



Special Commission of Inquiry into the Ruby Princess

Remarks made by senior counsel assisting, Richard Beasley SC – 8 May 2020

I wish to draw to attention an article published in the Australian newspaper yesterday, written by someone called David Penberthy. That article contained these statements:

“The scenes out of the NSW government’s sham inquiry into the Ruby Princess this week were harrowing and disgraceful.

The manner in which that poor public servant, epidemiologist Kelly-Anne Ressler was reduced to tears during her interrogation by Bret Walker SC was beyond belief.

It is debatable whether this woman should have appeared before the inquest at all.

As our NSW bureau chief, [Yoni Bashan, wrote yesterday](#): ‘She was not on the four-person panel that graded the ship a ‘low risk’ for entry to Australia; she did not write the inch-thick guidelines governing cruise ship arrivals; and she was not a medical doctor qualified to give clinical advice.’

Yet Ressler ended up wearing a day’s worth of vitriol all the same.

Let’s be clear. The treatment of this woman was an act of state-sponsored bastardry designed to ensure that whatever villains are found in this affair do not inhabit NSW cabinet.

It’s a taxpayer-funded show trial aimed at achieving a political end.

It was Hazzard who ultimately had the power to demand greater vigilance and oversight by his own department in managing the Ruby Princess.”

I wish to address a couple of these comments:

First, Mr Penberthy's claim that "it is debatable whether this woman [Ms Ressler] should have appeared before the inquest at all".

That is not rationally debatable.

Ms Ressler is not a low-level public servant. Can I draw these ten matters to your attention Commissioner, although they should not be considered the only matters of significance:

1. Ms Ressler is the Senior Epidemiologist at a NSW Public Health Unit in the South Eastern Sydney Local Health District.
2. She has been an epidemiologist in that Health unit for 16 years. She has a Masters Degree in Public Health.
3. She has been involved in the "Cruise Ship Program" carried out by that Health Unit for 16 years. She, with colleagues, has been the author of several articles concerning the spread of infectious diseases in cruise ships.
4. She was part of a team that boarded the Ruby Princess on 8 March to assist in carrying out an assessment, although clinical decisions were made by a doctor.
5. She was involved in communications with the Doctor of the ship regarding the health of those onboard from the time it left Sydney on 8 March until after it berthed in Sydney on 19 March.
6. On 15 March, she was sent an email by the ship's doctor about the beginnings of an "influenza outbreak".
7. As the Senior Epidemiologist, Ms Ressler reports directly to the Health Assessment Panel who determined that the ship was "low risk" for Covid-19 on 18 March, and who had determined it to be a "medium risk" on 7 March. As for the fact that Ms Ressler did not write what Mr Bashan called – quoted by Mr Penberthy - the "inch-thick guidelines covering cruise ship arrivals", it is true that Ms Ressler did not write them. She thinks she was sent them in draft, and may have commented on them. For the record, they are not inch-thick, if that

term was used literally. The protocols introduced for Covid-19 run to a few pages.

8. Ms Ressler made a recommendation to that Panel that the ship be treated as “low risk” when it was to berth in Sydney on 19 March. She called it a “plan” which involved allowing disembarkation of all passengers, including those swabbed for Covid-19, before results were available for those swabs. That recommendation was not made at 2.30am in the morning of 19 March. It, and the decision that followed, had been made during the afternoon of 18 March.
9. A day after passengers had all left the ship, Ms Ressler contacted the ship’s doctor on 20 March because she noticed that a person from the ship had been tested for Coronavirus who was not on the ship’s acute respiratory diseases log sent to NSW Health for the purposes of risk assessment early on 18 March. She queried this with the ship’s doctor, who sent an updated log, that contained new medical information, revealing a greater level of relevant illness on the ship.
10. She told you in her evidence if she had that new information available to her at some time on 18 March, she would have made a different recommendation to the Panel – a matter I would think that passengers on this ship and the community generally might think is a matter of relevance. She agreed, in her sworn evidence, that this was a “flaw” in the system. That might also be a matter of relevance to the many people infected with Covid-19 from infectious people from this ship. It might be, one would rationally think, to be a matter of interest to the community at large. It is a matter squarely within your terms of reference. You cannot do the task imposed on you without hearing that kind of evidence.

Very few of these facts are mentioned in Mr Penberthy’s article. There is no mention of your terms of reference. You, however, have to make findings of fact. You have to inquire into decisions made by people. Sometimes, organisational decision-making processes have chinks or flaws in them. If you start at the top, you can miss those flaws. To start at the top of a decision-making tree would be irrational, lazy, and would carry a real risk of missing something of importance. If it is “debatable” that Ms Ressler should or should not have been a witness to a Commission of Inquiry with this one’s terms of reference, that is a debate that could only be had by people who have either not read this Commission’s terms of reference, or, if they have read them, have

completely failed to comprehend them. No person, with or without legal training, could rationally take the view that Ms Ressler should not be summoned to give evidence by this Commission. She had to be, and the “line of questioning” (and I am not quoting Mr Penberthy there) was one you were obliged to pursue by your terms of reference.

I do not intend to make any comment on the statements concerning your alleged “interrogation” of Ms Ressler, or the statement that she wore “a day’s worth of vitriol”. She was asked questions for a day. That is hard. I did not enjoy her becoming upset, or crying. I have seen men and women cry in a witness box before. Nobody enjoys it when that happens. But Ms Ressler was, beyond any sensible argument, an important witness for this Commission, who gave evidence of matters relevant to NSW protocols for cruise ships entering NSW ports, of her decisions, and other matters relevant to the terms of reference.

As to “sham inquiry”, and “state sponsored bastardy”, and “ensure that whatever villains are found in this affair do not inhabit NSW cabinet”, I will only say this. I know, for a fact, as does every other person engaged in this Commission, that its terms of reference are not directed to any particular outcome, but to a broad inquiry, including into NSW agencies, and the decision-making processes of relevant people in those agencies. I know for a fact that no person within the NSW Government, much less the Cabinet, or the Health Minister, has in any way attempted to interfere with this Commission’s independence. It is completely independent of government. It is a Special Commission established by an Act of the NSW parliament – the *Special Commissions of Inquiry Act*. That Act gives you powers and responsibilities, not members of the NSW Cabinet. It is not an interdepartmental inquiry. It is – as a matter of fundamental legality – independent of government.

Finally on this matter Commissioner, I do not intend to express a view now about whether or not the comments in Mr Penberthy’s article constitute a contempt - that is, whether they constitute an act which has the tendency to interfere with or undermine the authority of, performance or dignity of this Commission, or those who participate in its proceedings. I can advise though that the Editor-in-Chief of The Australian newspaper has been written to by the Commission’s senior solicitor to invite him to inform you of any matter he might wish to have considered as to whether the comments in Mr Penberthy’s article – parts of which he has also circulated on social media - might constitute a contempt. A response has been requested by noon today.