

**COMMISSION OF INQUIRY (QUEENSLAND FLOODS INQUIRY)
STATEMENT OF MICHAEL ANTHONY ROCHE**

I, **MICHAEL ANTHONY ROCHE**, Chief Executive, Queensland Resources Council (QRC), Level 13, 133 Mary Street, Brisbane, in the State of Queensland, solemnly and sincerely affirm and declare:

1. I was engaged by QRC in my current position as Chief Executive, in June 2005.
2. As Chief Executive, I am not normally closely involved in day-to-day advocacy and consultation with State Government on behalf of QRC's members in relation to environmental policy issues, which is the responsibility of QRC's Director Environment and Social Policy, Frances Hayter, so I refer to her statement in that regard, lodged on 7 September 2011. Nevertheless, I have personally been responsible for some particular discussions and negotiations in relation to flood preparation and response issues, with State Government Ministers, their advisers and senior public servants.
3. As mentioned in the Statement of Frances Hayter, I was on leave overseas commencing on 15 August 2011 and returning to work on 26 September 2011. I did not access my QRC correspondence during that period, so I was unaware at the time of the various requirements directed from the Commission of Inquiry to QRC personnel including myself.
4. This statement responds to the questions set out in a Requirement to Provide Statement to the Commission of Inquiry, addressed to me, dated 14 October 2011, (the Requirement) a copy of which is at Annexure 1.

Question 1: An elaboration of the opinion of the Queensland Resources Council (QRC) on how the emergency direction power under the *Environmental Protection Act 1994* should be used, by reference to paragraphs 42 to 44 of the statement of Ms Frances Hayter provided to the Commission and dated 7 September 2011.

5. I adopt the views expressed by Frances Hayter in her statement submitted 7 September 2011.

Historic context

6. Before expressing a more detailed opinion on a future approach to the emergency direction power, I should first mention that:
 - (a) Historically, there have been examples of the use of the emergency direction power in relation to flooding at mines. **Item 1** of the bundle of documents in **Annexure 2** is a copy of an Emergency Direction issued to the Ensham Coal Mine dated 1 February 2008. **Item 2 of Annexure 2** is a copy of the Emergency Direction issued to Moranbah North Coal Pty Ltd (a subsidiary of Anglo American Metallurgical Coal Pty Ltd) dated 20 December 2010.
 - (b) There was a particular unusual situation at the time of the 2010/11 wet season, in that many mines had been prevented from reducing their water storages adequately for the onset of the wet season, primarily due to a set of flawed environmental authority conditions that had been imposed on the mining industry by State Government, as mentioned in paragraph 43 of the Statement of Frances Hayter. Given that the Department of Environment and Resource Management (DERM) has subsequently devoted considerable effort to resolving those flaws in the Fitzroy model water

conditions, some of the reasons that I put forward to State Government Ministers and Directors-General in early 2011 for a one-off widespread use of the emergency directions power should logically not be applicable to a future heavy (but not unprecedented) wet season, once mines have adopted and implemented the revised environmental authority conditions (including a schedule of conditions mentioned in the Explanatory Notes for Table 4 to address particularly heavy rainfall and flooding that is similar to previous events) and also once they have been able to increase their freeboard (that is, recover from the 2010/11 wet season).

Future possible types of emergencies

7. However, I agree with the opinion expressed by Frances Hayter at paragraph 44 of her statement that, even with adequate conditions in effect to address a future foreseeable heavy wet season, *'...there may be other types of more extraordinary emergencies, such as a tsunami or severe cyclone, which would still justify an emergency response rather than the paperwork of a TEP.'* Other examples might include earthquakes or catastrophic bushfires. In other words, there are some types of disasters which are either so sudden or unforeseen that they are likely to require an emergency response, involving on-the-spot professional judgments. Also, if there is a future heavy wet season similar to the last one, before mines have had an opportunity to release sufficient water, it is possible that human safety emergencies could arise, even with the revised Fitzroy conditions in effect.
8. In expressing a more detailed opinion about a preferred future approach to the use of the emergency directions power, it should be noted that I am not a lawyer. QRC received legal advice on the topic of emergency directions (which is included in my volume of documents), and I rely on a combination of that advice, a review of statements from mining industry representatives, informal feedback from members about their experience with the last wet season and above all, the high priority given to human health and safety by QRC and our individual members.

Suggestion 1: Give express priority to human health and safety

9. First, I am concerned that the *Environmental Protection Act 1994* does not spell out that human health and safety is to be given priority over ecological considerations, if a conflict arises between these two values. As explained in Appendix E, section 4 of QRC's submission:

'Section 23 of the Environmental Protection Act 1994 (Qld) provides:

'23 Relationship with other Acts

(1) This Act is in addition to, and does not limit, any other Act.

(2) If this Act conflicts with an Act as follows, that Act prevails, but only to the extent of the conflict—

- *Ambulance Service Act 1991*
- *Disaster Management Act 2003*
- *Exotic Diseases in Animals Act 1981*
- *Fire and Rescue Service Act 1990*
- *Public Safety Preservation Act 1986, part 3*
- *Radiation Safety Act 1999*
- *Transport Operations (Marine Pollution) Act 1995.'*

It is clear from this section that there was a general intention to give priority to health and safety issues, particularly in emergency situations. The difficulties with achieving this intention are:

- (a) That the list is limited and in particular does not include mine safety legislation or general workplace health and safety legislation.*
 - (b) This list of safety Acts only prevails to the extent of a conflict with the Environmental Protection Act 1994 (Qld). There may be many situations when a human safety issue conflicts with an ecological issue in practical terms, but that does not mean that the conflict is spelled out in the Act. The general principle of statutory interpretation is that, if there is argued to be any inconsistency between statutes, the courts will try to read both statutes together so that it is necessary to comply with both, rather than to give priority to one over the other.¹*
 - (c) The section only refers to conflict with an 'Act', not with instruments issued under the Act, such as directions and notices.'*
10. In my opinion, it would clearly be desirable for gaps identified in (a) to (c) above to be addressed by legislative amendments. Although QRC's legal advice was, in summary, that these gaps did not prevent DERM from issuing emergency directions during the 2010/11 flooding, legislative amendments would make the intention more clear.
11. An example of a human safety risk which would probably have benefited from emergency priority was provided by Anglo American Metallurgical Coal at paragraph 6 of the Statement of Mark Heaton dated 6 September 2011, in relation to the risks to the underground Grasstree coal mine from high water storages at the adjoining Capcoal mining project. I was not personally involved in that issue and merely provide it as a reference.

Recommendation 2: Address drafting deficiencies in the emergency directions power

12. Secondly, there appear to be some deficiencies in Section 468 of the *Environmental Protection Act 1994*, the Emergency Directions power. Section 468 provides:

'468 Authorised person may direct emergency release of contaminant

*(1) An authorised person may give a written direction (an **emergency direction**) to a person to release a contaminant into the environment if the authorised person is satisfied—*

- (a) it is necessary and reasonable to release the contaminant because of an emergency; and*
- (b) there is no other practicable alternative to the release.*



(2) The authorised person may impose reasonable conditions on the direction.'

These are some suggested deficiencies:

¹ Eg: *NSW Aboriginal Land Council v Minister Administering the Crown Lands Act* (2007) 157 LGERA 18.

- (a) In some types of emergency scenarios, it would be desirable for an authorised person to be able to issue a spoken direction under Section 468 and then confirm in writing afterwards.
- (b) The expression, '*there is no other practicable alternative to the release*' places an unnecessarily heavy onus on the decision-maker in an emergency situation. Given that the term 'contaminant' does not have its ordinary dictionary meaning, but rather it is defined in the Act² in a way which could include clean water (or water that is about the same as the receiving environment), it is not appropriate that the officer should have to be satisfied that there is no alternative to the release. Potential alternatives could include either:
- (i) That the release is unlikely to cause an unacceptable impact on the environment; or
 - (ii) That the risks to the environment of not authorising the release are likely to be greater than the risks of authorising the release; or
 - (iii) That the release is reasonably required for human health and safety reasons.
13. The most common example of a human safety issue which I was aware of during the 2010/11 wet season was the example of monitoring stations which were unsafe to access, either under environmental authority conditions or transitional environmental programs. There does not seem to be any logical reason why emergency directions should be restricted to the topic of releases. The problem of unsafe access to monitoring locations imposed by environmental authority conditions and transitional environmental programs is mentioned in the statement of Stuart John Ritchie of Rio Tinto Coal Australia Pty Ltd at paragraph 56(a). I was not personally involved in the events described in that paragraph and merely mention it as a reference.
14. My experience during the 2010/11 wet season was that DERM officers appeared to interpret the term 'emergency' as referring only to a human safety. I believe most people would interpret the term 'emergency' as referring to the nature of the disaster that has occurred (for example, a flood, cyclone, earthquake or fire). In any of those emergencies, there may be many reasons other than human safety why it would be reasonable to make an emergency direction, for example, to prevent loss or damage to property or stock, to allow water to be released before its quality deteriorates, or to allow homes or businesses to return to normal quickly if this is unlikely to create unacceptable risks.
15. An example where there was a combination of possible human safety risks and other serious consequences such as declaration of *force majeure*, which would probably have benefited from an emergency direction if that option had been available, was at the Hail Creek coal mine, as described in the submission by Rio Tinto Coal Australia Pty Ltd dated 11 March 2011. I was not personally involved in the events described in that submission and merely mention Hail Creek as a reference.

² Section 11 *Environmental Protection Act 1994* (Qld): 'A *contaminant* can be—

- (a) a gas, liquid or solid; or
 - (b) an odour; or
 - (c) an organism (whether alive or dead), including a virus; or
 - (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
 - (e) a combination of contaminants.'
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Recommendation 3: Emergency direction to override conditions etc

16. Thirdly, it is not specified in the various sections of the *Environmental Protection Act 1994* dealing with contraventions of conditions of environmental authorities, development permits or transitional environmental programs (Chapter 8 Parts 2 and 2A) or in Chapter 8 Part 3C (offences relating to water contamination) that it is a defence to comply with an emergency direction, or that an emergency direction overrides the other instrument.
17. QRC's legal advice was that, notwithstanding this drafting gap, sufficient authorisation should reasonably be implied by Section 493A of the *Environmental Protection Act 1994*, which provides for 'relevant acts' to be not unlawful if they are authorised by an emergency direction. It would logically follow that they are not unlawful whether or not they involve a contravention of condition in passing. However, it would probably be desirable for this reasoning to be set out expressly.
18. A related issue is that Section 344(3) of the *Environmental Protection Act 1994* prohibits an amendment to an approved transitional environmental program unless the administering authority '*is reasonably satisfied it will not result in increased environmental harm being caused...*' In other words, if the amendment could potentially result in even a slight increase in environmental harm, and even if this is consistent with an overwhelming increase of background contaminants such as during a flood, statutory priority is given to avoiding that tiny risk of increase in ecological impacts notwithstanding that this may be balanced against major risks to human factors such as safety if the amendment is not made. This is not intended as a comment on implementation, as I was not personally closely enough involved in members' problems with their transitional environmental programs to be in a position to comment on implementation; this is only intended as a comment on the apparent statutory priority given to ecology over human safety and the protection of property.

Question 2. A detailed account of any discussions held between officers and employees of the QRC and officers and employees of the Department of Environment and Resource Management (DERM) or any other agency or any Minister regarding refusals by DERM or any Minister to invoke emergency direction powers; and

A related extract from Question 3: 'An overview of any meetings, discussions or negotiations involving the QRC and any Minister or Director-General regarding... transitional environmental programs...'

Emergency directions that were granted

19. Before outlining the history of State Government refusal to consider the emergency direction powers for the purpose of managing the response to the 2010/11 floods, it is worth acknowledging (as noted in paragraph 6 of my statement) that, historically, there have been examples of the use of the emergency direction power in relation to flooding at mines. I am aware of the Emergency Direction issued to the Ensham Coal Mine dated 1 February 2008 and the Emergency Direction issued to Moranbah North Coal Pty Ltd (a subsidiary of Anglo American Metallurgical Coal Pty Ltd) dated 20 December 2010. (However, in January 2011, I was not aware that this emergency direction had been granted to Moranbah North Coal Pty Ltd on 20 December 2010 and it was not mentioned by any State Government representatives during any of our discussions or correspondence, as far as I can recall.)

Discussions and correspondence about the TEP process and the need to remove water from mines

20. Also, before outlining the history of discussions and correspondence about the emergency directions power, I have responded below to the first part of question 3 of the Requirement, relating to the history of earlier discussions and correspondence about the need to discharge water as quickly as possible from mines, essentially relating to the DERM template for a transitional environmental program (TEP), before QRC obtained legal advice about other options such as the emergency directions power.
21. On 5 January 2011, in a telephone conversation with Mr John Bradley, I suggested the concept of a more generic or simplified TEP template than the version which DERM had provided in December 2010.
22. **Item 3 of Appendix 2** is a copy of my e.mail to the Director-General of DERM, Mr John Bradley dated 5 January 2011 in which I outlined various feedback from QRC members, including the need for water to be discharged from coal mines as soon as possible. This was before QRC had obtained legal advice about the possible mechanisms available such as emergency directions, so I did not raise that option in that e.mail.
23. Relevantly, this e.mail included the line: *"To take best 'advantage' of the current flood situation, DERM could consider issuing an open invitation (see 'letter of comfort' concept in attached letter of 24 November) which invites all companies (coal and gas) to discharge as much water as possible within as short a period of time as possible."* I have only recently become aware, from having reviewed copies of Ministerial briefing notes which have been provided to me by the Commission of Inquiry, that an extract from this sentence was subsequently quoted out of context and without the various qualifications which were included in my e.mail of 5 January 2011. For example, in a briefing note to the Minister for Environment and Resources dated 17 March 2011 (ie, long after the heavy rains had ceased) there is a quotation at the tenth bullet point as follows: 'The Queensland Resources Council (QRC) has become increasingly critical of the need to conduct a detailed assessment of TEP applications and on 6 January proposed that the department issue "an open invitation which invites all companies to discharge as much water as possible within as short a period of time as possible." This is followed by the bullet point: *'The department advised QRC that it was not supportive of this concept as the risks to the environment, downstream water users and some drinking water supplies were unacceptable.'* In fact that was not the response that I received to my e.mail of 5 January 2011 or my letter of 6 January 2011, because at that time the discussion related to negotiating a simplified form of a TEP template which I believe was intended by Terry Wall and John Bradley of DERM to be for the same purpose I had suggested, which was to move water off mines as soon as possible, during the 'window of opportunity' of high dilution which was available at that time.
24. On 6 January 2011, I had a further telephone conversation with the Director-General of DERM, Mr John Bradley. I did not make a file note of that telephone call but I did send an e.mail to Frances Hayter shortly after the meeting, reporting on my impressions of the discussion, a copy of which is included at **Item 4 of Appendix 2**. In summary, John Bradley proposed producing a template for a 'tick a box TEP' for mines affected by flooding.
25. **Item 5 of Appendix 2** is a copy of a letter dated 6 January 2011 which I received from Ms Debbie Best, Acting Director-General of DERM by e.mail at 5.11pm on 6 January 2011, attaching a proposed simplified TEP application template, which was essentially proposed to

replace the previous *pro forma* guide for preparing TEPs provided by DERM in December 2010 explained in paragraph 36 of the Statement of Frances Hayter.

26. At 9.12pm that day, I forwarded an e.mail to Debbie Best seeking some clarifications and she responded at 10.28am on 7 January 2010. These e-mails are at **Item 6 of Appendix 2**.

27. **Item 7 of Appendix 2** is an e.mail trail including:

- (a) My e.mail of 10.38am on 10 January 2011 to various senior DERM officers, company representatives and QRC personnel, suggesting topics for discussion at a meeting that morning at 11.30am for the purpose of trying to improve the TEP template and its implementation;
- (b) My e.mail of 5.39pm on 10 January 2011 to the same personnel outlining the action points from the meeting; and
- (c) An e.mail confirmation from Mr Terry Wall of DERM that I received at 10.35am on 11 January 2011.
(To avoid wasting paper, I have deleted from this e.mail trail the earlier e-mails which have been provided at item 6.)

28. **Item 8 of Appendix 2** is an e.mail trail including:

- (a) My e.mail of 2.37pm on 14 January 2011 to Mr Terry Wall of DERM pressing for implementation of the actions agreed at the meeting of 10 January 2011;
- (b) An e.mail response to me from Terry Wall at 4.22pm on 14 January 2011 deferring a response until Monday 17 January 2011;
- (c) An e.mail from Terry Wall at 5.53pm on 17 January 2011 attaching his undated letter (originally provided to the Commission as Part of Appendix D of the QRC submission dated 11 March 2011) and copied again here; and
- (d) My e.mail to Terry Wall at 8.27pm on 17 January 2011, copied to Mr John Bradley and others, expressing strong disappointment with that response.
(To avoid wasting paper, I have deleted from this e.mail trail the earlier e-mails which have been provided at items 6 and 7.)

29. **Item 9 of Appendix 2** is an e.mail trail including:

- (a) An e.mail from John Bradley to myself at 9.11pm on 17 January 2011 (copied to others) inviting a meeting to discuss the issues and expressing concern that my response seemed to understate DERM's continued efforts to work closely with the sector to resolve issues urgently;
- (b) My e.mail to John Bradley (copied to others) at 9.50pm on 17 January 2011 acknowledging that DERM's performance in recent weeks had by and large been very responsive, but expressing concern about the fact that flood waters could be pumped out of other types of businesses without going through a TEP process, but not from mines;
- (c) An e.mail from John Bradley to myself at 10.34pm on 17 January 2011 inviting a meeting to discuss the issues, including inviting a discussion of 'an alternative approach' and suggesting that we were probably trying to seek the same outcome;
- (d) My e.mail to John Bradley at 11.26pm confirming the meeting;
- (e) My e.mail to John Bradley at 8.11am on 18 January 2011 suggesting some topics for discussion, including reiterating a concern (previously raised with Debbie Best on 6 January 2011) about the difficulties for flooded mines located near creeks with no flow or low flow, which would be unable to meet DERM's template for high flow of receiving waters in order to discharge;

- (f) A series of e-mails confirming the meeting arrangements.
(To avoid wasting paper, I have deleted from this e-mail trail the earlier e-mails which have been provided at items 6, 7 and 8.)

Discussions and correspondence about emergency directions

30. **Item 10 of Appendix 2** is a copy of my file note of my meeting with Mr John Bradley, Director-General of DERM on 18 January 2011. As far as I recall, this was the first occasion on which the option of emergency directions was mentioned in QRC's discussions with DERM about an emergency response to flooding of mines. It arose in the context that I asked John Bradley for advice on what other options were available under the *Environmental Protection Act 1994* apart from TEPs and this was one of the options mentioned by John Bradley.
31. **Item 11 of Appendix 2** is a copy of my e-mail of 1.50pm on 19 January 2011 to Nicole Scurrah (the Premier's chief of staff) requesting an opportunity to brief the Premier's advisors on the current status of water discharge from mines together with her response of 2.48pm on 19 January 2011 agreeing to the meeting.
32. **Item 12 of Appendix 2** is a copy of the powerpoint presentation for a briefing to the Governor of Queensland, Her Excellency Ms Penelope Wensley AO, which was jointly presented to her by Mr David Rynne (QRC's Chief Economist) and myself on 19 January 2011 about the impact of flooding on the Queensland resources sector. One of the key points from this presentation was the *'need to build resilience by getting rid of maximum amount of water NOW to prevent disruption and greater environmental harm (eg uncontrolled dam overflows)'* (on the second last page of the powerpoint).
33. On 19 January 2011 at 5pm, I met with the following personnel at the Executive Building: Advisers to the Premier Lachlan Smith and David Shankey. (Nicole Scurrah, the Premier's Chief of Staff was not able to attend due to the later than scheduled start). As far as I can recall, John Bradley (Director-General of DERM) was also in attendance. I did not make a contemporaneous file note of that meeting, but I did send an e-mail to Nicole Scurrah at 10.43pm that evening in which I mentioned what I saw as the key points for her. In summary, I outlined to the meeting the latest information on the production impacts on coal mines from their water issues. I emphasised that I thought that DERM officers had worked very hard to process TEP applications but that the situation was such that DERM was about to reach the limit of its experience and comfort in approving water discharges from mines. I expressed the opinion that we were getting too close to where DERM would need Ministerial or political support as we moved into this new territory. In order to try to achieve downstream dilution factors, I suggested that water should be discharged while major watercourses still had strong flows. I outlined the scenario where a further major rainfall event (such as a cyclone) could run the risk of uncontrolled discharges from mines whose dams were nearly full. The Premier's advisers thanked me for the briefing. **Item 13 of Appendix 2** is a copy of my e-mail of 10.43pm on 19 January 2011 to Nicole Scurrah.
34. **Item 14 of Appendix 2** is a copy of my e-mail of 12.06pm on 20 January addressed to the same people who had attended the meeting of 5pm on 19 January 2011 and also some others, in which I provided quotations from feedback received from various members about difficulties being experienced with the DERM approach to addressing flooding at a number of mines and setting out the summary I would propose to give to the media if asked about the situation.

35. On 20 January 2011, I attended a meeting of the Resources and Energy Recovery Group chaired by DEEDI Associate Director-General Dan Hunt. I did not make a contemporaneous file note, but my recollection is that representatives from the Department of Employment, Economic Development and Innovation (DEEDI) (in particular, Mr Jim Grundy, then the General Manager Mining and Petroleum Operations) outlined their statistics on mines which were 'operating, partly operating or struggling'. Representatives from the Department of Transport and Main Roads outlined the situation regarding roads and rail, especially Western line washaways. Representatives from DERM (Dean Ellwood and Mike Birchley) outlined the status of TEP applications and approvals. In response to my question about the delays with responding to several TEP applications, a representative from DERM (from recollection, Mr Dean Ellwood) said that *'the risk is too much for a delegate at DERM to accept'* in some of those cases.
36. Also on 20 January 2011, I received a telephone call from the Hon Kate Jones MLA, then Minister for Environment and Resource Management. This was in response to my comment at the foot of my e.mail set out in Item 13 of Appendix 2, which stated: *"Happy to discuss. Indeed, I would welcome some show of interest from Minister Jones."* The reason why I had made this comment was that while I was having almost daily contact with officers of DERM, I had received no queries from Ministers as to the QRC perspective and so we were reliant on Ministers being informed only by briefings being provided by their officers. The Minister expressed some displeasure about that comment. I took the opportunity to brief her on the current status of flooding at mines and about industry concerns that TEPs were not proving to be a suitable mechanism to deal with what was already a crisis situation. I raised with her the suggestion that emergency direction powers would be an alternative mechanism. The Minister undertook to seek advice on that suggestion and to revert to me.
37. **Item 15 of Appendix 2** is a copy of an e.mail trail starting with my e.mail of 12.06pm on 20 January 2011 which has already been provided at item 14 of Appendix 2 and also including:
- (a) An e.mail response from Lachlan Smith at 4.32pm on 20 January 2011, stating that he had onforwarded a copy of my previous e.mail to Josh Cooney (Principal Advisor) and Nicola Hazell (Senior Media Advisor) within the office of the Minister for Environment and Resource Management; and
 - (b) My e.mail to Lachlan Smith advising that I had already received a telephone call from the Minister for Environment and Resource Management.
38. **Item 16 of Appendix 2** is a copy of the powerpoint presentation, which was jointly presented to the Shadow Cabinet by Mr David Rynne (QRC's Chief Economist) and myself on 21 January 2011 about the impact of flooding on the Queensland resources sector. This was the same as the presentation previously given to the Governor on 19 January 2011.
39. **Item 17 of Appendix 2** is a copy of an e.mail trail including:
- (a) An e.mail from John Bradley to myself of 7.47pm on Friday 21 January 2011 attaching the letter dated 21 January 2011 which was previously provided to the Inquiry with QRC's submission (a further copy is **attached**) and proposing a meeting *'at the end of next week or early the following week'*; and
 - (b) My e.mail response to John Bradley of 9.34pm on 21 January 2011 expressing disappointment at the proposal to defer a meeting *'until a week or more away'*,

identifying the unanswered questions in the letter and pressing for consideration of the emergency directions option.

40. **Item 18 of Appendix 2** is a file note of a meeting that I attended on 25 January 2011 with the Director-General of the Department of Premier and Cabinet (Ken Smith), the Director-General of DERM (John Bradley) and the Director-General of DEEDI (Ian Fletcher), at which the Directors-General opposed the use of emergency directions powers in relation to flooding at mines.
41. **Item 19 of Appendix 2** is a file note of a meeting that I attended (together with other QRC personnel, Greg Lane and David Rynne) with the Hon Stephen Robertson MLA, who was at that time Minister for Natural Resources, Mines and Energy and Trade. David Rynne and I jointly briefed the Minister on QRC's published estimates of the impact of inundation upon coal mines and coal production. After outlining the frustration of some of QRC's members with the TEP mechanism, I said that QRC had received legal advice that it was possible and appropriate for Government to allow flooding to be treated as an emergency under the Environmental Protection Act. The Minister opposed that suggestion. He said that a higher priority for the Government was the impact of discharged mine water on the Great Barrier Reef. My experience was that normally DERM's reasoning for requiring a high level of dilution of mine affected water is essentially because of a concern that elevated salt content in mine affected water could otherwise affect either the taste of downstream drinking water or freshwater aquatic ecosystems, but the view that discharging water with an elevated salt content would be detrimental to seawater seemed to me to be novel approach. I informed the Minister that the information available to QRC was that mine water discharges at their peak accounted for less than one per cent of flows in the Fitzroy River system.
42. **Item 20 of Appendix 2** is a further copy of my letter to the Hon Anna Bligh MLA, Premier and Minister for the Arts dated 28 January 2011, which was previously included in Appendix D to QRC's submission, in which I requested the considered use of emergency directions powers to authorise water releases in preparation for the threat of cyclones.
43. **Item 21 of Appendix 2** is a copy of an e.mail trail including:
 - (a) My e.mail sent at 4.48pm on Friday 28 January 2011 to Ken Smith, John Bradley, Ian Fletcher, Dan Hunt, John Skinner, Nicole Scurrah, Lachlan Smith, Gerard Bradley, Joshua Cooney, Lance McCallum, Sharon Humphreys and Terry Wall, providing them with a copy of my letter to the Premier of 28 January 2011;
 - (b) An e.mail to me from Nicole Scurrah of 6.14pm on 28 January 2011 requesting evidence of *'what you believe to be outstanding or not approved Transitional Environmental Programs'*;
 - (c) My e.mail to Nicole Scurrah of 9.29pm on 28 January 2011 providing some examples in response to her enquiry, updating her on my meeting with Minister Robertson and suggesting a meeting with coal company representatives;
 - (d) An e.mail to me from Nicole Scurrah of 9.47pm on 28 January 2011 expressing disbelief that companies were experiencing delays in the processing of their TEP applications; and
 - (e) My e.mail to Nicole Scurrah of 3.40pm on Saturday 30 January 2011, responding to her doubts about the examples provided and giving her a copy of QRC's legal advice (included in item 20 of Appendix 2).
44. **Item 22 of Appendix 2** is a copy of an e.mail trail including:

- (a) An e.mail from Ross Willims (Vice President, Commercial Relations, BHP Billiton Mitsubishi Alliance) to David Shankey (Senior Policy Advisor, Environment, Energy and Resources, Officer of Premier and Cabinet) which he copied to Hubie van Dalsen (Chief Executive Officer of BMA) and Ken Smith, sent at 11.14am on Sunday 30 January 2011, outlining the problems for BMA with the TEP procedure;
 - (b) An e.mail from Ross Willims providing me with a copy of his previous e.mail to David Shankey at 1.25pm on 30 January 2011 and updating me that he was discussing the issues further with David Shankey.
45. **Item 23 of Appendix 2** is a copy of the response I received from Nicole Scurrah at 3.44pm on 30 January 2011, as follows: *"Michael, thanks for the email."*
46. **Item 24 of Appendix 2** is a copy of my e.mail updates to members of 30 January 2011.
47. **Item 25 of Appendix 2** is a copy of a briefing that I received from QRC's Director Environment and Social Policy, Frances Hayter and my Deputy Chief Executive, Greg Lane on [date?] about the status of TEP applications and problems reported by members.
48. **Item 26 of Appendix 2** is a copy of a file note of my meeting with John Bradley of 4 February 2011, together with a copy of the agenda of 'key points' which I presented at that meeting. Relevantly to the question of emergency directions, item 3 of the 'key points' I presented at that meeting was that: *'DERM (in its media release of 28/1) and government spokespeople have misrepresented QRC position as seeking an unconditional blanket exemption. This was then misrepresented to companies on Monday 31/1 as a "cookie cutter" approach'.*
49. **Item 27 of Appendix 2** is a further copy of the letter I received from the Premier by e.mail at 5.03pm on Friday 4 February 2011, refusing to use emergency directions powers. (A copy of this letter was originally included in Appendix D to QRC's submission to the Inquiry.)
50. **Item 28 of Appendix 2** is a copy of an e.mail trail including, relevantly:
- (a) The e.mail received at 5.03pm on Friday 4 February 2011 from David Shankey, Senior Ministerial Policy Advisor, Environment, Energy and Resources, Department of Premier and Cabinet, which attached the Premier's response declining the use of emergency directions powers; and
 - (b) My e.mail to David Shankey of 6.21pm on 4 February 2011 explaining that the Premier's letter was inaccurate in having represented that I had asked the Premier for a 'blanket exemption' and quoting to him the sections of my letter in which I had requested that the mechanism should be 'added to their armoury of options'.

Question 3. An overview of any meetings, discussions or negotiations involving the QRC and any Minister or Director-General regarding the Fitzroy model conditions, environmental authorities, transitional environmental programs and emergency directions since 1 January 2010, with specific reference to:

- a. the meeting held between Mr Roche and Mr John Bradley, Director-General of DERM, on 8 October 2010 concerning the Fitzroy model water conditions
- b. a meeting held between Mr Roche and Ms Kate Jones MP, then Minister for Environment in early 2011, concerning the review of the Fitzroy model water conditions, and
- c. any meeting or discussion between Mr Roche and the Honourable Andrew Fraser MP, Treasurer in relation to excess water being retained at mines.

Review of the Fitzroy model water conditions before the 2010/11 wet season

51. **Item 1 of Annexure 3** is a copy of a file note of my meeting with the former Environment Minister, the Hon Kate Jones MLA of 11 March 2010. In summary, at that meeting with the Minister, I had expressed the concern that the Fitzroy model water conditions that had been imposed on mines in the Bowen Basin in 2009/2010 'set up both industry and the government regulator to fail' and I requested a review to be undertaken in readiness for the next wet season. When the Minister agreed to a review, she did not express any qualification that this review was to be limited to minor issues only.
52. The next steps to follow up that commitment from the Minister have been described at paragraph 14 of the Statement of Frances Hayter and she has provided copies of relevant documents (Annexure D items 1 and 2 of her statement).
53. Due to my increasing concern about the lengthy delay by DERM in the implementation of this Ministerial commitment, I then took personal responsibility for the next steps to follow up the commitment. Frances Hayter was not present when I undertook those next steps and accordingly, they were not mentioned in her statement. **Item 2 of Annexure 3** to my statement is a copy of a file note of the relevant part of a luncheon discussion held in the QRC Boardroom on 13 August 2010 with the former Environment Minister, the Hon Kate Jones MLA and Mr John Bradley, Director-General of DERM. Several QRC Board members raised concerns that the Fitzroy model water conditions were impacting on the mines' ability to manage water and to prepare for the next wet season. Some QRC Board members observed that the model water conditions were operating such that their mines were effectively under 'zero discharge' conditions. Although not mentioned in my file note, my recollection is that Mr Bradley had to leave this discussion early, so he may not have been personally aware of the extent of concerns raised. As an action point from this luncheon discussion, I agreed with the Minister that I would come to see her to follow up on industry concerns.
54. Accordingly, I met with the former Environment Minister, the Hon Kate Jones MLA again on 8 September 2010 to press for a review of the Fitzroy model water conditions in readiness for the wet season. Also present at that meeting were the Minister's Senior Adviser Josh Cooney and Assistant Director-General, Dean Ellwood. A file note of that meeting is at **Item 3 of Annexure 3**. I was quite blunt with the Minister that QRC was not getting any satisfaction from DERM about kickstarting the review of the Fitzroy model water conditions which the Minister had agreed to back in March of that year. A difficulty with this meeting was that the Director-General, Mr John Bradley, was not present.
55. Accordingly, upon the return of the Director-General, Mr John Bradley, I met with him on 8 October 2010 for the purpose of following up on the discussion held during his absence on 8 September 2010 with his Minister and to determine a process for the review. Unfortunately, it appears that I have not kept a file note of that meeting with Mr Bradley. However, as noted in Annexure D item 3 of the Statement of Frances Hayter, I advised her shortly after the meeting that: *"he [JB] will write and propose workshop on 25/10 to work through our list of points (from June). I said we would want to prioritise items to be addressed in near term. I ran him through my fear scenario of La Nina, early wet season, lots of water in mines, how do we get it out without environmental harm (meaning relaxation of end of pipe measurement)".* That summary is consistent with my recollection of the meeting. Mr Bradley committed to arrange a workshop between QRC and DERM representatives to

review the conditions and he proposed to send a letter confirming this. Apart from discussing the need for a review of the Fitzroy model water conditions, I also raised with Mr Bradley during that meeting an unrelated issue about a clerical error in DERM's new invoicing system.

56. On 14 October 2010, I had still not received the promised letter. **Item 4 of Annexure 3** is a copy of my e.mail to Mr Bradley, (following up the promised letter) together with the response from Mr Bradley later that morning stating that he had already signed the letter and asking Mr Terry Wall, Associate Director-General of DERM, to ensure that I received the letter as Mr Bradley was in Townsville that day.
57. I received the letter from Mr Bradley dated 13 October 2010 under cover of an e.mail from Ms Linda Grant on behalf of Mr Terry Wall of DERM on 14 October 2010. A copy of that e.mail is at **Item 5 of Annexure 3**.
58. The balance of the review process for the Fitzroy model water conditions before the 2010/2011 wet season is described at paragraph 14 of the Statement of Frances Hayter and Annexure D to her Statement.

Transitional environmental programs and emergency directions

59. This part of question 3 overlaps with question 2 of the Requirement. Please refer to my response to question 2.

Review of the Fitzroy model water conditions after the 2010/11 wet season

60. On 21 February 2011, just prior to a scheduled meeting about strategic cropping land, I had an opportunity to meet briefly with the Director-General of DERM, John Bradley, to discuss the review of the Fitzroy model water conditions, taking into account what had been learned from the 2010/11 wet season and the TEP experience. Mr Mike Birchley, then Acting Assistant Director-General, Regional Service Delivery for DERM was also in attendance. Mr Bradley confirmed that the review would be led by Mr Andrew Brier, a General Manager in DERM. Mr Brier would be in touch with QRC shortly to set up a review "kick off" meeting. There was also a brief discussion about the regulatory approach DERM may employ where mines use water treatment technology such as "reverse osmosis". I did not make a contemporaneous file note of that meeting.
61. **Item 6 of Annexure 3** is a copy of a letter dated 25 February 2011 that I sent to the Hon Kate Jones MLA upon her appointment as Minister for Resource Management (in addition to her existing portfolio as Minister for Environment). In that letter, I mentioned numerous issues including mine water management and I requested a meeting 'to work through some of these vexed policy issues'.
62. On 28 February 2011, I received an e.mail from Mike Birchley, then Acting Assistant Director-General, Regional Service Delivery for DERM, advising that in light of the recent wet season, the review of Fitzroy model water conditions would be brought forward and was intended to be completed by the end of July 2011. The email also noted that this process was to be run by Andrew Brier, General Manager Coal & CSG Operations. A copy of this e.mail has already been provided as item 1 of Appendix E to the Statement of Frances Hayter.

63. My letter dated 25 February 2011 led to my meeting with the former Minister for Environment and Natural Resources, the Hon Kate Jones MLA on 17 March 2011. I did not make a contemporaneous file note of that meeting. The meeting covered a wide range of issues, most of which are not relevant to the subject-matter of this Statement and the part of the meeting relating to mine water management was quite brief. Relevantly, the Minister committed to completion of a detailed review of the Fitzroy model water conditions by the end of July 2011, to enable sufficient time for implementation before the next wet season. I thanked her for that commitment. However, that commitment had already been set out in the e.mail I had received from Michael Birchley dated 28 February 2011, so the meeting with the Minister in effect achieved no more than a confirmation of that existing commitment.
64. The balance of the chronology relating to the consultation process for the revised Fitzroy model water conditions 2011 is set out in paragraph 18 of the Statement of Frances Hayter.

Discussions with Queensland Treasury relating to the impact of flooding on mines

65. I did not engage in direct discussions with the Treasurer, the Hon Andrew Fraser, about the impact of flooding on mines, but rather with senior Treasury personnel. However, I did provide copies to the Treasurer and the Minister for Environment of the letter dated 28 January 2011 addressed to the Premier, referred to in paragraph 42 of this Statement.
66. Please refer to paragraph 35 of this Statement, which sets out my recollection of a meeting of the Resources and Energy Recovery Group that I attended on 20 January 2011 at the offices of DEEDI.
67. On 21 January 2011, David Rynne (QRC's Chief Economist) and I met with Mr Dennis Molloy, Assistant Under Treasurer. (Another Treasury representative was also present at that meeting, but I did not have a note of that person's name.) David Rynne had prepared a draft list of estimates of the worst case and best case impacts on coal production as a result of the 2010/11 flooding and he outlined and explained his estimates. Neither David Rynne nor I kept a contemporaneous file note of that meeting.
68. Please refer to paragraph 40 of my statement, which outlines a meeting that I attended on 25 January 2011 with the Director-General of the Department of Premier and Cabinet (Ken Smith), the Director-General of DERM (John Bradley) and the Director-General of DEEDI (Ian Fletcher), at which the Directors-General opposed the use of emergency directions powers in relation to flooding at mines. My file note of that meeting is at Item 18 of Appendix 2. Relevantly to Question 3c of the Requirement relating to Treasury, the Director-General of DEEDI, Ian Fletcher, expressed the view that government could not possibly anticipate a weather event in applying emergency directions powers.
69. I am informed by David Rynne and believe that he had a further discussion with Mr Dennis Molloy on 27 January 2011, in which Dennis Molloy advised David Rynne that the State Government's numbers for the mid-year fiscal review would be predicated on:
- (a) A lower saleable production number of 47.5 mt compared to QRC's estimate of 51 mt in the September quarter (because QRC relied on ABARE data, but Treasury had access to the full royalties data);
 - (b) Treasury had also estimated that the forecast production impacts would be at the lower end of the range estimated by QRC, that is, quite close to QRC's best case scenario;

- (c) Treasury was assuming lower coal prices. (David Rynne also speculated that Treasury was possibly also using a lower percentage of companies who would have access to the anticipated higher coal prices in the June quarter.)
 - (d) Overall, this meant that the estimated production impacts would be lower, meaning that Queensland Treasury forecasts were that the impact on royalties would be lower.
70. On 28 January, I e.mailed to various senior public servants and policy advisors (including Gerard Bradley at Queensland Treasury) a copy of QRC's State of the Sector report, which focussed on floods and the impact in particular on the coal sector. A copy of my e.mail is at **Item 7 of Annexure 3.**
71. On 28 January, I e.mailed to various senior public servants and policy advisors (including Gerard Bradley at Queensland Treasury) a copy of my letter to the Premier dated 28 January 2011 referred to in paragraph 42 of my statement. A copy of my e.mail is at **Item 8 of Annexure 3.**

Other

72. My other discussions and correspondence with Ministers and Directors-General are outlined in response to Question 2 of the Requirement above.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

Signed..

MICHAEL ANTHONY ROCHE

Taken and declared before me at Brisbane this 26th day of October 2011

LEANNE MEREDITH BOWIE
Solicitor