

QUEENSLAND FLOODS COMMISSION OF INQUIRY



Further Submissions on behalf of Terrence Malone

[1] These submissions are made on behalf of Mr Malone with respect to the spreadsheet entitled "SDWD-201101190700-RAComments".

[2] By letter dated 28 February 2012, the Executive Director advised that:

"The Commission is seeking any submissions that might be made as to the use which could be made of this document. In particular, attention might be given to whether any conclusions about Mr Ayre's state of mind might be drawn from or supported by reference to this document."

[3] An email from the Executive Director later on 28 February provided this clarification:

"To avoid any possible doubt, in addition to seeking submissions from Mr Ayre, the Commission invites you to provide submissions on behalf of your clients on the material provided with the letter, by 9 am Thursday 1 March 2012. If your client decides to make submissions, those submissions should address the use which could be made of the spreadsheet attached to the letter for matters relevant to the Commission's inquiries."

Submissions

[4] Mr Malone has no knowledge of the creation, or purpose, of the spreadsheet.

[5] In so far as Mr Ayre has previously stated that he did not believe that he had given the spreadsheet to any of the other engineers (Exhibit 1048; Paragraph 16), Mr Malone confirms that he was never provided with a copy of it. Nor was he aware that it had been created. Indeed, Mr Malone had never previously seen that version of the spreadsheet and cannot otherwise assist the Commission regarding the authorship of the comments appearing on the spreadsheet or the information available to the author at the time when those entries were made.

[6] Shortly put, the spreadsheet is not Mr Malone's document and he was in no respect concerned in its creation, let alone its adoption.

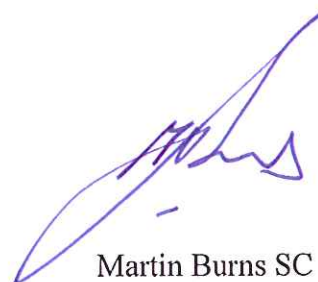
[7] Assuming Mr Ayre is the author of the comments, whether any conclusions about his state of mind might be drawn from or supported by reference to the spreadsheet will depend on

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his response to the Commission – and that is not something which we or Mr Malone are privy to at the time of making these submissions.

- [8] In no sense may the spreadsheet be used to draw any conclusions adverse to Mr Malone. There is no evidence that the comments reflect a common understanding between the engineers as to the dam management strategies which were employed, or even an understanding on the part of Mr Ayre in that regard which was shared with any of the other engineers. Indeed, the evidence is all the other way in the sense that a different sequence of strategies to that recorded in the comments was actually implemented by the engineers over the period in question.
- [9] If Counsel Assisting or any other party contend to the contrary, Mr Malone is entitled to notice of any such contentions together with a reasonable opportunity to respond by way of submissions.



Martin Burns SC

Counsel for Mr Malone

1 March 2012