



## 2009 Victorian Bushfires Royal Commission

Letters Patent issued 16 February 2009

### Practice Note No. 4

#### **Inquiry into fire related deaths**

1. The Commission will be conducting an inquiry into the circumstances surrounding the deaths of the 173 people who tragically died in the 2009 Bushfires (**Inquiry**).
2. A key focus of the Inquiry is to examine the operation of the policy that directs residents to Prepare, Stay and Defend or Leave Early (**Stay or Go Policy**).
3. The Stay or Go Policy is said to be strongly grounded in extensive research concerning the effects of bushfires on houses and people.
4. Given that historical analysis of civilian fire related deaths discloses clear trends which have apparently not been replicated in the 2009 Bushfires, and as foreshadowed by the Interim Report, further analysis is required before definitive conclusions can be drawn about previously accepted core propositions concerning the relative risks of staying to defend, and leaving.
5. To facilitate this analysis, the Commission will hear evidence on the circumstances surrounding each fire-related death. This will include matters such as the location of the deceased at the time of death, the cause of death (to the extent this can be ascertained), the activity and decision making of the deceased prior to death, and descriptions of the fire at the location the death occurred.

#### **Scheduling of Inquiry hearings**

6. The Commission will publish on its website at [www.royalcommission.vic.gov.au](http://www.royalcommission.vic.gov.au) hearing dates in the Inquiry for each of the fire complexes as the dates are finalised.

## **Nature of the Inquiry**

7. The Inquiry will not be in the nature of, or a substitute for, a coronial investigation or inquest. It will not preclude any person from exercising their rights under the *Coroners Act 2008* (Vic).
8. It is intended that evidence will be led about the circumstances in which individuals in a particular location perished, grouped by fire. It is anticipated that senior police overseeing the investigation of the 2009 Bushfires will give the vast majority of the evidence.
9. In addition, family members of each deceased will be given the opportunity to participate in and attend the Inquiry.
10. In conducting the Inquiry the Commission will have regard, as far as possible in the circumstances, to the fact that the death of a family member or other close personal contact is distressing.
11. **In light of the particularly sensitive nature of the Inquiry, hearings will only be web-streamed where family members desire maximum openness.**

## **Cross Examination**

12. Special procedural rules will apply in respect of cross examination in the Inquiry, additional to those set out in Practice Note No.1.
13. A party that wishes to seek leave to cross examine a layperson must give written notice to counsel assisting the Commission, specifying the following:
  - (i) the name of the individual that the party wishes to cross examine;
  - (ii) how the party's interests may be affected by the evidence given, or anticipated to be given, by the individual.
  - (iii) the matters that the party wishes to raise with the individual and, in particular, the evidence that the party wishes to challenge;

- (iv) whether such matters could adequately be addressed by written response of the individual to questions put by the party in writing and, if not, why not.
- 14. A party that wishes to seek leave to call any person other than a layperson for cross-examination must give written notice to counsel assisting the Commission, specifying the matters in subparagraphs (i), (ii), (iii) and (iv) of paragraph 13 above.
- 15. The notice in paragraph 13 or 14 must be received by counsel assisting the Commission at least one week prior to the commencement of the Inquiry hearings for the relevant fire complex.
- 16. If counsel assisting the Commission has declined a party's request to call a person for cross examination, or put questions in writing to the person, the party may write to counsel seeking a review of the decision.
- 17. If counsel assisting has reaffirmed his decision, the party concerned may apply directly to the Commission for leave to call the person for cross examination or to require that person to provide a written response to questions put in writing.
- 18. Nothing in paragraphs 13 to 17 prevents a party from seeking leave to cross examine a person at any time during the Inquiry if something occurs during the Inquiry which leads the party to believe that his or her interests may be adversely affected.

**Counsel assisting the Commission**

- 19. For the purposes of the Inquiry, any correspondence to counsel assisting the Commission (whether under this or any other practice note) should be addressed to Peter Rozen, to whom senior counsel assisting has assigned responsibility for the conduct of the Inquiry.

Contact details are as follows:

Peter Rozen, Counsel Assisting, 2009 Victorian Bushfire Royal Commission, Level 12, 222 Exhibition Street, Melbourne, Vic, 3000

Email: peter.rozen@royalcommission.vic.gov.au

## **Variation of practices**

20. The Commission reserves the right at any time to vary the practices set out in this practice note.

The Hon Bernard Teague AO  
Chairman  
2009 Victorian Bushfires Royal Commission  
3 September 2009