



REFLECTIONS

# 5 REFLECTIONS

The 2009 Victorian Bushfires Royal Commission operated in the absence of dedicated legislation. During the term of its operation the Australian Law Reform Commission published a report, *Making Inquiries: a new statutory framework*, that points to the need for the expertise in conducting inquiries to be documented. This volume is essentially a means of accounting for the administration of this 2009 Victorian Bushfires Royal Commission. It also affords the opportunity to bring to light the perspectives of some of the individuals who played key roles in the conduct of the Commission, in keeping with the proposal of the ALRC. With this in mind, the Commissioners invited counsel assisting, solicitors instructing and the CEO to each write a reflection on their individual role and contribution to the life of the Commission. The Commissioners begin the chapter with a reflection of their own.

## 5.1 THE COMMISSIONERS

We three Commissioners were virtual strangers when we met at 2.30 pm on Monday 16 February 2009. We came from varied backgrounds and professional experience but quickly realised that we brought a common purpose to this Royal Commission. From day one we agreed that we wanted to engage with the community to the maximum extent possible: we believed that all Victorians—but particularly those marked by Black Saturday—should have the fullest possible access to our proceedings. We were of one mind that we would adopt a rigorous approach with the goal of producing a substantial report on time and within budget. We set to work that day in temporary accommodation with borrowed staff.

The circumstances in which this Commission was set up shaped its nature and scope. A catastrophe had occurred and 173 people had died. The grief and loss were palpable. The Government framed exceptionally wide terms of reference and, despite this breadth, we were given a relatively brief time frame. We expected to be subject to a high level of public scrutiny and that expectation was realised. We chose to work as equals, as a threesome. This worked extremely well. We accepted that we would be operating within a substantially legalistic model, with its benefits and limitations. The advantages include the use of publicly tested evidence, high levels of public confidence in the integrity of the process, and a perception of distance from political interference. The disadvantages relate to the potential for parties to adopt an adversarial (rather than inquisitorial) attitude, heavy financial costs, and a narrower use of material than would be accepted in an administrative inquiry.

The absence of a royal commission Act distinguishes Victoria from most other Australian jurisdictions. Without specific legislation we adopted a modified legal mode but inserted innovative approaches, such as the community consultations, live streaming of our hearings, the use of expert panels, and a novel approach to the inquiries into the fire-related deaths. We believe, however, that individual royal commissions should not be left to sequentially grapple with such matters and that more enduring arrangements should be determined. We refer to the recommendations in the report of the 2001 Royal Commission into the Victorian Ambulance Service by (now) Justice Lex Lasry that call for legislation on this matter. His recommendations were not adopted; we think they should be. The Victorian Law Reform Commission or a comparable body would be a suitable entity to offer advice on this matter, with a substantial head start given by the 2009 report of the Australian Law Reform Commission *Making Inquiries: a new statutory framework*. The ALRC considered the views and submissions of many people and organisations, engaged a highly respected team of consultants to assist with its work, and framed valuable recommendations.

For its own part, this Commission sees merit in a review of this nature in the Victorian context and makes the following recommendation.

### RECOMMENDATION 67

The State consider the development of legislation for the conduct of inquiries in Victoria—in particular, the conduct of royal commissions.

As with other inquiries, a collection of strong-minded intelligent people was assembled. We shared the common aim of producing an influential report after wide consultation on a large number of topics, involving the widest possible range of witnesses. Time constraints dominated the setting of priorities. Everyone engaged expected that the assignment would probably prove exhausting, and that expectation was realised.

Early in its work the Commission faced hurdles relating to representation—for example, the decision of the State that all departments, agencies and employees were to be represented by the Victorian Government Solicitor. Representation of all government entities in this manner had advantages and disadvantages. The positives included a single assembly point for massive volumes of material (thereby minimising duplication and overload), a common point for the Commission's solicitors in their dealings with government, and reduced costs associated with a government entity working for all government agencies. The disadvantages included the adoption of a single government view on matters such as organisational structure (where there might have been institutional differences of view on desired directions for change) and the challenge of the government's lawyers representing the interests of all government employees and volunteers.

We had the benefit of an extremely capable chief executive officer, as well as high-calibre counsel assisting and instructing solicitors. Ms Jane Brockington, the CEO, was appointed early from a competitive field and promptly set to work to establish the Royal Commission to operate transparently, efficiently and with high standards of governance and probity. Ms Brockington oversaw a talented team of dedicated staff throughout the term of the Commission, and these people served us capably and diligently.

Our firm of solicitors was Corrs Chambers Westgarth. Partner Mr Val Gostencnik, assisted by partner Ms Janet Whiting, provided unstinting support to the Commission. Corrs was a point of contact for the Commission with external parties, supported counsel assisting, offered specific legal advice, and assisted with the drafting of the final report. The Commission is indebted to the Corrs team members for their outstanding professional services.

Mr Jack Rush QC assembled a group of five other counsel assisting who were all exceptional advocates. The ALRC report notes some of the roles of counsel assisting. Some go to matters of evidence—identifying witnesses, obtaining statements, calling witnesses, examining witnesses. Others are broader—advising Commissioners, making opening and closing statements, making submissions. The ALRC report also suggests the possibility of defining those roles more clearly. We opted not to be prescriptive but to allow substantial independence. Given the complementarity of our roles, this generally worked well. To adopt a naval analogy, counsel assisting were the navigators and the Commissioners captained the enterprise.

The ALRC report refers to the benefits of having more than one commissioner, diversifying the skills, knowledge and experience and enabling a sharing of the workload. There is the potential problem of dissent among commissioners, but this possibility was minimised by a maximal acceptance of equality, particularly when endeavouring to moderate an overly legal approach. We agreed early in the life of the Commission that we would aim for consensual decision making and reporting. Our reports, which are unanimous, are testament to the success of this approach.

We were well aware of certain risks. In particular, because substantial private and personal interests were bound up in a number of the matters under consideration, we were at pains to manage proceedings in a way that limited the risk that an application for judicial review might be made. That this and other potential concerns were not realised is a tribute to the whole team. At one point, as to an evidentiary issue, we were faced with the need for an urgent amendment to State law. Fortunately, that was effected expeditiously. There were other risks linked to our making decisions 'on the run' as to our processes, without governing legislation. To reiterate, such risks could be reduced if a broad framework to aid royal commissions were developed. We began from scratch without the benefit of dedicated legislation to guide our hand. The ALRC report thoroughly investigated modes of inquiry, and we prepared this administrative volume with an eye to further illuminating the nature and challenges associated with a royal commission. We invited Mr Rush, leader of the team of counsel assisting, Mr Gostencnik, partner from Corrs, and Ms Brockington to make comment from their various perspectives.

On a personal note, we three Commissioners are greatly indebted to all who worked within and beyond the Royal Commission to ensure its inquiry was robustly conducted. At the risk of singling out individuals, we are particularly indebted to Ms Colleen Carney, our executive assistant, who supported all three Commissioners. Rarely have we encountered a person of this stamina, flexibility and dedication. Ms Annie Tinney, Strategic Adviser and Manager of the Commission's Executive Services, provided ongoing professional counsel on which the three Commissioners came to rely. We salute Colleen and Annie and thank them warmly.

Bernard Teague AO, Ronald McLeod AM and Susan Pascoe AM

## 5.2 COUNSEL ASSISTING

Counsel assisting were Mr John 'Jack' Rush QC, Ms Rachel Doyle SC (appointed SC December 2009), Ms Melinda Richards, Mr Peter Rozen, Dr Stephen Donaghue and Ms Lisa Nichols.

The role of counsel assisting is not defined. By convention their main role is to identify, obtain and then lead in evidence all relevant material for the Commission so as to enable a full inquiry into all matters as necessitated by the terms of reference. This important task was achieved by identifying relevant witnesses and experts and the marshalling of documents that were generally obtained by summons requiring compulsory production.

In the hearings process counsel assisting played a central role. They made an opening address to the Commission on the first day of hearings, generally identifying the matters for inquiry and the approach that would be taken to the production of evidence during the inquiry. They called all witnesses who appeared in the Commission. Witnesses usually provided a detailed written statement prepared by lawyers representing them or, alternatively, with assistance in the preparation of the statement, by lawyers appointed to the Commission.

At the conclusion of individual topics covered in the evidence, counsel assisting prepared detailed written submissions containing the findings and recommendations they considered warranted on the evidence presented to the Commission. The submissions of counsel assisting were served on relevant parties, who were then given the opportunity of responding in writing. Opportunity was then provided for counsel assisting and the legal representatives of represented parties to make oral submissions in relation to each topic; for counsel assisting these oral submissions in relation to each topic served as a closing address.

### 5.2.1 THE INDEPENDENCE OF COUNSEL ASSISTING

The appointment of senior counsel assisting the Commission was made by government through the Victorian Government Solicitor, after discussion with the Chairperson of the Commission. Thereafter barristers possessing relevant investigative and legal skills were identified in consultation with the Chairperson, and appointments were made through the Victorian Government Solicitor.

On appointment, counsel assisting functioned with substantial independence, assisted by solicitors appointed to the Commission, Corrs Chambers Westgarth. The particular circumstances leading to the establishment of the Commission underscored the importance of that independence.

The significance of the losses of 7 February led counsel assisting to adopt a role in the hearings that represented, as far as possible, the public interest and particularly the interest of families, friends and communities affected by the fires. This role was important because of the practical impossibility of individual representation at the Commission for such individuals and groups. Effective representation of the public interest was assisted by counsel assisting's independent role.

Counsel assisting and the solicitors to the Commission maintained consistent contact with people in bushfire-affected areas over the course of the Commission's hearings. This contact included the calling, each day of hearings, of evidence of people affected by the fires, consideration of the many submissions members of the public presented to the Commission, and close consideration of the subjects raised at community consultations held by the Commissioners. Whilst this role required counsel assisting to exercise a general discretion as to the manner of approach in relation to the presentation of such evidence, a key objective of counsel assisting in the hearings was to ensure that community concerns so identified were raised and addressed by the evidence.

## 5.2.2 ENGAGEMENT WITH THE COMMISSIONERS

The Commissioners and counsel assisting held regular meetings throughout the hearings. Robust discussion concerning the many matters raised and to be raised in the evidence was encouraged at these meetings. As a consequence, a general appreciation of varying topics and opinions was developed. The discussions enabled counsel assisting, where appropriate, to adjust the selection of witnesses and the direction of examination both to meet the needs of the Commissioners and, as far as possible, to cover all relevant matters. A number of constructive initiatives were developed as a consequence of these discussions—such as the arrangement of expert panels ‘hot-tubbing’ the complex topics of planning and fuel management.

Although counsel assisting met with and discussed issues with the Commissioners and worked within the Commission premises using, as appropriate, the administrative structure established by the Commission, they nevertheless maintained an independence as to the calling of evidence and the making of submissions.

When necessary counsel assisting provided advice to the Commissioners on questions of law and practice. The advice provided was wide ranging over the course of the Commission and included advice on matters concerning procedural fairness in the conduct of Commission hearings, the application of relevant provisions of the *Evidence Act 1958* and general matters bearing on the requirement that all personnel working for the Commission in their actions and conduct maintain and be seen to maintain independence and objectivity.

In some inquiries and commissions counsel assisting are involved in helping with the writing of the Commissioners’ final report. This course was not followed. The engagement of counsel assisting concluded, in effect, with the presentation of final submissions.

The independence of counsel assisting has advantages and potential disadvantages. Independence brings objectivity to the Commission investigations and avoids suggestions of government pressure or influence being brought to bear.

The Royal Commission was of its nature ‘inquisitorial’. The Commissioners were required to inquire into and report on specified matters. They possessed extensive powers to compel the provision of evidence and the production of documents. The exercise of these powers demands a thorough recognition and application of the rules of procedural fairness. Counsel assisting brought such experience to the legal requirements of an evidence-based inquiry—important where the role and function of individuals and organisations are under close scrutiny.

Further, controversial issues and contested matters could be raised with witnesses through counsel assisting in an independent fashion, protecting the Commissioners from having to become involved in areas of controversy or from being seen to be indicating a view or opinion by their intervention, before all the evidence has been gathered.

The independent role of counsel assisting carries with it a potential risk that counsel assisting will not consult satisfactorily with commissioners or that the working relationship between the commissioners and counsel assisting might break down. It was understood that an efficient working relationship was vital to the success of the Commission, not only to ensure, as far as possible, that the Commissioners’ expectations as to the evidence produced were met but also to facilitate the necessary planning and meeting of time lines for the production of the final report; without that working relationship the time line set by the terms of reference for the completion of this final report could not have been met.

The Commission’s processes were the subject of intense media scrutiny and reporting. Public access to the proceedings was an important objective for the Commissioners. This was achieved by various means, including direct internet broadcasting. Consequently, there was close public scrutiny of the approach adopted by counsel assisting to controversial issues in the hearing room and also close attention to the written and oral submissions of counsel assisting.

On occasions the independent role of counsel assisting and the status of the submissions of counsel assisting were not clearly understood or were not explained by some, including media, as being solely the views of counsel assisting. This produced in some sections of the community an element of confusion, there appearing to be a misconception that counsel assisting were acting at the direction of the Commissioners and that the submissions

and opinions put forward by counsel assisting in some way represented the views of the Commissioners, whereas the reality was that these were merely the submissions and opinions put forward by counsel assisting. This misconception appeared to be maintained despite frequent enunciation of the true role of counsel assisting in the course of the public hearings.

The role of counsel assisting and the obligation that falls on them to provide independent advice as to the conduct and administration of a commission also carry a risk of misunderstanding and strain on working relationships with commission staff. This potential risk is exacerbated by the different backgrounds and training of those involved and the differing perceptions as to the roles and responsibilities of each. These matters require discussion and resolution at an early stage of commission proceedings, to ensure efficient delineation of responsibilities and appropriate working relationships.

State legislation setting out the role, powers, conduct and procedures of a royal commission is highly desirable so as to ensure such a commission is possessed of all necessary coercive powers to undertake the investigation and to report, as called for by terms of reference. Such legislation will provide certainty as to procedure. Nevertheless, the legislation should not be overly prescriptive in relation to procedure because it is important that commissioners and counsel assisting are able to adapt and innovate (within the bounds of procedural fairness) where necessary in relation to both the gathering and the presentation of evidence.

Jack Rush QC

### 5.3 SOLICITORS INSTRUCTING

The fires that burned throughout the state on 7 February 2009 and devastated many Victorian communities have variously been described as extreme, feral, devastating, savage and unprecedented and their consequences as catastrophic and tragic. But no reported words or second-hand accounts of the events of 7 February come close to describing the sense of destruction, dislocation and pain caused by those events that one gets from observing the faces of those who stayed to defend their properties and survived the fires, of those who lost family, friends and neighbours, of those who lost property and cherished personal possessions—and from listening to the words they use to describe first hand their experience or to observe their relief, their pain and their fury.

As solicitors to the Royal Commission, my legal team and I were both privileged and profoundly affected by these observations and by the first-hand accounts that we heard as we prepared material that would form some of the evidence before the Commission. These personal stories served as daily reminders of why we were all here—because 173 people had died, communities had been destroyed, and some lives had been changed forever.

The knowledge of the horrendous human cost of the fires—perhaps the nation's greatest peace-time disaster—brought, first, feelings of shock and disbelief and, next, tremendous efforts at providing relief by government and social welfare agencies, communities and individuals. Inevitably, though, questions were asked: Why did this happen? What can we learn?

Tragic events of the scale of those of 7 February 2009 demand inquiry and investigation. As the Premier acknowledged, the scale of the tragedy demanded that an independent body be established to determine what had happened, so that lessons might be learned from the events. Lessons *must* be learned in order that the risk of lives being lost in bushfires in the future is reduced. Royal commissions can be established for multiple purposes and for multiple reasons or motives. Some of the purposes and motivations for establishing commissions of inquiry were discussed recently by the Australian Law Reform Commission, but it is not necessary for me to enter into that debate.<sup>1</sup>

Royal commissions conduct their work in an inquisitorial manner that is quite unlike the adversarial style encountered in a proceeding in a court. This approach seems therefore well suited to the task envisaged by the Premier when he announced the establishment of this Commission. Royal commissions are perceived to have broad investigative and coercive powers. They are not bound by strict rules of evidence that apply to proceedings before a court.

Again, this seems well suited to uncovering facts, materials and other information, which in a court of law might not be admissible.

Despite their broad powers, however, royal commissions do have limitations. They are established by the executive of government to report and make recommendations. They cannot implement their own recommendations. Their recommendations are not binding, do not have the force of law and do not compel action. And royal commissions do not have the functions of a court (to interpret and adjudicate) or of the parliament (to make laws). Critics of royal commissions often point to the excessive costs incurred in the conduct of, and the lack of results achieved by, royal commissions. Such criticisms are misdirected and misunderstand the nature and role of royal commissions. First, criticisms about the lack of effectiveness of a royal commission are often directed at the failure of recommendations to be implemented. But this is not a function of a royal commission. Recommendations are implemented, in whole, in part or not at all, by those to whom the recommendations are directed. Criticisms about implementation should properly be directed elsewhere. Second, royal commissions often bring to light matters that should properly be publicly debated and be used in policy development and legislative amendment.

I do not question the ability of a royal commission to effectively conduct an inquiry of the kind that this Commission undertook. Throughout the course of this Commission's work, however, I paused on more than one occasion to consider the effectiveness of the framework under which commissions of inquiry in Victoria must operate.

In Victoria, a commission of inquiry may be established by the Governor in Council under s. 88B of the State's *Constitution Act 1975*. The Constitution Act does not confer on a commission of inquiry that is established under that Act any particular power that would facilitate inquiry. It has long been accepted that executive government cannot confer coercive powers on commissions it establishes.<sup>2</sup>

The terms of reference contained in the letters patent issued to establish this Royal Commission set out the scope and subject matter of the inquiry but do not, despite their terms, confer any particular coercive powers on the Commission. Therefore, despite the apparent broad coercive powers to 'call before [the Commission] such person or persons as [the Commission] shall judge likely to afford [the Commission] any information upon the subject of this our Commission' said to be granted by the letters patent, this provides no basis for the Commission to compel a person to appear before it to answer questions.<sup>3</sup> A royal commission will have those powers to require the production of documents or the appearance of a witness only as legislation confers on it. During its term, this Commission relied on certain powers conferred on it by the *Evidence Act 1958* and, since 1 January 2010, the *Evidence (Miscellaneous Provisions) Act 1958*.

Unlike other state jurisdictions or the Commonwealth, Victoria does not have specific legislation that deals with the role, conduct and powers of a commission of inquiry. Instead, commissions of inquiry such as this Commission rely on a mix of outdated and poorly drafted provisions in the Evidence Act (and now the Evidence (Miscellaneous Provisions) Act), tempered by the scope and breadth of terms of reference contained in letters patent. Important matters of rights of appearance, rights of cross-examination, claims of particular immunities and the roles of counsel assisting and the commissioners are left uncertain or to convention or to practices adopted by previous royal commissions. Uncertainty also pertains to the administration of the commission. For a body charged with important work, with all the attendant expense, such a piecemeal, uncertain and incomplete framework is unsatisfactory.

During the term of this Commission this patchwork of uncertainty led to some unnecessary conflict, delay and inefficiency in the work the Commission had been asked to do. In the report of the Royal Commission into the Metropolitan Ambulance Service, Commissioner Mr Lex Lasry QC (as he then was) argued that during the course of his commission it became clear that the legislative framework for royal commissions in Victoria was inadequate. He said the framework was not comprehensive 'for the efficient conduct of Commissions of Inquiry' and that the deficiencies 'may have the effect of increasing the time and cost of Royal Commissions, as every Commissioner must make his or her own rulings on a range of procedural and administrative aspects that could otherwise be embodied in legislation'.<sup>4</sup> Further, the framework gave rise 'to a degree of uncertainty as to how Commissions should operate from the point of view of those appearing before them'<sup>5</sup>—to which I would add those working within them or assisting them. These observations remain valid today, and I wholeheartedly agree with Commissioner Lasry's observation that Victoria would be well served by the passage of specific legislation dealing with commissions of inquiry.<sup>6</sup>

Corrs Chambers Westgarth was appointed solicitors to the Royal Commission and solicitors instructing counsel assisting. I am a partner at Corrs and, with the assistance of Ms Janet Whiting, led the legal team at the Commission. We were honoured to be appointed to work on this very important inquiry and we were fortunate to work with such a committed group of Commissioners, counsel assisting and Commission staff. In broad terms, our role was to provide legal advice and legal services to the Commission. We also acted as instructing solicitors to counsel assisting. We coordinated the gathering of evidence, by summons or other means and by obtaining and preparing witness statements. We oversaw document management, and we arranged for the calling and attendance of witnesses before the Commission. We helped counsel assisting with analysing evidence, preparing witnesses, and preparing submissions and proposed recommendations to the Commission. We conducted legal reviews of the interim and final reports, as well as contributing to some of the drafting. We were the primary point of contact for parties with leave to appear before the Royal Commission and generally managed the legally related business of the Commission during hearing blocks.

It is opportune that I acknowledge the tremendous and painstaking work done by an exceptionally talented, enthusiastic, committed and hard-working team of lawyers, paralegals and legal assistants that were gathered to work with Janet and me throughout the period of the Commission. It was my privilege to lead this team. They did difficult and challenging work, particularly in preparing lay witness accounts of experiences of 7 February and in reviewing traumatic and confronting material prepared for the hearings into the fire-related deaths. Their work was outstanding. I particularly acknowledge and thank Ms Jennifer DeJong, special counsel, and Ms Ruth Hart, senior associate, for their insight, support and helpful counsel to me and their guidance of our legal team.

Working as solicitors to the Royal Commission was a unique and rewarding experience. As with any busy, challenging and highly pressured enterprise, relationships between people are sometimes tested, patience sometimes is stretched, tempers sometimes become frayed, and strongly held opinions can be forcefully expressed. But for the most part all involved in the Commission's work—the lawyers, counsel assisting, the researchers, management and support personnel, the e.law team, and the Commissioners—remained good-humoured and focused on the task at hand and on the reasons that brought us all together.

The subject matter debated and tested in the Commission during hearings was at times controversial, at times deeply moving, at times distressing and at times remarkable and a testament to human resilience. The scope of the inquiry was ambitious and expansive and the time frame tight. But throughout this period the cooperation of the parties with leave and their legal representatives in the conduct of the Commission's work was unyielding, important and greatly appreciated. The mountainous volumes of documents and witness statements prepared for tender before the Commission could not have been dealt with were it not for the hard work and effort of those parties and their lawyers. I thank all parties and their lawyers for their assistance and cooperation with me and my team, and I particularly acknowledge the work of the Victorian Government Solicitor and his team in that process.

Thousands of homes, buildings and community amenities, as well as public infrastructure, were damaged or destroyed by the fires: these can be repaired, rebuilt or replaced. One hundred and seventy-three people died in the fires: lost lives cannot be brought back, and the pain and anguish experienced by the families, friends and neighbours of those who died will take years to ease. It is to be hoped that the recommendations this Commission makes will have a lasting positive effect, that it will improve the safety of people living in bushfire-prone areas in Victoria. Bushfires in the most bushfire prone region of our planet are inevitable, but loss of life during them is not.

Val Gostencnik

## 5.4 CHIEF EXECUTIVE OFFICER

It began with a phone call on a Sunday afternoon: Would I be interested? Was I available? 'Yes' was the only possible response.

The following morning it began in earnest. In hindsight, it is probably just as well that on that morning I did not know (and, indeed, could not have known) what the next 18 months, and more immediately the next several weeks, would hold and require of me.



A royal commission is an unusual organisation. It is an administrative inquiry created by executive government but, by convention, it relies on a legal mode of gathering and testing information. In Victoria there is no overarching legislation and there are no guidelines to direct such an organisation's conduct and operation or the roles of those within it.

A royal commission begins with a piece of paper, a Commissioner (or three), no people, no resources and no infrastructure. It must quickly form, bringing together people from different disciplines with diverse experiences. This Commission had additional challenges and high expectations of itself, born out of the urgency of its task, the magnitude of the impact of Black Saturday on the Victorian community, and the breadth of the terms of reference.

This all contributed to an exciting, rewarding and demanding role as CEO.

#### 5.4.1 ESTABLISHING THE OPERATION

The CEO arranges the operational capacity of the commission and then is responsible for its organisational needs, its people, policy, infrastructure and finance. In undertaking this, I was guided by the principles the Commissioners enunciated from the outset—openness and accessibility, transparency and probity, efficiency and value for money, innovation and the highest standards of practice.

The immediate challenge was to quickly establish a fully functioning organisation while ensuring that the principles of probity and accountability were never compromised. We needed to find the right people, the right premises (including building hearing rooms), create seamless and efficient document management, human resource, financial, contract and archival systems, and we needed the technology to support an inquiry of this scale. Simultaneously, the work program and priorities for the next 18 months needed to be planned and resourced, and there was a pressing need and expectation to get the substantive work under way quickly. It was also necessary to think about the Commission's legacy and to ensure that its records—not just its reports—would be available in the future for all Victorians.

The Commission's administration was established quickly and efficiently. The practical assistance provided by various government departments helped in this; they also allowed a number of their best people to work with the Commission.

I am indebted to the small team who threw themselves into the fray in those early days. They worked under extreme pressure and demonstrated great agility and innovation in developing websites, attending to public submissions processes, instituting a sensitive approach to community consultation, and so on. At the same time we established an internal research agenda; dealt with an avalanche of inquiries from the public, media and potential parties; sourced services and infrastructure; and worked through the logistics of an intensive hearings program. Some people stayed for a short time, others for the duration. All brought with them a strong understanding of the highest standards of public sector probity and accountability.

During this phase, the experience of two previous royal commissions provided guidance. First, the final report of the Royal Commission into the Metropolitan Ambulance Service reinforced the importance of ensuring exemplary probity in all activity to minimise the risk of legal challenge, which could cause delay and potentially diminish the credibility and integrity of a commission. Second, the final report of the Royal Commission into the Building and Construction Industry provided insight as to the records management and information systems needed to support a commission's work. I am also grateful to two former commission secretaries (or CEOs) who generously shared their experience and insights.

#### 5.4.2 PROBLEM SOLVING

Each commission is necessarily unique, shaped by its terms of reference, the commissioner(s) appointed, the nature of its inquiry and the time available. Identifying and responding to the challenges that emerge is a central and constant feature of the CEO's role and the office of the commission more broadly. Quick, practical and robust problem solving was necessary throughout the term of this Commission. For example:

- Concerns about the status and value of information collected through the community consultations led to each session being recorded.

- Challenges in the preparation of the interim report led to improved processes for the final report and tighter project management.
- Concerns about the emotional impact on people attending the hearings into the fire-related deaths led to the appointment of a specific staff member to manage the relationship with the families and friends and to the provision of support by counselling services.
- Flooding of the communications room led to a quick recovery that minimised time lost to work and the hearings.

#### 5.4.3 BUDGET AND FINANCIAL MANAGEMENT

There is no template for a royal commission and nor is there a reliable cost model. Royal commissions are complex, expensive undertakings and not uncommonly seek extensions of time and budget. The Commissioners made clear from the outset their expectation that they would conduct their inquiry fully and deliver on time and within the \$40 million budget provided—quite a challenge in itself.

Much of the infrastructure, plus the people, the systems and the accommodation, had to be arranged in the early days, when the pressure to ‘get going’ is most acute. It is also when the least is known about what will ultimately be required.

It was necessary to contract specialist services in order to meet the Commission’s resourcing needs. Procurement had to be expeditious while complying with public sector accountability standards. Three organisations filled the major contracts: Corrs Chambers Westgarth, the Commission’s solicitors; e.law, our information and records management provider; and Dimension Data our information technology and service support provider. All three organisations worked tirelessly and served the Commission extremely well.

The purpose of a commission is to inquire. Necessarily, much of what is required is only revealed as the inquiry proceeds. The constant internal pressure is to summons more material, to call another witness, to engage another expert, or to commission further research to ensure completeness. This pressure affects the costs of the investigation, information management and other support systems. In this environment it is easy to understand how extensions of time and budget are so often sought.

Meeting the Commissioners’ objective of ‘on time and on budget’ delivery was a major achievement. It was made possible through a commitment to and continuous focus on value for money, prioritisation and strong internal controls and audit, arrangements strongly endorsed and supported by the Commissioners.

#### 5.4.4 THE MODE OF INQUIRY

As noted here and elsewhere, Victoria stands alone among Australian jurisdictions in not having specific legislation or guidance for the conduct of a commission of inquiry or the roles of the key players in it. I do not believe this ultimately impeded the Commission. It did, however, present challenges.

The different perspectives, disciplines and work practices among the various groups that made up the Commission created some tension. Ironically, much of this stemmed from a shared purpose and a belief that the Commission must be objective, independent and rigorous in all aspects of its inquiry. Differences emerged as to how this was best achieved, particularly where more innovative approaches to inquiry and engagement were considered. Ultimately, the Commission did depart from a more traditional approach in several important respects—for example, the community consultations—and was the richer for it.

Clarity about the status of a commission as a public sector entity would assist in confirming whether certain legislative and organisational obligations apply to it. This includes legislation governing public records, freedom of information, privacy, financial management, audit and probity and procurement. Even when it was not necessary, this Commission adopted many of the principles and standards embodied in these practices. A consolidated view and expectation would assist clarity and ultimately save time for future commissions.

I note the recent report of the Australian Law Reform Commission on Commonwealth commissions of inquiry. A legislative framework and handbook similar to those proposed by the ALRC would assist future commissions by clarifying roles and expectations, providing guidance on the degree of flexibility available in the mode of inquiry, and supporting high expectations as to integrity, transparency and accountability.

#### 5.4.5 CONCLUDING REMARKS

Much has been achieved. The detail does not need to be restated. That the Commission has concluded its work with credibility and integrity is testament to all involved. Beyond its inquiry and reports, the Commission leaves an important contribution to the historical record of the State of Victoria.

It is the people who have made this Commission a successful and memorable experience—those who came to the Commission, those who shared their stories, and of course those who worked with the Commission. My thanks and appreciation go to counsel assisting, the solicitors instructing, e.law, DiData and the many others who provided advice and support.

The Commission's staff were exceptional people, and I am indebted to them all. They were some of the best of the public sector. I thank the team managers—Mr Quentin Fogarty, Ms Kaye Fox, Ms Lana Kolyunski, Ms Kathryn Phillips and Ms Annie Tinney—as well as Research Director Ms Deborah Cope and adviser Mr Stuart Ellis AM for their leadership, professionalism, humanity and support. I also thank Ms Gail Hart for her extraordinary effort during the set-up phase and my executive assistant, Ms Cathy Giuffrida, for her unwavering support and assistance.

I thank the Commissioners for this opportunity and their support throughout an exhilarating if exhausting 18 months. It has been a unique experience and a great privilege to work with this Commission.

Jane Brockington

## 5.5 COMMISSIONERS' CONCLUSION

These reflections from the primary contributors to the work of the 2009 Victorian Bushfires Royal Commission illustrate the depth of commitment to this inquiry and the high standards of professionalism brought by so many to all aspects of the Commission's endeavours. Black Saturday's impact on so many Victorians motivated Commission staff to take on this highest of public service roles.

Personally, we found the experience of serving the State and the people of Victoria on this Royal Commission a humbling and richly rewarding experience. Our obligation to act in the public interest guided our approach both to rigorous and objective analysis of the evidence and to formulating recommendations designed to make Victoria a safer place. We dedicate our endeavours to those no longer with us and to those they left behind.

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- 1 Australian Law Reform Commission, 'Royal commissions and official inquiries', Discussion paper 75, ALRC, Sydney, August—see, in particular, paras 2.19 to 2.28
  - 2 See, for example, E Campbell 1976, 'Royal Commission Act 1902 – 1966', in Royal Commission on Australian Government Administration, *Report*, app. 4, p. 346.
  - 3 For further discussion of the scope of coercive powers of royal commissions, see Donohue S 2001, *Royal Commissions and Permanent Commissions of Inquiry*, Butterworths Australia, Sydney, ch. 2.
  - 4 Metropolitan Ambulance Royal Commission 2001, *Report*, Vol. 5, November, p. 65.
  - 5 *ibid.*
  - 6 *ibid.*, p. 66.

Image 5.1 The hearing room at 222 Exhibition Street



Source: 2009 Victorian Bushfires Royal Commission.