

TRANSCRIPT

LEGISLATIVE COUNCIL ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into the 2022 Flood Event in Victoria

Echuca – Thursday 24 August 2023

MEMBERS

Sonja Terpstra – Chair

David Ettershank – Deputy Chair

Ryan Batchelor

Melina Bath

Gaelle Broad

Wendy Lovell

Samantha Ratnam

Rikkie-Lee Tyrrell

Sheena Watt

PARTICIPATING MEMBERS

John Berger

Ann-Marie Hermans

Joe McCracken

Evan Mulholland

Rachel Payne

WITNESS

Jay Whittaker, Whole of Country Manager, Yorta Yorta Nation Aboriginal Corporation.

The CHAIR: Good afternoon, everyone. I declare open the committee's public hearing for the Inquiry into the 2022 Flood Event in Victoria. This public hearing is for the Environment and Planning Committee, a bipartisan committee of the Parliament looking into the October flood event. We will be providing a report to Parliament, which will include recommendations to the government. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands we are gathered on today, and I pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee. I welcome any members of the public in the gallery, and I remind those in the room to please be respectful of proceedings and to remain silent at all times.

All evidence that is taken today is protected by parliamentary privilege as provided by the *Constitution Act 1975* and the provisions of the Legislative Council standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded and you will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

I will just take the opportunity to now introduce myself to you and also for the committee to introduce themselves. My name is Sonja Terpstra. I am the Chair of the Environment and Planning Committee, and I am also a Member for North-Eastern Metropolitan Region.

John BERGER: My name is John Berger. I am a Member for Southern Metropolitan.

Wendy LOVELL: Wendy Lovell, Member for Northern Victoria.

Rikkie-Lee TYRRELL: Rikkie-Lee Tyrrell, Member for Northern Victoria.

Melina BATH: Melina Bath, Member for Eastern Victoria Region.

Gaelle BROAD: Gaelle Broad, Member for Northern Victoria.

Samantha RATNAM: Samantha Ratnam, Member for Northern Metropolitan.

The CHAIR: With that, I will hand over to you now to make your introductory remarks. If you could just limit them to about 10 minutes that will then allow plenty of time for us to ask you questions. If I could also please get you to state your name and the organisation that you are representing for the Hansard record. So over to you.

Jay WHITTAKER: Thanks for the opportunity. My name is Jay Whittaker. I am the Whole of Country Manager at Yorta Yorta Nation. Today I will be tabling a written submission on behalf of our CEO Monica Morgan. It relates to some of the events and subsequent actions of emergency services. I will premise this by stating that I am not a traditional owner, but I represent the interests of Yorta Yorta Nation today.

The floods impacted Yorta Yorta country in many ways. We are concerned that Yorta Yorta people and Yorta Yorta Nation Aboriginal Corporation were not respectfully engaged in discussions and decision-making early in the emergency response. This, we believe, has resulted in the misappropriation of powers under the emergency response provisions. We have witnessed ministerial directions that we believe have contravened the *Aboriginal Heritage Act 2006* and Victoria's duties under the *National Parks Act 1975* to proceed with the introduction of weed-infested hay into Barmah National Park to feed feral horses.

The authorised helicopter hay drops were conducted in an area containing multiple registered cultural heritage sites. This has resulted in the desecration of the site and ongoing issues with controlling introduced weeds in such a sensitive area. There are biosecurity concerns that have the potential to impact our traditional knowledge. Further, they will also cause irreversible damage to the sites that hold our knowledge. Therefore we are at risk of loss of cultural elements in those areas. Furthermore, the environment is recognised internationally as a significant Ramsar environment that has now been subjected to more weed distribution. The feed drops have sustained feral horses and other feral animals. This is but one example of gross overreach of emergency response powers during this period.

In a broader sense, damaging levee construction in areas of known cultural heritage sensitivity were conducted, largely unchecked. Anyone with earthmoving equipment quickly started damaging country and traditional knowledge. As the emergency response progressed, Yorta Yorta Nation Aboriginal Corporation were engaged on its perspectives for supposed emergency works in very sensitive country. Some of those proposals did not constitute emergency works.

Yorta Yorta Nation Aboriginal Corporation considers that there are important lessons to learn out of the flood events and experiences. Early and timely engagement with traditional owners is critical. It has been done before effectively with bushfire emergencies. While the Yorta Yorta Nation Aboriginal Corporation believe the government needs to review what constitutes emergency works, we must also be authorised under Emergency Management Victoria and relevant legislation so that we are in the front line of protecting culture and advising the best way forward. We need to have the legal powers to ensure that widespread destruction of country does not occur again. Yorta Yorta Nation Aboriginal Corporation has been working with appropriate government agencies to conduct a review into the directions given to introduce weed-infested hay into Barmah National Park to feed feral horses.

The CHAIR: Thank you very much, Jay. We will start with some questions. Dr Ratnam.

Samantha RATNAM: Thanks, Jay, for being here today and for the written submission as well that you presented today. It is quite damning in terms of that gap in communication and the breaches that you have outlined. I am interested to know if there has been any effort made post those events with any communication about what has occurred, directly from government or ministers that you all have been invited to participate in. Has there been any way that you have been able to give that feedback to the relevant authorities?

Jay WHITTAKER: We have been made aware that there is a review underway, but we do not know the outcomes of the review, and there has been remediation works conducted by Parks Victoria, with close engagement with the cultural heritage unit of the Yorta Yorta Nation.

Samantha RATNAM: Thank you for that. And have you been invited to be part of that review formally?

Jay WHITTAKER: Not me, but the executive may have been.

Samantha RATNAM: May have. Okay. All right, it would be good to find that out actually. Thank you.

The CHAIR: Mr Berger.

John BERGER: We have heard a number of submissions not only just today but yesterday about the lack of information and some misinformation and communication across the whole event. I am just wondering, in your situation, how could things have been done differently?

Jay WHITTAKER: As outlined earlier, with involvement in senior management or at the very least the CEO in the decision-making process. There are a number of arms to the panels established to make operational decisions during these sorts of events. This emergency response took place over a lengthy period of time, and it took a fair while for Yorta Yorta to be properly engaged. We were probably the last to be considered, in many instances. With regard to the hay drop, it was probably three-quarters of the way through that activity where we were engaged and had staff involved in providing guidance on where and what areas would be most appropriate to drop the hay.

John BERGER: Thank you.

The CHAIR: Ms Lovell.

Wendy LOVELL: You said that eventually they did engage with you, it was just sort of down the track. I am just wondering what you would see as being the process for engagement in the future, and would you play a role within the ICC? How do you propose to be engaged?

Jay WHITTAKER: Yes, I believe that is the proposal, to be involved at that level, similar to previous examples of traditional owners being involved in bushfire response.

The CHAIR: Mrs Tyrrell.

Rikkie-Lee TYRRELL: I think Ms Lovell just cut my grass.

The CHAIR: Okay. No worries. Ms Bath.

Melina BATH: Thank you. Thank you for being here and for explaining Yorta Yorta's position. I was up at Barmah for the Barmah Muster recently, and I had a walk along the Murray River and saw the height that the water got to. I note that it is common to flood and it is important to flood. What I am interested in specifically is around the cultural heritage sites, auditing of sites or mapping of sites. I have been on another inquiry, and there was that discussion around how people – people like me who come to visit – know about those sites as well. Is there an audit map? Are you happy with that? Is there anything that government can do to assist you in that at culturally sensitive sites?

Jay WHITTAKER: Yes, there is. Government workers do have access to a system called ACHRIS, Aboriginal cultural heritage system, that has documented registered sites. However, there also are cultural heritage sensitive layers, which typically encapsulate 200 metres from a waterway as a potentially sensitive site. So the view would be that if you are going to conduct any earthmoving activity in those zones, you conduct your due diligence.

Melina BATH: Working alongside that document where possible – I will put it like that. Just for the, I will say, visitor or the non-emergency service type situation, how do we find out about culturally sensitive sites? How is it available to, I will say, the visitor to the area?

Jay WHITTAKER: Look, sometimes they will be fenced off and signposted, but not always. You have to be an authorised user to access ACHRIS to identify those sites. That information can be obtained by representatives that manage Crown land, so representatives from DEECA, First Peoples – State Relations, Goulburn–Murray Water – those sorts of places that manage Crown land. They would have access to ACHRIS, and they would be able to cross-reference proposed activities with sites that are documented.

Melina BATH: Yes, sure. Earlier in one of the submissions, and I think it was Loddon council, there was – and I have put my document away – a point around levees being built and that time frame. These might be structural levees that are not generated as an emergency levee; these are structural levees. What do you think that balance is in getting that balance right between the building of them and having Yorta Yorta or others, depending on where they are, have that input? How do you strike that balance between getting it done and never getting it done, in concert with First Nations people?

Jay WHITTAKER: Again, if traditional owners were involved in that ICC group, they would then potentially have resources to provide guidance on those types of activities.

Melina BATH: Thank you. Thanks, Chair.

The CHAIR: Thank you. Just looking now forward in terms of after the event, what do you think is the best way to look at recovery or the aftermath of these things from your perspective, from First Nations peoples and Yorta Yorta's perspective? What needs to happen now to help heal country and move forward?

Jay WHITTAKER: I think it is important that this review that we have requested through the traditional owner land management board for Barmah National Park be conducted and internally that government look at how they can improve processes so that such an event does not occur again. There is a lot to do in relation to restoration. Yorta Yorta have received some funds to do restorative works and remedial works. We were about to commence doing those activities, and the river levels rose again. So we are just in a waiting game whilst the river goes back down until it is safe to go back into those sites. I think we need a firmer commitment to making an obligation to involve traditional owners on that ICC panel at those heavy decision-making days and then

probably clarity about what constitutes emergency works, because it seems like all the rules go out the window and there is no-one left holding the can or responsible for it after the fact.

The CHAIR: You have probably already answered this question, but I will ask you as well. What are the top three things? You have talked about making sure all First Nations people, Yorta Yorta, are involved in those early days when the decisions are being made. Are there any other things that we really need to know? We have got to make recommendations to government, so what other things do you think are of importance?

Jay WHITTAKER: I might have to take that on notice. I think internally a review on what constitutes emergency works and powers is critical because there can be groups, local government and other agencies that exercise activities under the exemption of emergency works, and if you were to go over all of the details of sites that were disturbed, you would probably argue that some of it was not threatening human life. It needs close examination.

The CHAIR: Thank you. Mrs Broad, a question.

Gaelle BROAD: Thank you very much. It was good to read your submission. I guess we have heard a lot of people talk about the emergency response, the speed at which they are making decisions and so many different people involved. What are your thoughts on the planning? We have also heard a lot about the need for planning now and to make decisions. You are talking about involvement at ICC level, but are you involved at all in that planning process? Is there a wish list that you have of things that you would want considered at the ICC level, if you know what I mean, as far as planning and preparation go?

Jay WHITTAKER: With regard to the feeding activities, that was a secondary emergency response and that was based around animal welfare, so being able to have people in positions of power to question whether or not it triggers that sort of mechanism would be a good thing to do.

Gaelle BROAD: Is there a wish list or anything of the types of things that you have developed or would want to see?

Jay WHITTAKER: Yorta Yorta's wish list is for the review to be completed so that important lessons can be learned and that precedents with regard to engagement of traditional owners through bushfire response be incorporated into all emergency services.

Gaelle BROAD: You mentioned bushfires. I think you said it had been done well, so what sorts of aspects of that worked?

Jay WHITTAKER: It is my understanding that there have been examples where traditional owners in bushfire areas have been engaged to provide guidance on where to establish earth break and firebreak activities.

Gaelle BROAD: Thank you.

The CHAIR: We have got a bit of extra time, so we might see if there are any more questions.

Samantha RATNAM: I have a question: has there been an audit of the damage that you anticipate has been done or any process to be able to assess that kind of damage and future impact?

Jay WHITTAKER: There has not been an audit as such. However, our cultural heritage team is conducting activities with Parks Victoria around certain areas, and we have engaged cultural heritage advisers to assist in documentation of previously unregistered sites that have been identified during those activities.

Samantha RATNAM: Great, thank you. If you produce any reports during the time that we are having this inquiry, we would love to receive them to add to our evidence as well.

Jay WHITTAKER: Those sites that are investigated and verified as cultural heritage sites will go into ACHRIS, which is –

Samantha RATNAM: It is the system, great. Thank you.

The CHAIR: Are there any other questions any members have? No, okay. With that, thank you so much, Jay, for coming and giving us evidence this afternoon. We really appreciate your time, and thanks again for coming. Thank you very much. Now we will have a short break while we wait for our next witnesses to come.

Witness withdrew.