


**IN THE MATTER OF  
The Hazelwood Coal Mine Fire Inquiry**


**FURTHER SUPPLEMENTARY STATEMENT OF ROSEMARY ANN LESTER**

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Date of Document:	28 September 2015
Filed on behalf of: Dr Rosemary Lester	Ref: RWP:20150096
Prepared By:	Solicitors Code: CR 101 397
<b>Perry Maddocks Trollope Lawyers</b>	
	
	Email 

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I, Dr Rosemary Ann Lester, care of Perry Maddocks Trollope Lawyers, 

 retired, say as follows:

1. I provide this statement in response to a letter from the Principal Legal Advisor to the Inquiry dated 18 September 2015.
2. I gave evidence in relation to Term of Reference 6 on 2 September 2015. I was cross-examined by counsel assisting about a number of matters.
3. I have read the final written submissions of counsel assisting dated 8 September 2015.

**Engagement and the Public Health and Wellbeing Act**

4. I have read the emails that were tendered as Exhibit 37 on 9 September 2015 during the closing submissions for Term of Reference 6 and paragraph 85 of the closing submissions, which refers to an email I sent on 19 August 2014.
5. It was never put to me by counsel assisting that I had failed to communicate or engage with the Latrobe Valley community. The only question I was asked about engagement was, "What did you do to engage with the community about these matters that were of such concern to it, that is the Latrobe Valley community?" I answered that question at T 420:5 – 15. I declined to add anything further to this answer when asked (T 420:16).

6. If I had been shown Exhibit 37, and if it had been put to me that I had failed to communicate and engage with the Latrobe Valley community, I would not have agreed with that proposition.
7. Similarly, it was never put to me, as suggested in paragraph 88, that there was, “no real application by DHHS of the functions and guiding principles required by the [*Public Health and Wellbeing Act*] as they relate to community collaboration and engagement” regarding the question of deaths as a result of the fire. Had I been asked to respond to this proposition I would have strongly disagreed.
8. Further, I was never asked, as paragraph 89 suggests, whether, “The response to the concerns raised by VoV rather than being consultative and demonstrating engagement with the Latrobe Valley community, was, it is submitted, handled in an inappropriate manner which has ultimately exacerbated the mistrust felt by the community towards DHHS.” If I had been asked to comment on that proposition I would have not have agreed that the Department’s response was inappropriate, or that it demonstrated a lack of consultation or engagement.

#### **The retention of Melbourne University**

9. Paragraph 91 of counsel assisting’s written submissions record that, “[I] showed poor judgment in deciding to take charge of the investigation of this issue of whether or not the fire contributed to an increase in deaths.” This proposition was never put to me. If it had been put to me I would not have agreed with it.
10. Paragraph 94 records that, “the concern in the community acknowledged by Dr Lester is the very reason that the DHHS response to the issue should have been overseen by someone with no vested interest in the outcome.” This proposition was never put to me either. If it had been put to me, I would have denied it.
11. Other related propositions were put to me including that it was possible that I had a conflict of interest, that it would be better if I was at arm’s length from the process (of engaging Melbourne University), and whether it was normal for a Chief Health Officer to be in charge of a relatively small (in value) contract. These propositions are different to the one in paragraph 10 above.
12. Paragraph 120(c) of the written submissions records that, “The process by which the Melbourne School of Population & Global Health at the University of Melbourne was

selected to undertake the data analysis was unclear and lacking in rigour.” This was not put to me during my evidence and if it had been, I would have disagreed with it. I gave detailed evidence about the process of engaging Melbourne University at T 403:7 – T 419:21.

### **The fact sheets**

13. Paragraph 98(a) and (b) respectively stated:
  - (a) “the fact sheets did not live up to either: their own claim to provide ‘accurate and clear information’ that will be ‘well understood’;” or
  - (b) “the requirements of section 8(2)(b) of the *Public Health and Wellbeing Act* 2008 (Vic.) which states that members of the public should be given ‘access to reliable information in appropriate forms to facilitate a good understanding of public health issues’.”
14. Paragraph 102 stated that “the continued emphasis on the Morwell figure without reference to the limitations of that figure was misleading.”
15. Paragraph 120(e) recorded that “The ‘factsheets’ published by DHHS in September and October 2014 were incomplete, misleading and unbalanced and failed to acknowledge any uncertainties concerning the mortality data.”
16. The only fact sheet that I was cross-examined at any length about was the 18 September 2014 release. The proposition that the fact sheets were unbalanced and misleading was not put to me in those terms. All that was said was that there was a “degree of selectivity about the way the data is presented to support in effect an argument that there was no relationship between the fire and any increase in deaths.” I did not agree with that proposition and was not afforded an opportunity to respond to the precise submission counsel assisting now makes. If I had been asked to comment on that proposition I would not have agreed with it.
17. I was also asked whether I was satisfied that the information in it was both “accurate and complete”. I was not asked whether the information was “accurate and clear”. I was not afforded an opportunity to respond to the precise submission that the fact sheets were not accurate or clear. Had I been asked, I would have disagreed.

18. It was never suggested to me that the fact sheets breached the requirements of the *Public Health and Wellbeing Act*. I was never asked to comment on whether, in my view, the fact sheets breached the Act. If I had been asked, I would have disagreed. I gave evidence during the hearing about the ways in which I honoured my obligations under the Act, including at T 398.15 - 21 where I said, "... I felt it was important that the whole community actually saw the figures that were there so they could see exactly what happened in Morwell at the time of the fire. So I felt it was important for those figures in the table to go on the website and for us to say we're seeking further expert advice on this." At T 395.31 I also said that "The complete picture was in the table."
  
19. It was never suggested to me that the continued emphasis on the Morwell figure without reference to the limitations of that figure was misleading. It is a serious matter to allege. Had I been given the opportunity to respond to the suggestion that I had misled the public, I would not have agreed to the proposition.

# PERRY MADDOCKS TROLLOPE

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## LAWYERS

Your Ref:  
Our Ref: RWP: 20150096

28 September 2015

**BY EMAIL** [REDACTED]

Ms Justine Stansen  
Principal Legal Advisor  
Hazelwood Mine Fire Inquiry  
[REDACTED]

Dear Ms Stansen,

**Hazelwood Mine Fire Inquiry II  
(Dr Rosemary Lester)**

I refer to your letter dated 18 September 2015.

For the avoidance of doubt, the oral submissions made by Mr Blanden QC on 9 September 2015 were directed not only to a lack of procedural fairness regarding paragraph 120(a) to (f) of the written submissions of Counsel Assisting, as you have suggested, but also to paragraphs 85 to 133 of those submissions.

The assertion that your letter of 11 August 2015 (attached to this letter) identified two "issues of concern to the Board" being the engagement of Melbourne University and the fact sheets published on the Department of Health website, is surprising given that:

1. there was no evidence at that time which could have demonstrated that these matters ought to have been "of concern" to the Board;
2. my client had not yet filed any statement about these matters;
3. the letter does not state anywhere that these issues were of concern to the Board and could not on a fair reading be construed as suggesting that they were;
4. the letter simply asked for a statement setting out what Dr Lester did in relation to these matters.

Your letter of 25 August 2015 (also attached) asked Dr Lester to comment on her role in drafting the fact sheets and sought a response by 26 August 2015. That letter also asked Dr Lester to comment on two further propositions, which were clearly, questions for cross-examination, namely:

1. does she consider that the data is presented accurately, fully and objectively in the documents?
2. can she respond to the proposition that the documents appear to be arguing persuasively towards a particular conclusion, namely, that the mine fire did not cause any excess in deaths?

Two days later on 27 August 2015, and after Dr Lester had filed a supplementary statement addressing the fact sheets, you served the report of Professor Gordon dated 11 August 2015. The second proposition, almost word for word, appeared in Prof Gordon's report at paragraph [30]. Why was Prof Gordon's report withheld until 27 August 2015, when it was dated 11 August 2015?

If Counsel Assisting or the Board was aware that adverse evidence was to be given at the public hearing concerning my client, it should have notified my client in advance of the evidence that it expected would be given. That process is required by paragraph 41 of Practice Direction No 2 – Public Hearing for Term of Reference 6. The report of Prof Gordon, should have been served on my client as soon as possible on or after 11 August 2015 and prior to her being asked to comment on any propositions relating to the fact sheets (including the qualifications of Gordon to make such comments).

The proposed adverse findings about my client that appear in the written submissions of Counsel Assisting should have been put to her in advance of her evidence, or in the very least, in the course of her evidence. It should have been apparent to Counsel Assisting when formulating his closing written submissions that a number of matters had not been put to her with sufficient detail to enable her to respond, or were just not put to her at all. Raising a discussion point at a general level is not the same as putting a specific allegation. Counsel assisting was required to warn Dr Lester that he intended to submit to the Board that it should make adverse findings about her conduct and in what particular respects. This did not occur, contrary to the Practice Direction.

The first time my client was made aware that adverse findings against her had been recommended by Counsel Assisting, was on the afternoon of 8 September 2015, when the written closing submissions were served.

Further, I note that adverse comments were made in the written submissions in relation to persons not legally represented in the Inquiry, namely Melbourne University (paragraph 104), Dr Louisa Flander (paragraph 116 & 120) and Monash University/Prof Abramson (paragraph 131).

I draw your attention to the requirements of s 76 of the Inquiries Act 2014 in the event the Board proposes to make findings adverse to my client. I also confirm your advice that, in the event that the Board proposes to make adverse findings against Dr Lester, she will be given an opportunity to respond to any proposed findings before the final report is published.

I enclose a further supplementary statement of Dr Lester addressing the emails that were tendered in the course of the closing submissions (Exhibit 37) and the matters raised by Mr Blanden.

Yours sincerely,

*Mc BC*

for Rob Perry  
PERRY MADDOCKS TROLLOPE  
LAWYERS