

Peter Vaughan
Environmental Media Foundation Inc.

18 July 2021.

ATTENTION: Chairman IAC Fingerboards Mine Inquiry.

**DECISION TO REFUSE MEDIA APPLICATION TO RECORD CLOSING SUBMISSIONS.
PROCEDURAL FAIRNESS AND DECISION MAKING INCONSISTENCY.**

Dear Mr Wimbush.

I write to express strong concern over a decision you handed down during the hearings of the Fingerboard Mine inquiry on the morning of 15 July.

The decision related to my application to the Inquiry, to film certain submitters and the closing presentation of the EPA, the East Gippsland Shire Council, the Mine Free Glenaladale group, and the proponent Kalbar Operations.

On the morning of 15 July in preliminary business, you allowed a discussion on the issue. I spoke from a prepared statement (attached). Kalbar Operations was the only other participant to oppose the application.

It is of note, that you thought it important to seek the position of all parties. Apparently you did this to give the impression of procedural fairness. The EPA, The Shire, and MFG all agreed to allow their closing presentation to be filmed, with the proponent predictably not agreeing. You even delayed events to allow council to seek advice.

However despite those three parties agreeing to my application, you announce that the IAC had refused the application. This decision is troubling, because after receiving the majority opinion, you then sided with the position of the proponent.

In addition you failed to supply any reasoning for the decision, apart from a mention that it did not affect the principles of natural justice or procedural fairness. And some illogical reference to the number of submitters to the EES and inquiry.

You then stated that a comprehensive decision would be prepared and supplied to parties the next day. It never was, and indeed four day later, I am still waiting to see a detailed justification for your decision. Obviously for the sake of procedural fairness, I have a right to question your decision while this inquiry is still under way, and before closing arguments are presented. You stated that a written submission would now be supplied on Monday or Tuesday, (19-20 July) which is conveniently too late for me to evaluate it and raise the matters prior to the hearings recommencing.

I note that after I raised issue with the [REDACTED] and presentation on July 2, you rejected my warnings in a written response. Only to reverse that position after councillors threatened to include IAC in a defamation suite. There appears to be no logic or consistency in your decision making regarding these matters. You also refused to investigate or refer on the Ausenco witness tampering matter, which is notable as a company of bad character can not hold a mining license in Victoria.

I also note that after you sought the opinions of all parties regarding Kalbar last attempt to dump yet more documents onto the IAC (the Sensitive Receptor Kalbar generated maps), all three parties,

MFG, Shire and EPA objected. Yet you also ignored that majority, and approved Kalbars application. Apparently you side with Kalbar on all matters, regardless of the cost to other parties and the principles of fairness involved.

I presume that as you could not articulate any substantive reasoning for refusing my recording application on that day (15 July), but refused the application, simply because you knew that Kalbar and the government had or would object. And that you have used the extra 4 days to seek legal advice in order to construct a retrospective reasoning for your decision. That would be unethical.

The fact that the three parties agreed to my application, with only the proponent opposed the application, leads to the obvious question. Why didn't you simply allow our application, in relation to those three parties. Why didn't you give permission to record the final arguments from EPA, Shire, MFG, but not Kalbar. Surely that would have been a fair and uncontroversial decision. What statistical proportion would you require to have approved this application, 4 out of 4 ? Or did you just ask the parties for their position, to make it appear you were making a considered and fair assessment of the application ?

In this matter surely the public interest - for media coverage - trumps Kalbars financial and political interest to suppress public awareness of this inquiry ? I have 2 letters from Kalbar threatening me with legal consequences if I continue my investigations, and one letter from Ausenco to the same end. There are clearly political and financial interests at play in these matters.

Your decision is in effect, an order to censor public vision of the final arguments to be put before this extensive inquiry. I can't imagine any justification for this (considering 3 of the parties agree) other than the conclusion that you have been influenced by political considerations, that have overridden the public interest.

A clear insight into the political influence in your decision, was shown in your initial display of open hostility to my presence during discussion on the morning of 15 July. I was invited to talk, but as I don't have a camera attached to my computer, could only appear via audio. In fact the email communication I had retrieved in regards to my appearance on the day from the IAC, did not stipulate a requirement to appear with a video and audio.

However, you chose to preamble my input, with a string of slurs designed to denigrate my character and professional standing, and to rattle my composure, with a statement to the effect: **“You want to film us, yet you don't want us to see you”**, and **“we don't know who you are?”**

The question that needs to be asked is: why did you make those comments ? Where is the procedural fairness in your behaviour as the Chairman of a public inquiry panel; why was your behaviour a reasonable reaction, to a fair and reasonable application by a media professional to record proceedings ? Why did you ask “who are you ?” without any warning ? Who else during this entire inquiry, have dared to treat in such a way – nobody.

Your behaviour strongly suggests that you had in fact already come to a decision to refuse the application, and were setting up an atmosphere of denigration, as a means to provoke a reaction to your advantage. This suggests either you are setting up this inquiry as a whitewash under instruction from the government, or acting in Kalbars interests. Why else would you act that way ? I am after all just a documentary film maker examining a highly controversial mine proposal, and the scandalous mismanagement of mine regulation across Victoria.

I note that to date, I have not received a written apology from the IAC for your behaviour. I believe it was defamatory, it was unjustified, and done with malice and designed to damage my standing in

the community and justify your decision – which you had probably already been made.

In regards to your decision, it appears to be affected by political influence. The IAC should declare in a statement, exactly what communication took place between yourself (or the Inquiry) and the Planning Department management and staff, solicitors, or ministerial staff, over this decision. In particular, what advice did you take from those parties during the break in the inquiry, prior to your presentation of a decision. All that documentation should be protected, as it could be called if this matter ever end up in the courts.

You part justified your decision by quoting figures for 900 submission and 140 presentations to the ESS and inquiry. You said, “We also don't accept that there is a lack of public knowledge about this hearing, or this project or this process...would suggest that the level of public interest engagement and knowledge of this project is very very high.” This response is hard to fathom, and completely ignores the role of the media in our society. Its not for the Chairman of a government inquiry panel to define how the media should operate or how the public receive information.

Your comments above do not support your decision. If only 1040 people out of a total regional population of 25,000, made submissions, then a lot of the population, by your argument are unaware. Furthermore, its not for the Chairman of a government inquiry into a highly controversial mine, to define what is an acceptable level of public awareness on a current and ongoing political and social issue. Nor should such an important state issue, be limited to only local awareness.

It is notable that in your decision you made no reference to any of the points I raised in my spoken submission (I read prior to your decision), other than your mention of the matters above. I believe this display procedural unfairness, and a lack of balance in your decision.

What you failed to considered was my declaration, that I am a member of the Media Entertainment and Arts Alliance, which is the professional body representing Australian journalists. I said I was bound by the Code of Journalistic Ethics held by the MEAA. However, you stated at the time: “We don't know anything about you Mr Vaughan, who are you “ ?

It is also of note that the audio of the inquiry including Thursday 15 and Friday 16, has still not been uploaded to the Kalbar Youtube channel for viewing. These recordings should have been available for parties to consider prior to closing submissions. It begs the question, why is the proponent responsible for these recordings, especially as there has been documented examples where Kalbar has doctored recordings of public meetings posted online in the past.

In relation to the quotes I make above, I have a personal audio recording of my participation on the IAC inquiry on the morning of 15 July. I made that recording to protect my legal rights, and I will retain it as a record.

Note I have written this letter in consideration of any future legal issues that may arise. I do not believe the events as they have unfolded, show that you as the Chairman of the IAC inquiry panel, acted fairly in deciding this matter. Your failure to articulate any credible reasoning at the time you made your decision, raises the expectation that the decision was predetermined, and possibly motivated by undisclosed political or government policy considerations. There is a public expectation that this panel process would be conducted fairly.

Thank you.

Regards.
Peter Vaughan

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