you could have an emergency expert committee, I am sure that beneath that there would be groups who would deal with a particular type of emergency. So I think we just have to be very, very careful about who to select. I
5 would take a fair bit of confidence in the fact that Premiers, Chief Ministers and the Prime Minister would have a fair idea of who they would want in the room for a particular event. In the case of the AHPPC there is only one member of that group, and that's the Chair of AHPPC who attends the meeting. So that again is a trust and acceptance that the Chair of the group is able to represent the group. Of course, that
10 trust is also supported by the fact that I am sure Premiers and Chief Ministers are being advised by their own Chief Health Officers.

So it would become pretty apparent if the view in the room was different to that being provided to others. So there's a reinforcement mechanism there. So I think as
15 long as you don't make the group too narrow, nor, in fact, too large, and that goes back to the point I made in paragraph 10 as well, and this is direct access to expert advice that is relevant to the issue.

MS HOGAN-DORAN SC: Yes.
20

MR GAETJENS: And I think then the ACS and between the leaders themselves, it would be a reasonably clear task as to who would be best.

MS HOGAN-DORAN SC: Just considering the process of that briefing by the
25 expert, do you see advantages in there being essentially one person speaking, ideally on a consensus basis, by being the single source of truth by way of expert advice to the National Cabinet to then making its decision-making processes, rather than having a large number or more than one briefing them on the different perspectives?

MR GAETJENS: I think that's right, Counsel. As I said, it's the Chair of AHPPC
30 who does that. That person is trusted. Obviously, the same arrangement did not apply at - through the time of the bushfire. But certainly from the Commonwealth's own advice, the Director EMA was basically the single point of truth who again brought into the meeting of federal discussions on these issues input from a lot of people, and
35 that again could be tasked back to him to get further advice if required. But I think that's - that's a good example. As I said, I think the architecture, once First Ministers know what they want, I think the - so that says you have got a pretty clear objective and mission, then you can arrange things around that, as long as you are clear about those two things in the first place.

MS HOGAN-DORAN SC: If this architecture was to be adopted or embraced again
40 for future natural disasters, do you have any insights as to how National Cabinet, its First Ministers and even the Prime Minister can stop themselves from descending into the detail and ensuring they stay above the tactical level?

MR GAETJENS: My opinion would be that would be reasonably easy. I don't
45 think - just on the health issue, I don't think they've tried to get into the tactical issues

very much at all. They have looked - and I think my recollection of Ministers, and the operational requirements with the bushfire as well, there is most times if this needs to be done operationally, this needs to be done. It's - it's the higher level issues where people seek to prioritise. Also to understand why, so I think there are
5 questions why something is done, and that goes to - I think more that people at that level seek to understand why that is a learning, that can then be stored in memories that make a decision next time easier, because they've worked out why.

10 So I think that - yes, I - I don't think there would be an issue of getting into the weeds, if you like. And I think if the meeting is well chaired as well, there would probably be a hesitation to doing that in the first place.

MS HOGAN-DORAN SC: The National Cabinet was stood up essentially in the middle of the response, or at the commencement of the response phase, and you've
15 just addressed your remarks, your evidence to the response phase of a national natural disaster circumstance. If we go to paragraph 24 and the observations that you make - page 5 it is, Mr Gaetjens - the observations you make about the advantages of convening a National Cabinet meeting ahead of a disaster season. If I could just have you share with the Commissioners your insights as to that, I feel as if you had one's
20 time again.

MR GAETJENS: Look, in terms of National Cabinet, it was - well, it was established in a COAG meeting that had been on people's calendars for quite a long time. So 13 March was a Friday?
25

MS HOGAN-DORAN SC: Yes.

MR GAETJENS: So just some background, at that stage at that meeting there was some advice from the health people that made it pretty obvious, I think, that this was
30 getting more and more serious. So the Prime Minister and the Premiers actually did have a short - a session amongst themselves, and out of that came National Cabinet. And I'm sure at that meeting they would have - sorry, at the COAG meeting I'm sure they talked about why you would have a National Cabinet and what was actually - what - what was the possible path going forward. All I was saying in
35 paragraph 24 in fact, was if we have - and particularly in relation to bushfires and seasonal related events, I think it would be useful for leaders to meet before the event and, again, set expectations, hear from the data and the evidence and the forecasts of what sort of season are we expecting.

40 MS HOGAN-DORAN SC: Yes.

MR GAETJENS: So, one, they can actually set themselves up with an expectation of forecasted future events. That, of course, can change drastically. It might stay the same. But it gives them an outlook and a starting point. And to then be able to - and
45 sometimes it could actually give you a possible baseline against which you compare things. And depending on where - again, I think the action - National Cabinet or other, if you have a benign baseline, I think you might act differently than if you had

a less benign baseline. So it actually does set a tempo right from the very start of where you could handle things.

5 I think in a planning sense that would be good and I think I do say this in my - any meeting that National Cabinet has, of course, is of its own decision. But I think there are benefits that, right from the very start, there is a knowledge base, if you like, an understanding of what to expect and then you can actually, against that baseline, compare progress with expectations and adjust them.

10 MS HOGAN-DORAN SC: And establish any coordinating efforts or additional variations on coordinating efforts going forward; is that right?

15 MR GAETJENS: Yes, and Commission work again, which may need to be adjusted through the - through the process.

MS HOGAN-DORAN SC: Yes. Thank you, Mr Gaetjens. Go to paragraph 27 and I'm fast-forwarding us now through to the sort of after phase, the recovery phase. You make the observation in paragraph 27 that:

20 *"National Cabinet could also play a role in coordinating decision-making related to recovery following a natural disaster."*

25 You've, of course, already given some evidence in relation to the recovery phase, at least for a number of States and Territories in Australia in the COVID-19 pandemic, and we've seen the shift of the National COVID-19 Coordination Commission into an advisory board focused particularly on longer-term recovery issues. I will just step to the side and ask this existing question concerning the role of the National Bushfire Recovery Agency. So there has already been established a recovery agency for the bushfires and we've also had some evidence from Mr Shane Stone in relation to the recovery agency that he heads in Queensland following its droughts and floods.

30 I wondered what your view was in relation to the recovery agency becoming a standing agency rather than standing one up after each disaster, particularly in circumstances where, as the evidence has indicated to this Commission, the recovery is a long process. It's a long-term process. It's not something that's confined to six to 12 to 18 months?

35 MR GAETJENS: Counsel, I think - I think that's a very empirical question actually, because if you had, let's say, five or six years with benign circumstances, then you have an agency that might not have much to do. And I think - the reason I mention that is not just the efficiency aspect but, in fact, one of the things the NBRA and indeed the - the COVID events is, well with National Cabinet, if you have a recovery agency that deals with ongoing recovery, again you get that sense of purpose and mission.

45 MS HOGAN-DORAN SC: I see.

MR GAETJENS: This is your job. And I think if you actually, because of circumstances not under our control, you don't have that purpose or mission because of events, that can actually have an effect on morale and attitude at the start. I think if a recovery - if a recovery agency applied to disasters no matter what the cause, that might not be as much of an issue. And I also think you've got a transition, if you like, from an event where there will be a sense of purpose and a cause in response to a particular event, as to what can then happen to policy roles in general and what we need to do for an economy. And we've got an economy, and again the forecast is I think about a seven per cent fall in GDP in the June quarter. You know, the whole of the country will need to have the sense and purpose and mission to actually recover out of that - that hole.

But I think as long as you can sustain a purpose, I think you can have a single agency that will do very good work and, in fact, it will benefit and become like the leading edge of the rest of public services and other things to actually focus their effort, the recovery - the recovery from that event. I think, however - and, again, you can see from that paragraph there, the National Cabinet, in fact, moved to recovery in May when - in the expectation that things were going to get better; let's work out a plan to get out and to start a path to recovery, and then move on from there.

So I think - and the empiricism and my reluctance to provide a firm answer is that if you set something up and then circumstances depart from the reason you set it up for, what will be the effectiveness? And again I repeat, this is not just an efficiency argument, it's an effectiveness argument, but --

MS HOGAN-DORAN SC: So it sounds, from what you've just said, that you wouldn't recommend that, for example, the NBRA be folded into a broader national recovery agency. Is that what you're saying? Or are you saying that at least its component should continue on with its central mission?

MR GAETJENS: No, I think I'm - well, I think it could be soldered into the wider agency. I think what I'm probably more directly saying is I think you would need to set it up in a way that says - sorry, a very scaleable and adjustable focus so that --

MS HOGAN-DORAN SC: I see.

MR GAETJENS: -- there could be a standing number of people and terms of reference for that commission which, depending on actual events happening and that needing to scale up and then back again. So it would need to be a lot of thought given, I think, to the nature of its set-up and not being seen to be an agency of X people and that's then written in stone forever and ever. So it's just flexibility I think, and knowing what it could do. But a scaleability I think would be definitely required.

MS HOGAN-DORAN SC: Right. Can we go to paragraph 28. 28, you've broadened your view to a National Cabinet playing a role in building national resilience. There's some overlap between recovery, building back better and thus establishing greater resilience but I think when you speak here, because you've referred to the National

Disaster Risk Reduction Framework, you're speaking of resilience in a much broader sense; is that right?

MR GAETJENS: Correct.

5

MS HOGAN-DORAN SC: In terms of this role, how would you see this role operating for National Cabinet? It seems to be one that would - seems to be more policy driven as opposed to reacting to the circumstances that are confronting it and seems to hark more back to the way in which COAG had been established and operating in times past; is that right?

10

MR GAETJENS: It would not be right in that outlook because National Cabinet does not want to go back to the way COAG worked. But it - I think what you can imagine here is - and I would go back to the framework of National Cabinet. As well as National Cabinet, there has been formed the National Federation --

15

MS HOGAN-DORAN SC: Reform Council.

MR GAETJENS: -- Council, I think. So that's the group that actually includes Local Government. It's probably going to meet once a year.

20

MS HOGAN-DORAN SC: I see.

MR GAETJENS: And I think if you looked at resilience, which as I say, could involve Local Government, private sector and communities, it could just be a check-in. So not - not in terms of constant meeting to check out progress on what's happening in an event, but as this is a greater process. I could, in fact, use a comparison of Closing the Gap. Closing the Gap is still intended to be considered by that committee in terms of progress.

25

30

But in terms of the risk reduction framework this - and again if National Cabinet decided it was necessary, because I think they are also going to be quite disciplined about what they take on and what they don't and keep that sense of purpose, it would then go from an update or a check-in to see how things are going, and if things are off track, then again, review, make decisions, pass back out to get things going. It's a case of how frequent and what it would do, rather than actually manage an ongoing event where things are changing very quickly.

35

MS HOGAN-DORAN SC: The last topic I want to take you to, and I'm mindful of the time and the Commissioners will, of course, have their own questions, you were asked some questions, question 4 and 5, so question 4 in your statement on page 6 and 7, as to:

40

"What role could National Cabinet play in the making of a declaration of a state of National Emergency and what might be the consequences of a making of that declaration?"

45

If I could go down to your answer at paragraph 36 over to the next page as to how you saw National Cabinet involvement in the making of any declaration and how that might then operate?

5 MR GAETJENS: Counsel, I think if I can go back, sorry, also refer to paragraph 37, I think if a National Emergency declaration was made that would be a decision of the Commonwealth. I think throughout National Cabinet it has been quite clear and often expressly considered about what is a decision of National Cabinet versus National
10 Cabinet being informed of a decision by either a State Cabinet or the Federal
know how to work.

But again, I think what National Cabinet can do is to look at, again, if there were triggers on which a declaration would be made, there could be discussion about that
15 and I think it's very useful to have a discussion and that can be taken into account when the Commonwealth makes its decision about these things. So in that event it would not be a discussion about Commonwealth doing something. It would be a discussion that provides an understanding in National Cabinet about on what basis the Commonwealth would act and I think that that again helps things because people
20 understand the likely consequences or sorry, the likely circumstances in which - in which this would happen.

I also think in paragraph 36 as well, it's, in terms of what would be the purposes of that declaration and what would be the implications of it, and that goes into the
25 advice that EMA at the Commonwealth level might have from its interactions that go into the - into the making of that declaration itself.

MS HOGAN-DORAN SC: You speak, in the sub-paragraphs of 36, about mobilising - that the consequence of the declaration being to augment rather than
30 usurp the roles and responsibilities of the States and Territories, and the consequences. It therefore follows that you've emphasised are mobilising EMA, mobilising the Commonwealth's resources. And then you speak at paragraph 36.3 to:

35 *"..a unifying mechanism for the Commonwealth and States and Territories to come together and take collective stock of the resources at hand."*

I just wanted to get a sense, is that reference to National Cabinet or is that reference to the National Coordination Mechanism which I asked some questions of
40 Mr Pezzullo and what had previously been the National Crisis Committee?

MR GAETJENS: I think it would be the NCM, just - what's the name?

MS HOGAN-DORAN SC: Yes.

45 MR GAETJENS: Yes, so I think what we are saying here is if the National Emergency declaration happened, I think if that - that would not overtake what actually happens in operational levels at the moment. It would just be

another - another mechanism to say well, the circumstances have got - and again I think there is, in a general nature at the moment, it's the request and respond issue where a State makes its own decision and I think that is an area where - and the Prime Minister has spoken about this - is what the Commonwealth did on the last fire
5 season was actually by pre-positioning things and testing that limit, but it's only in the nature of being able to react and respond more quickly and be able to do that more readily.

10 If I think you have an understanding of the circumstances in which a National Declaration would be made, you then have a sense of what mechanisms, operational resource placement will occur, and I think underneath a declaration, you then get what I would regard as the unifying mechanisms that actually says what are our priorities, what are the issues and the NCM, I think, has proven to be a good
15 mechanism in the COVID experience of getting the views of States, Local Governments, private sector to actually, all right, well, this is what we need to happen. We had best then meet the mission that the actual emergency declaration commences.

20 MS HOGAN-DORAN SC: And the last matter is 36.4, you refer to:

*"For crises of national scale affecting multiple States and Territories the declaration could initiate certain Commonwealth outreach for international support from one collective source, rather than having multiple States and Territories reach out independently to international governments or bodies seeking access to the same
25 resources."*

30 Is that reflecting any past experience of there being more than one voice reaching out for international support in circumstances of natural disasters, of which you're aware?

MR GAETJENS: Not directly, Counsel. All I was trying to envisage is - and again at the global level, and again, I appreciate I think between State fire agencies and, for example, US State fire, I think there's a very good relationship.

35 MS HOGAN-DORAN SC: Yes.

40 MR GAETJENS: I'm not seeking to be critical of that in any way, but at another level as well, at a global level there is a very quick and easy recognition between sovereign governments and for some instances, I think for some sovereigns to deal with sovereigns, it can cause delays just because of lack of knowledge and things like that.

45 If it would help, I think it's very useful for, in fact, because it's the Prime Minister who speaks with leaders of other countries, that can actually be used to good effect to help these things. So it's really just, again, an efficiency and effectiveness argument rather than seeking to see any actual problem but it's just something that adds to the - adds to the mix and hopefully makes things, again, much quicker.

MS HOGAN-DORAN SC: Thank you so much, Mr Gaetjens, for that clarification. I note the time. Commissioners, I'm going to pass back to them. Thank you, Mr Gaetjens.

5

COMMISSIONER BINSKIN: Thank you, Mr Gaetjens. You gave us a very concise statement and actually, as you went through that, that has answered my questions, but I will go to Commissioner Bennett.

10 COMMISSIONER BENNETT: Thanks, Chair. Mr Gaetjens, I did have one matter. Can paragraph 29 come up, please? Thank you. You talk there about:

"National Cabinet could focus on supplementing rather than supplanting operational level coordination mechanisms."

15

And then you say:

"I emphasise here the importance of subsidiarity."

20 Then you say:

"A policy construct under which roles are delegated to the lowest level of government possible in order for the response on the ground to best meet the needs of the community."

25

Now, as you would appreciate, we've heard a lot of evidence about the importance of community-led action at every stage: preparation, response and recovery. And I just wanted you to expand on that for me in the context of the concept I understand, but how in practice is there such delegation? And I think using an example of things like recovery, you know, the Commonwealth has provided a lot of money and resources into the recovery space. And how do you then practically, A, get that down to the lowest level of government? And B, how do you get assurance as to how that level of government is responding and utilising the resources that are being transmitted? Do you understand the question I'm asking?

35

MR GAETJENS: I think I do, Commissioner, and it's - it's an issue that comes up in federations quite often. I think in terms of subsidiarity, the best example I think probably in response, rather than recovery, and that is what's the response to a bushfire. It's the local brigade that actually is the first responder. If they have to be supported by others then you bring in others, and then there's a centralised coordination mechanism in State agencies and - so that's the subsidiarity of it first because they know what's on the ground and then the State coordination mechanism above it also knows at a wider level.

40

45 COMMISSIONER BENNETT: Yes, that's an easy example, if I might say so, and a good example.

MR GAETJENS: Yes.

COMMISSIONER BENNETT: Recovery is the harder example.

5 MR GAETJENS: Yes.

COMMISSIONER BENNETT: Yes, that's why I'm asking, that's why I'm
focusing - I understand that concept at response level. But focusing on recovery, and
one of the things I'm looking at because we know that there are Inspectors-General in
10 some of the States that look at assurance questions. I don't mean - the question at one
stage was is that audit. It isn't. It's broader than that. So I'm just trying to work out
how the policy construct works when, let's just put hypothetically the National
Cabinet decides and the Commonwealth funds a very large recovery program to be
implemented by Local Governments throughout the country or the affected areas for
15 a particular national disaster. A, how do you know?

I suppose you rely upon the States to ensure, I suppose, that the moneys are so
delegated, but how do you - I mean, is there a role for the Commonwealth, bearing in
mind it's providing the funding, to track that going down and assuring itself that it's
20 having the desired effect at Local Government level and that the moneys are
going - I'm not suggesting they will rip them off, I'm just saying that, you know, the
moneys are actually being utilised effectively at that level and doing what they're
meant to do? I suppose, I mean, you've got the - you might have a national recovery
agency that might have people in there. I'm just, you know, that actually have people
25 seconded or - what's the word I want - put in, into the --

COMMISSIONER BINSKIN: Seconded.

COMMISSIONER BENNETT: Seconded will do - into some sort of State
30 monitoring system. I just want to get a feel from you as to how that works as a matter
of policy and practice?

MR GAETJENS: A couple of levels, Commissioner. I think the principles of
subsidiarity, I think apply in recovery very easily through the financial transfers that
35 occur. So again, for an event that is small in nature, and again DRFA has worked on
this basis, the first responder is the State. So they do the immediate income support.
If you had large events, let's say COVID, and the economic response is
unemployment goes up, then, in fact, the Commonwealth pays unemployment
benefits. So the financial burden of that goes up to the Commonwealth level of
40 government.

In the health aspects there are increased calls on hospitals. Again, the
Commonwealth/State agreement on the hospitals agreement basically says the
Commonwealth and the States share the - they share and take risks with respect to
45 growth and the Commonwealth acts in a lot of cases, I think, as a bit of a reinsurer, if
you like, or second level support mechanism for that.

And in terms of looking at whether the money is delivered correctly or not, I think there is quite a bevy of Commonwealth/State arrangements which quite often have KPIs or requirements to be done. At the State level, in fact, and at the Commonwealth level both can be audited in terms of did they actually do what their
5 job was. Treasuries and the State Treasuries, the Council on Federal Financial Relations and the portfolio ministries actually look into how these agreements are tracking in terms of are you doing what you were asked to do.

10 Some agreements, for example, there's one of note at the moment, the schools agreement, in fact, what the Commonwealth payment there is 1.5 billion to the States and that is untied. So, in fact, the States don't have to spend that money on schools but that is the arrangement that was started. So I think there are a range of accountability mechanisms within the wider sphere of Commonwealth/State relations.

15 We provide assistance to Local Government as well through the States, because the Local Government are a creature of State constitutions, not our own. And again sometimes the Commonwealth can provide money direct to schools, a mechanism called are you paying money through the States not to the States. So it goes to the
20 States and then it immediately passes on to private school operators.

So I think the concept is there, and again I just think its focus, that National Cabinet realises as well, in the health response again, public health units are State units, they're not Commonwealth units. They are actually - they have people on the ground,
25 they have the work being done to recognise what's there and then how the response has to happen. So I'm not arguing that anything needs to change in this.

I would acknowledge, however, Commissioner, that one of the aspects that plays into this is - and I think I detected this more from community views than government
30 views, is I think there is a view sometimes that the public expectation is the Commonwealth gets involved earlier than what it does. And that's because of a view, and again no - not necessarily a great - a great understanding of federal relationships and processes. They just want things fixed.

35 So I can understand the need for resources to get things fixed more quickly. And in that respect, I think I mentioned, I think, in my statement that sometimes we have to be careful because there is a little bit of - of moral hazard, if you like, in people coming in too quickly and then that being upsetting; these are the usual arrangements or what might normally happen. I don't know whether that's answered your question
40 sufficiently?

COMMISSIONER BENNETT: I think it does, it answers my question. If anything, it reveals a level of existing complexity that perhaps means there's no silver bullet answer to some of this - some of these questions, and I think you've helped elucidate
45 that. Thank you very much.

COMMISSIONER BINSKIN: Thank you. Commissioner Macintosh.

COMMISSIONER MACINTOSH: Thanks, Chair. And thanks, Mr Gaetjens. Can I pull up paragraph 34, please, operator. And Mr Gaetjens, this is one of your paragraphs about the National Emergency declaration and in it, in that, I think it's the second sentence there, you say:

"There is some moral hazard in this and it may lead to calls for Commonwealth involvement even when first responder capacity is sufficient."

10 The way I interpreted that was effectively to say, "be careful attaching any mandatory Commonwealth assistance to a declaration lest you create incentives to constantly pressure the Commonwealth to make such a declaration". Have I interpreted that correctly?

15 MR GAETJENS: I think this was the question about, again, a declaration of a state of national emergency. I think this is a follow-on, I think, from the previous question, Commissioner, which said basically if - there was a sense again that public opinion actually might have been in advance or greater than say State Government opinion about the Commonwealth being involved. And this doesn't - that does again go to the
20 subsidiarity point.

If the State and Local Government has the resources to do things, again it's a question of roles here, and I think circumstances have been - I don't want to make this a point - in both bushfires and COVID, I think each government has helped each other almost immediately. So there has been no, you know, harsh negotiations about doing things. But if - if you have an involvement where Commonwealth - sorry, if circumstances which keep accreting so that the Commonwealth becomes involved, then you ask the question: why do you have the other levels of government.

30 COMMISSIONER MACINTOSH: Yes. My interest is really about the reference to moral hazard. I'm just very aware of the fact that if you create a guarantee of Commonwealth assistance, then you potentially create that incentive for constant pressure on the Commonwealth, "Please declare a state of emergency because, therefore, we will get assistance", and that's how I interpreted that sentence.

35 MR GAETJENS: That's one part of it, Commissioner.

COMMISSIONER MACINTOSH: Thank you. Can I pull up paragraph 41, operator.

40 MR GAETJENS: And I do reiterate, Commissioner, I do come from a Treasury background as well.

COMMISSIONER BINSKIN: We've noted that. Thanks.

45 COMMISSIONER MACINTOSH: And this is almost on a very similar point where you make some very salient remarks about the balance between Commonwealth assistance, and it's an issue that we've been grappling with amongst the

Commissioners and amongst the Commission more broadly. At the moment there seems to be three options the government can take for handing out assistance for recovery. There's one where the Commonwealth simply gives a set amount to victims and that ensures that Commonwealth assistance is consistent across the country, yet the outcome for the victim then depends upon State assistance.

The second one is where the Commonwealth matches the State assistance, in which case you can have differences of treatment between jurisdictions and you can also have different outcomes for victims. Then the third one is the Commonwealth can calibrate its assistance, depending on how much the States give. So the victims get the same amount. But the negative of that is that it creates a disincentive for the States to give or creates an incentive for the States to cost shift on the Commonwealth. And, given that you raised this issue in paragraph 41, I wonder whether you had any advice for us on which of the suboptimal outcomes that someone should choose in this space when trying to design optimal recovery policy?

COMMISSIONER BINSKIN: Noting we only have 30 minutes.

COMMISSIONER MACINTOSH: Yes.

20

COMMISSIONER BINSKIN: Yes.

COMMISSIONER MACINTOSH: I'm trawling for PhD students, obviously.

MR GAETJENS: I think the - look, this is an issue that does come up, but I wouldn't also overemphasise it, I think, because a person who is living in northern New South Wales, for example, do they - do they really care what happens to someone in South Australia? In fact, do they really know? I think as long as they are satisfied that they've been treated well, it's good - that addresses total quantum; it doesn't necessarily address split between different levels of governments to who provides it.

I think, however, we do have - again, this is a bit of a conceptual argument but it does play out, I think, directly in the media because the media, I think, says: well, person here got X and person here got Y, and they have the same circumstances, why is it different? And the point here is just to say it's not just because there can be different Commonwealth treatment. It could be different baseline positions on which the Commonwealth pops up. I think this is a very good exercise, and I think there will be numerous different outcomes. The one example I could use where I think the certain objective has been to provide a person with similar circumstances in different locations, the same event, and that's, in fact, the NDIS where a person could actually move from one State to another and take their package with them.

COMMISSIONER MACINTOSH: Yes.

MR GAETJENS: So I - I do not have any magic bullet answer, I'm afraid. It's just one of the issues that arises in a federation. And, again, from my previous background, that goes to issues that go to both vertical fiscal imbalance and

horizontal equalisation, and there can be multiple PhD pieces about both of those things.

COMMISSIONER MACINTOSH: I think you --

5

MR GAETJENS: But it was just.

COMMISSIONER MACINTOSH: Sorry to cut in. I was just going to say I think you just gave the golden piece of policy advice, that is, those who are in similar circumstances should be treated equally?

10

MR GAETJENS: Yes, and then it's a case of - again, it's the composition of that - that quantum. I think that's the sense. And I would also add to that, I think there is an issue which did play out, I think, both in bushfires and COVID and that is when the community and the government is acting together to achieve outcomes, you know, the financing of that is less relevant but, of course, it's relevant on the other side because all of that is paid for by taxpayers.

15

COMMISSIONER MACINTOSH: Yes. Thank you very much for your evidence. Thanks, Chair.

20

COMMISSIONER BINSKIN: Thank you very much. Ms Hogan-Doran.

MS HOGAN-DORAN SC: No communications from parties with leave.

25

COMMISSIONER BINSKIN: We're doing well.

MS HOGAN-DORAN SC: Might Mr Gaetjens be excused from his summons - sorry, released from his summons?

30

COMMISSIONER BINSKIN: Mr Gaetjens, you may be released from your summons and we appreciate your time. Before you go, though, as head of the APS, I would just like to make a comment. And this is the last hearing day for the week. The core of the Commission, Australian Public Service personnel that we've got here, can I thank you and can I commend them for the quality and their capability, both individually and collectively in getting this Commission up and running, and the adaptability and the flexibility they've shown in keeping it going throughout the current situation. So I would just like to pass - and dedication. I would just like to pass the Commissioners' thanks to you as the head of the APS for their service.

35

40

Thank you very much.

MR GAETJENS: Thank you, Chair. Can I just thank you for that acknowledgement and I will make sure I pass that on.

45

COMMISSIONER BINSKIN: Thank you, appreciate it. Good luck with the rest of the day and the rest of the year with the way it's going. Thank you.

MR GAETJENS: Thank you, Commissioner.

COMMISSIONER BINSKIN: Ms Hogan-Doran.

5 MS HOGAN-DORAN SC: Chair, just some conclusionary remarks and some
housekeeping. I need to tender documents that had been omitted from the tender this
morning which are documents at tab 30.16 of the amended declarations tender list as
notified to the parties with leave to appear. These are the materials provided
or relevant to the Australian Capital Territory.

10

COMMISSIONER BINSKIN: Yes. So that is 30.16?

MS HOGAN-DORAN SC: 30.16.

15 COMMISSIONER BINSKIN: 30.16, we will take that as marked as an exhibit.
Thank you.

MS HOGAN-DORAN SC: Thank you, Chair. And there's also a bundle of additional
materials which we will seek to approach you to have tendered in chambers which
20 are materials that were gathered in the course of earlier hearings which had not made
their way through to the tender list.

COMMISSIONER BINSKIN: Okay. We will do that in chambers.

25 MS HOGAN-DORAN SC: Commissioners, this concludes this block of hearings on
national coordination and decision-making. There is a lot of material to digest. We
would like to thank those who have assisted us in collating the evidence and
providing it to you. I anticipate that the Royal Commission will shortly advise parties
with leave to appear and the public on the plan for future hearings of the Royal
30 Commission.

And finally I would also like to take this opportunity to express our gratitude for the
work of Emma Costello, Jasmine Forde, Rebecca Smith, Emily Lobban, Rohan
McPhee and Georgia Sullivan of the Queensland office of our instructing solicitors
35 of King & Wood Mallesons who are returning home to Queensland which, of course,
has just closed or is about to close its borders with the Australian Capital Territory.
And could I just record again that our thoughts are with our Victorian colleagues
who I mentioned on Monday who have returned to lockdown, and we wish them all
well.

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COMMISSIONER BINSKIN: We do wish our Victorian colleagues well and I wish
the best for the Queensland team as well. I'm not sure whether it's the COVID
lockdown or this is the coldest day in Canberra that's causing the decision, but I
appreciate the support that they've given us. I do hope before we finish that we do get
45 a chance to get everyone back together again and tie this all up, but I wish them all
the very best. Thank you.

MS HOGAN-DORAN SC: Thank you, Chair.

COMMISSIONER BINSKIN: With that, we will adjourn. Thank you.

5 <ADJOURNED 3:41 PM>