



Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

MR P CALLAGHAN SC, Counsel Assisting

MS E WILSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 10/02/2011

..DAY 1

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE HEARING COMMENCED AT 10.00 A.M.

COMMISSIONER: I have seen some press reports to the effect that the Commission of Inquiry will commence today. That is not really accurate. The Commission has been in a state of frantic busyness since it came into being three and a half weeks ago. This hearing is simply a formal opportunity to give some direction as to the process the Commission will adopt in assembling information. It is not intended today to receive evidence or legal submissions. It should be appreciated that formal hearings are only one part of the means by which the Commission will carry out its investigations.

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The Commission was set up on the 17th of January to inquire into a wide range of issues arising from what can generally be called the Queensland floods of 2010/2011. That, of course, is an oversimplification. Those events encompassed river flooding, stormwater drain inundation, rainwater run-off, flash flooding and, in the Lockyer Valley, what has been aptly described as an inland tsunami. The floods' significant effects ranged from serious property damage to the simply catastrophic, with loss of life, most shockingly at Postman's Ridge, Murphy's Creek, Grantham and Toowoomba. Wide swathes of Queensland were desolated, from the south-east corner up the east coast through the Burnett and north to the Fitzroy basin, across the Central West, and down to the Balonne and the Condamine plain. The towns and regions affected are too many to name now.

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The task before us is enormous because of the variety of issues to be addressed in a very short time-frame. They include the adequacy of warning systems before the critical events and the management of emergency responses and provision of essential services after them; questions of dam management and land use planning; and insurers' performance in response to claims.

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In the first week of the Inquiry's operation, the Commissioners had the opportunity to visit Grantham, Murphy's Creek and Postman's Ridge in the very early phases of the clean up there, leaving us with indelible impressions of the devastation in those areas. We returned there a week later, also visiting Toowoomba. We intend to visit Grantham and Murphy's Creek again in the near future to hear in an informal setting from members of those and nearby communities. As we progress, we intend to hold hearings in flood-affected areas across the State.

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Clearly, what occurred this summer was, in the larger sense, the product of nature at its extreme, and there are limits to human capacity to plan and protect against every possible outcome; but our aim is to identify those areas where things can be managed better in the future. We hope that those who are in a position to contribute to our considerations will do

so by providing submissions and statements.

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Allowing for the need to protect people who have already suffered tragedy from further hurt, the Inquiry will work in as open a way as possible. The hearings will be webcast and, wherever possible, submissions received will be placed on the Inquiry's website and made available for viewing.

Our initial focus will be on what can be done in the short term to improve safety for next summer. For that purpose we must provide a report by the 1st of August. The final report is due on the 17th of January 2012. Because of those very tight time-frames, much of the evidence and the submissions will, of necessity, be taken in writing, and, ideally, electronically.

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I will ask counsel to expand on the way in which the Commission will receive evidence.

Mr Callaghan?

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MR CALLAGHAN: Thank you, Madam Commissioner.

Against the background of severe drought, Queensland has suffered floods that were worse than any since 1974. For those who lived through the worst of it, 1974 provided lessons which were never to be forgotten, but for others 1974 became a shorthand term which was understood to relate to flooding but which, with the passage of time, gradually lost meaning and failed to convey the true sense of loss and destruction associated with events of this nature.

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There was no comparable Commission of Inquiry into those events of 37 years ago. This Commission affords an opportunity to ensure that the lessons which must be learned on this occasion are recorded for the purposes of the future.

In this way, it might be hoped that Queenslanders are neither condemned to the fate of those who cannot remember the past, nor left vulnerable at the hands of those who might choose to forget it.

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There is no blueprint that lays out the means by which this Inquiry should operate but we have had some guidance. As a matter of course in Queensland, the State Coroner investigates deaths of the kind that occurred in these floods. I am pleased to confirm that we have already benefited from the assistance of the Coroner, but, of course, our terms of reference extend the scope of this Inquiry far beyond the work which has already been done by him.

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The task which confronts this Inquiry does invite some comparison with that which was undertaken by the 2009 Victorian Bushfires Royal Commission. I am also pleased to report that we have received assistance from some who were involved in that Inquiry. Nevertheless, whether by reference to the budget or any other aspect of that Inquiry, it is clear that this is an exercise which is very different from any

previously undertaken.

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In a short period much has already been achieved as a result of what you, Madam Commissioner, accurately describe as frantic busyness. In particular, we must acknowledge the effort which enables us to announce today the existence of the Commission's website. Ms Wilson will, at the conclusion of my remarks, provide more information as to that website's content and capabilities.

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Can I say, however, that as important as the website will be to the Commission's activities, we understand that we will be dealing with many Queenslanders who do not enjoy easy access to the internet. We shall strive to meet the needs of those people by whatever means are at our disposal.

We can foresee other challenges that reflect the vast geographical area with which the Commission will be concerned. You have, Madam Commissioner, already mentioned some of the areas affected and there will be enormous regional variation in the nature of the issues to be addressed.

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Much of the media attention has thus far focussed upon events in Brisbane, and, of course, there is a specific term of reference relating to the Wivenhoe Dam. Those matters will, naturally, be subject to thorough investigation.

However, we perceive the duty of Counsel Assisting this Commission to represent at the Inquiry the public interest, and by that we mean the interest of all Queenslanders, not just those who reside in the south-east corner of the State.

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Having said that, it must be acknowledged that some events under investigation involve the loss of life and do, therefore, have special significance. Counsel Assisting have already travelled with the Commissioners on their second visit to Grantham and Murphy's Creek. We plan to return for the purposes of community consultation prior to the taking of evidence.

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We also accompanied the Commissioners on their visit to Toowoomba. It was in Toowoomba that we saw some of the video footage which will make its way into evidence before the Commission. It can be expected that, in the nature of any modern Inquiry, a camera in one form or another will have captured images of relevant events. Some of those have been widely telecast and are already etched into the minds of all who lived through these events.

However, the Inquiry is emphatically not limited in its scope to events that were captured on camera or that have already been documented in some form. It became clear to us during our visit to the Lockyer Valley that a solid evidentiary foundation for the Commission's work must include, and will in many cases depend upon, the observations and recollections of individuals.

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This weekend in newspapers across the State, Queenslanders

will read an invitation for statements or submissions to be made to this Inquiry. Full contact details, including the Commission's website address, will be contained in these advertisements. The opportunity to contribute is not restricted to businesses or organisations or government agencies. It is open to all individuals who feel that the Inquiry should hear something that they have to say.

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If the statement or submission touches upon something which might be relevant to preparedness for next summer's wet season, we ask that it be received by 11 March 2011. If it relates to any other matter embraced by the terms of reference, which are reproduced on the website, it should be received by 4 April 2011.

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Following the receipt of statements and submissions, there will be a sequence of public hearings. These hearings will take place within a legal framework. Witnesses will be called, examined, cross-examined, exhibits will be tendered, a transcript will be prepared. That format carries with it many advantages.

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Subject only to the need to protect those who are suffering grief and loss, these hearings will take place in public. All who have an interest can assess the manner in which evidence is received and tested, and any concerns about political interference can be laid to rest.

Madam Commissioner, as you have noted. There will be an unprecedented opportunity for the public, or at least those with access to the internet, to monitor the process as it unfolds. By this means, it is hoped to maintain public confidence in the conduct and conclusions of the Commission.

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Whilst public hearings bring with them those obvious benefits, they harbour also some drawbacks. The floods have affected many people and organisations and many will seek to appear and be represented at the hearings. I emphasise, though, that it is not necessary to have legal representation in order to make a statement or submission. However, for those who do wish to have legal representation at the public hearings, attention is drawn to the practice direction which issues today and about which Ms Wilson will say more when I conclude.

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Clearly enough, following compliance with that direction, leave to appear will be granted to some legal representatives.

It is then inevitable, when any number of lawyers gather in one place, that an adversarial atmosphere can develop. Those who are briefed to appear here and represent affected parties will, of course, strive to protect the interests of those by whom they have been retained. But some of the notions with which lawyers may be familiar in other surroundings will have no place in these proceedings. The Commission has power to order witnesses to attend and answer questions, power to order the production of material which can then be admitted into evidence. Punishment may follow disobedience of any such order.

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The Commissions of Inquiry Act extinguishes the right to silence on the basis of self-incrimination for a person summoned before the Commission. In short, no amount of legal argument will prevent the Commission from inquiring into any matter of legitimate interest.

On the other hand, Counsel Assisting the Commission are conscious of other legal principles which we regard as having application to an Inquiry of this nature. We shall endeavour to give effect to the principles of natural justice and, in particular, to give notice to those whose conduct may be the subject of adverse findings, such that they have the opportunity to test any evidence which might support such a conclusion.

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Above all, the conduct of the hearings will be dominated by the need for the August deadline to be met. To that end, we foresee that heavy reliance will be placed upon written submissions and that questioning at public hearings will be circumscribed by the need for forensic relevance to be demonstrated.

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In this, as in all other matters, Counsel Assisting will look to the other members of the legal profession for consultation and cooperation. We acknowledge that our colleagues will be concerned to meet the demands of their clients. We are concerned that this Inquiry must meet the expectations of an entire State.

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We understand that those expectations might have been fed by the suggestion that the Inquiry would start today, which, as you have noted, Madam Commissioner, is not really accurate. A Commission such as this cannot simply be commanded into existence, at least not in a fully-fledged state.

The first challenge has been the recruitment of the most abled staff available. By definition, such people are always likely to be engaged in other things, and we thank those who have released to us the team we have thus far assembled, notwithstanding the dislocation and inconvenience it must have involved elsewhere.

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Madam Commissioner, the task ahead is vast. We have had limited opportunity even to measure exactly how vast it is. It is, therefore, impossible, and would be irresponsible, for me today to foreshadow in any detail any of the evidence we propose to adduce before the Commission.

But the terms of reference do allow us to forecast with some confidence that public hearings will be divided into different blocks and will be held at different locations. We know that some of those locations will be in regional Queensland.

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We would anticipate that at the beginning of each block of hearings, Counsel Assisting will deliver a further opening in which the nature of the evidence to be adduced will be outlined. We shall then, in consultation with, but

independently from, you and your Deputies, endeavour to assist in the direction of the investigation. We shall procure the attendance of witnesses and facilitate the admission of the evidence upon which you can ultimately base your conclusions.

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Madam Commissioner, we are committed to enabling that which is demanded by the Order which established this Commission; that is, to deliver an Inquiry which is full, careful, open and independent.

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If it please the Commission.

COMMISSIONER: Thank you, Mr Callaghan. Ms Wilson?

MS WILSON: Thank you, Madam Commissioner.

The Queensland Flood Commission of Inquiry has established a website: www.floodcommission.qld.gov.au. Information on this website is an efficient way to quickly obtain relevant information as to the conduct of this Inquiry.

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The website will provide information on how to make a submission. Any person can make a submission and you do not need legal representation to make a submission.

To assist with the processing of a submission, a coversheet document will be provided on the website. This coversheet should be attached to all submissions. Submissions can be sent electronically via the website, or sent by the ordinary post to the Queensland Flood Commission of Inquiry.

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Generally, submissions received will be published on the website. If individuals do not wish for their submission to be published, then they should so advise the Commission.

The Commission will, from time to time, issue practice directions as to the conduct of the Inquiry. These practice directions will be available on the website. For example, a practice direction has been issued today in relation to the making of an application for leave to appear at any of the hearings. If any person contends that their interests may be affected by the Inquiry's finding, then they may apply for leave to appear at those parts of the hearings that concern them.

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Applications for leave to appear must be in writing and accompanied by written submissions as to why leave should be granted.

Because of the tight time-frames, written submissions as to why leave should be granted have to be received by the Commission by 28 February 2011. This practice direction will be available on the website.

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The Inquiry will hold hearings in Brisbane and also in flood-affected areas across the State. When a hearing schedule becomes finalised, the website will contain the places and dates of when and where hearings will take place.

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These hearings will be transcribed and it is intended that some time after the hearings, transcripts of the hearings will be available on the website.

Further, it is intended that the hearings will be streamed live through the Commission's website. It is intended that hearings conducted in this Court will be streamed live by video and, wherever possible, hearings throughout regional Queensland will also be streamed live by either video and/or audio. This website will be dynamic and will be updated with different additional information as the Inquiry progresses.

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If it please the Commission.

COMMISSIONER: Thank you, Ms Wilson. Adjourn the hearing.

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THE HEARING ADJOURNED AT 10.22 A.M.

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