

Firestick Estate Inc.

4 Felicia Rise, Diamond Creek, 3089
secretary@firestickestate.com

Mr Scott Morrison
Prime Minister
Parliament House
Canberra ACT, 2600

3 October 2020

Dear Prime Minister Morrison,

Abandon the Bushfires Royal Commission

Firestick Estate believes your Royal Commission into National Natural Disaster Arrangements, confirms the Liberal Party's initiation and mute support for Victoria's 'residual risk' policy ("*sneaky buggers*")¹. That is a death sentence for thousands of people. With "*...three billion animals were killed or displaced (2019/20)...*" and no effective solution offered, your Liberal Party's "*...Royal Commission is on a disaster course...*"².


You must abandon your Royal Commission because:

1. It is wrongly named. Killer bushfires are not 'natural disasters'³.
2. Its Terms of Reference are response driven and anti-prevention/mitigation³.
3. Its three commissioners are lay persons⁴.
4. Its Background Paper on hazard reduction is biased, careless and in denial about Extreme Bushfires⁴.
5. It failed to call willing and able 'world's best' Extreme Bushfire experts⁵.
6. It absurdly states prescribed burning "*...will not eliminate bushfire risk*"⁶.
7. It crosses "*...the boundary between science and faith, into climate change*"⁷.

Victoria has new Laws aimed at tall poppies like you⁸. For instance, a News Limited article states "*...incompetent politicians...run a protection racket, exempting themselves from basic accountability standards...*", indicating an influential part of the media has turned against you⁹.

Prime Minister, would you please abandon your Royal Commission because it is "*...on a disaster course...*". Further, it will not indemnify you and the Liberal Party, from future prosecutions^{8 & 9}.

Yours faithfully,



Belinda Clarkson (Secretary) www.firestickestate.com

¹ **Time to make good on burn advice pledge**, News Ltd's The Weekly Times, 2 September 2020

² **Only prescribed burnings can avert fire calamities**, News Ltd's The Weekly Times, 23 September 2020

³ **Prime Ministerial Responsibility for Extreme Bushfires**, 8 May 2020, firestickestate.com Letters No. 628

⁴ **Extreme Bushfire Criminal Negligence**, 29 June 2020, firestickestate.com Letters No. 657

⁵ **Extreme Bushfire Criminal Negligence**, 31 July 2020, firestickestate.com Letters No. 691

⁶ **Extreme Bushfire Criminal Negligence**, 12 September 2020, firestickestate.com Letters No. 739

⁷ **A clash of faith and science**, News Ltd's The Weekly Times, 30 September 2020

⁸ **Momentum gathers for COVID-19 prosecutions**, News Ltd's The Australian 30 September 2020

⁹ **Why hold only business to deadly double standard**, News Ltd's The Australian, 30 September 2020

CC: Governor-General David Hurley AC DSC (Retd), Opposition Leader Anthony Albanese, Cabinet Ministers, US Ambassador A.B. Culvahouse Jr., The Royal Commission into National Natural Disaster Arrangements & Others

State:

Australian Capital Territory
New South Wales
Northern Territory
Queensland
South Australia
Tasmania
Victoria
Western Australia

Leaders:

Chief Minister Andrew Barr
Premier Gladys Berejiklian
Chief Minister Michael Gunner
Premier Anastacia Palaszczuk
Premier Steven Marshall
Premier Peter Gutwein
Premier Daniel Andrews
Premier Mark McGowan

Opposition Leaders:

Alistair Coe
Jodi McKay
Lia Finocchiaro
Deb Frecklington
Peter Malinauskas
Rebecca White
Michael O'Brien
Liza Harvey

Emergency Management Commissioners:

Commissioner Georgina Whelan
Commissioner Shane Fitzsimons
Commissioner Greg Leach
Chief Executive Officer Malcolm Jackman
Chief Officer Chris Arrol
Commissioner Andrew Crisp
Commissioner Darren Klemm

State Police Commissioners:

Commissioner Neil Gaughan
Commissioner Michael Fuller
Commissioner Katarina Carroll
Commissioner Grant Stevens
Commissioner Darren Hine
Chief Commissioner Shane Patton
Commissioner Chris Dawson

"...trying to set fires, rather than prevent them" - Bill Gammage 2012

Letters

Time to make good on burn advice pledge

WHEN "The nation's top bushfire scientist ..." and originator of the concept of 'residual risk', Professor Kevin Tolhurst says the Andrew's Government are "sneaky buggers", it confirms, at the highest level, our predictions about unprecedented loss of life from future extreme bushfires ("Smokescreen", TWT August 26).

Professor Tolhurst has stated extreme bushfires are less than 1 per cent of all bushfires, and yet they cause over 90 per cent of bushfire deaths and damage. His stated opinion that the Andrews Government are "sneaky buggers" about their "residual risk" figures, is the most damning indictment possible. This is because it cannot be dismissed as politically motivated. I believe he has been "their man", for a long time.

Professor Tolhurst was at Victoria's emergency headquarters on Black Saturday, where he predicted the Kilmore East fire would hit, and continue through suburban Melbourne. His prediction was based on the forecast wind change coming at 9pm. However, it arrived early at 6pm, saving thousands of lives on negligently unmitigated fuel, tree covered and blocked roads. Professor Tolhurst described that fire, which was the

worst killer fire in Australia's history:

"... the fire front itself can, for short periods, move devastatingly quickly ... pulsing with flashes of fireballs, often in a circular motion like a hurricane, as the fuel-air mixture bursts into flame well out from the fire front"

So when Professor Tolhurst says the Andrews Governments are "sneaky buggers", it demands an immediate and proper adoption of the 2009 Victorian Bushfires Royal Commission prescribed burning recommendation that both the Coalition and Labor parties promised Victorians.

**Tim Malseed,
President Firestick Estate
Inc.**

Opinion

WEDNESDAY SEPTEMBER 23 2020 THEWEEKLYTIMES.COM.AU

Only prescribed burnings can avert fire calamities

The Bushfire Royal Commission is on a disaster course, argue PHIL CHENEY, DAVID PACKHAM and TIM MALSEED

THE Royal Commission's progress into National Natural Disaster Arrangements, as measured by its interim observations of August 30, is a disaster in the making.

It suggests the cause of extreme bushfires is climate change, without any valid scientific evidence to that effect. But even worse, consideration of appropriate forest management, initial attack and prescribed burning is diminished to almost nothing.

If the final report, due at the end of October, continues on the present course, the likelihood of future extreme bushfires killing our people, and animals, will be officially sanctioned by the Prime Minister and his Liberal Party team.

Incredibly, the Royal Commission states "three billion animals were killed or displaced" by the 2019-20 bushfires. True, this occurs in all widespread high-intensity bushfires and unless we manage them to reduce the extent and intensity in the future there will be dis-

astrous consequences for certain species of both animals and plants that may well lead to their extinction.

The solution to this problem has been known for decades starting formally with the 1939 Stretton Royal Commission.

In the 1960s, Western Australia began a program of environmentally sensitive and strategically planned hazard-reduction burns, which operated on five to 12 year cycles. These protected both the community and forest ecology.

Western Australia ultimately developed a high-tech version of the 40,000 year-old practice of Indigenous Australians, which reduce fuel loads to manageable levels. Their hazard-reduction burns are gentle, with a flame front you can step across.

The Royal Commission has not properly investigated the impact of current land management policies on forest fire suppression, particularly initial attack by dedicated forest firefighters. It has not mentioned those cases where fires were deflected or slowed by previously burnt areas.

Those who suggest bad bushfires are "natural disasters", effectively disenfranchise Aboriginal care for country.

Extreme bushfires are not "natural disasters", as the government claims.

They are caused by government's negligence towards hazard-reduction. The evidence for this can be found in the journals of Australia's first European explorers, who repeatedly describe landscapes of open parkland that were being constantly burned by Indigenous Australians.

The 2019-20 bushfires were exactly what Indigenous Australians warned Europeans about.

In January Prime Minister Morrison accepted the buck stops with him.

However, it is now becoming clear he is not interested in promoting skilled burning by trained people to achieve multiple objectives.

Deliberately reduced access, lack of resources and skilled personnel — not climate change — are all making the task nearly impossible.

His Royal Commission is on a disaster course, talking climate change nonsense and pretending that extreme bushfires can be managed without appropriate prescribed burning, which would make our forests healthy and safe.

• Phil Cheney is a respected bushfire scientist, David Packham is a renowned bushfire expert and Tim Malseed is the president of firestickestate.com

Letters

A clash of faith and science

WITH the bushfires inquiry, Prime Minister Morrison's royal commission appears to be reflecting his faith in climate change. Most of us have seen photos of the PM worshipping at his local Hill-song Church. As much as I admire the apparent joy faith brings, the management of killer bushfires requires a different approach.

Controlling bushfires requires an empathy for its victims and rigorous study of successes, failures, methodology and peer reviewed science. Crossing the boundary between science and faith into climate change is an extraordinarily dangerous thing to do, when so many deaths and such trauma are at stake.

**Belinda Clarkson,
Secretary**

www.firestickestate.com



GETTY IMAGES

Jennifer Coate's inquiry may lead to many prosecutions

Momentum gathers for COVID-19 prosecutions

ROBERT
GOTTLIEBSEN



Acting in the national interest, a group of Australia's top occupational health and safety lawyers has painstakingly trawled through the transcripts of the Jennifer Coate inquiry to discover which ministers and public servants may have breached Victorian Occupational Health and Safety (OHS) law.

They have concluded that four ministers, 16 public servants, the state of Victoria, four departments and the Trades Hall Council should be prosecuted.

It is a stunning conclusion from the Coate inquiry evidence. If the prosecutions are launched it would drastically change the government structure of Victoria.

Under Victorian law, as set out by the 2004 Steve Bracks OHS act, citizens can request WorkSafe to prosecute individuals.

Accordingly, acting on the advice of the lawyers, the executive director of Self-Employed Australia, Ken Phillips, has written to WorkSafe requesting the prosecutions.

Never before in the nation's history has such a detailed and comprehensive set of prosecution requests ever been made.

But we are dealing with the worst industrial workplace accident in the nation's history. More than 700 people have died, large numbers have been infected by the coronavirus as a result of governmental errors and bungles, and untold damage inflicted on the Victorian — and Australian — economies.

Accordingly, it does require actions that were never, ever contemplated by those who framed OHS laws.

WorkSafe chief Colin Radford must reply to the Phillips letter either stating that he will lodge prosecutions or, if not, Radford must state the reasons why he is not proceeding.

Radford does not have an easy task because he is a former press secretary to premiers Steve Bracks and John Brumby, and he knows well and is friends with many of those he is being asked to prosecute.

There is no reason why Radford can't undertake the task because it will be the courts — not Radford — that must decide guilt or innocence. But if Radford feels he is too conflicted, then he should stand down.

Under the act, if WorkSafe will not prosecute, then Phillips

can then put the same request to the Director of Public Prosecutions Kerri Judd QC, who also must either prosecute or set out her reasons. The reasons will need to be very good given the magnitude of the disaster. Radford is launching his own inquiry and he has much greater power than Coate and may discover much more evidence, which could result in further prosecutions.

As it now stands, four ministers have been alleged to have contravened four sections of the act, which are:

Section 26, which — with great clarity — says that persons who manage or control workplaces must ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health;

Section 32, which says that persons who manage or control workplaces have a duty not to recklessly endanger persons at workplaces;

Section 39 G, which says a person who is not a volunteer must not engage in conduct that is negligent; nor conduct that constitutes a breach of an applicable duty that the person owes to another person; nor conduct that causes the death of that other person; and

Section 144, which sets out that if a body corporate (including a body corporate representing the Crown) contravenes a provision of the OHS act and that contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence.

WorkSafe Victoria has been asked to prosecute 16 public servants on grounds covering some of the sections that apply to ministers. However, it's been requested that all prosecutions directed at public servants include section 25, alleging they failed to take reasonable care for the safety of "others affected by your acts and omissions".

Phillips concludes it is now clear that the occurrences, acts and omissions in this affair have to date resulted in more than 17,800 people contracting the COVID-19 virus, hundreds of people being admitted to hospital as inpatients and 765 people dying as a result of contracting the virus (as at September 27, 2020)

In other words: the credibility of Victoria and its system of law, as well as the OHS act itself, demands there must be no whitewash.

FOOTNOTE

I set out the background to the WorkSafe letter in two earlier comments on theaustralian.com.au under the headings Hotel quarantine inquiry: Victorian politicians caught in their own trap and Hotel quarantine inquiry: the power to probe the 'don't knows'.

WHY HOLD ONLY BUSINESS TO DEADLY DOUBLE STANDARD?

What the Victorian government has done cannot be dismissed as 'just politics'

JANET ALBRECHTSEN

There is a simple way to understand the deadly double standards that apply to public servants and politicians, on the one hand, and directors and corporate executives, on the other.

Ask what would happen if 768 Australians died due to the actions of a mine owner, or a bus company, or amusement park. If a chorus line of executives fronted an inquiry saying "it wasn't me" or "I don't know anything", how would we respond? If the CEO claimed no knowledge, couldn't pinpoint who did what, and put it down to a "creeping assumption", there would be hell to pay. And then some.

Slide down the scale. Just recently, Rio Tinto chief executive Jean-Sebastien Jacques signalled his resignation after the destruction of an Aboriginal heritage site. David Murray resigned as AMP chairman after the board promoted an employee who, several years earlier, was guilty of "relatively modest" breaches of AMP's code of conduct.

But when Victorian politicians and public servants masterminded a hotel quarantine system using untrained private security guards that, not surprisingly, led to 768 deaths, to say nothing of

other damage done, many people simply shrug their shoulders and say, it's terrible — then wave it away as politics.

Outgoing health minister Jenny Mikakos is a lousy example of ministerial responsibility. She denied she was responsible, blamed her department for not sharing information, and resigned because she said she could not remain in cabinet following the Premier's testimony on Friday.

Nor has the Premier taken genuine responsibility. He's still there. Deflecting in front of the Coate inquiry, Daniel Andrews couldn't say who was responsible for the private security guards. The Premier also dumped on his own chief public servant, Chris Eccles, for not telling him the commonwealth had offered troops to assist with the hotel quarantine program in April.

Though some Labor MPs are privately complaining that Andrews threw Mikakos under the bus, their radio silence aids and abets his Houdini-like escape from accountability.

If we, the people, keep shrugging our shoulders at this as just politics, we accept not just **incompetent politicians** and their dissembling behaviour, but a

dangerous double standard that applies in Australia today. **We are allowing politicians to run a protection racket, exempting themselves from basic accountability standards** they routinely impose on people who run a business.

Yes, Andrews could get the boot at the ballot box. But that can happen if a leader introduces an unpopular new tax policy. Unless there are more serious consequences, this hotel quarantine disaster will, by our tacit approval, set a new low bar for standards we accept from politicians. And that won't end well for us.

Politicians and public servants should not have a higher level of accountability than corporate executives. But today the balance is dangerously out of whack.

At civil law, public servants can be liable for acts of misfeasance in public office. But making that case is hard: it requires a high level of knowledge or proof that they didn't care about the consequences of their actions. Take the live export ban imposed by Labor minister Joe Ludwig in June 2011. The minister was found guilty of committing misfeasance in public office. The judge found he was "recklessly indifferent" to the consequences of the live export ban. But when the crown pays for the damages, where is the accountability?

By contrast, politicians, and the public servants advising them, are never short of suggestions to hold directors and corporate executives to account for their be-

haviour, imposing very severe penalties.

There are 723 sections in the Corporations Law that prescribe criminal penalties for directors, 367 of them carry a term of imprisonment, and 29 sections carry a maximum term of 15 years.

There are also strict liability offences in the Corporations Law where directors must prove their innocence, in addition to 160 other strict liability offences in other commonwealth laws. Directors are also subject to "absolute liability" offences where they

Nor has the Premier taken genuine responsibility. He's still there

cannot rely on an honest and reasonable, but mistaken belief. Liability is also imposed in a raft of "positional" or "managerial" offences where a director is criminally liable for actions committed by a company even if a director was not personally involved in, and did not know of, the act.

The Turnbull government introduced the federal Bank Executive Accountability Regime where bureaucrats can disqualify senior banking executives for breaches of the accountability provisions. Last year, the Morrison government extended this, renaming it the Financial Accountability Regime, to cover in-

surance and superannuation firms too.

As Robert Gottlieb reported in this newspaper on Monday, Victoria's industrial manslaughter laws are among the toughest in the Western world with the aim to jail company directors for deaths in the workplace irrespective of their responsibility or control. And now we know why ministers and heads of departments fronting the Coate Inquiry into Hotel Quarantine couldn't recall who was responsible for the decision to use untrained private security guards. As Victoria's Minister for Training and Skills, Gayle Tierney, said in the Legislative Council last November, "the Premier, ministers and departmental secretaries are covered by this new offence".

But did the Andrews government seriously think that it would be prosecuted? The state's regulator, WorkSafe Victoria, faces a big credibility test.

As Gottlieb also reported, the McGowan government in Western Australia is not making the same mistake: it is changing its proposed new industrial manslaughter laws to make sure politicians are not caught.

It is an admission that the proposed laws are so unfair that they must not apply to politicians. Here is the double standard that underpins the protection racket: the McGowan government is saying that a death in the workplace is terrible, unless it involves a politician.

To encourage more sensible policy, the starting point ought to be that politicians do not impose laws with criminal sanctions that they wouldn't dream of applying to themselves. If laws are based on sound policy, they ought to apply equally to people responsible for workplaces whether they are in the private or public sector.

Our regulatory system is killing our prospects of a fast economic revival. It is so out of kilter that it makes far more sense for someone to join the public service than to take risks by running a company.

As one of the few politicians who straddled business and politics, Malcolm Turnbull understood only too well how politicians escape accountability. Writing in his autobiography, Turnbull asked: "What have I learned? ... A company director who misleads his shareholders could end up in jail or ruined by litigation. Politicians routinely dissemble, the press gallery seldom calls them out, often connives in the deceit and, when they get away with it, praises them for their political skills."

While Turnbull said a lot of contestable things, this observation is spot-on. And after the biggest public policy failure in Australia in 50 years, it is high time that we demand a fairer reckoning of responsibility and liability when it comes to public servants and politicians. If we don't, we should prepare for more, not fewer, deadly policy failures.