



2009 Victorian Bushfires
Royal Commission

ESTABLISHMENT AND OPERATION OF THE COMMISSION

FINAL REPORT VOLUME III

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INTRODUCTION

INTRODUCTION

In producing this administration volume, the Commission had two clear purposes: first, to record its work, the conduct of its inquiry, and its administration for the Victorian historical and public record it leaves behind; second, to provide assistance to others who in future are faced with the task of establishing a royal commission.

This volume sets out the overarching precepts that guided all aspects of the Commission's work. It details the three main elements of the inquiry—hearings, research and community consultation—as well as the organisational and administrative arrangements that underpinned the Commission's operations.

The final chapter presents personal reflections by the Commissioners, senior counsel assisting, a partner from the firm of solicitors instructing and the chief executive officer. These are included not only as an insight into the inquiry but also to assist those faced with a similar task in future. Finally, arising from this, the Commission proposes that the State consider developing legislation for the conduct of inquiries in Victoria—in particular, the conduct of royal commissions.

THE CONTEXT OF THE INQUIRY

Fire is a constant companion in the Australian landscape, and Victoria's flora, topography and climate make it the most bushfire prone part of the nation—indeed, one of the most bushfire prone regions in the world. But even with this history 7 February 2009 will be remembered as one of the darkest days in the state's memory. One hundred and seventy-three people died, townships were destroyed, about 78 communities were affected, 430,000 hectares were burnt.

The shock and grief caused by these tragic events have marked many people, not just in the areas directly affected but throughout the state and further afield. Many in Victoria were working on the immediate response, including those who continued to fight the fires, some of which burned for more than a month. At the same time, the community needed to understand how and why these dreadful events had occurred.

On 9 February the Victorian Premier, the Hon. John Brumby MP, announced his Government's intention to establish a royal commission. Four days later he recommended the Commission's establishment to the Governor of Victoria.

On 16 February the 2009 Victorian Bushfires Royal Commission was established by letters patent, pursuant to the State's *Constitution Act 1975*, with broad terms of reference to investigate the causes of, preparation for, responses to and impact of the fires that occurred in late January and in February 2009. The letters patent set out the Commission's terms of reference and reporting requirements (see Appendix A in this volume).

The Hon. Bernard George Teague AO was appointed Chairperson of the Royal Commission; he was to be joined by two other Commissioners—Mr Ronald Neville McLeod AM and Ms Susan Mary Pascoe AM. The appointment of three Commissioners rather than one reflected the expected complexity of the Commission's work. Each Commissioner brought different skills, experience and knowledge to the task—including legal, administrative, regulatory, public policy, bushfire, and community engagement expertise.

There have not been many royal commissions in Victoria, the last being established in 1999, and there is little guidance on which to draw in creating such an operation. Many factors had to be considered—infrastructure, systems, processes, people, and more. The Commission had to learn quickly.

This volume sets out the principles that underpinned the Commission's operations from start to finish. It records how the Commission's terms of reference were discharged and provides details of the associated expenditure of public money. It also describes the challenges the Commission faced, as well as its accomplishments and innovations. Additionally, the Commission's organisational structure is described, as are the systems and processes—administrative and legal—that were adopted to help the Commission achieve its goals. The Commission hopes that its account of these matters will prove useful to others charged with a similar task in the future.

THE COMMISSION'S ADMINISTRATIVE PRECEPTS

The Commission determined from the outset that it would be guided by the principles of openness and accessibility, transparency and probity, efficiency and value for money, and innovation and high standards of professional practice. The Commissioners were also adamant that the community should be central to all Commission processes.

The wide-ranging terms of reference and the strict time lines meant the Commission had to be innovative in carrying out its work. Additionally, the intense public interest and the magnitude and impact of the events of Black Saturday called for ways of working not typical of past royal commissions.

OPENNESS AND ACCESSIBILITY

At the Commission's directions hearing, held on 20 April 2009 at the County Court, Commissioner Teague stated:

To the greatest extent reasonably possible, the work of the Royal Commission will be open. Most specifically, the full hearings will routinely be web cast—that is, streamed through the internet—just as this preliminary hearing is being web cast. We will be seen and heard in many places. Most importantly, our hearings will be seen and heard in fire-affected communities around Victoria.¹

The tragedy that resulted in the creation of the Commission touched all Victorians. The Commissioners took the view that, in responding to its terms of reference, the Commission could contribute to individual and community healing, as well as accommodating the strong public interest in its work. This commitment to people went beyond the requirement to ensure natural justice for represented parties and those potentially affected by the Commission's findings and recommendations: as much as possible, those most directly affected by the fires were given a voice in the Commission, and their stories and views were heard.

The immediate response from individuals and organisations seeking to assist the Commission or be involved in its work was overwhelming. A dedicated inquiry line and website were quickly established. Emails, phone calls and letters were consistently received from members of the public throughout the 18 months of the Commission's operations. In response, the Commission provided information about its processes and about making submissions, which was the main way people could contribute. Almost 1,700 people and organisations made written submissions.

The community consultations allowed the Commission to hear at first hand about people's experiences and to gain insights into how individuals and communities had dealt with, and were dealing with, the disaster. These consultations were confined to people directly affected by the fires and helped the Commission identify and develop priorities for matters that would become the subject of its inquiry.

In contrast, the Commission's formal hearings were generally open to the public. With the exception of the hearings dealing with the fire-related deaths, proceedings were streamed live through the Commission's website. Hearings were also held in affected regional centres that were distant from Melbourne. Transcripts of the hearings and copies of the exhibits tendered were available on the Commission's website unless subject to suppression orders or technical limitations.

In 155 days of hearings the Commission heard oral testimony from 434 witnesses. One hundred of these people gave personal accounts as lay witnesses—people directly affected by the fires, or by the threat of fires, who were not representing any particular body or organisation.

The media had unrestricted access to virtually all the hearings, allowing for wide public reporting of the Commission's processes.

TRANSPARENCY AND PROBITY

The Commission performed its task in a manner consistent with the highest standards of transparency and probity. As a record of the Commission's administration and operations, this volume is testimony to the commitment to provide an open account to government and the public of Victoria.

The inquiry itself was conducted with the principles of natural justice and procedural fairness at the forefront.

Parties with leave to appear were given early access to relevant material—including witness statements, expert reports, material proposed to be used in the cross-examination of witnesses, and the submissions of counsel assisting and the responses by various parties. Access to this material was effected through the web-based electronic hearing book e.trial.

Parties applied for leave to cross-examine, and where that leave was granted they were entitled to cross-examine witnesses. They also provided written responses to the submissions of counsel assisting, in addition to making oral submissions in the hearings. Material was tendered into evidence throughout the course of the hearings, and these exhibits were also made available to the parties through e.trial.

This approach was central to building the trust and confidence of the parties and the community. It was also vital to avoid the pitfalls that have in the past led some inquiries to be contested and delayed and sometimes have their credibility undermined.

Transparency and probity were embedded in the Commission's policies, practices and systems, including the following:

- purchasing and procurement
- financial delegations and controls
- confidentiality and related interests—declaration and management
- risk management
- records management—including archiving in compliance with the Victorian Electronic Records Strategy
- audit and financial accounts and controls.

EFFICIENCY AND VALUE FOR MONEY

As noted, the Commission's terms of reference were wide-ranging. The Commissioners were determined to respond to them as fully as reasonably possible while completing their inquiry within the allotted 18-month time frame and the allocated budget of \$40 million.

The Commission was required to deliver to the Victorian Governor an interim report, dealing with things that could be improved for the 2009–10 bushfire season, by 17 August 2009 and its final report by 31 July 2010. To meet these deadlines, the Commission decided to focus on those matters most crucial to protecting human life, creating a safer environment for Victorians, and limiting the damage caused by any future bushfire events.

These priorities are clear in the interim and final reports, and they guided the collection and analysis of the large quantities of evidence the Commission considered. The aim was to always ensure that the Commission focused its investigation on areas requiring attention and where it felt it could make the greatest contribution and impact.

The Commission's legal team worked with parties to focus summonses on the most important materials, to minimise the search effort and the number of documents to be processed and reviewed by all, and to identify potential witnesses qualified to give evidence on a topic. The information management systems the Commission used helped with the management of the large volumes of documents reviewed.

The Commission invested in well-designed hearing rooms and associated facilities, which supported the efficiency and flexibility of operations. It is pleasing that this important investment will be maintained by government as a continuing hearing facility, increasing the capacity and efficiency of the Victorian court system.

The rigour of the procurement and contract management processes also contributed to the Commission achieving the efficiency and value-for-money goal and ultimately finishing on time and within budget.

INNOVATION AND HIGH STANDARDS OF PROFESSIONAL PRACTICE

As well as a number of technological innovations—such as webstreaming of proceedings and the use of e.court systems—the Commission adopted innovative approaches for its information and evidence gathering.

These included the community consultations before the hearings began, receiving evidence of the first-hand experiences of lay witnesses throughout the hearings, and the use of expert panels to explore the complexities of fuel management and the planning regime.

These innovative practices allowed the Commission to carry out its work in the time available, while maintaining high standards of professional practice. The expert panels, for example, proved an excellent way of efficiently obtaining the diverse views of experts in the field and then testing these views through peer review and thorough examination.

The Commission's starting point—in the localities directly affected by the fires—allowed it to base its work in the first-hand experience of individuals and communities. Many people had direct contact with the Commission through community consultations, the public submissions process, the lay witness program, and the inquiries into the fire-related deaths. At all stages the utmost care was taken not to add to the pain and trauma these people were experiencing. To the fullest possible extent the Commission took an individualised approach, recognising the differing experiences and needs of the people with whom it came into contact. This was particularly evident in the hearings into the deaths: great care was taken to prepare and support bereaved family members and friends.

The Commission's technologically innovative approach carried over to the final report itself. Volume IV is a digital-only volume, an interactive DVD (for computer use) that contains not only the written statements of lay witnesses but also maps, satellite images, and photographic and audiovisual material provided by the witnesses.

COMMUNICATIONS

The scale and impact of events on Black Saturday meant the Victorian community had a very strong interest in the Commission's work, as well as a large stake in its outcomes.

In deciding its approach to communications the Commission had to balance a desire to be open and transparent with the public against respect for the personal recovery of individuals and the need for procedural integrity and fairness. In striking the balance, the Commission's goal was to make sure the Victorian community and other interested parties remained confident about the inquiry process and the Commission's approach.

The Commission sought full engagement with the community; this included consultation with the media, especially in relation to the hearings. It also involved telling the community how to participate in the Commission's processes—especially the community consultations, submissions and hearings. Further, to the greatest extent possible, public information such as witness details, submissions, exhibits, transcripts and reports was made available.

Finally, the Commission made an early decision in relation to its own communications, choosing to adopt a conservative approach. This meant keeping public comment outside the hearing room to a minimum and not consenting to requests for media interviews or comment. This was done to protect the Commission's integrity and to avoid feeding speculation about its views on particular matters before the release of its interim and final reports.

THE INQUIRY MODEL

LEGAL FRAMEWORK

Victoria is the only jurisdiction in Australia that does not have specific legislation establishing inquiries and royal commissions. The power of the Governor of Victoria to issue commissions and appoint boards of inquiry derives from s. 88B of the State's *Constitution Act 1975*.

Established by executive government but operating independently, a royal commission has extensive powers to investigate and discharge its terms of reference. The letters patent (see Appendix A) that formally established this Royal Commission required the Commission to report on what it found through its inquiries and to provide to executive government recommendations based on its deliberations. They did not, however, confer any particular coercive powers on the Commission. A royal commission will have powers to require the production of documents or the appearance of a witness only if legislation confers this.

The Commission relied on powers conferred on it by Division 5 of the State's *Evidence Act 1958* and, since 1 January 2010, the *Evidence (Miscellaneous Provisions) Act 1958*. Under this legislation the Commission had power to summons people to appear before it to give evidence or to produce documents², to examine witnesses under oath³, and to close hearings to the public in specific circumstances.⁴ The Commission was not bound by the rules of evidence applied in the courts. For example, unlike the courts, it was not bound by the rule against hearsay evidence. It was, however, mindful of the evidence rules because they represent arrangements established by the courts over many years for identifying the kinds of material that can safely be relied on.⁵ The evidence given in the Commission's hearings was to a large extent material that would have been admissible in a court of law. It consisted primarily of documents that were tendered and sworn evidence given during the hearings. The Commission was also committed to ensuring that procedural fairness was extended to the parties and witnesses involved in the hearings.

RELATIONSHIP WITH GOVERNMENT

During the Commission's establishment period, there was some contact between the Commissioners and representatives of government and associated agencies. In particular, the Commissioners received early briefings from the heads of the various fire and emergency agencies and other bodies such as the Victorian Bushfire Reconstruction and Recovery Authority, the Victorian Bushfire Appeal Fund Advisory Panel and the State Coroner. A number of government departments also greatly assisted the Commission in establishing itself speedily in an operational sense (see section 2.1). The advice and practical assistance were very helpful. Further, the Commission appreciated the diligence all officers showed in respecting the proper separation of functions and the Commission's independence from government.

Apart from communication between the legal teams and in the hearings, after this early period the Commission had only minimal contact with government. This was considered desirable in order to preserve the Commission's independence. The State of Victoria was a party before the Commission, so contact between the legal teams—particularly the Commission's solicitors and the Victorian Government Solicitor's Office—was regular and intended to afford procedural fairness and efficiency in the inquiry process. As required and appropriate, the Commission's CEO also liaised with departmental representatives in relation to operational matters such as administrative, personnel and financial considerations, as well as the negotiation to transfer the hearing rooms at the end of the inquiry.

During the course of their work the Commissioners made three site visits at the invitation of the Government. On 26 February 2009 the Office of the Emergency Services Commissioner arranged for the Commissioners to be flown over and to visit several fire-affected locations in order to observe the agency response effort in situ. At the time of the regional hearings in Traralgon, in October 2009, the Commissioners went on a site tour that included visiting the local Department of Sustainability and Environment offices, which had been used as an incident control centre for managing the Churchill fire in February 2009. And on 15 March 2010 the Commissioners visited an incident control centre at the DSE offices in Vickers Street, Ballarat, to observe the management of a prescribed-burning exercise in the area.

Other, limited communication between the Commission and the Government took place by letter. On 28 January 2010 the Premier wrote to the Chairperson of the Commission, expressing concern about the scheduling of hearings in the week preceding the first anniversary of the bushfires. The Chairperson responded on 29 January 2010, confirming the schedule and that action to be taken would minimise the impact on individuals, the community and the fire services ahead of the anniversary.

On 1 March 2010 the Chairperson wrote to the Premier, seeking urgent amendment of the *Evidence (Miscellaneous Provisions) Act 1958* to remedy a limitation on the Commission's power to issue suppression orders. In response, the Government quickly introduced amendments that were subsequently passed by parliament (see Section 1.5).

The terms of reference required the Commission to take into account the important roles and functions of Victoria Police, the State Coroner, the Victorian Bushfire Reconstruction and Recovery Authority and the Director of Public Prosecutions and to consult with them as appropriate to avoid unnecessary interference in their functioning.

There was frequent and regular contact between the Commission's legal team and representatives of Victoria Police, one of the main parties appearing before the Commission. This occurred in particular in relation to Victoria Police's evidence in connection with the fire-related deaths. This contact helped ensure that the Commission gained access to material it needed and that criminal investigations were not jeopardised by the Commission's work.

Contact with the State Coroner was less intensive but no less important. First, there was a meeting between the Coroner and the Commissioners, in which they discussed the scope of their respective processes. As the Commission developed its approach to examining the fire-related deaths, there was further contact with the Coroner and her office, to ensure that the two processes remained compatible. The Commission was greatly assisted during this time by the Coroner and her staff, who provided carefully controlled access to sensitive information. Finally, there was contact towards the end of the Commission's inquiry, when the information flow was reversed and the Commission provided information to the Coroner. At all times the privacy of personal information held by either party was respected.

It was also important for the Commission and VBRRRA to be in contact from time to time. The organisations kept each other informed about important initiatives and took particular care to keep abreast of each other's community activities. Bereaved communities did not need uncoordinated visits from different agencies, and it was important that VBRRRA and the Commission communicated well in this regard.

ENCOURAGING CHANGE

Apart from the State and the agencies just described, the Commission communicated with the Commonwealth and local governments and public and private agencies through the hearing processes and its interim and final reports. From the outset the Commission expected its work to be a catalyst for change and encouraged all those concerned to respond quickly and progressively. It did not want progress to stall pending the outcome of its work and as a result welcomed a number of actions taken immediately after the fires or that arose from the evidence before the Commission formally made recommendations for change.

The Commission asked parties with responsibility for implementing the recommendations in its interim report to prepare implementation plans by 30 September 2009. Delivery reports were required by 31 March 2010, so that the progress and impacts of changes could be assessed. The Commonwealth and Victorian Governments and the Municipal Association of Victoria furnished these reports to the Commission, and the Commission explored the extent and effect of the implementation activities in hearings in April 2010. The Victorian Government also established an implementation monitor, Mr Neil Comrie APM AO, to oversee implementation of the recommendations from the Commission's interim reports.

Delivery of the Commission's final report signals the next phase of effort by governments, non-government agencies, communities and individuals. The Commission's expectations for the implementation of the recommendations in this final report are set out in Chapter 12 in Volume II.

THE COMMISSION'S REPORTS

As noted, the terms of reference required the Commission to provide an interim report by 17 August 2009 and a final report by 31 July 2010.⁶

On 11 June 2009 Victoria's *Bushfires Royal Commission (Report) Act 2009* came into effect.⁷ This legislation sets out the process of publication of the Commission's reports once they have been provided to the Governor of Victoria. It requires the relevant Minister (being the Premier) to provide the reports to the clerks of both Houses of the Victorian Parliament. The clerks must table the reports on the next available sitting day, which may be the same day, or out of session, while the parliament is in recess. This process authorises the 'printing' of the Commission's reports (although in practice this has necessarily occurred). Only after tabling can the Commission's reports be released publicly.

As required, the Commission's interim report focused on immediate actions that could be taken before the 2009–10 fire season.⁸ That interim report was delivered and released on 17 August 2009; it contained 51 recommendations.⁹ The report represented the completion of six months' work—among other things, four weeks of community consultations, examination of more than 1,260 submissions, and eight weeks of public hearings, involving 87 witnesses.

After publication of the interim report, several matters arose in relation to building regulations that the Commission considered warranted action before the release of its final report. As a result, Interim Report 2, *Priorities for Building in Bushfire Prone Areas*, was released on 24 November 2009.¹⁰ In this second interim report the Commission made seven recommendations to do with the need for a national standard for bushfire bunkers and urgent changes to building standards in bushfire-prone areas.

This final report, delivered on 31 July 2010, represents the culmination of the Commission's work. It consists of four volumes and a summary:

- Volume I, *The Fires and the Fire-related Deaths*, describes the progress of the fires that burned in Victoria in January and February 2009 and summarises the results of the Commission's inquiries into the 173 associated deaths.
- Volume II, *Fire Preparation, Response and Recovery*, presents the Commission's conclusions and recommendations in connection with fire preparation, response and recovery.
- This volume—Volume III, *Establishment and Operation of the Commission*—describes how the Commission went about its work.
- Volume IV, *The Statements of Lay Witnesses*, presents the statements and associated materials of the 100 lay witnesses who shared with the Commission their experiences of the fires.

Volumes I to III and the summary volume are produced in both hard-copy and digital (DVD) form. Volume IV is produced in digital form only because of the size and nature of some of the materials it contains, including video footage. All volumes are available on the Commission's website.

The Commission is grateful to the people who consented to the use of their artwork on the covers of its interim and final reports—Linda Haggar, Marian Rennie, Brett Pollock and Trudi Factor. Their work reminds us of the terrible effect of the fires on the landscape and on individuals and communities, but it also offers us signs of hope through the slow process of healing.

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- 1 TRAN.001.001.0001
 - 2 *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s.17*
 - 3 *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s.18*
 - 4 *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s.19B*
 - 5 *R v War Pension Entitlement Appeals Tribunal; Ex Parte Bott* (1933) 50 CLR 228, 256 (Evatt J)
 - 6 Letters patent 16 February 2009, 2009 Victorian Bushfires Royal Commission
 - 7 *Bushfires Royal Commission (Report) Act 2009 (Vic)*
 - 8 Letters patent 16 February 2009, 2009 Victorian Bushfires Royal Commission
 - 9 B Teague, R McLeod & S Pascoe 2009, *2009 Victorian Bushfires Royal Commission*, Interim Report, Parliament of Victoria, Melbourne, August 2009
 - 10 B Teague, R McLeod & S Pascoe 2009, *2009 Victorian Bushfires Royal Commission*, Interim Report 2: *Priorities for Building in Bushfire Prone Areas*, Parliament of Victoria, Melbourne, November 2009

The Commissioners: (left to right) Ronald McLeod AM, Bernard Teague AO and Susan Pascoe AM



Source: 2009 Victorian Bushfires Royal Commission.