

# **COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE**

**INQUIRY INTO THE PROTECTION OF CROWDED PLACES FROM TERRORIST ACTS**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 13 JUNE 2018**

**SESSION TWO**

## **Members**

**Mr P.A. Katsambanis (Chairman)**  
**Mr M.J. Folkard (Deputy Chairman)**  
**Mr Z.R.F. Kirkup**  
**Mr A. Krsticevic**  
**Mr D.T. Punch**

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**Hearing commenced at 11.10 am****Mr TONY PEARCE****Inspector-General for Emergency Management, Victoria, examined:**

**The CHAIRMAN:** Thank you for agreeing to appear today to provide evidence in relation to the inquiry that our committee is conducting into the protection of crowded places in Western Australia from terrorist acts. My name is Peter Katsambanis and I am the Chair of the Community Development and Justice Standing Committee. I will introduce the other members of the committee, sequentially from my left: the Deputy Chair, member for Burns Beach, Mark Folkard; member for Dawesville, Zak Kirkup; member for Bunbury, Don Punch; and member for Carine, Tony Krsticevic. We are also assisted here by Franchesca and Amy, who are our committee staff, and we have a Hansard transcriber.

It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. You have agreed to provide evidence to the committee. Your evidence is protected by parliamentary privilege in Western Australia and also protected by uniform defamation laws in Australia against any action for defamation. However, this privilege does not apply to anything you might say outside of today's proceedings. If in the course of the hearing you believe that some committee questions require answers containing sensitive or confidential information, you can request that we take that evidence in a closed session and you can give us a brief explanation why. If the committee accepts that explanation, we will receive the evidence in closed session. Hansard will continue to make a transcript, but we will not make the transcript publicly available unless either the committee or the Legislative Assembly resolves to make it public. In that case, our practice is that we would communicate with you and make sure that everyone is on the same page; we do not want to surprise or ambush anybody.

Before we begin with our questions, do you have any questions about the procedure or about your attendance today?

**Mr PEARCE:** No, not at all.

**The CHAIRMAN:** Did you have a brief opening statement or do you want us to move straight into questions?

**Mr PEARCE:** No, I think if you move straight into questions, that is probably where the greatest value is, I hope.

**The CHAIRMAN:** Obviously your role is something that is of interest to our committee, so thank you for making the time to speak to us. Are you able to give us a brief overview of your role and how you fit into the emergency management framework in Victoria?

**Mr PEARCE:** Yes, certainly. You may or may not be aware that this office and a number of other government structural changes occurred as of 1 July 2014 in legislation in Victoria. That occurred primarily because of the Victorian bushfires in 2009, following which there was obviously a royal commission and recommendations that came out of that royal commission, and also the large-scale floods we had in 2010 and 2011, again for which there was a review and a number of recommendations made. Both of those levels of inquiry identified system-level assurance as being one of the missing elements in the Victorian system. As a result of that, there was a white paper in Victoria, the findings of which were released in 2012. One of the outcomes of that was the creation of this office. In legislation, the objectives of the office are to provide assurance to both government

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and the community regarding the effectiveness of Victorian emergency management arrangements and also to foster their continuous improvement. That is the rationale for the creation of the office. It came into being in legislation as of 1 July 2014, so it will be four years old in about two and a half weeks' time. My role specifically and the role of the office is to sit above the emergency management system, which includes all the operational agencies and our coordination functions and our planning arrangements, and to monitor the performance of those in the context of the outcomes that the government has decided are appropriate from the government perspective as well as the community outcomes, a lot of which were identified through the white paper I talked about. It is monitoring the implementation of the reform as an ongoing function, but it is also on a day-to-day basis monitoring the performance of the sector at that system level to ensure that we are providing that service.

There are a number of very specific areas for which I have responsibility, one of which is monitoring the non-financial performance of our emergency services telecommunications authority, which is a statewide single agency that provides all call-taking and dispatch functions for all our agencies. As I say, I have a responsibility for monitoring that performance and investigating any potential failures or issues that arise in that space. We are responsible for developing and maintaining a monitoring and assurance framework for the state for emergency management, which is done and is on our website now. All agencies are obliged to function within the levels of assurance that are described within that framework. I think it is important to mention that in terms of the framework itself, whilst I have responsibility for developing and maintaining it, assurance is an issue that actually operates at many levels throughout our system; therefore, it does not abrogate the responsibility of other organisations to actually have assurance mechanisms in place at their levels. The framework is actually more a descriptive rather than a proscriptive framework, and describes how they and we work together to provide assurance.

I am responsible for conducting reviews in my own right in relation to events that might occur in the state. It happens in two ways. One is on a planned program basis. We work with the broader emergency management sector to identify system-level issues that may warrant the effort of my resources in reviewing the performance of those issues and then making recommendations back to government about how they might be improved. That is a planned review process that occurs every year. We generally conduct two to three reviews depending on what is going on. The other way in which we conduct our reviews is at the request of the minister or other ministers, through our minister, in relation to a specific event that might have occurred. For example, thunderstorm asthma was one of the recent ones. It was a big impact in this state. We had a big recycling plant fire et cetera, so we looked at that. We might also review those types of events. Probably the most important function that our office provides, and the greatest benefit that has been provided to the state, is the performance and implementation monitoring function that we have, and particularly the implementation monitoring function. One of the values of our state, with all due respect to others—I think it is one that would be quite common throughout other jurisdictions as well—is that if a big event occurs, there is always some level of inquiry in relation to that and recommendations made. Government will then respond to those and agree and accept them, or accept them in principle. Two years down the track, if you were to go back and talk to agencies or government departments that might have been implicated in those recommendations and asked them how the recommendations were going with regard to implementation and acquittal, in many cases people would ask what you were talking about, and in other cases they would say, "They're not relevant now, so we've just sort of parked them and we don't do it." The function that we provide now is that for any recommendation from any level of inquiry, whether it is a royal commission, a board of inquiry or a parliamentary inquiry—we are monitoring recommendations from that at the

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moment—once the government has accepted those recommendations and has provided a response to them, we are then tasked with monitoring the implementation of them right through to acquittal. There is no inquiry or review that occurs within this state now, once accepted by government, that is not acquitted right through to the last recommendation. I think that is probably one of the biggest positive functions that we provide.

Finally, we are also responsible for critical infrastructure protection assessment and monitoring of the system, to make sure that our critical infrastructure protection arrangements are functioning effectively and that critical infrastructure resilience is assured. We are responsible for monitoring the performance of exercising and statewide training frameworks as well. Very shortly, with an amendment bill that is currently going through the upper house, there will be a requirement for us to monitor the performance of the emergency management planning arrangements in the state as well.

[11.20 am]

**The CHAIRMAN:** Thank you. That sounds like a very comprehensive role. Some questions arise out of that. You obviously report to the minister—I am not sure if it is the Attorney-General or the minister for justice or somewhere in the justice-type department. Who within the system has the power to enforce compliance with any recommendations that you might make in your role?

**Mr PEARCE:** Once those recommendations are accepted by government, obviously there is the implementation and monitoring process. There is no punitive approach in relation to how the agencies and departments are monitored in regard to that. They have no fear of formal retribution, so to speak. The way in which we do it in Victoria is that, firstly, for every report and every recommendation that I am monitoring, the evidence that we gather and the findings I make in regard to the progress of those recommendations is reported either directly to the minister or even to Parliament, depending on the level of recommendation. Many of our reports are tabled in Parliament. The other way in which we provide a very strong incentive for agencies, departments and others to meet their obligations is that all of our reports are published on our website and are publicly available. There is nothing that we do, whether it is an adverse finding or a positive finding or otherwise, that is not made public. The Victorian community are generally the arbiters of performance to some extent, along with our Parliament as well. There are not too many agency chiefs or departmental secretaries that I have spoken to who are willing to put themselves in the position of having one of our reports make an adverse finding in relation to recommendations that their minister has accepted as part of the cabinet.

**The CHAIRMAN:** Thank you. I think there is some legislation to establish slightly more independence for your office to make it an independent authority. If Western Australia considered the type of inspector-general model that exists in Victoria, do you think it would be of greater benefit for that model to be introduced within a public sector agency or as an independent, standalone authority?

**Mr PEARCE:** I will be totally honest with you. As you are well aware, my appointment is one through our Public Administration Act. As a result of that, I have a secretary of department within justice that, for administrative purposes, I function through, but my tasking and my reporting in legislation is to the minister. That, in itself, whilst it has created me no great difficulties along the way, has certainly created the opportunity for some, such as some of our industrial bodies externally and some of the peak bodies, such as the national foresters association, to question the level of independence when I am reviewing something, particularly if it is an event outside, such as the Wye River fires that we had a couple of Christmases ago. There are reasons why some of those bodies would want to try to infer that there is a lack of independence. As a result of that, my independence has been challenged quite a number of times in that regard. Government has always

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supported the independence of it. Our coroner has supported the independence of the office. However, there is a perception at times that there is an issue there. That is why the government is currently going through the Governor in Council appointment process to change it; if nothing more, it will take away some of the potential for some to argue that there is not independence in the role.

**The CHAIRMAN:** Thank you. In your four years of experience in conducting reviews and evaluations of the sector, are there any repeated themes or gaps that you have identified that keep coming up?

**Mr PEARCE:** I think if you were to talk to your emergency management people in Western Australia and ask them the same question, they would probably come up with the same sorts of things, such as communication breakdowns and IT issues et cetera that relate to communications—that always appears to be a big one. The reality is that we have learnt over the four years that these processes have been in place that we are better able to identify that each emergency has a number of things that present each time. Most of them are not common. They are often quite independently related to that particular event. It might be about the way in which the local community functions or it might be particular planning arrangements in a particular part of the state or otherwise. Our issue in the past was that we were not able to properly identify those things and, even if we could, we did not have mechanisms to ensure that if we identified something in one part of the state, we could then go away and evaluate whether that was an issue that occurred elsewhere, and put something in place at the system level to try to mitigate it. The same things kept occurring generally in different parts of the state because we had no statewide or system capacity to address them. Now, as we have that, we have found that the things we identify are generally at that high level and are generally more applicable across the state. They still come down to communications, resources, demography et cetera, but we are able then to measure those or evaluate them against other parts of the state to see whether we think the same impact would occur there and to make recommendations that have a statewide implication rather than just a local focus. As I say, each emergency presents its own challenges. Communication is generally the number one. From there it tends to spread out a bit.

**Mr Z.R.F. KIRKUP:** I am keen to understand your interaction in the counterterrorism space a bit more if we can. I note the reviews you have previously done on the fires, for example—I cannot remember the name of the fire off the top of my head. I am keen to understand what that looks like in terms of your obligations or the proactive approach that you will take on the preparedness for counterterrorism. Victoria seems to be quite well advanced. I think an Auditor General's report was the first report into the preparedness for counterterrorism. Largely speaking, it is the basis for why we in this jurisdiction are looking at the areas we are now looking at. In Victoria versus WA, in this instance Victoria seems to be quite far ahead. I am keen to understand your role in that space, if that is something you have actively looked at. Something we have found as a committee as well is that we are often not exposed to classified or sensitive material necessarily. What does that look like in terms of your ability to properly scrutinise preparedness in that space?

**Mr PEARCE:** That is a very interesting question. The way the legislation is written, if you have read it, is that our emergencies are classified in three specific class levels—1, 2 and 3. Class 1 emergencies are our natural hazards, such as fire, flood and earthquake-type scenarios. Class 2 emergencies are the ones that are not those but might be health emergencies and so on. Class 3 are our terrorism and civil unrest—level arrangements. I have a very active role in both class 1 and class 2, particularly in reviewing those arrangements, making recommendations against them and reviewing events that occur within those two classes. As far as class 3 events go, the counterterrorism arrangements we have in the state is that we have our Terrorism (Community Protection) Act and then the Victoria Police Act. Those two acts define the way in which the police authority and those who work with them work in regard to terrorism. As far as preparation for terrorism goes, I have no active role

in reviewing the counterterrorism arrangements, even though I know them. I do not have a legislative obligation nor a mandate to review those. Secondly, if there were to be a terrorist attack in Victoria, from a review perspective, I would very likely be brought in to review, but the review I would be conducting would be the consequence management review of the multiagency response to the consequences of the event, rather than reviewing the preparatory or planning arrangements from a counterterrorism perspective. That would all be done within the police jurisdiction and probably, in addition to that, with an independent inquirer appointed to the event from a counterterrorism perspective.

**Mr Z.R.F. KIRKUP:** Thank you. Mr Pearce, given your active involvement in class 1 and 2—thank you for walking us through that—is it not something that you think should be looked at in terms of your ability to look at class 3 as well? It is an all-hazards approach, really, if you include class 3. Is that not something that you believe? Are you aware of any other jurisdictions that have a similar role as yours that actually do look at that?

[11.30 am]

**Mr PEARCE:** No, I am not aware of others. You would be aware of the Queensland IGEM I am sure, whose office was created as a result of an event. From my recollection, Iain MacKenzie does exactly the same as me. His involvement would be in the consequence side, not in the preparatory or planning side. If you were to say that it is all hazards, terrorism events are another hazard like many others and from that perspective it could be reasonable to expect that an inspector general's office would have some jurisdiction there. But having said that, I also think it depends on the maturity of the framework in which it is operating. I understand the Victorian framework very well—the counterterrorism framework as well as the emergency framework more broadly. I suggest that it would be very unlikely that I would add any better value than would already be provided through the arrangements they have. From that perspective, looking at the consequence of an attack and the consequent preparation versus the counterterrorism preparation and the investigation elements of it, I think it is still appropriate to have that structured the way it is, in Victoria at least.

**Mr Z.R.F. KIRKUP:** Given your extensive history, and obviously you have been on the job now for four years, noting what you said before about your insight into counterterrorism arrangements and preparedness, I will put to you the situation I find as a committee member, and I am keen to get your thoughts. It seems to us that we are getting the approach that in a lot of jurisdictions the law enforcement agencies look after their own area and civilian oversight and from an elected representative's perspective, our oversight and ability to scrutinise those plans and preparedness is quite limited. I think an IGEM makes a lot of sense. In the Western Australian context it is something that should probably exist, but I would rather see it also extend to the counterterrorism side of things as well. Do you find it unusual that your role has been created because of the same issues, these gaps that were identified for those classes 1 and 2, but because of the class 3 nature, there is not that same civilian oversight and reporting? I realise this goes to my second question: are you aware of anything in a parliamentary democracy, in any other jurisdictions, where your role does cover those areas? Do you think that would be prudent given the issues you have found in the past four years in the job?

**Mr PEARCE:** No, I am not aware of any others that cover the complete spectrum in the way you have described it. I am not aware of that at all. The one thing that provides a measure of comfort, in Victoria at least, is that the Auditor General's office provides a significant function in this space and has the capacity to conduct reviews and investigate and inquire into arrangements and the way they are prepared. From that perspective, although the IGEM may not reach down to that extent in counterterrorism matters, we have within our state's structure a mechanism that can and does.

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Therefore, there is quite often engagement between the Victorian Auditor General's office and Victorian police and government in regard to counterterrorism arrangements. I do not think that me not being able to do that creates any great issue, at least in this state.

**The CHAIRMAN:** A body in Victoria called Emergency Management Victoria also seems to have some form of coordination role in this space. Can you identify the delineation between its work and your work, and perhaps also comment on why it is a good idea to have that separation between that body and your office?

**Mr PEARCE:** Yes, I think it was probably put best to me by a member of the community in 2014, about a month after our office had opened, after some big, big bushfires in East Gippsland. A member of the community approached us when we were starting a review of the response to that event and said that it was very positive to see for a change that the fox was not managing the chook shed. The reason they made that comment was that East Gippsland has a long history of fairly significant disasters, particularly fires and floods, and they were just about over having the emergency response agencies and the emergency response coordinators come down and review their own performance in regard to events where there had been significant damage or public loss. The reason IGEM sits in place is effectively to make sure that we do not have that nepotism, or potential nepotism, or vested self-interest in conducting inquiries and reviews. That is the first part of it. Secondly, Emergency Management Victoria has two elements to it. One is that the chief executive officer and the Emergency Management Commissioner jointly lead the organisation and the Emergency Management Commissioner coordinates statewide response to large scale emergencies, so that is his function. Again, although he has some assurance functions within his own right with regard to his obligations and legislation, my responsibility is to also assess his organisation's performance against their obligations in legislation. I guess it puts an extra mechanism in place to make sure that people are not reporting on their own level of performance, so that is another reason for it. Of course, the other part of Emergency Management Victoria is responsible for policy development and implementation and monitoring the state's strategic action plans as well. They are two separate elements, all of which need something over the top of them to assure the delivery of those obligations. As I say, the Emergency Management Commissioner, from my role, is no different from the agencies and the chiefs of the agencies and their performance.

**The CHAIRMAN:** In Victoria late last year there were two hostile vehicle-type attacks. Did you have any role after those attacks in assessing both the preparedness and the response of emergency management to those incidents?

**Mr PEARCE:** No. With the Bourke Street situation there was consideration by government about whether or not we would do a review into that, but that was again as I described earlier a consideration of reviewing the response to the event and the consequences of the event, but not to the cause. In the way I described before, that would have been done through different mechanisms. However, at the time there was no review requested. Even though the review was not requested, we monitor each of those events from within our own office, and we have access to the state emergency management systems to be able to monitor those. If we thought that there was a potential community safety concern in the way the event was managed, or if we thought there was a political risk in the way the event had been managed, we would have recommended to the minister that he task us to do that, and I have no doubt in my mind that he would have done. Similarly with the incident at the intersection of Flinders Street and Exhibition Street, the same thing occurred there. We monitored that. There was no request for any official review, but our assessment of the response to the event, which we did quietly in the background anyway, suggested that we would not have expected to see anything different from what actually occurred. In both of

those events, from IGEM's perspective at least, it really does come back to the cause and the lead-up to the cause rather than what happened after the event occurred.

**The CHAIRMAN:** You do have significant powers over agencies—state government agencies. A lot of emergency management of course also depends on contractors. How much oversight do you have when you go down the chain outside of an agency to either contractors who are appointed directly by the agency or in some other subcontracting-type framework? Do you think that oversight could be improved?

**Mr PEARCE:** We have found no need to improve it because the way the legislation is written, although it prescribes some agencies specifically that I have very specific responsibility for, it also has a catch-all that talks about the emergency management sector. The sector has a responsibility to provide me with whatever I require at the time that I am carrying out my function. Within that sector we take that to mean, as does the sector, that any organisation that in any way is either written into our arrangements or in the support arrangements for our emergency management framework. For example, with the thunderstorm asthma event we even spoke to the Pharmacy Guild of Australia and requested evidence about the role it played, and the role it might play in the future et cetera. We have spoken to private contractors from departments and agencies who have been engaged. From that perspective, I have access to anybody who provides any input into the system for the way our arrangements work, and they do not have to be a prescribed agency.

**The CHAIRMAN:** Thank you. The whole committee could spend a lot of time asking you questions, but we have to get to Parliament and we are also not allowed to meet while Parliament is sitting. We will have to conclude today. We thank you for your evidence and for making yourself available. Technology is a wonderful thing. You will be forwarded a transcript of the hearing to correct any errors. You need to make those corrections within 10 working days and return the transcript to us. If you do not return it, we will deem it to be correct. You cannot use the correction process to introduce new material, but if you want to provide any additional material or elaborate on any points, please include those in a supplementary submission for the committee's consideration. If the committee has any further questions, if you do not mind us sending those through to you for a written answer, we would also appreciate it.

**Mr PEARCE:** That is fine.

**The CHAIRMAN:** Thank you very much for your time today. That concludes today's hearing.

**Mr PEARCE:** Happy to be of assistance.

**Hearing concluded at 11.40 am**

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