



Fw: Morwell Mine Fire Submission

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To Hazelwood Inquiry
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cc
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Subject Morwell Mine Fire Submission

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Content of submission (you can choose multiple): Response to fire by Emergency Services, Response to fire by Public Health Officials, Response to fire by Other Government Agencies, Other (please state)

If Other please state here: 12 May 2014

Hazelwood Mine Fire Inquiry
PO Box 3460
Gippsland MC Vic 3841

Dear Justice Bernard Teague, Professor Emeritus John Catford and Ms Sonia Petering,

Submission to the Hazelwood Mine Fire Inquiry

The Victorian Equal Opportunity and Human Rights Commission has prepared the attached submission to contribute to the Hazelwood Mine Fire Inquiry. The Commission's Disability Reference Group raised concerns about the experiences of people with disabilities in the communities affected by the Hazelwood Mine Fire. We have incorporated their feedback in this submission.

This submission addresses the fourth matter of the Inquiry's terms of reference, specifically the adequacy and effectiveness of the response by emergency services and other relevant government agencies. The Commission believes that people with disabilities are not necessarily more 'at risk' during emergency conditions if their access needs are met. Making reasonable adjustments for people with disabilities, ensures people with disabilities are on equal footing with those without disability.

I invite the Board to make this submission available on its website.

If you would like further information, please feel free to contact Michelle Burrell on [REDACTED] or [REDACTED]

Yours sincerely,

Kate Jenkins
Commissioner

Please select one of the following options: I acknowledge that my submission will be treated as a public document and may be published, quoted or summarised by the Inquiry.

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Victorian Equal Opportunity
& Human Rights Commission

Submission to the Hazelwood Mine Fire Inquiry

12 May 2014

Introduction

The Victorian Equal Opportunity and Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the Hazelwood Mine Fire Inquiry.

The Commission is an independent statutory body that has functions under the *Equal Opportunity Act 2010* (Vic), the *Racial and Religious Tolerance Act 2001* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). Our functions include dispute resolution, providing education about human rights and equality of opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission has a role in reporting to the Victorian Attorney-General on the operation of the Charter and, at the request of public authorities, conducting compliance reviews.

The Commission has a Disability Reference Group which enables the Commission to hear directly from people with disability, parents of children with disability, service providers and advocates. The Disability Reference Group provides guidance to the Commission on human rights priorities affecting people with disabilities and provides advice on the development of policies and procedures.

At the March 2014 meeting, members of the Disability Reference Group raised concerns about the experiences of people with disabilities in the communities affected by the Hazelwood Mine Fire. We have incorporated their feedback in this submission.

This submission addresses the fourth matter of the Inquiry's terms of reference, specifically the adequacy and effectiveness of the response by emergency services and other relevant government agencies, and in particular, the measures taken in respect of the health and well-being of the affected communities by:

1. informing the affected communities of the Hazelwood Coal Mine Fire and about its known effects and risks; and
2. responding to those effects on, and risks to, the affected communities.

Consistent with the Commission's obligations, this submission adopts an equal opportunity and human rights framework in examining the response to the Hazelwood Mine Fire.

The Commission's interest

During emergencies, some people in the community are more 'at risk' than others. Depending on the type of emergency, this may include people with disabilities, people who are geographically isolated, live alone or those who are unable to make independent decisions due to cognitive impairment.¹ People with low-level literacy skills, people who are not proficient in English and those without access to communication technologies such as internet or telephone, may also face additional challenges during emergency conditions.

¹ Office of the Emergency Services Commissioner, *Emergency Management Manual Victoria, Appendix 9 Evacuation Guidelines – Introduction – Vulnerable People* (2013) <<http://www.justice.vic.gov.au/emanuals/emmv/default.htm>>.

In addition, people who reside in hospitals, aged care facilities, educational facilities, prisons or disability services are “more likely to need more time, resources, support and assistance.”²

In 2011, over seven per cent of Morwell residents had a profound or severe disability.³ During the Hazelwood Mine Fire, people aged over 65, young children, pregnant women and people with heart or lung conditions, were identified by the Department of Health as ‘vulnerable’ groups, requiring priority assistance. Taken together, these ‘at risk’ groups make up a significant segment of the population.

Significant changes to emergency management practices in Victoria were introduced following the 2009 Bushfire Royal Commission.⁴ Key reforms include the establishment of robust information warning systems and the *Vulnerable People in Emergencies Policy*. The Commission welcomes these reforms, including their focus on meeting the access needs of people with disability.

The Commission supports emergency management practices that incorporate the diverse needs of the community. It is also important to remember that inclusive emergency management enhances the response, relief and recovery experience of the entire community.

Legal framework

In Victoria, the Human Rights Charter and the Equal Opportunity Act provide the framework of rights and obligations affecting emergency services, government agencies and the affected community. As duty holders under both Acts, agencies must observe these obligations.

Charter of Human Rights and Responsibilities Act 2006 (Vic)

When emergency services are delivered, the following have obligations under the Charter: the Country Fire Authority (CFA), Metropolitan Fire Authority, Fire Services Commissioner Victoria, Ambulance Victoria, Department of Environment and Primary Industries, Department of Human Services, Environment Protection Agency (EPA), Department of Health, Victoria Police and local government (in the context of the Hazelwood Mine Fire, the La Trobe City Council).⁵

Section 38 of the Charter requires these public authorities to act compatibly with human rights, and to consider human rights when delivering services, developing policies, and making decisions.⁶ The following rights are engaged:

- equality before the law⁷
- freedom of expression, which includes the right to receive information in appropriate formats⁸
- right to privacy and reputation⁹

² Ibid.

³ “The ABS defines profound or severe disability as those people needing help or assistance in one or more of the three core activity areas of self-care, mobility and communication, because of a disability, long term health condition (lasting six months or more) or old age.” Australian Bureau of Statistics 2011, ‘Morwell, Victoria (Statistical District), Basic Community Profile, Table B18: Core activity need for assistance, by age, by sex.’

⁴ State of Victoria, Bushfires Royal Commission Implementation Monitor, *Annual Report (2013)*.

⁵ These agencies are public authorities under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 4.

⁶ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 38.

⁷ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 8.

⁸ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 15.

- freedom of movement.¹⁰

Equal Opportunity Act 2010 (Vic)

Under the Equal Opportunity Act, Victorian emergency services and government departments and agencies:

- have a positive duty to take reasonable and proportionate steps to eliminate discrimination as far as possible¹¹
- must not discriminate against people with disabilities when they deliver emergency response and relief services¹²
- have a legal obligation to make reasonable adjustments for people with disabilities when providing information to the affected community on the effects and risks of the Hazelwood Mine Fire and responding to those known effects and risks.¹³

People with disabilities are not necessarily more at risk during an emergency if their access needs are met.¹⁴ Hence, although people with disabilities may face additional challenges, if reasonable adjustments are made by authorities, their safety will be protected.

Feedback from the Commission's Disability Reference Group

This submission will provide comment on particular issues raised by members of the Disability Reference Group. The Commission acknowledges that submissions to this Inquiry prepared by the affected community will be better placed to comment directly on the local response of emergency services and government agencies.

The Commission would like to note consistently positive feedback from the Disability Reference Group on the response and relief efforts of emergency services, particularly the CFA.

1. Informing the affected communities of the Hazelwood Mine Fire and about its known effects and risks

Effective communication is fundamental in all stages of emergency management. As noted in the Australian Emergency Management Institute's handbook *Communicating with People with Disability: National Guidelines for Emergency Managers*, if information is not available or accessible in appropriate formats during emergency prevention, preparation, response and recovery stages, people with disabilities may miss out on critical information and be unaware of appropriate actions to take.¹⁵

In Victoria, the Fire Services Commissioner, or a delegate, must issue warnings and provide information to the community in relation to fires in Victoria for the purposes of protecting life and property.¹⁶ The Emergency Management Manual Victoria provides

⁹ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 13.

¹⁰ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 12.

¹¹ *Equal Opportunity Act 2010 (Vic)* s 15.

¹² *Equal Opportunity Act 2010 (Vic)* s 44.

¹³ *Equal Opportunity Act 2010 (Vic)* s 45.

¹⁴ Australian Emergency Management Institute, 'Communicating with People with Disability: National Guidelines for Emergency Managers' (Handbook 5, 2013) 3.

¹⁵ *Ibid* 7.

¹⁶ *Fire Services Commissioner Act 2010 (Vic)* s 24(1), 26.

twelve recognised principles to be followed when providing warnings to the community, including, that warnings and warning systems should be:

- **Complete:** The message should include relevant details, include any direction on the need to consult other sources, and be presented in an easily understood way. Messages should target the entire community, including culturally and linguistically diverse communities and those who are vision or hearing impaired.
- **Multi-modal:** The use of a variety of delivery mechanisms and multiple formats will complement each other and allow maximum reach to the affected community.¹⁷

Making reasonable adjustments in the provision of information, ensures that people with disabilities are on equal footing with those without disability in an emergency.

Information should be available in accessible formats

One in five hundred people in Victoria has a communication disability.¹⁸ It is estimated that 1 in six Australians has hearing loss, and 30,000 have profound deafness.¹⁹

The access needs of people with communication disabilities is fundamental to an effective emergency management communications strategy. People with communication disabilities may use various assisted and augmented communication, including signing, communication boards, and voice output communication aids.

All emergency warnings, updates and information must be available in a wide range of accessible formats. This means that websites must offer large text size, DOC format (rather than PDF), display vital messages clearly and use visual aides (Easy English) and be adaptable to mobile phone format. Video updates must have an Auslan interpreter, and/or captioning. These reasonable adjustments, allow people with disabilities to access information on the same basis as others, and so assist agencies meet their obligations under the Equal Opportunity Act and the Charter.

The Commission was informed that the CFA website and social media was heavily utilised by the affected community to stay informed during the Hazelwood Mine Fire.

The Commission strongly supports the CFA using Auslan interpreters for the weekly Fire Conditions Update videos.²⁰ The Commission was surprised that the Fire Conditions Update on 28 February 2014, filmed offsite from the State Control Centre, did not have an Auslan interpreter.

Given the reliance by the affected community on internet updates, the Commission would like to see Auslan interpreters used consistently and engaged in all other CFA video updates including in joint media conferences with Department of Health, Victoria Police and the incident controller.

¹⁷ Office of the Emergency Services Commissioner, *Emergency Management Manual Victoria, Warnings and Information, Community Warning Principles* (2013) <<http://www.justice.vic.gov.au/emanuals/emmv/default.htm>>.

¹⁸ Scope, 'Communication Access – Introducing the newest access symbol in Australia' (Media Release, 19 August 2011) <<http://www.scopevic.org.au/index.php/site/mediacentre/pressreleases/communicationaccesssymbol>>.

¹⁹ Access Economics, *The Economic Impact and cost of hearing loss in Australia* (2006) 5, 26, Australian Emergency Management Institute, 'Communicating with People with Disability: National Guidelines for Emergency Managers' (Handbook 5, 2013) 13.

²⁰ See <http://news.cfa.vic.gov.au/video/latest-cfa-tv-videos.html>.

Information should also be available in non-electronic formats

While social media and websites were a useful and popular way of communicating community updates, there are many people in the community who do not access these modes of communication. This is particularly relevant for people residing in medical facilities, aged care services, disability services and prisons.

The Commission supports local authorities and emergency services holding community information sessions during the Hazelwood Mine Fire. However, we note that some people with disabilities may be indirectly excluded from participating due to physical or communication barriers, or because they reside in a socially isolated environment. As such, reasonable adjustments should be made to ensure people with disabilities receive information, as others in the community do. This may require further liaison with disability accommodation providers and others to ensure information is getting to the whole community and to facilitate access to community meetings.

The Commission recognises the significant task, coordinated by La Trobe City Council, of door knocking over 6400 homes in Morwell to identify vulnerable residents, provide information on available assistance and answer any questions.²¹ This was a resource intensive and very important measure supporting residents and is highly valued by the Commission.

Information must be accurate and consistent

The Commission is concerned that emergency warnings and updates may not have reached all members of the affected community. For example, the Commission was informed by Disability Reference Group members that some people did not receive SMS alerts during the early stages of the Hazelwood Mine Fire, when there was limited information on the severity of the fire danger. SMS is particularly important for people with hearing impairments.

We also had feedback that agencies gave inconsistent advice about relocation and respite options and the health risks associated with the smoke. For example, information regarding facemasks was mixed during the early stages of the Mine Fire. We heard that some members of the affected community were left to do their own research on wearing facemasks, and where to get them.

Co-ordination between agencies

The Commission commends the work of key agencies tasked with specialised information dissemination including the Fire Services Commissioner, CFA, Department of Health, the EPA and Victoria Police. However, the Commission is concerned that the overall communications strategy was, at times, inconsistent and confusing. We had feedback that some members of the affected community were unsure which agency had responsibility for certain response and relief tasks. Further, we had feedback that there was no 'go-to' for up-to date information and advice. Enhanced co-ordination between agencies may have resulted in more clarity about the health effects and risks, relocation advice and available assistance.

2) Responding to those effects on, and risks to, the affected communities

The Commission will provide brief comment on issues raised by our Disability Reference Group regarding the response by emergency services and agencies.

²¹ La Trobe City Council, 'Door knocks complete' (Media Release, 17 March 2014) <http://www.latrobe.vic.gov.au/About_Council/Media_and_Publications/Latest_News/Door_knocks_completed>.

Relief and Relocation Assistance

The Commission acknowledges the various response efforts by emergency services and government agencies including the establishment of respite centres, and respite and relocation assistance. The Commission commends agencies, notably DHS, for providing outreach respite services for people with mobility impairments, older people and people experiencing difficulties leaving their homes. We also heard that taxis were provided for people who required assistance to attend the respite centres. This is very welcome.

The Commission understands that two types of financial assistance were available to the affected community: a respite assistance payment, and weekly relocation payments. Eligibility was determined on a case-by-case basis, based on income and health status and intention to take respite or relocate.

Some people with disabilities will require additional financial assistance to relocate their assistive technologies. The Commission encourages the Board to enquire whether DHS provided additional financial assistance for people with disabilities to assist their relocation by topping up the persons Independent Support Package. If this was not the case in the Hazelwood Fire, it may be useful to include this practice in the future.

It will also be important for the Board to clarify with DHS and Latrobe City Council, the arrangements made to ensure that (non-residential) disability support workers, including Home and Community Care staff remained available to people who were relocated.

It would also be worthwhile to confirm with DHS that any residential services in the affected area maintained full staffing during the emergency period, and that if services were relocated temporarily that all residents had a full complement of support staff with them in the new location during that time.

Vulnerable Persons Register

Local Councils are funded to maintain a Vulnerable Persons Registers for their municipality. The Registers collect information on people who are “frail, and/or physically or cognitively impaired, and unable to comprehend warning and directions and/or to respond in an emergency situation [Sic].”²² The register can be accessed by Victoria Police in emergency planning and response to assist vulnerable residents to evacuate.

The current Latrobe City Council Municipal Emergency Management Plan (MEMP) states that “To date there have been very no contacts submitted to the Latrobe City by agencies across our municipality.”²³ We understand a new MEMP will be prepared for release later this year. We are particularly concerned that people who are external to facilities funded by DHS, DH and Commonwealth funded aged care facilities, may not be included on these registers. The Commission encourages the Board to enquire into the progress of existing Vulnerable Persons Registers.

Conclusion

This submission has provided an overview of the legal rights and obligations in Victoria affecting emergency services, government agencies and the affected

²² Department of Health and Human Services, *Vulnerable People in Emergencies Protocols, Protocol 1: Emergency Planning and Screening* (2012) 3, 4.

²³ Latrobe City Council, *Municipal Emergency Management Plan* (November 2011) 10.

community of the Hazelwood Mine Fire. We have also provided feedback from our Disability Reference Group regarding the adequacy and effectiveness of the emergency services and government agency response to the Hazelwood Mine Fire.

The Commission encourages the Board to consider the access and support needs of people with disabilities in making their recommendations, including that:

- Reasonable adjustments are made for people with disabilities when emergency services and agencies provide information and respond in emergency conditions
- Emergency management communications must be responsive to the needs of people with communication disabilities.

The Commission supports inclusive emergency management planning, preparation, response and recovery. We note that during the week of 4 May 2014, the Hazelwood Mine Fire Inquiry held additional sessions with the Koori community, the multicultural community and community service agencies (including those representing young people, people with disabilities and the aged care sector).²⁴ The Commission believes that the participation of people with disabilities, their families, carers and advocates in the Inquiry is critically important to ensure that the Board hears directly from those with experience of the Hazelwood Mine Fire.

Thank you for the opportunity to make this submission. For further information, please contact Michelle Burrell on [REDACTED] or [REDACTED]

²⁴ Hazelwood Mine Fire Inquiry, 'Hazelwood Mine Fire Inquiry conducts further consultations' (Media Release, 1 May 2014) <<http://hazelwoodinquiry.vic.gov.au/hazelwood-mine-fire-inquiry-conducts-further-consultations/>>.

