

The Canberra Firestorm



Inquests and Inquiry into
Four Deaths and Four Fires
between **8 and 18 January 2003**

Volume II

Maria Doogan, Coroner

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December 2006

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Volume I

Foreword

Acknowledgments

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- 2 Appearances, representation and witnesses
- 3 The course of the inquests and the fire inquiry

Part Two About the fires

- 4 The situation leading up to the fires
- 5 Chronology of events: 8 to 18 January 2003

Part Three

Action and reaction

6 The initial response

This chapter deals with the response to the four fires—at Bendora, Stockyard Spur, Mount Gingera and McIntyres Hut—in the first two or so days after their ignition on 8 January 2003. Some of the information that follows also appears in Chapter 5 and, although it is important to repeat some of it here so as to give context to this chapter, I do not provide the same level of detail here: I assume readers of this chapter will have first read Chapter 5.

An examination of what actions were taken or not taken to suppress the fires in the first 36 to 48 hours is crucial, exceeded in importance only by the question of warnings, which is covered in Chapter 7. The primary matters that need to be examined in connection with the response are as follows:

- What was done?
- Was it enough?
- If not, why not?
- Could the result have been different?

It can be said with little fear of contradiction that the importance of a rapid and aggressive response to all fires—particularly those that start in remote areas—has long been a well-recognised principle of firefighting. It was recognised in the ACT and was practised when the Bush Fire Council was responsible for fire suppression.¹ At that time, among the policies and practices adopted in periods of high and extreme fire danger were pre-positioning of heavy plant and aggressive standby arrangements, where firefighters responding to a fire would expect to remain overnight until relieved the following morning.²

Long before the January 2003 fires it was known to the senior personnel of the Emergency Services Bureau, and to many others who lived in the rural areas, that the ACT region was experiencing severe drought. It was also known that fuel levels were at or near the maximum, or ‘equilibrium’.³ The danger of fires in these conditions was well recognised, as was the potential for the rapid spread of fire.⁴

6.1 The Bendora fire

6.1.1 Arrival at the fire and assessment

Ms Odile Arman (call sign Parks 1) was tasked by Mr Tony Graham from ESB headquarters to respond to the Bendora fire and to take charge. At about 6.50 pm she arrived at the site, where she met personnel from other units who had been sent to the fire and had arrived before her.

There were 14 personnel, three tankers and three light units, including Mr Cliff Stevens (Forest 7) who attended in a vehicle with a radio.⁵ There was some confusion about the fire's size, as reported earlier by Mr David Ingram in the helicopter *Firebird 7* and subsequently by the operator of the helicopter *Southcare 1*, who at 6.53 pm estimated the fire area as about 500 to 750 square metres.

Ms Arman decided to assess the size of the fire by walking around it and asked some of the crews to begin a direct attack on it. She started to walk at about 7.00 pm, accompanied by Mr John Kane from the Forests crew. Ms Arman said she had observed that the intensity of the fire was not dramatic, and she judged it to be susceptible to direct attack with water and rake-hoe teams. She said she could hear timber falling occasionally but did not see any trees or branches falling. She estimated the fire to be 300 metres by 400 metres—120 000 square metres, or 12 hectares—but said later that, on reflection, she had overestimated the size, which was more probably about 6 hectares, much larger than the estimate she had received from *Southcare 1*. She observed that the fire was moving slowly with a flame height on the fire edge of about half a metre, rising to about 2 metres further into the fire, particularly around the base of trees where bark had accumulated.⁶

Ms Arman and Mr Kane completed their reconnaissance at about 8.00 pm and returned to find that the Forests crew had not started putting water onto the fire, so she directed the tanker driver to roll out the hoses and proceed with a direct attack. The other tankers had hoses rolled out.⁷ She contacted ComCen (the Communications Centre) at 8.01 pm and had a conversation with the operator. Mr Graham was on duty as the Operations Officer of the service management team that had been assembled by Mr Peter Lucas-Smith at about 4.00 pm that day.⁸

6.1.2 The decision to withdraw from the fire

Ms Arman provided to ComCen a situation report that included information that the fire was about 100 metres from Warks Road, was drawing into itself and was not moving very rapidly. She reported that tankers and light units could reach it on the eastern side but that rake-hoe lines were needed around the top section. A few minutes later ComCen and Ms Arman had another exchange, in which Ms Arman was asked if she had further information. She replied 'No' but asked for guidance from the duty coordinator on whether or not to leave crews in the area overnight. The ComCen operator said that he understood teams would be removed that evening and returned the next day, but that he would get back to her. The reply came at 8.06 pm from the ComCen operator, who asked Ms Arman if she intended remaining or leaving crews overnight and, if not, to provide an estimate of the number of crews required the following morning. Ms Arman said she would respond in a few minutes after she had worked out the numbers.

Meanwhile, the Forests crew had rolled out hoses as directed and *Southcare 1* was water bombing the fire at Ms Arman's direction. She contacted ComCen again at about 8.14 pm and told the operator she and the crews would be leaving since there was 'not too much we can do this evening'. Ms Arman reported that they would need to send in at least two rake-hoe teams, do water bombing, and deploy at least one heavy tanker first thing in the morning.⁹ She received a response from the ComCen operator two minutes later, telling her the duty coordinator thanked her for her attendance and said she could leave because crews would return in the morning.¹⁰

Ms Arman told her crews to fold up their equipment, and they left the fire ground. She telephoned Mr Graham at about 9.18 pm, when she was in mobile phone range, and discussed the fire in more detail with him. She told Mr Graham about the terrain and what resources would be needed the following day. She said she also told him she was unsure about the recommendation to withdraw the crews that night and said Mr Graham replied, ‘We were hoping you would do that’.¹¹ In his evidence, Mr Graham said he did not recall the conversation clearly enough to contradict Ms Arman and agreed, knowing what he did of the situation at Bendora, that in his opinion it was appropriate to withdraw the crews from the fire.¹²

The difficulty with Mr Graham’s opinion is that at the time he had scarcely any information about the fire, the conditions or the circumstances surrounding Ms Arman’s decision because he had not asked her any questions.¹³ He did not even know the size of the fire because that question was not asked of Ms Arman, and she admitted, frankly, that she had forgotten to report it after she had completed her reconnaissance.¹⁴ Nevertheless, Mr Graham said if he had known all the reasons Ms Arman subsequently gave for her decision to leave the fire that first night he would have agreed that it was a dangerous situation for crews and that the risks of staying and fighting the fire overnight were too great.¹⁵

Ms Arman explained in her evidence and the statements she made after the event that there were several factors that influenced her thinking when she responded to the question from Mr Graham, via the ComCen operator, about whether she was intending to stay at the fire that night. First, she had recognised a tendency in recent years not to have crews staying overnight at fires in remote areas.¹⁶ Second, she said there was some confusion about who was responsible for making a decision to fight a fire overnight because it was a ‘grey area’ and that is why she sought guidance from the people at the Emergency Services Bureau.¹⁷ Third, she believed she had made a recommendation with which the duty coordinator agreed and she would have been overruled if he had not agreed.¹⁸ Fourth, she was concerned about the safety of her crews for a variety of reasons, among them falling timber, fatigue, the fire’s size, visibility, and the remoteness of the area.¹⁹ Finally, she thought the fire would not grow excessively overnight.²⁰

It was, however, Ms Arman’s evidence that she saw her decision to withdraw from the fire as a recommendation; she said she was asking for advice and if she had been directed by Mr Graham to stay at the fire overnight she would have happily accepted such a direction.²¹ The decision to withdraw meant the fire was unattended overnight, and it grew.

Mr Graham agreed that his failure to question Ms Arman about her reasons for withdrawing the crews that first night was a deficiency in the way the matter was handled and he should have taken the opportunity to obtain more information. He also said that at the time he was the only service management team member at the operations centre, so he could not discuss the decision with anyone. He did not think to telephone Mr Lucas-Smith to discuss the matter with him and agreed the decision-making process could have been better.²²

The drought conditions were known to Mr Graham, as was the importance of taking the opportunity to control the fire on the first night.²³ Mr Graham admitted, however, that on 8 January he did not recognise the threat the McIntyres Hut fire posed for the Uriarra pine plantation and had taken no action to arrange additional bulldozers to put fire trails around the three ACT fires the following morning. Additionally, Mr Graham had not considered or made

inquiries during the night about the possibility of deploying additional crews.²⁴ He agreed he did not have the level of concern about aggressive attack that night that Messrs Tony Bartlett, Arthur Sayer and Neil Cooper had discussed, and he accepted that the reason for this was that they had more experience of bushfire fighting than he.²⁵

In his statement Mr Graham noted that he had discussed Ms Arman's concerns about keeping the crews at the fire overnight with Mr Lucas-Smith and Mr Rick McRae and said the three of them agreed with Ms Arman's assessment that the risks to the firefighters' safety were too great. Consequently, they, the members of the service management team, supported her position to withdraw.²⁶ It became clear from the evidence, however, that the only conversation between Mr Graham and Mr Lucas-Smith on this subject was at 7.40 pm, while Mr Lucas-Smith was travelling to Queanbeyan; this was before Ms Arman had returned from her walk around the fire, before her calls to ComCen, and before the decision to withdraw.

Mr Graham told Mr Lucas-Smith the fire was about 500 square metres in size—a mistake made by Mr Ingram—and that he (Mr Graham) doubted anything could be done on the fire that night. Mr Lucas-Smith then said they would be looking at crews going back the following day and asked Mr Graham to organise that.²⁷ Again, the decision not to fight the fire that first night started as a doubt expressed by Mr Graham in response to Mr Lucas-Smith's question about whether anything could be done that night. That doubt of Mr Graham's became a decision within a matter of seconds after the discussion between the two men. The decision appears to have been based on no more information than an underestimation of the size of the fire.

In evidence, Mr Lucas-Smith accepted that he approved the decision to do nothing that night without knowing any details about the fire.²⁸ He gave evidence that he and Mr Graham had discussed Ms Arman's concerns after he had returned from Queanbeyan to ESB headquarters and after the crews had already left the area. Mr Lucas-Smith said he thought there should have been a little bit more in-depth consideration of the matter and admitted that he might have done things differently if he had been on the firefront and that others with more experience in those conditions also might have made a different decision about withdrawing.²⁹

Before his conversation with Mr Lucas-Smith, at 7.00 pm Mr Graham had a telephone conversation with Mr Bruce Arthur from the NSW Rural Fire Service in Queanbeyan. Mr Arthur asked if the ACT was proposing to take any action on the fires that night; Mr Graham responded that he did not think so and agreed with Mr Arthur's comment that you could not 'put people into that country today'.³⁰

Ms Arman said an important influence on her thinking that evening was the welfare of the crews and the fact that some of them had been working since 7.30 am; she was reluctant to ask them to start an overnight 12-hour shift.³¹ Her communications with ComCen, however, and her decision to withdraw from the fire without attempting to attack it occurred without any consultation with any of the crew members. Many of the crew members—for example, Mr Cliff Stevens and Mr Doug Mitchell—were experienced firefighters. Mr Stevens was on reconnaissance looking for water and returned to the area some time after 8.15 pm, after the decision to withdraw had been made. In his opinion:

There is no doubt in my mind that we could have got it out. We had the tanker and the light unit that came in with Parks 1 and my crew (another tanker and light unit). The tankers already had the hoses rolled out from both units ... I believe we had adequate resources to put out the fire that night. I believe we should have stayed there and put the fire out. I know my crew were prepared to stay and wanted to stay.³²

Other crew members also expressed surprise and disappointment at having been told to abandon the fire that night.³³

6.1.3 The opinions of the experts

Mr Phil Cheney

Mr Cheney's opinion was that, if Ms Arman had been aware she could not handle the fire that night, her decision not to try to do so was the right one. But he also expressed the view that it was the responsibility of the service management team to know the level of training, experience and proficiency of all firefighters under its control, and it should have assessed the situation in order to determine whether Ms Arman was suitable for the position of incident controller.³⁴ Mr Cheney did not mean this to be a criticism of Ms Arman; rather, he believed that a more experienced firefighter should have been called to respond to the Bendora fire on 8 January.³⁵

Mr Cheney said in his evidence that, although firefighting is a dangerous business and firefighter safety must always be taken into account, threats to the safety of the wider community as a consequence of firefighters not taking action must also be considered.³⁶ Mr Cheney said people experienced in suppressing forest fires should have known that the fire danger was low to moderate on the night of 8 January and that the fire was extinguishable. It was his opinion that the ACT Bushfire Service should have stayed with the fire on that first night and put it out.³⁷ His report detailed what action could have been taken that night to put the fire out.³⁸

Mr Trevor Roche

Mr Roche said that, having examined Ms Arman's actions, he concluded she was not sufficiently experienced to recognise the implications of her decision to withdraw and that a more experienced firefighter might have made a different decision. Mr Roche did not criticise Ms Arman's uncertainty and her decision, but he did criticise the fact that, when she sought guidance from ComCen, she received none and no planning support was provided by the service management team.³⁹

In his report Mr Roche explained why Ms Arman misconstrued various safety measures and how those measures could have been addressed.⁴⁰ He also outlined firefighting tactics that could have been implemented overnight on 8 January to contain the Bendora fire.⁴¹ It was his opinion that the decision to withdraw from the fire was a wrong one⁴²: 'In my experience withdrawing from a fire is a very, very significant decision to make. In general terms fires don't get any smaller overnight'.⁴³ Mr Roche's opinion was that the Bendora fire could have been contained within 24 hours and secured before the weather deteriorated.⁴⁴

Mr John Nicholson

Mr Nicholson's opinion was that a decision to stay and try to contain the fire on the night of 8 January would have been reckless.⁴⁵ He agreed, however, that it was appropriate to do firefighting at night if the weather and terrain were favourable and that night-time is usually when a fire is at its quietest. It was also acceptable, he said, to fight fires overnight if they were small and direct attack was the best strategy. When told that there was night firefighting from 10 January onwards, Mr Nicholson said he would be the first to agree that, notwithstanding the risks, sometimes night-time firefighting was absolutely necessary.⁴⁶

6.1.4 Preparations and the response: 9 January

During her radio conversation with ComCen at 8.14 pm Ms Arman said the resources needed for the fire the following morning were 'at least' two rake-hoe teams and 'at least' one heavy tanker. She said in her evidence that during her later telephone conversation with Mr Graham, at 9.18 pm, she told him more resources than she had said previously would be preferable; she believed she told Mr Graham that at least four rake-hoe teams were needed.⁴⁷

Later that evening Mr Graham arranged with ACT Parks that one of its officers would be the field incident controller at the Bendora fire the following morning. He was subsequently informed that Mr Rick Hayes (Parks 6) had been tasked, along with two RAFT (remote area firefighting team) crews and one light unit, and they were to assemble at the intersection of Brindabella and Warks Roads at 6.00 am. Mr Graham believed that Ms Arman's 9.18 pm request for resources seemed appropriate and he was proceeding on the basis that the fire covered about 500 square metres.⁴⁸

Mr Graham had contacted Mr Hayes later on the evening of 8 January, confirming that he would be taking with him two rake-hoe teams of six people each, plus a tanker and a light unit. Mr Hayes said his recollection of the detail ComCen provided to him about the fire, its location and the objectives for the following day was sketchy.⁴⁹ He was, however, told by Mr Graham that the fire covered about 500 square metres.

On the morning of 9 January one tanker, one light unit, one command unit, Mr Hayes (in his own car) and eight personnel instead of 12 arrived to attend to the Bendora fire. There were fewer firefighting vehicles and personnel than had been at the fire the previous evening. The resources were also less than the weight of response according to Stand Operating Procedure 7 for a code yellow day—as was 9 January—which is two tankers and two light units.⁵⁰

Mr McRae was the designated Planning Officer of the service management team. After he had returned from Queanbeyan, having accompanied Mr Lucas-Smith, he was told about the decision to withdraw from the Bendora fire. He commented in his evidence that he agreed with the decision, which, he said, would not have been taken lightly.⁵¹

He said there had been a discussion about resources for the fires the following day, but he did not take part in the discussion. On the basis of what he had heard, he thought the fire was about 1 hectare and expected it to double in size by the morning.⁵²

Mr Cheney's opinion about the fire's behaviour overnight was that the expected southerly change, which arrived in the area about 9.00 pm, would limit the fire's spread. He added, however, that because of the fuel levels, the fire continued to spread overnight in the heavier patches and developed a fingered perimeter along which some of it had self-extinguished.⁵³ It appears the fire crossed the Bendora Break (firebreak) at some time between 11.00 pm on 8 January and 3.00 am on 9 January and was burning in long fingers when Mr Hayes arrived at the scene at about 7.00 am.⁵⁴

While the crews were en route to the Bendora fire that morning, Mr Ingram went on a reconnaissance flight over the three ACT fires in *Firebird 7*. He first visited the Bendora fire, reporting to ComCen at 6.52 am that the fire was burning slowly at the southern end and was most active on the north-west and north-east corners, where the flame height was about 1.5 to 2 metres. He estimated the size of the fire to be about 750 square metres.⁵⁵

In his evidence, Mr Ingram acknowledged that his estimate the previous evening of the size of the Bendora fire being 500 square metres was wrong and that his clear recollection of the size at 7.30 pm was 5000 square metres—'the size of a football field, which is 100 by 50'.⁵⁶ It was suggested to him that his estimate on the morning of 9 January could not be correct because he reported a much smaller fire than he knew it to be the previous evening. He replied that his report on the morning of 9 January referred only to the fire he could see (750 square metres), so that is all he could call it. He said, 'Obviously the fire was a lot larger. If you can't see where the fire is, you can only call what you can see'. Mr Ingram did not inform ComCen of this qualification.⁵⁷

Mr Hayes confirmed that the response on the morning of 9 January to the Bendora fire consisted of the Rivers command unit (a twin cab unit that did not carry water), with three crew members, the Rivers 21 light unit, with two crew members, the Guises Creek 10 tanker, with three crew members, and Mr Hayes in his own vehicle. The firefighting capacity was therefore one tanker, one light unit, eight crew members and Mr Hayes.⁵⁸ Mr Graham had intended that there would be 12 crew members, and Mr Hayes was expecting 12 rake-hoe team members and three crew on the tanker—in all, 15 people. With the limited resources, Mr Hayes was able to create one rake-hoe team, although that meant he had to stand down the tanker and light unit and so had no suppression capability.⁵⁹

About 10.00 am Mr Hayes contacted ComCen and asked for help in locating the water supply crews had identified the previous evening. He was given a grid reference and told to speak with Ms Arman if he had further problems. Several times that day Mr Hayes spoke with Mr Graham about additional resources, but he did not ask for more personnel because he assumed they would not be available.⁶⁰ He also said heavy traffic made communication difficult on the ComCen radio channels, and he had to drive some kilometres out of the area every time so that he could use his mobile phone.⁶¹

Mr Hayes described what was done to try to contain the fire. He did not know the size of the fire when he arrived but estimated it to be between 7 and 10 hectares. By 10.00 am it might have been about 15 to 20 hectares, he thought.⁶² He abandoned efforts on the southern side of the fire after conferring with Mr McRae, who was flying over the fire in *Firebird 7*, and being told of severe fire activity. Mr Hayes turned his attention to the northern side and tried to find the

Bendora Break, which had become overgrown. It took some time to find the break and put in a rake–hoe line to allow a tanker access to the fire ground. Neither Mr Hayes nor the crews had been given maps before they came to the fire ground. Mr Graham contacted Mr Hayes and offered him a bulldozer, which Mr Hayes said would supplement his small crew, but at about 3.40 pm Mr Hayes was told the bulldozer would not arrive at the site until first light the next morning.⁶³

As the afternoon progressed Mr Hayes said it became increasingly obvious to him that, with the limited crew and resources, they were fighting a losing battle and it was impossible to make the attack needed to suppress the fire.⁶⁴ At about 4.40 pm ComCen contacted him to tell him his earlier request for overnight crews was supported, but at 5.54 pm Mr Hayes radioed ComCen and called off the overnight crews because, he said, the situation had become too dangerous. ComCen responded that the duty coordinator, Mr Graham, agreed with Mr Hayes' assessment.⁶⁵

Mr Hayes explained that he reversed his earlier suggestion about overnight crews because from about 4.00 pm conditions had become 'horrendous', with falling trees and atrocious fire behaviour. The fire had crossed Warks Road and Wombat Road. He said firefighting efforts would have been more effective if a dozer had been available that morning to clear Wombat Road and provide better protection against the fire jumping the road; the Bendora Break could also have been cleared. Mr Hayes sent the crews home at 6.00 pm.⁶⁶

6.1.5 The response on 10 January

During the afternoon of 9 January the service management team reviewed the situation after it had received various reports from the reconnaissance flights and the incident controller for each of the ACT fires. Mr Lucas-Smith said in his statement it had become apparent that the strategy of direct attack only on the Bendora fire would not succeed because there was insufficient water. Consequently, the agreed strategy was to continue with direct attack until indirect measures could be implemented. They started making arrangements to acquire heavy plant for 10 January, to open up access tracks and build containment lines.⁶⁷

Ms Arman was the incident controller for the Bendora fire on 10 January and arrived at the fire about 7.00 am with one RAFT crew consisting of five personnel and three tankers—Molonglo 10, Southern 11 and Guises Creek 11.⁶⁸ A bulldozer had also been allocated, but Ms Arman did not become aware of this until about 8.00 am. Without giving her any information about strategies or objectives, Mr Graham directed her to contain the fire. She was briefed about the weather and told the size of the fire was about 80 to 90 hectares. Ms Arman was given no maps and no incident action plan. Further, because no one had been at the fire the previous evening, she received no handover information.⁶⁹

Ms Arman deployed one tanker to protect the Bendora Arboretum; this was successful. She deployed the other two tankers and the RAFT crew to Warks Road and Wombat Road to construct rake–hoe lines; this was unsuccessful. She tasked the bulldozer driver to clear the Bendora Break. In her statement Ms Arman commented that she was frustrated because she did not have a clear picture of the boundaries of the fire.⁷⁰ She asked for more resources at 10.14 am; these were provided and arrived early in the afternoon, having been redeployed from the Mount

Gingera fire. Mr Brian Murphy was to help Ms Arman manage the fire: Mr Graham had advised her at 1.30 pm that the strategy had changed from direct attack to indirect attack and the fire was too big for her to manage on her own.⁷¹ Mr Murphy said that when he arrived that afternoon it was clear to him they did not have sufficient resources to control the fire.⁷² Ms Arman and Mr Murphy then set about deploying their resources onto various sectors of the fire.

Crews were deployed to the fire overnight, and at about 8.30 pm Ms Arman and Mr Murphy handed over control of operations to Mr Robert Flint, who was the incident controller overnight. He was allocated a crew of seven, with three light units and a tanker.⁷³ Mr Flint conducted surveillance of the fire, including around the arboretum and Bendora Hut, which were threatened by the fire and required considerable effort to save. Mr Flint handed over to Mr Hayes at 5.00 am the following day.⁷⁴ By 10 January the fire had doubled in size, to about 220 hectares. By 11 January it would double in size again, to about 422 hectares.⁷⁵

6.2 The Stockyard Spur fire

6.2.1 Initial assessment and response

The Stockyard Spur fire was the first reached by Mr Ingram in *Firebird 7*, at about 3.37 pm on 8 January. He estimated the area burnt at about 50 square metres. He then saw the Bendora fire and recommended to Mr Graham that water bombing begin there. Mr Graham directed water bombing on the Stockyard Spur fire instead of the Bendora fire. The water bombing continued until about 4.30 pm, when *Firebird 7* was instructed to stop doing it. At 4.46 pm Mr Ingram estimated that the Stockyard Spur fire had grown to about 70 square metres, burning in a small hollow and moving slowly.⁷⁶

Meanwhile, at 4.18 pm Mr Graham had arranged for Mr Dennis Gray (Parks 9) to respond to the fire as field incident controller, with two tankers and a light unit. Mr Graham directed Mr Gray to the Stockyard Spur track as a possible access route to the fire, not knowing the track had become overgrown.⁷⁷ It took Mr Gray an hour-and-a-half to reach the car park at Mt Ginini; he and a crew member then set off to find the road marked on the map as leading through to the Stockyard Spur area. They could not find the track and spent some time trying to find another way to the fire but were unsuccessful.

At 6.47 pm Mr Gray radioed ComCen to ask *Firebird 7* to provide updated information on the fire he could not find. Mr Ingram replied shortly afterwards, saying the fire covered about 100 metres by 75 metres and Mr Gray was about an hour away if he had to travel on foot.⁷⁸

6.2.2 The decision to withdraw from the fire

ComCen contacted Mr Ingram at about 7.12 pm, asking if *Firebird 7* could water bomb the Stockyard Spur fire sufficiently to contain it until crews returned the following day. Mr Ingram said further bombing would be difficult but they would make another attempt. ComCen replied that the Chief Fire Control Officer had directed *Firebird 7* to check on the Mount Gingera fire, and Mr Ingram replied that they were on their way. ComCen also told Mr Ingram that Mr Gray

had been directed to walk back to his vehicle and leave the area. This happened after a conversation between Mr Gray and ComCen at about 7.14 pm, when Mr Gray said he did not think they would make it to the fire that evening. ComCen replied that the Chief Fire Control Officer also thought Mr Gray should not go to the fire that night.⁷⁹

In his statement Mr Gray said he was surprised to be instructed to withdraw from the Stockyard Spur fire because he and his crews had provisions and expected to be out all night. In evidence, however, Mr Gray said he accepted that he had initiated the call to abandon the fire that night and he still believed it to have been the right decision. He said his comment in his statement about being surprised to be told to withdraw referred to not being relocated to other fires.⁸⁰

6.2.3 The opinions of the experts

Mr Phil Cheney

Apart from noting that there was a delay before crews were dispatched and that when they arrived they could not drive through because the Stockyard Spur fire trail had not been kept in a trafficable condition, Mr Cheney made no comment on the decision to withdraw from the Stockyard Spur fire.⁸¹

Mr Trevor Roche

Mr Roche did not criticise Mr Gray's decision to withdraw because he could not locate the fire. He said, however, this difficulty could have been resolved had the helicopter landed and taken Mr Gray on a reconnaissance of the fire—which would also have been valuable for the subsequent planning and resourcing of the firefighting effort. He suggested that a bulldozer should have been requested for first light on 9 January to help with the construction of a containment line. It was Mr Roche's opinion that if access to the fire had been easier and suitable resources had been dispatched there was an excellent chance the fire could have been contained overnight because it was no more than about 300 metres by 200 metres in size.⁸²

6.2.4 Preparations and the response: 9 January

Mr Gray contacted ComCen at about 7.45 pm on 8 January, saying he had found a track for vehicles that led from the Mt Ginini car park to about 1 kilometre from the fire. He also spoke with Mr Brett McNamara, who was going to be the field incident controller the following morning and attend with RAFT crews. Mr Gray did not speak with anyone at the Emergency Services Bureau about what resources were needed the following day, nor did he discuss this with Mr McNamara.

Mr Ingram flew over the Stockyard Spur fire at about 7.05 am on 9 January and reported that the area burnt was about 500 square metres. It was put to him during evidence that his report must have been wrong because he had said the previous evening that the fire area was 7500 square metres. He again said that because of the smoke and cloud that was all he could see.⁸³ Mr Cheney had estimated that by about midnight on 8 January the fire area was about 300 metres by 200 metres.⁸⁴

Mr McNamara arrived at the Bulls Head staging area at about 6.00 am and left for the Mt Ginini car park shortly afterwards. He had 12 RAFT personnel, drawn from the Parks brigade and Gungahlin volunteers.⁸⁵ He received Mr Ingram's message from ComCen at 7.05 am, informing him the burnt area was about 500 square metres. He and his crew had difficulty reaching the fire because they could not drive along the heavily overgrown Stockyard Spur trail; they had to walk about 2 kilometres, arriving at the fire at about 9.00 am. Mr McNamara asked his crew to rest while he carried out reconnaissance for about 20 minutes to half an hour. He observed the fire to be of low intensity, with a flame height of between 0.5 and 1 metre, and burning in a heavily forested snow gum – mountain gum woodland with very dry fuel.⁸⁶ He decided the best course of action would be to construct a bare-earth mineral containment line at the north-west flank of the fire. This proved a difficult operation.⁸⁷

During the morning Mr McNamara was in contact with Mr Graham about the firefighting strategy, but he said they had problems communicating because the radio and satellite phones did not work effectively in the area. Mr McNamara told Mr Graham he would have great difficulty establishing a containment line around the entire perimeter of the fire because he did not have enough personnel. He asked for additional RAFT crews and helicopter support and told Mr Graham a bulldozer would be able to clear the trail and thus allow fire tankers access to the seat of the fire. Mr McNamara said Mr Graham told him there were multiple fires in the area and he would respond in due course.⁸⁸

Mr Graham did not recall Mr McNamara's request for additional RAFT crews or his alleged response about multiple fires in the area. He did, however, agree that he and Mr McNamara discussed the need for heavy plant and that access was good for this along the fire trail.⁸⁹

Mr McNamara had a brief exchange with Mr McRae in *Firebird 7* at about 10.35 am. Mr McRae informed him that the fire was a backing fire with an area of about 8 hectares and that the fire was 'fairly hot' and probably would not self-extinguish. He told Mr McNamara he had 'an awful lot of work to wrap this one up'. Mr McNamara agreed and added, 'especially with the crews we have on deck at the moment'.⁹⁰

Mr McNamara described the progress of the firefighting in the early afternoon. The crews had constructed about 400 metres of containment lines and *Southcare 1* and *Firebird 7* were providing valuable assistance, water bombing the fire. But both helicopters were withdrawn from the fire at 2.30 pm. The wind had changed and Mr McNamara became concerned about his crews' safety. He reported to Mr Graham that some crew members were fatigued and the fire had reached the containment lines they had built.⁹¹ Mr McNamara discussed his concerns and the options with his crews and then with Mr Graham again, when he reported that in the absence of helicopter support and with an aggressive change in the fire's behaviour and a number of personnel who were fatigued—having been awake since 4.00 am for the early start—it was no longer safe to be on the fire front. Mr McNamara told Mr Graham he and his crews would fall back to observe the fire from a safe distance. Mr Graham agreed with this, and Mr McNamara and his crews withdrew from the fire at 5.53 pm.⁹²

Mr Graham noted in his statement that, without any vehicle access to the fire, little could be done by way of direct firefighting. He also noted that after discussions between the service management team and the Parks and Conservation Service, which was the land manager

responsible for the area, it was agreed that heavy machinery should be used to open up the Stockyard Spur track and so allow vehicles access to the fire. This would require considerable effort and, because suitable machinery was not readily available, the work could not begin until 11 January 2003.⁹³

Mr Lucas-Smith was asked if there was any reason why Mr McNamara and his crew could not be replaced and he replied that there was no reason except:

It was a decision that was made earlier in the day to move from direct attack to indirect attack for all our fires. It was the realisation that these fires were a much larger size than was originally thought at Curtin and also the fact that an 80-hectare fire—putting two tankers and 13 personnel on an 80-hectare fire was not a ... reasonable strategy ... the people resources for a direct attack on an 80-hectare fire, whether daytime or night-time, was far in excess of what I could have marshalled for that night.⁹⁴

6.2.5 The response on 10 January

By the morning of 10 January there was no incident action plan for the Stockyard Spur fire: the service management team had not worked to identify a containment strategy.⁹⁵ Mr McRae enlisted Mr Arthur Sayer to work with Mr Nicholas Lhuede in the Planning Unit to identify containment lines for the fire. Mr McRae said the objective was to monitor the situation while a containment strategy was being planned.⁹⁶ Mr Lhuede and Mr Sayer conducted a reconnaissance of the Stockyard Spur and Mount Gingera fires late that afternoon. Mr Sayer noted that the fire was burning quietly, such that he could step over the flames and walk back into the burnt area. He also noted, however, that the fire had become too large for containment with rake-hoe teams and that bulldozers and tankers were needed.⁹⁷

There were no teams tasked to respond to the Stockyard Spur fire on 10 January. The fire grew from 35 hectares on 9 January to about 302 hectares on 11 January.⁹⁸

6.3 The Mount Gingera fire

6.3.1 Initial assessment and response

No units were allocated to the Mount Gingera fire on the afternoon of 8 January 2003. Mr Graham noted in his statement:

The [service management team] (less David Ingram) discussed the Gingera fire and agreed not to put crews into this area to try and round up that fire. The terrain was fairly rough, there wasn't any vehicle access and the perimeter of the fire was difficult to get around by foot because of the rugged terrain.⁹⁹

At about 6.00 pm on 8 January Mr Ingram flew over the Mount Gingera fire in *Firebird 7* and reported that it had burnt about 20 square metres and the flame height was about 1.0 to 1.5 metres; he commented that there was no easy access to the fire. Later, at about 7.20 pm,

Mr Ingram again flew over the fire and reported that it had grown a little in size, probably by about 5 square metres.¹⁰⁰

At about 7.15 am on 9 January Mr Ingram reported from *Firebird 7* that the Mount Gingera fire had burnt an area of about 300 square metres and was working its way slowly up the ridgeline.¹⁰¹ In evidence, Mr Ingram admitted he really did not know the exact size of the fire because he could not see all of it, and he agreed he had made mistakes in reporting the size of the other fires.¹⁰² During an observation flight later that morning Mr McRae reported the Mount Gingera fire to be 2 hectares and growing.¹⁰³

Crews were first despatched to the Mount Gingera fire on 9 January at about midday. Mr Peter Callan, the field incident controller, reported at about 2.30 pm that he and his crew—four people in two light units—were having difficulty reaching the site. At 3.00 pm he reported that he and another crew member were walking through to the fire line to see what might be needed.¹⁰⁴ He said they reached the fire edge at about 3.25 pm and proceeded to assess the fire's behaviour and the terrain. At 5.20 pm Mr Callan reported to ComCen he estimated the fire size to be about 5 hectares, with flames about half a metre high. He added that there were two options—using a bulldozer as soon as possible or water bombing. He expressed concern about the fire crossing Mt Franklin Road and moving into the creek area because, he said, there would be no way to stop it if it did.¹⁰⁵ Water bombing started at about 6.00 pm.¹⁰⁶

At about 6.45 pm ComCen and Mr Callan discussed whether it was worthwhile remaining at the fire. Mr Callan asked if he and his team would be replaced if they were pulled out and was told there would be no replacements and that the intention was to pull them out then wait and see what happened overnight.¹⁰⁷ At about 7.45 pm ComCen notified Mr Callan that the situation had been re-assessed and he and the crew should remain overnight to prevent the fire crossing the road. They stayed, watching the fire come down the hill and edge up to the Mt Franklin Road. They were relieved the following morning, and Mr Callan finished at 10.00 am.

6.3.2 The opinions of the experts

Mr Phil Cheney

Mr Cheney reported that if the crew that attended the Mount Gingera fire on the afternoon of 9 January had been properly equipped with rake-hoes, a chain saw and a slasher they could have done some hand-line construction from the Mt Franklin Road to the southern edge of the fire, where it was burning downhill. This would have been a useful start for the teams that arrived the following morning.¹⁰⁸ Mr Cheney's evidence on this was unchallenged.

Mr Trevor Roche

Mr Roche expressed the view that, although the crews were seriously under-resourced that day, he could not understand why they had not done some hand-trail work off the Mt Franklin Road, which would have been useful for the following day. Mr Roche's opinion was that two RAFT crews, a medium-sized bulldozer, and two or three tankers and light units should have been sent to the fire on 9 January—at first light, not midday. With those resources, plus water bombing and support from ground crews, he believed the Mount Gingera fire could have been contained

by the end of 9 January and secured before the onset of adverse weather.¹⁰⁹ Mr Roche's evidence on this was unchallenged.

6.3.3 The response on 10 January

Mr Tony Greep was the incident controller for the Mount Gingera fire on 10 January and arrived at Piccadilly Circus at 6.00 am. Mr Graham briefed him by radio, instructing him to keep the fire from crossing Mt Franklin Road and put a rake-hoe line around as much of the fire perimeter as possible.¹¹⁰ Mr Greep travelled to the fire and met his team of three RAFT crews; there were three tankers and two light units.¹¹¹ He was briefed by Mr Callan. Mr Dennis Gray was also at the fire that morning, and he and Mr Greep conducted an aerial reconnaissance in *Firebird 7*, which had landed with Mr Neil Cooper, who had been with Mr Ingram mapping the boundaries of all the fires and reporting on their behaviour. Mr Greep estimated the Mount Gingera fire's size as 200 metres by 300 metres.¹¹² Mr Cooper reported the fire to be less active than the Bendora fire but said the vegetation was very thick. He radioed ComCen at 7.46 am, suggesting that a small bulldozer would be best, to cut a trail around the fire and contain it. Mr Graham replied immediately that this would not be an option. In his statement Mr Cooper noted that he was confident that, had a bulldozer been made available, the Mount Gingera fire could have been contained. He also noted that the reason Mr Graham gave for not providing a bulldozer was environmental concerns.¹¹³

At about 11.30 am ComCen told Mr Greep his three RAFT crews, one tanker and one light unit were to be redeployed to the Bendora fire. They left the Mount Gingera fire. By then the crews had constructed some 200 metres of containment lines in difficult terrain and dense vegetation. Mr Greep used his remaining resources to suppress the fire on Mt Franklin Road and then patrol the road until his shift finished at 6.30 pm. No crews were deployed on the Mount Gingera fire overnight on 10 January.

On 10 January the Mount Gingera fire was the smallest of the three ACT fires. Mr Cooper stated that he was surprised to learn resources had been withdrawn from the fire that morning and sent to the Bendora fire. It was his opinion that the Mount Gingera fire was the only fire that offered a chance of control and containment: it was small; it was burning at a relatively high altitude; and it was burning relatively slowly.¹¹⁴ Mr Lucas-Smith agreed that on the morning of 10 January the Mount Gingera fire was the smallest of the fires but said, 'It was probably going to be difficult to suppress purely and simply because it did require plant and we didn't have it and it was a long haul to get it there'.¹¹⁵

The size of the Mount Gingera fire was estimated at 53 hectares on 10 January. On 11 January the fire had burnt 172 hectares.¹¹⁶

6.4 The McIntyres Hut fire

6.4.1 Initial assessment and response

Ms Julie Crawford was the incident controller in charge of the McIntyres Hut fire on 8 January. Shortly after 4.00 pm, when she learned of the fire's ignition, she dispatched a category 9 tanker with 400 litres of water and Mr Rob Hunt, a divisional commander, to accompany the tanker. She also arranged for a surveillance flight over the fire. At about 5.30 pm reports coming from various sources led Ms Crawford to conclude that this was a big fire.¹¹⁷

Mr Hunt reported his observations about the fire from the Mt Coree fire tower, to which he retreated for safety, and noted the likelihood of several ignition points or spot fires. At about 5.40 pm Mr Scott Seymour, a NSW National Parks and Wildlife Service ranger, was conducting the aerial reconnaissance and noted that the size of the fire was about 200 hectares. He reported this to Ms Crawford on his return, at about 7.30 pm.¹¹⁸ Ms Crawford decided not to send personnel closer to the fire than the Mt Coree tower: she was uncertain about the situation and concerned for people's safety.¹¹⁹ Throughout the afternoon and early evening, Ms Crawford received reports of fire activity in the area.

At 8.00 pm Ms Crawford chaired a meeting attended by people from the NSW National Parks and Wildlife Service and the Rural Fire Service, as well as Messrs Lucas-Smith, McRae, Cooper and Bartlett from the ACT. Mr Hunt and Mr Seymour briefed the meeting on the McIntyres Hut fire and Mr Lucas-Smith briefed the meeting on the ACT fires. The meeting was informal and discussed tactics. The strategy devised and agreed on was one of indirect attack in a broad containment area, using the Goodradigbee River to the west, the power line fire trail to the south, the fire break on the eastern perimeter of Brindabella National Park, and Doctors Flat Road and the Webbs Range trail to the north.

There was conflicting evidence and controversy during the inquiry about the NSW authorities' decision not to use the Baldy Range trail as the eastern containment line. This evidence is recounted in some detail in Chapter 5. In short, had the Baldy Range trail been chosen as the eastern containment line, the area that had to be burnt would have been much smaller and construction of a new firebreak on the eastern perimeter of the national park would not have been necessary. It was Ms Crawford's evidence, however, that, in her recollection, by the end of the meeting the Baldy Range trail was seen to be an unviable eastern containment line because of fire in the area.¹²⁰

It seems that there was general agreement among those who attended the meeting, including Mr Lucas-Smith, that the Goodradigbee River should be the western containment line.¹²¹ Ms Crawford said no work needed to be done to construct the line because the river was already there, and any spotting over it would be controlled by aircraft.

Those at the meeting acknowledged that the area to be burnt out was about 10 000 hectares—a very large area.¹²² It was Ms Crawford's evidence, however, that, although it was generally recognised that the strategy needed to be implemented quickly, no specific time frame was developed for its completion.¹²³ Late that evening NSW National Parks and Wildlife Service officers completed request forms for reconnaissance and water-bucketing aircraft for the

following day and forwarded these requests to Rural Fire Service State Operations. Mr Seymour prepared a situation report in the early hours of the morning, at 2.45, for 6.00 am to 6.00 pm on 9 January; the report noted that the strategy was for the control lines to be completed by the day shift and for the back-burn to begin that evening and be consolidated with aerial incendiaries on 10 January.¹²⁴ Ms Crawford gave evidence that the time frames set out in Mr Seymour's situation report were not set at the meeting on the evening of 8 January and were unrealistic.¹²⁵ Mr Bruce Arthur, who was the District Fire Control Officer for the Yarrowlumla and Queanbeyan rural fire district and the day-shift incident controller of the McIntyres Hut fire from 9 to 18 January, signed off Mr Seymour's report at 6.00 am on 9 January; he agreed that the time frame for completing the strategy was 'a little ambitious'.¹²⁶

6.4.2 Operations: 9 January

Although the strategy for 9 January was to construct containment lines during the day and start back-burning from these lines that evening, the NSW crews encountered problems, among them insufficient resources to construct the rake-hoe line at the south-west corner of the power line fire trail and the subsequent relocation of resources from that sector to another.¹²⁷

The NSW authorities gave further consideration to using the Baldy Range fire trail as the eastern containment line but, after resources were transferred in order to start constructing a containment line around the eastern side of the trail, crews and vehicles were withdrawn at 11.45 am because the fire was reported during an aerial reconnaissance as being far larger than was apparent from the ground.¹²⁸ Water bombing continued on the Baldy Range fire during the afternoon, to dampen the area in front of the fire and stop the fire's easterly spread until crews could be sent.¹²⁹ In evidence, Ms Crawford said there were insufficient crews to work on the fire on 9 January, but about 30 people began work the following morning, putting in a rake-hoe line around the eastern side.¹³⁰ Crews continued to work on the Baldy Range fire until mid-afternoon on 13 January, when it was decided that the fire trail and direct attack would not contain the fire and another trail further to the east was chosen as the containment line.¹³¹

There were delays in starting the burning-out operations on 9 January because containment lines had not been completed in the various sectors and the incident management team had decided these should be completed before back-burns were lit.¹³² Mr Neil Cooper, who had been appointed liaison officer by Mr Lucas-Smith and was located with the incident management team at Queanbeyan, said he was concerned about the delay and discussed this with Mr Lucas-Smith and Mr Bartlett, both of whom were also concerned about the potential implications for the ACT.¹³³

6.4.3 Operations: 10 January

NSW authorities continued constructing containment lines on 10 January, but no burning-out operations were started that day. Mr Bartlett raised his concerns about the potential threat to the ACT pine plantations with Mr Alan Thompson, the Chief Executive of the Department of Urban Services, who contacted Mr Mike Castle. Later that day Mr Bartlett and Mr Castle attended the incident management team meeting in Queanbeyan, where Mr Bartlett expressed his strong view and serious concern about the delay in starting the back-burning.¹³⁴ After further discussion,

Mr Arthur informed those present that the burning-out would start along the southern control lines of the power line trail the following day.¹³⁵ Mr Bartlett offered ACT Forests crews to assist, but Mr Arthur declined the offer.¹³⁶

NSW crews were deployed to the Baldy Range fire to directly attack it. The fire became more active during the mid-afternoon, and spot-overs and re-ignitions were occurring. Dozers continued to prepare the containment lines, with two working along the power line trail. The terrain became too steep at one point, and the track could not be completed. Work on other containment lines had also not been completed, so crews assigned to the back-burn were stood down the following day. Back-burning did, however, start off the southern containment line—at the power line access track and Two Sticks Road—on 11 January, but it did not start on the northern line until 13 January and on the eastern line until 14 January.¹³⁷

6.5 The actions of service management team personnel: 9 January

6.5.1 Mr Lucas-Smith's interview

At about 9.00 am on 9 January Mr Lucas-Smith was interviewed on ABC Radio 666. In answer to a question about the situation with the fires, he said:

We've still got two fires in the ACT in Namadgi National Park which are uncontained but small, and we've got crews going there now, helicopters already in the air and working over these fires, as we speak, and we expect to have them rounded up fairly early this morning.

He went on to explain that because of the mild conditions he did not expect the ACT fires to grow much but that his biggest concern was the McIntyres Hut fire. The interviewer asked him whether any ACT crews were likely to attend that fire; he responded, 'We'll certainly assist them once we've got our fires out of the way, as best we possibly can, because it is a large fire which is threatening the ACT'.¹³⁸

Mr Lucas-Smith agreed that anyone who had heard that interview would have understood his comment to mean that the ACT fires were unlikely to pose a problem after a few more hours. He said this reflected his state of mind at the time, which was that any problem these fires might have posed was almost resolved.¹³⁹ In his evidence, however, Mr Lucas-Smith made it clear that at that time the 'McIntyre's Hut fire was certainly posing a threat to the ACT. That was in the forefront of my mind. That was my highest priority'.¹⁴⁰

6.5.2 Mr McRae's reconnaissance

At about 9.45 am on 9 January Mr McRae and Mr Castle conducted an aerial reconnaissance over the four fires in *Firebird 7*. The flight lasted about 90 minutes, and Mr McRae took on the role of observer and plotted the coordinates of the fires on laminated maps he had taken with him. He also made notes about the behaviour and characteristics of the fires, the nature of the

terrain, the size of the fires, and any assets that might be under threat.¹⁴¹ Mr McRae said his first priority upon his return was:

to make available the notes of my observations during the helicopter flight. I therefore made multiple photocopies of my notes and provided them to Peter Lucas-Smith, Tony Graham and Dave Ingram. I then typed up my notes, downloaded the photographs from the digital camera, printed the photographs and placed the notes on the ESB website.¹⁴²

Mr McRae's notes posted on the ESB website at 11.00 am described the Bendora fire as 20 hectares and 'growing' and noted the fire behaviour as 'backing with 1.5 m flames to NW, NE; hot with 2 m flames on SW; out on SE along road'. The Cotter catchment was noted as being under threat.¹⁴³ In evidence, Mr McRae said the rapid growth of the Bendora fire surprised him: he had not expected the fire to be much bigger than 2 hectares at that time.¹⁴⁴

In relation to the Mount Gingera fire, Mr McRae's notes stated that the fire was 2 hectares and growing and described its behaviour as '0.5 m backing on flanks and heel; 1 m spreading around rocks on head to N'. He noted that access to the fire was possible by four-wheel-drive trail 200 metres downslope to the east.

Mr McRae stated that the Stockyard Spur fire was 8 hectares and described its behaviour as 'Backing, 0.5 m flames, 1m on W flank. Escalating'. He noted that it was accessible by a 'dormant trail by foot' and that there was 'lots of large fallen timber'. His handwritten notes appear to also state, 'lots of large logs—difficult for rake hoe'.¹⁴⁵

For the McIntyres Hut fire, Mr McRae estimated the main fire to be 300 hectares, with the three related spot fires—Dingi Dingi Ridge, Mountain Creek and Baldy Range—being between 15 and 20 hectares each. He said all fires were growing. The terrain was 'steep dissected valleys' and the fire behaviour was 'mostly backing flames 0.5 to 1.5 m, some hot spots'. It was noted that the fire threatened 'ACT, especially pines; private property; powerlines'.

There was also a report on the Mt Morgan fire in NSW, which was 2 kilometres from the ACT, 2 hectares in size, and described as posing no direct threat.

While Mr McRae was on the surveillance flight he spoke by radio with Mr Hayes, who was at the Bendora fire, but failed to tell Mr Hayes that he estimated the fire to be 20 hectares. Mr McRae said he did not believe at the time it would help Mr Hayes if he received that information: 'A lot of our fire controllers prefer brevity rather than a detailed travel log from air observers'.¹⁴⁶ In contrast, Mr Hayes said it would have been of great assistance to him had he been told the fire he was trying to control was 20 hectares, although the information would not have led him to change his tactics that day.¹⁴⁷ Mr McRae also failed to tell Mr McNamara the Stockyard Spur fire covered 8 hectares.¹⁴⁸

Mr McRae noted in his statement that after the reconnaissance flight and on his return to the ESB:

It was becoming clear to me and to the rest of the [service management team] that direct attack was not going to succeed and that we needed to focus on indirect attack. This in turn meant that we needed to address the fire as a 'campaign' fire. That in turn requires extensive planning and additional personnel and capability ...¹⁴⁹

6.5.3 The decision to change strategy

Mr Lucas-Smith noted in his statement that by 10.30 am on 9 January reports from the incident controllers and Mr McRae suggested the fires had grown substantially and that by the afternoon it had become evident direct attack alone was not going to succeed on the Bendora fire. It would, however, continue until indirect strategies could be implemented. This involved the use of heavy plant to construct containment lines and open up access to tracks.¹⁵⁰

Mr McRae defined a ‘campaign fire’ as ‘one where the fire goes for some number of shifts before it’s finally suppressed and requires significant logistic and other support and significant operational commitment’.¹⁵¹ Similarly, Mr Lucas-Smith described ‘campaign fires’ as fires that are going to extend well beyond 24 to 36 hours and will therefore require multiple shifts and multiple field resourcing.¹⁵²

In keeping with the change in strategy from direct attack to indirect attack, Mr McRae noted, ‘The Planning Section within Curtin would have to be ramped up’.¹⁵³ Nevertheless, despite the change in strategy and an acknowledged need for extensive planning for campaign fires, no formal Incident Action Plan appears to have been prepared for issue to field commanders for any of the ACT fires for the following day—or, indeed, for any time before 19 January. Rather, Mr Graham was left to communicate the strategy to incident controllers in verbal briefings.¹⁵⁴

Mr Graham made no reference in his statement to receiving a copy of Mr McRae’s notes on the reconnaissance flight and said in evidence that, although he did not recall receiving notes, distributing them was certainly the kind of thing Mr McRae would do and if he had been given the notes by Mr McRae he certainly would have read them. Mr Graham also said that, although he could not specifically recall Mr McRae describing what he had seen, he believed that a discussion would have taken place. Mr Graham did not recall being surprised to learn that the Bendora fire had grown from around 500 square metres the night before to about 20 hectares—200 000 square metres—12 hours later¹⁵⁵, despite Ms Arman’s report at 8.00 pm the night before that the fire was drawing into itself and not moving very fast.¹⁵⁶

6.5.4 The Bendora fire: ‘severely under-resourced’

In Mr Cheney’s view, on 9 January 2003 the Bendora fire was ‘severely under-resourced’.¹⁵⁷ Mr Lucas-Smith agreed with this assessment.¹⁵⁸ Mr McRae did not know what resources had been allocated to the Bendora fire that morning, so he had not wondered whether or not they were sufficient.¹⁵⁹ He did not know what resources Mr Hayes had allocated to him and, in particular, did not conclude from his conversation with Mr Hayes that he had insufficient resources to deal with anything other than a part of one flank of the fire. Mr McRae merely thought Mr Hayes was seeking advice about which was the most appropriate flank of the fire to focus suppression efforts on. Mr McRae did not agree with Mr Cheney’s description of the fire as ‘severely’ under-resourced, although, given that Mr Hayes was continuing to pursue direct attack throughout the day of 9 January, Mr McRae did agree that ‘more [resources] would have been better and that the fire was under-resourced’.¹⁶⁰

Mr Graham agreed that the service management team should have alerted Mr Hayes to the size of the fire and discussed resourcing with him and that this information should have come from

Mr McRae, Mr Lucas-Smith or himself.¹⁶¹ Mr Graham also said, however, that it was Mr Hayes' responsibility to tell Mr Graham if he needed more resources, and Mr Hayes did not do this. Mr Graham accepted that it was 'possibly right' that people in the service management team had information on the fire's size that suggested Mr Hayes had underestimated the extent of the task confronting him. He agreed that this is a consequence of a person with responsibility for making decisions not being able to do so effectively without all relevant information having been provided to them. He also agreed that it was the role of the service management team to support those in the field with information and said:

It would appear that there wasn't enough resources for a 20-hectare fire. However, I don't know that Mr Hayes raised any concerns. I understand your point that he may not have had a total appreciation of what he was facing; nevertheless, we do rely on information from the ground.¹⁶²

What Mr Graham seems to be saying is that Mr Hayes should have asked for more resources, even though he did not have vital information with which he could make the judgment that he did in fact need more resources.

6.5.5 Failure to use all available resources

Mr Bartlett and ACT Forests crews

Mr Bartlett gave evidence that, in his position as Deputy Chief Fire Control Officer, he went to the Emergency Services Bureau in Curtin at about 4.20 pm on 8 January 2003, immediately after he had seen smoke plumes in the Brindabellas and heard radio reports of smoke sightings. He spoke with Mr Lucas-Smith and Mr Graham, saying that, judging from what he had seen of the smoke on his way from the city to Curtin, there was a need to deploy additional resources as quickly as possible. Mr Bartlett said he was concerned about the potential threat to the pine plantations and offered his services. Mr Graham told Mr Bartlett he was not willing to deploy additional resources until he had heard from the incident controllers at the fires and there was no role for Mr Bartlett until the numbers and locations of the fires had been confirmed. Mr Bartlett remained at ESB headquarters for a time, waiting for the situation to be clarified and to be assigned a role in either managing the initial response or allocating resources. Neither of these things happened, so he made to leave after about an hour, to go to the ACT Forests headquarters at Stromlo and coordinate the Forests response.

As he left the Emergency Services Bureau Mr Bartlett saw a huge column of smoke—the McIntyres Hut fire. This caused him immediate concern, he said, and he went back inside, spoke with Mr Castle, and showed him the smoke plume. Mr Castle said he would convey the significance of what he had seen to the personnel responsible for operations, and Mr Bartlett left to await further instructions. Mr Bartlett had been told that some Forests staff had been deployed to the Bendora fire that day.¹⁶³

Mr Bartlett returned to the ESB offices at 9.00 am on 9 January to obtain an update on the fires and find out what role he would be given. Mr Bartlett said:

Again I was advised by Peter Lucas-Smith that there was no requirement for my services. I offered the services of some of my staff to support the Planning Unit and

Mr Lucas-Smith indicated that he would like two staff for these roles. I indicated that I would arrange for Hilton Taylor and Felicity Grant to make contact with Rick McRae about their involvement in the Planning Unit. I also advised the Duty Co-ordinator that we could source bulldozers if required and that we had also made this offer through Neil Cooper to the NSW Incident Management Team. At that point I knew that all of the ACT Forests firefighting crews were on stand-by but that none had been deployed. I then queried the expected requirement for those crews and was told that they were to remain on standby and that there was no immediate tasking. Surprised at this response, I returned to my office and discussed the various possibilities with some of my senior managers. I decided that if I was not going to be used as an Incident Controller I would concentrate my efforts on what could be done in relation to the McIntyre fire considering the threat that it posed to the plantations.¹⁶⁴

Mr Bartlett explained that on 9 January ACT Forests had effectively the same crews and equipment available as had been available on the preceding afternoon. He was asked to keep the crews and equipment on standby in case there was a need to deploy them. Mr Bartlett said the advice that he could obtain bulldozers was also given at the time he offered his services, and he was reasonably certain he had spoken to Mr Graham about the dozers.¹⁶⁵

Mr Lucas-Smith could not recall telling Mr Bartlett on the morning of 9 January that his services were not required but acknowledged that this ‘may have occurred’. He said he did not regard the Emergency Services Bureau as being under-resourced that morning.¹⁶⁶ Mr Graham was not sure whether he had had a conversation about resources and bulldozers with Mr Bartlett and thought it might have been Mr Ingram rather than him, but he did not know. He did agree, however, that it was true that on the morning of 9 January no ACT Forests crews had been deployed to any of the fires burning in the ACT, although he could not recall whether any ACT Forests crews had been deployed to the McIntyres Hut fire at that time. Asked whether there was any reason why those crews were not being used, Mr Graham replied, ‘Well, we had crews deployed to the incidents that we had. There was no indication I don’t believe in the morning that those crews weren’t coping with the situation that they had in hand, so there was no requirement’.¹⁶⁷

Mr Graham did not recall having any dealings with Mr Bartlett on the morning of 9 January and did not believe that he and Mr Lucas-Smith discussed having someone of Mr Bartlett’s experience involved either at the service management team level or as an incident controller in the field. In his view, the Emergency Services Bureau had competent and capable officers managing the fire and the service management team was performing well. Accordingly, Mr Graham believed there was no need for Mr Bartlett’s assistance at that time¹⁶⁸, although he was aware that ACT Forests crews would have been available had he requested them.¹⁶⁹

By mid-afternoon Mr Bartlett still had not received any request from the Emergency Services Bureau for deployment of Forests firefighters, who all were still at headquarters on standby. He did, however, receive a request to supply a D6 bulldozer for use on the Bendora fire. The machine was brought in from NSW and sent to the fire early the following morning.¹⁷⁰

On the morning of 10 January Mr Bartlett again reported to ESB headquarters. He was again told that no specific role had been allocated to him, and no request was made to deploy Forests crews to the ACT or McIntyres Hut fires. Mr Bartlett was briefed about the fires. ACT Forests arranged

to supply two further bulldozers—a D6 and a D8—to the McIntyres Hut fire. The three Forests staff continued to provide support in the Planning Section.¹⁷¹

Mr Bartlett noted in his statement that in his roles as Deputy Chief Fire Control Officer and Director of ACT Forests he had two concerns: first, ESB personnel were not making use of his expertise and experience to assist with the firefighting effort; second, he believed the NSW agencies were not doing enough to implement the indirect suppression strategies that had been agreed on the evening of 8 January for the McIntyres Hut fire, and this compromised his ability to protect the ACT plantations. As a result, Mr Bartlett took the initiative and instructed his staff to obtain another bulldozer to widen the firebreak on the western side of the Uriarra plantation.¹⁷² He was appointed incident controller of the Bendora fire and took up that role on the morning of 11 January.

Mr Arthur Sayer

At the time of the 2003 fires Mr Arthur Sayer held the position of Deputy Chief Fire Control Officer representing ACT Parks and Conservation and was Mr Bartlett's counterpart. He was on duty as DCFCO on 8 January 2003. Despite his position, his availability and the fact that he is a most experienced bushfire fighter, no one from the Emergency Services Bureau contacted him that afternoon and asked for his help. The following day Mr Sayer went to his workplace at 7.30 am to attend a meeting of the Parks Brigade, only to learn that the meeting had been cancelled. After lunchtime he received a telephone call from Mr Peter Galvin, who was at ESB headquarters in Curtin, asking him to attend. On his arrival at the headquarters Mr Sayer noted that various people were present and were discussing the fires. He said he expressed his anger at not having been consulted or contacted until after lunchtime that day.

Mr Sayer said he had a verbal exchange with Mr Lucas-Smith and then left the ESB offices. He returned the following day, 10 January, after having received a telephone call from Mr McRae, and was asked to assist with planning strategies for the Stockyard Spur and Gingera fires.¹⁷³

Mr Val Jeffery

Mr Val Jeffery noted in his statement that on 8 January he and members of his brigade responded to a number of roadside fires that had been started by a motorist driving on a tyreless wheel rim. They controlled those fires and mopped up, then Mr Jeffery called ComCen and reported that he and his crews were available to help. He noted:

As our crews were standing up and very experienced in fighting mountain fires I was expecting to be called to assist with the suppression of the fires I was now aware of to the west of Canberra. We did not receive a tasking from ESB and our units returned to our shed and remained stood up until about 9.00 pm and on call from then on. If our units had been tasked to attend any of the fires in the ACT or NSW we would have responded. We would have been prepared to work under any Incident Controller and would have been prepared and equipped to work as usual until relieved next day by dayshift crews.¹⁷⁴

Mr Jeffery went on to state that he received no request from the Emergency Services Bureau the following day, 9 January, but if he had he could have supplied one tanker, one light unit and three or four rake-hoe teams and still have sufficient resources to respond to a fire in his area. It

was not until 11 January, Mr Jeffery thought, that he received a request to send brigade units to assist with the ACT and NSW fires.¹⁷⁵

6.6 Submissions of counsel

The written and oral submissions presented by counsel are all long, and they are not dealt with exhaustively here. I did, however, consider them carefully in the light of the evidence on which they purport to be based. What follows is a discussion of the more significant submissions as they relate to the initial response to the fires and the adequacy or otherwise of that response.

The overriding submission counsel assisting made is that, had the Emergency Services Bureau adopted a genuinely rapid and aggressive initial response to all the fires, there is a strong likelihood they would have contained them all within 24 hours of their ignition on 8 January 2003 and there were equally good prospects of controlling and suppressing the fires before the onset of extreme weather.¹⁷⁶ The reasons this did not happen, it was submitted, are many but can be summarised as follows:

- There were flaws in the service management team structure within the Emergency Services Bureau and this resulted in the team's dysfunctional operation.
- Mr Graham was not sufficiently experienced to act as Operations Manager.
- The initial response to the fires came too late and was inadequate.

In relation to the McIntyres Hut fire, counsel assisting submitted in the first instance that I should find that the failure of the incident management team in Queanbeyan on the evening of 8 January or early on 9 January to properly assess the agreed strategy for containing and controlling that fire, and the team's subsequent failure to identify and provide adequate resources for that or an alternative strategy, was a cause of the fire that burnt into Canberra on 18 January 2003.¹⁷⁷ Related to this submission are factors such as the debate about the initial selection of the containment lines (particularly the eastern and western lines), the resultant large area (10 000 hectares) to be burnt out, the fact that no time frame was established for completing the burn-out operation, the delay in completing the burn-out and, ultimately, the use of aerial incendiaries on 17 January.

Following consideration of the written submissions of counsel for the NSW represented persons, counsel assisting submitted on 24 July 2006 that it was no longer their view that there was sufficient evidence to support the findings they had initially proposed were open to me as related to the fire cause.¹⁷⁸ Despite this, though, counsel assisting submitted that this did not preclude me from commenting on acts and events, even if I were to reach the conclusion that those acts and events were not a cause of the fire.¹⁷⁹

Counsel for the ACT submitted on numerous occasions that the events of January 2003 were extraordinary events outside the previous experience of the personnel of the Emergency Services Bureau.¹⁸⁰ They further submitted that the ACT is a small jurisdiction with limited resources, so the pool of people experienced in dealing with large fires is limited. As a result, they submitted,

‘Any judgment concerning the response of ACT authorities to the fires of January 2003 should be judged with these constraints in mind’.¹⁸¹

Additionally, counsel for the ACT submitted that I should not find that the decisions or decision-making processes contributed to the fires burning into Canberra on 18 January because any conclusion that the fires could have been controlled and contained would be speculative.¹⁸²

Rather, they submitted:

The better approach is to recognise that although a ‘chance’ to extinguish the fires was lost in the first 24 to 48 hours after the lightning strikes on 8 January 2003, the number of variables and the underlying circumstances make it inappropriate to state with any certainty that a different final outcome would have been achieved had a more vigorous approach been undertaken. The ACT submits that the course adopted by Mr McLeod at page 242 of his report provides a sound approach.

They then quoted the following passage from Mr McLeod’s report on the operational response to the fires:

The Inquiry considers ... that there was *a chance to extinguish the fires* if the opportunity to put them out in the first 36 to 48 hours after the lightning strikes had been grasped more vigorously. The ACT fire authorities are criticised for not coming to this realisation quickly enough and for failing to immediately attack the fires with all the aggression they could muster. *Had this occurred—while this Inquiry is not in a position to conclude unequivocally that it would have made a difference in the absence of the fullest response that was potentially available—the doubt remains that the fires that originated in the ACT could have been stopped.*¹⁸³ [emphasis added]

What counsel for the ACT omitted from their submissions are the two crucial sentences that follow immediately after the piece just quoted and reflect Mr McLeod’s view:

There would be little ground for criticism if, despite no effort being spared during these critical first days, the fires had in fact proved unstoppable. *Unfortunately, in the Inquiry’s judgment, this was not the case.*¹⁸⁴ [emphasis added]

Counsel for the ACT conceded that an opportunity to contain the Bendora fire was lost on the night of 8 January, when crews were withdrawn, but then submitted that this lost opportunity should not be seen as a cause of the fire that reached Canberra on 18 January.¹⁸⁵ They also submitted that Ms Arman was ‘of sufficient competence and experience to make a decision whether to stay or not’ at the Bendora fire on 8 January¹⁸⁶—which is contrary to Ms Arman’s evidence—but conceded that the interaction between Mr Graham and Ms Arman was inadequate and could have been better.¹⁸⁷ Counsel for the ACT then made another concession in relation to the expertise and experience of both Ms Arman and Mr Graham and the decision to withdraw from the Bendora fire (and other fires):

Moreover [the fires’] small size and their remoteness supported the view that the potential threat posed by them to valuable assets was not great. There was, no doubt, a failure to realise the potential consequences of allowing such fires to take hold, thereby making later suppression more difficult.¹⁸⁸

Counsel for the ACT also conceded that the way the decision to withdraw was made was deficient because Mr Graham should have sought more information from Ms Arman and she should have been helped to make an informed decision.¹⁸⁹

Despite these concessions, counsel for the ACT submitted that Mr Graham was sufficiently competent and experienced to perform the role of Operations Officer.¹⁹⁰ They submitted that it was unfair of counsel assisting to characterise the decision making on the first night of the fires as ‘poor’ largely because of Mr Graham’s lack of experience, but they did agree that ‘it might have been done better’.¹⁹¹ On the other hand, they also accepted that Mr Graham was inexperienced ‘in the prevailing fire conditions and wildfires of this kind’.¹⁹²

Counsel for the ACT conceded that there was ‘confusion’, but not ‘dysfunction’, in the operations of the service management team and the roles perceived by field incident controllers and that there were deficiencies in the planning role.¹⁹³ They submitted that the attitude of the crews at Bendora on 8 January was a relevant consideration for Ms Arman to take into account in making her decision to stay or leave the fire—despite the fact that she did not consult her crew—and said that a decision to stay could have been reasonable.¹⁹⁴ They further accepted that the Bendora fire was under-resourced on 9 January but submitted, ‘There is little utility in a finding that it was “severely under-resourced”’ because ‘even if that was the case, it is doubtful that extra resources would have made a difference’.¹⁹⁵

In connection with the Stockyard Spur and Gingera fires, counsel for the ACT submitted, in short, that the evidence does not support the conclusion that either of these fires could have been contained quickly, even if there had been a rapid and adequate response, which they conceded was not the case.¹⁹⁶

Counsel for Mr Castle and Mr Lucas-Smith submitted that I do not have jurisdiction to consider, among other things, the performance of government agencies or private institutions or the conduct of individuals.¹⁹⁷ I do not accept this submission: to do so would deprive me of the prime function of a coronial inquiry—to investigate and make findings based on a consideration of all relevant circumstances, which must include the actions of individuals and organisations. They submitted that it is wrong to imply that Mr Bartlett’s skills were not used in the first few days after the fires were ignited, yet this is precisely the evidence Mr Bartlett gave, and he was not challenged.¹⁹⁸ Counsel further submitted that in the days after 8 January Mr Lucas-Smith was more concerned with the McIntyres Hut fire than with the Bendora or Stockyard Spur fires and that the McIntyres Hut fire was his priority.¹⁹⁹ There is, however, no evidence of what resources Mr Lucas-Smith or the other members of the service management team deployed to help the NSW authorities in the early days, at the expense of the response to the ACT fires, or of what involvement they had in the decision making about that fire. In evidence, Mr Lucas-Smith said that on the morning of 9 January he felt he had adequate resources to deploy to the ACT fires.²⁰⁰ He had also said that morning that the ACT would assist NSW ‘once we’ve got our fires out of the way ...’²⁰¹

Counsel submitted that Mr Lucas-Smith had no direct role in the decision to withdraw from the Bendora fire on 8 January²⁰², and he was misinformed about its real size. Further, counsel submitted that they supported the oral and written submissions of counsel representing interested

persons that occupational health and safety were a valid and important consideration in Ms Arman's decision to withdraw from the Bendora fire.²⁰³

Other than to say that the opinions of all the experts should be treated with caution²⁰⁴, counsel representing Mr McRae made no submissions relevant to the subject matter of this chapter.

Counsel representing Ms Arman submitted that Ms Arman decided to leave the fire at Bendora on the night of 8 January because she assessed the situation as being dangerous: she could hear trees falling and was concerned for the safety of her crews.²⁰⁵ It was further submitted that it is not open to me to make any other findings in this regard.²⁰⁶ Counsel also submitted that Ms Arman was legally bound by the provisions of the *Occupational Health and Safety Act 1989* and would have exposed herself to penal sanctions if she had ignored the provisions of the Act.²⁰⁷ Although counsel conceded that Ms Arman did not consult the crews before she made her decision, it was submitted, 'This was not a democracy. Three reckless votes to stay versus two votes to put safety first is no better than three timid votes to go versus two votes to use the resources and the opportunity'.²⁰⁸

Counsel also submitted, however,

That is not to say that consultation is forbidden. Far from it. Ms Arman so acknowledged. If there were more experienced firefighters present, especially if they had strong backgrounds in remote forest firefighting in those conditions, their views would be very valuable in assisting the Incident Controller to arrive at his or her decision. It might, with the benefit of hindsight, have been better to have taken aside one or two of the most experienced and discussed the situation, the resources, the risks and so forth. That does not mean that the decision was wrong, but it might be a worthwhile enhancement of the decision-making process for the future.²⁰⁹

Furthermore, it was submitted that it was 'beyond the reach of this inquest/inquiry' to determine whether Ms Arman's decision was right or wrong²¹⁰ and that it is purely speculation as to whether a decision to stay would have produced a different result.²¹¹

Counsel representing Mr Graham made very brief written submissions and no oral submissions. They stated that they adopted the submissions filed on behalf of the ACT and then submitted that, in short, Mr Graham possessed 'significant management skill and judgment [which] Mr Graham demonstrated in the innumerable decisions made by him in January 2003'.²¹² But no examples of these decisions were provided with reference to the evidence in the proceedings and, in fact, in the submissions there are few references to the evidence.

Counsel for the NSW represented persons made extensive submissions relating to the limited jurisdiction I have to inquire into or make findings or critical comment about the McIntyres Hut fire and the actions of NSW personnel or authorities in dealing with that fire from the time of its ignition on 8 January until it crossed into the ACT on 18 January.

In Chapter 1 I discuss the legal limitations on my jurisdiction so far as the McIntyres Hut fire and the events in NSW are concerned. I refer to the various submissions made by counsel for the NSW represented persons and say that, by and large, I accept the submission that I have no legal

power to formally find the cause or origin of a fire or fires in NSW and that I am limited to events in the ACT.

I go on to say that, in order to make sense of the events of 18 January 2003 in the ACT, it was necessary for me to examine as a matter of fact what occurred in NSW in the days leading up to 18 January, and I refer to the submissions of counsel for the NSW represented persons, in which they conceded that I could do this. In Chapter 5 I refer to the opinions of the expert witnesses, Mr Phil Cheney and Mr Trevor Roche, who, in a number of respects were critical of the actions taken by the NSW authorities. Whether or not I agree with those opinions expressed by Mr Cheney and Mr Roche is irrelevant for the purposes of this inquiry since I accept that I do not have jurisdiction to make findings about or to criticise the actions of NSW authorities. In this regard, I am able to merely note that the NSW Deputy State Coroner, Mr Carl Milovanovich, found:

On the 8th day of January 2003 at approximately 3pm a fire commenced in the vicinity of an area known as McIntyre's Hut, Webb's Ridge, in the Brindabella National Park at Grid Reference 587965. I further find from the evidence presented to me that this fire was caused by lightning strike.²¹³

In any event, counsel for the NSW represented persons also submitted that there was no evidence of a causal connection between the strategies adopted by NSW authorities in fighting the McIntyres Hut fire and the ultimate break-out of the fire into the ACT.²¹⁴ It was therefore submitted that there is no evidence or, rather, insufficient evidence upon which I could base the finding urged on me in the initial submission of counsel assisting—that the actions taken or not taken by the NSW authorities in relation to the McIntyres Hut fire caused the fire to burn into Canberra on 18 January 2003.²¹⁵

What was, in effect, submitted by counsel for the NSW represented persons on the question of causation is as follows:

- There is insufficient evidence to establish that NSW authorities had access to sufficient additional resources to implement alternative strategies within the required time frame.²¹⁶
- There is insufficient evidence to show that, even if those resources had been available, any alternative strategy would have succeeded.
- There was no quantification of additional resources that might have been needed.
- Selection of the Lowells and McIntyres trails, instead of the Goodradigbee River, as the western containment line would have added an additional task to the containment strategy, which would have necessitated additional resources and time to implement.

As I noted earlier in this section, counsel assisting agreed with those submissions, as do I.

6.7 Conclusions

The senior ESB personnel were very aware that the summer of 2003, like the summers of the few preceding years, would be one of extreme fire danger. The December 2001 fires must have still been prominent in the thinking of those charged with responsibility for keeping the community safe from fire. All the senior ESB personnel had been involved in the December 2001 fires in operational roles. They knew the severity of the conditions in 2003—the worst drought on record—and they knew conditions were worse for fire than in the summer before. They knew fuel loads were very high, and they knew many fire trails in Namadgi National Park were overgrown and not maintained. They knew how vital it was to respond rapidly to any fire that ignited in the bush.

It is also not unrealistic to assume that people who lived on farms and properties, people who worked in the forests and the parks, and people involved with bushfire fighting would have known or been generally aware of most, if not all, of those things—perhaps unlike the average resident of Canberra’s suburbs.

Yet, despite this knowledge and awareness, the evidence before the inquiry reveals that senior ESB personnel lacked a full appreciation of the gravity of the fire situation and the potential for major escalation from the time the fires ignited on 8 January 2003. Further, despite having been put on notice by the fires some 12 months previously—apart from Mr Bartlett’s preparations on the part of ACT Forests—in essence, neither the Emergency Services Bureau nor any of the ACT land management agencies made any meaningful preparations additional to their routine work.²¹⁷ Even though the need for a rapid and aggressive response was recognised, the response made to all the ACT fires in January 2003 lacked the urgency the situation demanded.

Responsibility for allocation of resources for the fires fell to Mr Graham, as the Operations Officer within the service management team that had been established on the afternoon of 8 January. He had this role from the outset and worked under the direction from time to time of Mr Lucas-Smith. The role was crucial: it required Mr Graham to make decisions about strategies and resource allocation often without the benefit of consultation with Mr Lucas-Smith, who was, understandably, involved in many other aspects of the fires, including regularly meeting NSW authorities to discuss the McIntyres Hut fire.

The role of Operations Officer should have been assigned to the person who was second only to Mr Lucas-Smith in experience and had the greatest expertise in fighting and managing fires in remote areas. With all due respect to him, Mr Graham was not this person. He was, by all accounts, a dedicated and competent administrator in his day-to-day role, but what was required of him on and after 8 January was beyond his normal functions and responsibilities. Mr Graham identified the duties he was assigned from 8 January as being, among other things, to provide direction and support to the field incident management teams, to allocate resources, and to provide the link between the ACT Bushfire Service, the ACT Fire Brigade and the NSW Rural Fire Service.²¹⁸ When asked whether or not he felt he had the relevant training and experience to deal with an event such as that which occurred on 18 January, Mr Graham replied:

Given my role initially as Operations Officer with the Service Management Team and then later on as Incident Controller of the Service Management Team, I felt reasonably

well prepared for the event. I usually fill either of these roles during an incident, regardless of its size, for bush and grass fires in the rural areas throughout the year, though they are obviously not of the same scale as experienced in January 2003.

Mr Graham went on to say he had completed and conducted various courses in the operation of the AIIMS Incident Control System and he therefore felt he had good training and experience in incident management concepts and practices.²¹⁹

Although Mr Graham might have believed he had sufficient training in the concepts and practices of incident management, he did not, in my view, have the experience in and knowledge of fire behaviour and fire-suppression tactics that were needed to satisfy the requirements of the position of Operations Officer from the start of the fires. Mr Graham did not accept this, but it is a fact.²²⁰ Mr Graham took the position of Manager Operations with the Emergency Services Bureau in mid-1997. Before that, he worked in the ACT Department of Urban Services, being involved with management systems, and the Department of Defence, in staff development. Before having these positions, Mr Graham had a career history that saw him predominantly in the Royal Australian Navy, for 21 years, most of which time was spent in the field of catering. During his time in the Navy his firefighting experience had been limited to the occasional grass fire near a naval shore establishment. Mr Graham had some limited experience as a volunteer firefighter and had received a little bushfire training; he had acted as an incident controller on two or three occasions. He had never actually fought a fire by holding a hose or using a rake–hoe, and he had no training in fire behaviour. Combined, these factors made him inexperienced and unqualified and unsuitable for the position he held as Operations Officer of the service management team from 8 January 2003 onwards.

The officer who should have been appointed as Operations Officer on the afternoon of 8 January was either one of the two other two Deputy Chief Fire Control Officers—Mr Bartlett or Mr Sayer. Both were available. Mr Sayer was on call for duty yet was not contacted. Mr Bartlett made it known to Mr Castle and Mr Lucas-Smith that he was available, that he was concerned, and that he and his Forests crews were waiting to be tasked. Both Mr Sayer and Mr Bartlett had far more relevant experience than Mr Graham. Mr Bartlett recorded in his statement how he would have approached the response to the fires on the first night if he had been responsible for their management: ‘I certainly would have thrown everything that was available at it initially. I wouldn’t have held it back because ... I’ve always worked on the principle that you fight the fire you’ve got’.²²¹

Mr Bartlett also said he would have started the planning process immediately and determined what was needed for the following day. This approach differs from the one adopted by Mr Graham, who did not appear to recognise the urgency of the situation and the need for a maximum and sustained response involving appropriate personnel and heavy machinery. Mr Graham did not understand the significance of the typical five- to seven-day summer weather pattern referred to by many other witnesses, and he was incorrect when he asserted in his statement that night-time operations are usually conducted once strategies have changed from direct to indirect attack.²²² Planning specifically for control over the Stockyard Spur fire did not start until 10 January.²²³ In fact, no incident action plans appear to have been provided to field commanders for any of the fires.

The evidence was that, generally, the best opportunity to control a fire arises on the first night because that is when the fire is at its most benign and the control almost invariably involves direct attack. On his evidence and in his actions, Mr Graham appeared not to have respected this principle, which is probably one of the most fundamental of bushfire fighting. It was not a question of being short of resources: it was a question of not appreciating the need to deploy those resources in the first 24 to 48 hours and the consequences of not controlling the fires quickly, given the extreme drought and the dire weather forecast.

On the evidence before the inquiry, I am satisfied that Mr Graham's lack of experience in fire behaviour and suppression was a significant contributor to the poor decisions made on the first night of the fires and the following morning. I am also satisfied that, had an officer with Mr Bartlett's or Mr Sayer's experience been appointed to the role of Operations Officer, the response to the fires would have differed in the following ways:

- All available resources, including RAFT crews, would have been allocated to all the fires that first afternoon, with an emphasis on the urgent need for containment.
- The crews would have been equipped to remain overnight with the fires if it were thought safe to do so.
- That night, efforts would have started to locate and bring heavy equipment to the fires the following day.

Had this been done, I am satisfied that in all probability the initial attempts to contain the ACT fires in the first 24 to 48 hours would have succeeded, and a significant degree of control would have been achieved during the following days, before the forecast extreme weather conditions of 17 and 18 January. Had early rapid and aggressive action been taken, the fires would not have grown to the size they did; this would then have made it much easier to control any break-out and would have greatly limited the damage and destruction to property that occurred. Importantly, if the Bendora fire had been controlled it is likely that the tornado that swept into Chapman and Kambah would not have eventuated.²²⁴

I have concluded from the evidence that:

- The failure to recognise Mr Graham's limitations in skills and experience was a serious error of judgment on the part of Mr Lucas-Smith, especially when he had available two very experienced officers—Mr Bartlett and Mr Sayer. This error of judgment resulted in an inadequate initial response to the fires and was a factor allowing all the ACT fires to expand and ultimately become uncontrollable, leading to the devastation that occurred on 18 January 2003.
- Mr Graham displayed a lack of judgment by failing to recognise the limitations of his skills and experience in dealing with major fire events. As a consequence, he failed to call on and deploy all the resources that were available to him and he failed to seek advice.

Apart from the question of the allocation of roles, there were other problems with the operation of the service management team at the time of the fires. Mr McRae described the system that operated as 'a local variant of the AIIMS [Incident Control] System. In a lot of areas, local

arrangements force some tweaking'.²²⁵ Chapter 4 discusses the operation of the service management team; suffice it to say here that it became clear from the evidence given to the inquiry that there was confusion on the part of some field incident controllers about their role in decision making. Counsel assisting described the entire structure as 'dysfunctional' and counsel for the ACT agreed that there was some 'confusion' in the operation.

One example of uncertainty is Ms Arman contacting ComCen when seeking guidance on whether she and her crews should remain at the Bendora fire on the night of 8 January, to be told by Mr Graham that the decision was hers to make. This is not a criticism of Ms Arman; rather, it is a criticism of a system that left her uncertain about who was responsible for making the decision.

Perhaps the more significant failing within the service management team structure related to the function of planning. The evidence was that the field incident controllers, who were charged with managing the fires, were not supported by any planning, which should have been done at the Emergency Services Bureau. This was the situation in the early days of the fires, and it did not appear to improve much towards the end. Field incident controllers took on the planning function not only because they had sufficient experience to do so but also because they had no other option. Many of them complained that this made it difficult to plan effectively beyond the next shift. This was particularly the case on the days when there was no overnight operation and thus no incident planning.

Planning, including fire-spread predictions and fire mapping, was in fact being done under Mr McRae's direction at the Emergency Services Bureau. Mr McRae said, however, he was working upwards to the incident controller, who was Mr Lucas-Smith, and the other members of the service management team and did not see it as part of his role to provide information to the field incident controllers, who, he believed, should have been preparing the incident action plans. Mr McRae did not know whether there were people in the field who were capable of performing this planning task, but he assumed there were.

Many incident controllers raised the matter of the lack of maps being provided to them by the Emergency Services Bureau, and this, along with the problems of planning in the field, created difficulties and delays in shift changes as crews waited while incoming incident controllers were briefed. There was no overnight planning at the Emergency Services Bureau, and this resulted in insufficient resources being allocated to fires the following day²²⁶ and delays of up to 90 minutes before crews moved into their allocated sectors.²²⁷ Mr Hilton Taylor prepared some situation plans for the Bendora fire in the period 10 to 12 January and took some maps to the field on the afternoon of 11 January; this was the first time maps had been provided and the first time anyone from the Planning Section had gone into the field and briefed the field officers.²²⁸

The fact that the Emergency Services Bureau adopted a system of incident management that was not in accordance with the recognised AIIMS Incident Control System caused confusion among incident controllers in the field and inhibited the transfer of important information to them. The field incident controllers are commended for their efforts, which were made with what appears to have been limited support from the service management team.

In relation to the response to the Bendora fire, the decision to withdraw from fighting that fire on the night of 8 January and to leave it unattended until the following morning is very important from two perspectives. First, it opens up for consideration the question of what might have been achieved had the fire been fought that night. Second, it necessitates consideration of the way that decision was made.

The unchallenged evidence before the inquiry was that the Bendora fire burned slowly overnight and continued to spread. Mr Cheney and Mr Roche reviewed the decision to withdraw from the fire and concluded that it was the wrong decision: they both believed much valuable work could have been done overnight to control the fire, with the result that control and possible extinguishment would have been achieved before the onset of bad weather. Mr Cheney and Mr Roche also considered the decision in the context of the circumstances that existed at the time and the seriousness of the situation. Mr Cheney said in his evidence:

I am referring to the whole situation they were facing. They had four fires going to the west of the ACT. Three of them were areas of their direct responsibility and a fourth one which, if not brought under control, was going to have a serious impact on ACT forests and ACT itself. The condition of the fire season was known. The drought index was such that the fires weren't going to go out overnight and in fact weren't going to slow down much overnight, as subsequently turned out. I think these conditions were known or should have been known.²²⁹

Mr Roche said that in his experience, which is considerable, 'withdrawing from a fire is a very, very significant decision to make' because, as he added, fires do not become smaller overnight.²³⁰

Both Mr Cheney and Mr Roche developed strategies that could—and, they said, should—have been implemented that night to contain the fire. In the absence of overnight resources, however, the fire crossed the Bendora Break and, with an expanded fire and with inadequate resources the following day, Mr Hayes and his crews faced a formidable task.

In his statement and his evidence Mr Lucas-Smith said that by the afternoon of 9 January direct attack on the Bendora fire was no longer a viable option. He said, however, that, if it had been decided on the night of 8 January to attack the fire directly, 'At first light on the morning of the 9th we would have had heavy plant in there opening those trails and doing what we could to limit the growth of that fire'.²³¹ Mr Lucas-Smith said he doubted that a control line around the fire could have been constructed during the night of 8 January if crews had stayed there.

On the evidence, it is not possible to say that, had crews remained at the Bendora fire on the night of 8 January, the fire would have been extinguished. It is, however, most probable that, had crews stayed, they would have contained the fire and prevented its spread. Had properly resourced crews attacked the fire on the following and subsequent days, the fire would in all probability have been extinguished. As a result, the decision to withdraw crews from the fire was a serious miscalculation: it resulted in the Bendora fire growing.

The way the decision to withdraw from the fire was made is detailed earlier in this chapter. From that, I conclude as follows:

- The way the decision to withdraw from the fires was made was flawed.
- Ms Arman relied on Mr Graham and took his words to the effect of ‘we were hoping you would do that [that is, withdraw]’ as meaning the service management team supported the decision.
- The decision to withdraw should have been subjected to greater scrutiny by Mr Graham in the first instance. By the time Mr Lucas-Smith knew of the decision it was too late to reverse it. I note in this regard that in evidence Mr Lucas-Smith acknowledged that more analysis should have been done and that he might have made a different decision. It was also conceded in submissions by counsel for the ACT that the decision was deficient.²³² Mr McLeod expressed the same opinion in his report on the inquiry into the operational response.²³³
- Mr Graham accepted in his evidence that the decision-making process could have been better.
- Ms Arman was seeking guidance from headquarters but received none.
- Ms Arman was willing to stay and fight the fire overnight if this was the decision of the service management team.

In relation to the allocation of resources on 9 January and thereafter, I refer earlier to the inadequacy of the resources and the consequences of this. This exacerbated the situation and allowed the fire to increase in size.

Furthermore, I conclude that the inconsistency in the terminology used to describe the size of the fires from time to time resulted in confusion and uncertainty about the fires’ actual size.

I also conclude that the submissions some counsel made in connection with occupational health and safety are, in effect, a red herring. This is not to say that OH&S is unimportant. It is very important; apart from any other consideration, the ACT’s *Occupational Health and Safety Act 1989* mandates employers’ responsibilities for OH&S, and other legislation makes certain breaches of the OH&S Act offences within the meaning of the Criminal Code.

Despite the extensive submissions made by counsel for the ACT and some of the interested persons, very little evidence about OH&S was put to the inquiry. Indeed, my review of the transcript suggests that OH&S assumed far greater importance in submissions than it actually had during the hearings. I note in this regard that in his evidence Mr Lucas-Smith confirmed that there is no policy in the ACT against firefighting at night. I further note that the legislative responsibility of an employer is to ‘take all reasonable practicable steps to protect health, safety and welfare at work’.²³⁴ Of itself, this does not prevent firefighting at night. Firefighting at night occurred from 10 January 2003 onwards (and there had been night firefighting in the ACT on other fires before 8 January 2003).

Mr McLeod said in his report:

The transcript of the radio communication between the incident controller and the Duty Coordinator at Curtin contains no reference to safety issues having been raised. I believe, on this basis, that the decision to withdraw and return to Canberra was confirmed by Bushfire Service headquarters without safety factors entering into the consideration.²³⁵

On the evidence before me I am satisfied that:

- When Ms Arman made the decision to withdraw her crews from the fire on the night of 8 January 2003 she did so in the belief that she had the imprimatur of the service management team. This belief was reasonably based on her discussion with Mr Graham; had Mr Graham indicated that the service management team thought it preferable to remain with the fire, she would have done so.
- Mr Graham failed to make proper inquiries of Ms Arman before agreeing with her suggestion that she withdraw her crews overnight.
- If the crews had not been withdrawn on the night of 8 January the fire would most probably have been contained, and if it had been fought during the following days by properly resourced teams it would most probably have been extinguished.

In the case of the Stockyard Spur fire, I conclude that it was initially quite a small fire but, as a result of a series of poor decisions, it—like the Bendora fire—grew beyond containment and progressively became uncontrollable.

Rather than having Mr Gray wandering about on the afternoon of 8 January trying to locate the fire, it would have been more effective to have flown him over the fire so he could see the best and shortest route to the fire on foot. After that, consideration should have been given to attacking the fire overnight, and a more urgent and aggressive approach—including providing a bulldozer to assist with construction of a containment line and to clear the overgrown Stockyard Spur track—should have been taken at first light the following morning. Consideration should also have been given to flying the RAFT crews to the fire, rather than having them walk in, which caused delay and fatigue. Further, on 9 January Mr McNamara’s crews should have been replaced at the end of their shift.

Failure to do any of these things—all of which were possible—resulted in the Stockyard Spur fire becoming out of control.

The initial response to the Stockyard Spur fire was inadequate and this allowed the fire to spread beyond containment in subsequent days.

The Mount Gingera fire was the smallest of all the fires and, apart from a fly-over by Mr Ingram, was ignored on the first day. Again, as with the other ACT fires, very little effort was devoted to responding to this fire in the first few days.

On the basis of the unchallenged evidence of Mr Cheney and Mr Roche, the Mount Gingera fire could have been contained by the end of 9 January and then secured before the onset of adverse weather conditions.

In relation to the McIntyres Hut fire, as discussed earlier in this chapter and in Chapter 1, my jurisdiction does not extend to an assessment of the NSW authorities' initial response to the fire. I can go no further than to say, as a matter of fact, that the McIntyres Hut fire began to burn on 8 January and developed over subsequent days into a large fire that crossed the ACT border on 18 January 2003.

In conclusion, I note that Mr McLeod conducted his review of the operational response to the bushfires quickly and did not have the benefit of all the evidence that was presented to this inquiry. Even with the relatively limited information available to him, however, Mr McLeod formed the following opinion:

The responses to all the fires in the first few days present a picture of a measured approach to a threat that was growing on a daily basis—as opposed to an all-out attempt to beat the fires from the outset, using every resource at the ACT's disposal.²³⁶

Mr McLeod also noted, 'I am not convinced that the ACT authorities' response during the first two days (8 and 9 January), when the fires were most amenable to extinguishment, reflected the sense of urgency that in my opinion should have prevailed'.²³⁷

With all the evidence available to this inquiry, there is no room for doubt that, had the ACT authorities fought the fires promptly and with full vigour, they could have controlled them in the first 24 to 48 hours. They then would have had only the McIntyres Hut fire to concern them, and every effort could have been deployed to help the NSW authorities with that fire before the predicted bad weather arrived.

At about the same time as Mr McLeod was conducting his review, the House of Representatives of the Australian Parliament appointed a select committee to investigate the fires of the summer of 2003 in NSW, Victoria and the ACT. The select committee's report was published in October 2003, and among the comments made in the report was the following:

It was put to the committee that perhaps those with the responsibility for managing the fire were complacent or disinclined to believe that a major disaster was possible, as illustrated by the apparent lack of concern early on in the fires in the Brindabellas The Committee can only surmise on the evidence available to it that the initial delays outlined in the evidence and the failure of New South Wales and Australian Capital Territory authorities to take decisive and effective action in the first few days following the lightning strikes in the Brindabellas led to the devastation of [the] urban edge and a large part of the rural areas of the Australian Capital Territory.²³⁸

Notes

¹ ESB.AFP.0028.0112, *Rural Fire Control Manual*; see also DPP.DPP.0006.0268, statement of Mr Jeffery, paras 17–22.

² Statement of Mr Jeffery, para. 18.

³ ESB.DPP.0001.0074, Phoenix Imperative document, p. 2.

⁴ ESB.GSO.0005.0312, *Canberra Times*, ‘Plan aims to avert fire threat’, 29 November 2002, referring to comments made by Mr Lucas-Smith.

⁵ ESB.AFP.0111.0001, statement of Ms Arman, para. 29; DPP.DPP.0004.0021, TROC of Ms Arman, Q. 178 and 185.

⁶ T4030–4031.

⁷ ESB.AFP.0108.0262, statement of Mr Stevens, paras 9–14.

⁸ ESB.AFP.0110.0551, statement of Mr Lucas-Smith, para. 15.

⁹ Statement of Ms Arman, para. 56.

¹⁰ *ibid.*, para. 57.

¹¹ *ibid.*, para. 65; T4051.

¹² T3016–3017.

¹³ T3017–3019.

¹⁴ Statement of Ms Arman, para. 47.

¹⁵ T3018–3019.

¹⁶ Statement of Ms Arman, para. 55; T4034–4035.

¹⁷ T4037; TROC with Ms Arman, Q. 236–237.

¹⁸ T4039.

¹⁹ Statement of Ms Arman, paras 52–53.

²⁰ T4046.

²¹ TROC of Ms Arman, Q. 244 and 247.

²² T2721–2722, 2716.

²³ T2728–2729.

²⁴ T2722–2723.

²⁵ T2726.

²⁶ ESB.AFP.0001.1307, statement of Mr Graham, paras 18–20.

²⁷ DPP.DPP.0003.0207, transcript of discussion between Mr Lucas-Smith and Mr Graham, 8 January 2003, 7.42 pm.

²⁸ T0830.

²⁹ T0825, T0835.

³⁰ DPP.DPP.0006.0096, transcript of telephone conversation between Mr Arthur and Mr Graham, 8 January 2003, 7.03 pm.

³¹ Statement of Ms Arman, para. 53.

³² Statement of Mr Stevens, paras 10 & 14.

³³ ESB.AFP.0111.0068, statement of Ms Beath, paras 15–17; ESB.AFP.0108.0115, statement of Ms Blundell, paras 17–21; ESB.AFP.0108.0158, statement of Mr Hewlett, paras 14–15; ESB.AFP.0111.0091, statement of Mr Brooke, paras 13–17; ESB.AFP.0108.0138, statement of Mr Harding, paras 16–19.

³⁴ DPP.DPP.0008.0051, report of Mr Cheney, p. 30.

³⁵ T6857–6858.

³⁶ T7069.

³⁷ T7178, 7196.

³⁸ Cheney report, pp. 30–31.

³⁹ DPP.DPP.0009.0001, report of Mr Roche, p. 71.

⁴⁰ *ibid.*, p. 69–71.

⁴¹ *ibid.*, p. 72–73.

⁴² T7347.

⁴³ T7350.

⁴⁴ Roche report, p. 72.

- ⁴⁵ HIL.DPP.0001.0001, report of Mr Nicholson, p. 14.
- ⁴⁶ T8231.
- ⁴⁷ T4049–4050.
- ⁴⁸ Statement of Mr Graham, para. 21.
- ⁴⁹ ESB.DPP.0108.0002, statement of Mr Hayes, para. 18.
- ⁵⁰ ESB.AFP.0052.0056, SOP 7 at 0069.
- ⁵¹ T3142.
- ⁵² T3143–3146.
- ⁵³ Cheney report, p. 29.
- ⁵⁴ DPP.DPP.0004.0029, TROC with Mr Hayes, Q. 432–434.
- ⁵⁵ ESB.DPP.0003.0002, ESB radio transcript, 9 January 2003, p. 5–6.
- ⁵⁶ T3536.
- ⁵⁷ T3539.
- ⁵⁸ T3880–3881.
- ⁵⁹ T3893–3894.
- ⁶⁰ T3894.
- ⁶¹ Statement of Mr Hayes, para. 24.
- ⁶² T3896.
- ⁶³ ESB radio transcript, 9 January 2003, p. 31.
- ⁶⁴ Statement of Mr Hayes, para. 31.
- ⁶⁵ ESB radio transcript, 9 January 2003, p. 58.
- ⁶⁶ Statement of Mr Hayes, paras 39–40.
- ⁶⁷ Statement of Mr Lucas-Smith, paras 33–37.
- ⁶⁸ Statement of Ms Arman, para. 73.
- ⁶⁹ *ibid.*, paras 69 and 74.
- ⁷⁰ *ibid.*, para. 85.
- ⁷¹ *ibid.*, para. 94.
- ⁷² T3989–3991.
- ⁷³ ESB.AFP.0103.0010, statement of Mr Flint, paras 25 and 27.
- ⁷⁴ ESB.AFP.0108.0002, statement of Mr Hayes, para. 45.
- ⁷⁵ Cheney report, pp. 32–33.
- ⁷⁶ ESB.DPP.0002.0001, ESB radio transcript, 8 January 2003, p. 20.
- ⁷⁷ ESB.AFP.0108.0230, statement of Mr Gray, paras 13–15.
- ⁷⁸ ESB radio transcript, 8 January 2003, p. 48–50; statement of Mr Gray, paras 12–13.
- ⁷⁹ ESB radio transcript, 8 January 2003, pp. 50–51.
- ⁸⁰ T3696–3697.
- ⁸¹ Cheney report, p. 43.
- ⁸² Roche report, p. 76.
- ⁸³ T3539–3541.
- ⁸⁴ Cheney report, p. 43.
- ⁸⁵ ESB.AFP.0103.0052, statement of Mr McNamara, para. 30.
- ⁸⁶ *ibid.*, para. 36.
- ⁸⁷ *ibid.*, paras 38–39.
- ⁸⁸ *ibid.*, paras 40–41.
- ⁸⁹ T2749–2750.
- ⁹⁰ ESB radio transcript, 9 January 2003, p. 30.
- ⁹¹ Statement of Mr McNamara, para. 46.
- ⁹² *ibid.*, paras 46–47; ESB radio transcript, 9 January 2003, p. 58.
- ⁹³ Statement of Mr Graham, para. 39.
- ⁹⁴ T872–873.
- ⁹⁵ ESB.AFP.0110.0481, statement of Mr McRae, para. 48.
- ⁹⁶ T3258.
- ⁹⁷ T3959–3960.
- ⁹⁸ Cheney report, pp. 44 and 48.

- ⁹⁹ Statement of Mr Graham, para. 25.
- ¹⁰⁰ ESB radio transcript, 8 January 2003, pp. 38–39, 52.
- ¹⁰¹ ESB.AFP.0111.0291, statement of Mr Ingram, para. 37.
- ¹⁰² T3544–3547.
- ¹⁰³ ESB.AFP.0110.0761, ‘Fires in and adjacent to the ACT’, 11.00 am, 9 January 2003, p. 1.
- ¹⁰⁴ ESB radio transcript, 9 January 2003, p. 27.
- ¹⁰⁵ *ibid.*, 9 January 2003, p. 51.
- ¹⁰⁶ *ibid.*, p. 61.
- ¹⁰⁷ *ibid.*, pp. 68–70.
- ¹⁰⁸ Cheney report, p. 46.
- ¹⁰⁹ Roche report, p. 82.
- ¹¹⁰ T3867–3869.
- ¹¹¹ T3868.
- ¹¹² T3871.
- ¹¹³ ESB.DPP.0001.0206, statement of Mr Cooper, para. 34.
- ¹¹⁴ *ibid.*, para. 36.
- ¹¹⁵ T0898.
- ¹¹⁶ Cheney report, pp. 47–48.
- ¹¹⁷ T4419–4421.
- ¹¹⁸ RFS.AFP.0093.0002, NSW submission to NSW coronial inquiry, pp. 22–23.
- ¹¹⁹ T4424–4425.
- ¹²⁰ T4441.
- ¹²¹ T0813, 4444.
- ¹²² T0817, 4446–4447, 4559.
- ¹²³ T4448.
- ¹²⁴ NSW submission to NSW coronial inquiry, p. 24.
- ¹²⁵ T4446–4448, 4455.
- ¹²⁶ T4565–4566.
- ¹²⁷ NSW submission to NSW coronial inquiry, p. 25–26.
- ¹²⁸ *ibid.*, p. 26.
- ¹²⁹ T4467.
- ¹³⁰ T4466.
- ¹³¹ MLI.DPP.0005.0191, Yarrowlumla Shire S44, 9 January – 7 February 2003, Incident Controller’s report, p. 7.
- ¹³² NSW submission to NSW coronial inquiry, pp. 26–27.
- ¹³³ T0847–0849; ESB.AFP.0001.1140, statement of Mr Bartlett, para. 36.
- ¹³⁴ *ibid.*, para. 49.
- ¹³⁵ *ibid.*, para. 50.
- ¹³⁶ T4599–4600.
- ¹³⁷ NSW submission to NSW coronial inquiry, pp. 18–19, 27–28.
- ¹³⁸ DPP.DPP.0004.0002, transcript of interview of Mr Lucas-Smith on ABC Radio 666 before 9.00 am, 9 January 2003.
- ¹³⁹ T0851.
- ¹⁴⁰ T0854.
- ¹⁴¹ Statement of Mr McRae, paras 33–34.
- ¹⁴² *ibid.*, para. 40.
- ¹⁴³ ‘Fires in and adjacent to the ACT’, 11.00 am, 9 January 2003.
- ¹⁴⁴ T3188.
- ¹⁴⁵ AFP.AFP.0003.0384, Mr McRae’s notes, ‘Rick’s brief’, 11.50 am, 9 January 2003.
- ¹⁴⁶ T3203.
- ¹⁴⁷ T3896–3897.
- ¹⁴⁸ ESB radio transcript, 9 January 2003, p. 30.
- ¹⁴⁹ Statement of Mr McRae, para. 41.
- ¹⁵⁰ Statement of Mr Lucas-Smith, paras 36–37.

- ¹⁵¹ T3213.
¹⁵² T0857.
¹⁵³ T3216.
¹⁵⁴ T3256.
¹⁵⁵ T2753–2754.
¹⁵⁶ ESB radio transcript, 8 January 2003, p. 60.
¹⁵⁷ Cheney report, p. 32.
¹⁵⁸ T0876.
¹⁵⁹ T3189.
¹⁶⁰ T3199–3202.
¹⁶¹ T2756.
¹⁶² T2757–2758.
¹⁶³ Statement of Mr Bartlett, paras 28–30.
¹⁶⁴ *ibid.*, para. 33.
¹⁶⁵ T5952.
¹⁶⁶ T0853.
¹⁶⁷ T2743–2744.
¹⁶⁸ T2745.
¹⁶⁹ T2815–2816.
¹⁷⁰ Statement of Mr Bartlett, para. 37.
¹⁷¹ *ibid.*, para. 40.
¹⁷² *ibid.*, para. 42.
¹⁷³ ESB.AFP.0111.0626, statement of Mr Sayer, paras 13–18.
¹⁷⁴ DPP.DPP.0006.0268, statement of Mr Jeffery, para. 27.
¹⁷⁵ *ibid.*, paras 28 and 29.
¹⁷⁶ Submissions of counsel assisting, para. 1117; transcript of 10 July 2006, pp. 157–158.
¹⁷⁷ Submissions of counsel assisting, para. 1197.
¹⁷⁸ ‘Further submissions of counsel assisting in reply to the submissions of the NSW represented parties’,
²⁴ July 2006, para. 4.
¹⁷⁹ *ibid.*, para. 13.
¹⁸⁰ Transcript of proceedings, 10 July 2006, p. 204.
¹⁸¹ Submissions of counsel for the ACT, para. 204.
¹⁸² Transcript of proceedings, 10 July 2006, p. 210.
¹⁸³ Submissions of counsel for the ACT, para. 216.
¹⁸⁴ McLeod, Ron 2003, *Inquiry into the Operational Response to the January 2003 Bushfires in the ACT*,
(the McLeod report), ACT Government, Canberra, p. 242.
¹⁸⁵ Submissions of counsel for the ACT, paras 221–222.
¹⁸⁶ *ibid.*, para. 226.
¹⁸⁷ *ibid.*, para. 231.
¹⁸⁸ *ibid.*, para. 232.
¹⁸⁹ *ibid.*, para. 327.
¹⁹⁰ *ibid.*, para. 294.
¹⁹¹ *ibid.*, paras 299 and 426.
¹⁹² *ibid.*, para. 372.
¹⁹³ *ibid.*, para. 317.
¹⁹⁴ *ibid.*, paras 373 and 375.
¹⁹⁵ *ibid.*, para. 408.
¹⁹⁶ *ibid.*, paras 419–425.
¹⁹⁷ Submissions of counsel representing Mr Castle and Mr Lucas-Smith, para. 10.
¹⁹⁸ *ibid.*, paras 99–103.
¹⁹⁹ *ibid.*, paras 96–98, 117, 121.
²⁰⁰ T853.
²⁰¹ Transcript of interview of Mr Lucas-Smith on ABC Radio 666 before 9.00 am, 9 January 2003.
²⁰² Submissions of counsel representing Mr Castle and Mr Lucas-Smith, para. 123.

- ²⁰³ Transcript of proceedings, 12 July 2006, p. 309.
- ²⁰⁴ Transcript of proceedings, 17 July 2006, p. 354.
- ²⁰⁵ Submissions on behalf of Ms Arman, paras 3.1.16, 3.1.25, 3.1.29, 3.1.30.
- ²⁰⁶ *ibid.*, paras 3.1.30, 3.1.31.
- ²⁰⁷ *ibid.*, paras 3.1.33–3.1.43, 3.1.65.
- ²⁰⁸ *ibid.*, para. 3.1.65.
- ²⁰⁹ *ibid.*, para. 3.1.69.
- ²¹⁰ *ibid.*, para. 3.1.80.
- ²¹¹ *ibid.*, para. 5.1.
- ²¹² Submissions on behalf of Mr Graham, p. 3.
- ²¹³ NSW Coronial Inquiry into the Circumstances of the Fire(s) in the Brindabella Range in January, 2003, 18 September 2003. Findings of Deputy Coroner Carl Milovanovich, at p. 19.
- ²¹⁴ Submissions by counsel for the NSW represented parties, para. 158.
- ²¹⁵ Submissions of counsel assisting, 2 April 2006, para. 1197.
- ²¹⁶ Transcript of proceedings of 28 July 2006, pp. 396–397; submissions by counsel for the NSW represented parties, paras 318, 414, 463, 490, 492.
- ²¹⁷ See submissions of counsel for the ACT, paras 193, 196, 198, where this fact is conceded in relation to the ESB.
- ²¹⁸ ESB.AFP.0053.0002, questionnaire completed by Mr Graham, 4 May 2003, p. 2.
- ²¹⁹ *ibid.*, p. 15.
- ²²⁰ T2729.
- ²²¹ DPP.DPP.0004.0023, TROC with Mr Bartlett, Q. 74–75.
- ²²² Statement of Mr Graham, para. 18.
- ²²³ *ibid.*, para. 53.
- ²²⁴ Cheney report, pp. 24–26.
- ²²⁵ T3055.
- ²²⁶ Statement of Mr Cooper, para. 42.
- ²²⁷ Statement of Mr Bartlett, para. 88.
- ²²⁸ ESB.AFP.0108.0076, statement of Mr Taylor, paras 25–28.
- ²²⁹ T6858.
- ²³⁰ T7350.
- ²³¹ T0862–0863.
- ²³² Submissions by counsel for the ACT, para. 327.
- ²³³ McLeod report, p. 59.
- ²³⁴ Section 37 (formerly s. 27) of *Occupational Health and Safety Act 1989* (ACT).
- ²³⁵ McLeod report, p. 59.
- ²³⁶ *ibid.*, pp. 60–61.
- ²³⁷ *ibid.*, p. 57.
- ²³⁸ House of Representatives Select Committee on the Recent Australian Bushfires 2003, *A Nation Charred: inquiry into the recent Australian bushfires*, Parliament of the Commonwealth of Australia, Canberra, paras 4.36 and 4.38.

7 Warnings

7.1 Introduction

Of all the matters that arose during the inquiry, the one that, from a public interest perspective, was the most compelling and emotive is that of warnings. It is also one of the most important matters because it was submitted that it is directly relevant to the cause of death of Mrs Alison Tener and the extent of the fires' damage to and destruction of property.¹

Further, it was submitted that as early as 13 January 2003—five days before the firestorm—some senior officers of the Emergency Services Bureau knew the fires posed a risk to Canberra. It was also submitted that that risk was not made known to the community until approximately 2.40 pm on Saturday 18 January 2003², a little over half an hour before the first suburban houses started to burn. On the other hand, counsel for Mr Mike Castle and Mr Peter Lucas-Smith submitted that 'quite specific and quite clear warnings were being issued by ESB, well before 1440'.³

Whether or not the people of Canberra were given prompt and adequate warning of the encroaching fires was a crucial question for the inquiry, one that can be resolved only by considering the following:

- Did any senior person at the Emergency Services Bureau know or have reasonable grounds to believe there was a realistic possibility that the fires would enter Canberra's suburbs?
- If so, when was this knowledge acquired or belief formed?
- Was sufficient information about the risk conveyed to the Canberra public?
- If not, why not?

7.2 Information and knowledge before the 2003 fires

Chapter 4 points out that the fires of January 2003 were not the first fires to affect Canberra. The risk was known to senior officers of the Emergency Services Bureau, who were familiar with the *Rural Fire Control Manual* and its description of the characteristics of fire and fire weather in the ACT.⁴ The manual was the instrument that governed all aspects of the organisation, structure and operations of the ACT's Rural Firefighting Service at the time of the fires in 2003. It contains references to 'potential weather to create widespread havoc within the suburban area'.⁵

Mr Lucas-Smith recognised the risk of fires for the 2002–03 fire season. On 29 November 2002 he is reported in an article in the *Canberra Times* in the following terms:

‘What we saw last December was in real terms probably only an entrée to what’s potentially going to occur this year,’ he said. Mr Lucas-Smith said that the conditions were even worse than they were at the end of 1982 before the Ash Wednesday bushfires in Victoria and large fires in the ACT and NSW. The conditions were now as bad as would be expected at the end of February with no moisture in the grass. At least 75mm of rain was needed to avert the current level of danger’.⁶

Mr Rick McRae recognised the fire risk in the context of the deteriorating conditions during 2002. On 23 January 2002 he sent the first of a series of email messages about the deteriorating outlook for the 2002–03 fire season. The message was sent to Mr Ian Bennett, Mr Peter Lucas-Smith, Mr Tony Graham and Mr David Ingram and was copied to Ms Vivian Raffaele. It was rated as high importance and headed ‘Doom & gloom such as not even the dark Kingdom of Mordor has seen’. It began:

It now appears more likely than not that we have just started down the path of a full blown El Nino (I estimate 67 percent chance) ... The actual observations are closely tracking the evolution of events up to and during January 1997. This went on to form a ‘Big One’... Unfortunately, if this forecast is correct, we currently have a drought index running at around 100mm more than at this time in 1997. Oops. Even ActewAGL is gloomy as the rivers are low as are the dams ... An El Nino would be very likely to trigger water restrictions for Canberra. This has significant flow on effects for interface residents and firefighters ... I would like to give everyone a big happy ‘heads up’ on this—please think about the preparedness required. I hope I am wrong.⁷

Mr McRae sent other emails to his work colleagues during 2002, all of which can be seen as not only alerting people but raising alarm in relation to the fire outlook for the coming season. On 30 December 2002, only 19 days before the firestorm, Mr McRae sent to Mr Lucas-Smith, Mr Graham, Mr Ingram and Mr Bennett an email in which he said, among other things, that because of the water restrictions ‘flammability of the urban interface may reach levels that we have not seen before ... Fire fronts could move through gardens, and embers could start spot fires well within the suburbs’.⁸

Similar information appears to have been disseminated to others outside the Emergency Services Bureau at training sessions conducted by ESB personnel during 2002.⁹ It can reasonably be inferred that Mr McRae and other senior ESB personnel recognised the potential consequences of bushfires for Canberra’s suburbs. Mr McRae also gave evidence that he repeatedly issued warnings about the potential for fire to affect:

two or three rows of houses in, not streets, that I say when I talk about these matters ... I have used it as a rule of thumb for all of Canberra’s interface for how far bushfire impacts would be expected to occur. That’s consistent with national research ... I would apply it anywhere in the urban edge where we felt there was going to be a bushfire impact. It doesn’t mean I expect the bushfire impact everywhere on the urban edge.¹⁰

Clearly, before the January 2003 fires senior personnel of the Emergency Services Bureau recognised and understood the risk of a potentially serious wildfire impact on Canberra during the 2002–03 fire season.

7.3 Events on 13 January

Counsel assisting submitted that, by Monday 13 January 2003 at the latest, it was apparent to Mr Castle, Mr Lucas-Smith and others there was a real risk that the fires might reach the urban area. Two events that occurred on that day are cited in support of that submission.¹¹

7.3.1 The first request for Commonwealth assistance

The first relevant event of 13 January was a request Mr Castle made to the Commonwealth for assistance in relation to the fire effort. This was the first of a number of such requests, and it was sent at 10.55 am. It followed up a verbal request Mr Castle made the previous evening. He sought helicopters and bulldozers in a situation he described in the following terms:

There are currently these uncontained bushfires within the ACT that are threatening the ACT water catchment areas. Another large fire just outside the ACT border to the north-west is also causing serious concern with a further fire in NSW just to the south-west of the ACT. Containment of the fires has been unsuccessful to date due to the remote and difficult terrain. ACT Government resources are severely stretched responding to both the ACT and assisting with the NSW fires ... [the McIntyres Hut] fire is very large and with a wind change and no containment poses a substantial threat to the ACT.¹²

At 11.55 am that day Mr Castle gave an interview on ABC Radio 666 in which he confirmed that the fires burning around the area were ‘uncontained’ and serious. He went on to say the fires were susceptible to wind change and ‘our most prevailing wind is from north-north-westerly and that gives us 180 degrees and would bring the fires back into us and back onto us in a much wider front. So that’s the concern we actually have’. Mr Castle conceded that the ACT emergency services did not have enough resources to cope with the fires and, referring to the McIntyres Hut fire, burning north-west of the ACT border, said, ‘With prevailing winds from that direction, [that fire] would come back on a very large front’. In response to a question from the interviewer about whether the fires could come as far as Canberra and threaten the city if the wind did swing to the north-west, Mr Castle replied:

I wouldn’t want to be that dramatic. What we actually try to do is establish a series of containment lines between that, but you are talking about fairly significant fires, and at the moment, of course, whilst people can see them as smoke, smoke is, as you indicated, going away from us, so they don’t look particularly large from down in the urban area, but they could present quite a significant impact, but there’s a lot between where they currently are and the urban edge.¹³

It thus appears clear that Mr Castle held the view that if particular conditions prevailed and the fires were not contained they could reach the edge of Canberra.

Similarly, in evidence to the inquiry Mr Lucas-Smith said he had come to the view by the morning of 13 January that the ACT fires and the McIntyres Hut fire could pose a risk to Canberra. When questioned on this, he said, ‘It is a matter of trying to work out at the end of the day how far it could actually go without any intervention and with worst-case weather and whether or not we are going to get that sustained. The potential exists for it to go all the way through to the Pacific Ocean’.¹⁴

Mr Lucas-Smith went on to say that he did not believe this to be a realistic prospect because he had confidence in the success of the firefighting effort.¹⁵ This claimed optimism about the firefighting effort must be set against a background of a significant escalation in the size of all the fires, which by 13 January had been burning for five days, a lack of success in containment efforts, and dire weather predictions, all of which were known to Mr Lucas-Smith.¹⁶

7.3.2 A telephone call from Mr Cheney to Mr Lucas-Smith

The second event counsel assisting submitted as being materially significant is a telephone conversation between Mr Lucas-Smith and Mr Cheney. In evidence, Mr Cheney said the conversation took place on 13 January, in the ‘afternoon towards the evening’.¹⁷ Counsel representing Mr Lucas-Smith submitted that the telephone conversation with Mr Cheney occurred on 14 January.¹⁸ Mr Lucas-Smith agreed, however, that he had spoken with Mr Cheney on 13 January.¹⁹

Mr Cheney’s evidence was that he rang Mr Lucas-Smith and ‘advised him that I was going to be asked questions by WIN Television and I expressed my opinion to Peter that, if they asked me, I would have to tell them that in my opinion it was a very dangerous situation and that these fires were likely to burn into Canberra’.²⁰

Later in his evidence Mr Cheney said he thought he also used words such as ‘if we get westerly winds, the fire would burn into Canberra’ because he believed a westerly wind would eventuate at some time before the fires were brought under control.²¹ He also said the conversation was serious, and he wanted Mr Lucas-Smith to know that he had been approached by the press and to give Mr Lucas-Smith his opinion.²² Mr Cheney gave evidence that Mr Lucas-Smith’s response was ‘That’s fine, Phil. That’s our opinion too’, and he understood from that comment that the Emergency Services Bureau was fully aware of the potential.²³

Mr Lucas-Smith agreed that he had had a telephone conversation with Mr Cheney but at first disagreed that Mr Cheney told him it was likely the fires would burn into Canberra.²⁴ He did concede, however, that his recollection of the conversation was not as good as Mr Cheney’s.²⁵ Mr Lucas-Smith said he advised the planning meeting held at 4.00 pm on 14 January of his conversation with Mr Cheney. The minutes of that meeting record, ‘Mr Cheney stated that any strong westerly gusts of wind could turn the fire towards urban areas’.²⁶ Mr Lucas-Smith then acknowledged that Mr Cheney had referred to the fire reaching the urban area. The handwritten notes of that meeting confirm that Mr Cheney had said strong gusts of wind from the west would bring the fire ‘into Canberra City’.²⁷ Mr Lucas-Smith then agreed that Mr Cheney, for whom he had the utmost respect as a fire behaviour expert, had in fact expressed this opinion to him.²⁸

Mr Lucas-Smith said he added Mr Cheney's comments to his own thinking. He also said, 'I looked at it from a realistic point of view at that particular time and, of course, I had confidence in our people to actually undertake the job of intervention'.²⁹ Additionally, in his statement Mr Lucas-Smith said, 'We discussed the media release by Phil Cheney who had stated that any strong westerly gusts of wind could turn the fire towards the urban areas, although this potential had already been recognised at the meeting'.³⁰

Submissions on behalf of Mr Lucas-Smith state that, after being referred to the notes made at the planning meeting, Mr Lucas-Smith acknowledged that Mr Cheney might have referred to the possibility of the fire burning into Canberra.³¹ The submissions then state:

The discussion with Mr Cheney could only be material information if Mr Cheney had told Mr Lucas-Smith something he did not already know. Mr Cheney did not. It is nowhere suggested that Mr Lucas-Smith did not know that it was possible that the fires could come into Canberra under the influence of westerly or north-westerly winds. Mr Lucas-Smith did not say that this information was something with which he disagreed or that it was a revelation to him. Quite the reverse ... he acknowledged that, on 13 January, it occurred to him that McIntyre's Hut could be a risk to Canberra.³²

It was further submitted that, although Mr Lucas-Smith recognised the potential existed for strong westerly winds to bring the fire into Canberra, and that this potential was also recognised by those who were at the 4.00 pm planning meeting on 14 January, he did not at the time believe the scenario was realistic.³³

I reject this further submission as being inconsistent with the facts in evidence. It is clear from the evidence that Mr Lucas-Smith and other personnel at the Emergency Services Bureau considered and recognised the potential risk of fire entering the urban area under the influence of strong westerly or north-westerly winds.

7.4 Events on 14 January

During the morning of 14 January 2003 Mr Castle was again interviewed by ABC Radio 666, and he commented about concerns that a wind change could see new outbreaks from the McIntyres Hut fire and that strategies were being developed to deal with that eventuality. He also said all the fires were growing.³⁴

7.4.1 The morning planning meeting

A planning meeting was held at 9.30 am on 14 January and notes were taken of the discussion. Mr McRae informed the meeting that north-westerly winds were expected that day, changing to easterly in the evening. He asked a representative of the Bureau of Meteorology to attend the Emergency Services Bureau the following day, to brief him on weather conditions and then attend the planning meeting.

The forecast north-westerly wind that afternoon was the first such wind since the fires had started burning and caused the Belconnen area to be engulfed in smoke. Mr Castle noted, 'It

blanketed Belconnen and there were reports of burnt ash in yards etc. That heightened the media interest in the fires because it brought the smoke much more into Canberra'.³⁵

7.4.2 The afternoon planning meeting

The planning meeting held at 4.00 pm received reports on fire operations associated with the three fires in the ACT and the situation with containment efforts. Mr McRae expressed his concern about holding the containment lines around the Stockyard Spur fire and noted various alternatives for where that fire might run if it crossed the Cotter River. He also predicted—rightly—that the Stockyard Spur fire and the Mount Gingera fire would join, which they did at about 2.00 am that night.³⁶

The minutes of the meeting record Mr McRae reporting on the forecast weather conditions:

The inversion level today made fire behaviour hard to predict. Long term weather outlook details the temperature for Saturday at 35 degrees, with temperatures for Sunday, Monday and Tuesday being hot with stronger north-westerly winds. Mr McRae stated this forecast indicates that strategies will be harder to complete and hold after Friday evening.³⁷

The minutes also record discussion of Mr Lucas-Smith's telephone conversation the previous day with Mr Cheney. Under the heading 'Media' the minutes note:

Peter Lucas-Smith stated that Phil Cheney (fire behaviour expert) has conducted an interview with WIN TV. Mr Cheney stated that any strong westerly gusts of wind could turn the fire towards urban areas. There are currently no westerly winds forecast. There was discussion regarding appropriate media response. Tim Keady suggested that while the westerly wind direction would make operations difficult, we are currently implementing measures to control this possibility.³⁸

Independent notes of the meeting, made by Ms Jillian Ferry and Ms Kate Keane, employees of the Emergency Services Bureau, both include a reference to Mr Castle asking, if the fires were not contained, what wind change or direction would bring the fires into the city or endanger the urban area. He is recorded asking which winds were the more threatening, to which Mr Tim Keady replied westerly winds.³⁹

The minutes and the notes appear to record the sum total of the discussion of Mr Cheney's concerns about the fire risk, apart from noting that the Emergency Services Bureau was to be the source of advice to the public if there were any threat from the fires.

Counsel assisting submitted that, instead of examining Mr Cheney's view and debating the seriousness of the risk to the urban area, the meeting instead focused on what response should be made to the media in the event that Mr Cheney's comments on television aroused increased interest. Counsel assisting further submitted that the oral evidence of the people present at the meeting was unsatisfactory because of the generally poor recollections about the meeting and the witnesses' unhelpful responses.⁴⁰

A review of the evidence on this supports the submissions of counsel assisting:

- Mr Keady said, ‘I think it is more likely that I queried what would have been or what was the response to the suggestion that there was a problem emerging, and the note takers possibly documented it in a way that may not have been accurate. But I don’t have a recollection of it, I am sorry’.⁴¹ He questioned the accuracy of the minutes while at the same time saying he had no memory of the discussion.
- There is a reference in the notes to Ms Marika Harvey fielding questions, yet Ms Harvey had no recollection of whether or not she attended the meeting.⁴²
- Mr Graham had no recollection of that part of the meeting where Mr Cheney’s conversation with Mr Lucas-Smith was discussed, but he knew about it from Mr Lucas-Smith telling him the day before. Further, he said he might not have been there for that part of the meeting.⁴³
- Mr Ingram recalled that Mr Cheney was to speak to the media but did not recall any discussion about Mr Cheney’s prediction.⁴⁴
- Ms Keane and Ms Ferry clarified their notes but could recall little of the discussion.⁴⁵
- Mr Lucas-Smith said there was a discussion about the level of threat and the prospect that the fire might affect the urban area, because ‘that was the whole reason for raising it within the planning meeting’.⁴⁶ He accepted that if certain combinations of events happened, given the size of the fires, there was a significant risk at least to the western side of Canberra.⁴⁷ In connection with discussion about media interest, Mr Lucas-Smith also said, ‘I have no doubt that Mr Cheney’s comments, if they had gone to air, would have sparked a lot more media interest in those aspects, and I think they were formulating a response’.⁴⁸
- Mr Castle had a generally poor recollection of the discussion. He knew Mr Cheney and was aware of his expertise. He could not remember if it concerned him that Mr Cheney was saying that fires would come into Canberra under the influence of westerly winds. He said, ‘I don’t think it changed the level of understanding that I already had’.⁴⁹ Mr Castle had no recollection of what was meant by the note ‘ESB to be reasonable advice re threat’ but said, ‘I don’t think it would surprise me to be trying to ensure that the advice is coordinated, if there is advice going’.⁵⁰ He could not recall any comment made by Mr Keady but, in response to a comment that he (Mr Castle) was ‘the officer ultimately responsible for keeping the public informed about threats to the public’, he replied that he was part of a department and reported to Mr Keady, who reported to ‘ministerial level’, and it ‘all forms part of the process’.⁵¹ Ultimately, Mr Castle said the fire ‘could, uncontained, depending on the strength of the winds, the vegetation in between and all those caveats’ come into the city.⁵²
- Mr McRae had difficulty recalling some of the details of the discussion.⁵³ He did, however, recall it being said that Mr Cheney’s view was that strong gusts of wind from the west would bring the fires into the city. His reaction to this information was ‘... anyone is entitled to have an opinion. If we need to manage this fire, we need to have people come in and help us with the detailed planning we are doing ... I was concerned that he was going to the

media and I was concerned that, if he had information that could assist us, he wasn't bringing it to us'.⁵⁴ Mr McRae regarded Mr Cheney's information as unhelpful because, Mr McRae said, 'We needed detailed analysis of the weather sequence, detailed analysis of the fire behaviour. It's a very complex area. Just a single opinion wasn't going to be of any help to us'.⁵⁵ He said he did not disagree with Mr Cheney's opinion, but it was of no value to them. He did not see a risk from westerly winds because he said strong gusts from the west were not expected. Mr McRae said many factors needed to be considered when determining fire behaviour. He did not note the possibility that under north-westerly winds and hot conditions the McIntyres Hut fire could burn over the border and affect the city. He said he had no basis for identifying that possibility.⁵⁶ And he did not expect the McIntyres Hut fire to break its containment lines and did not expect it to make a run of such magnitude that would bring it into the city. Consequently, those possibilities were not part of Mr McRae's planning by the end of 14 January.⁵⁷

In their submissions counsel representing Mr Lucas-Smith conceded that Mr Cheney had told Mr Lucas-Smith something he already knew. Further, the possibility that fires could come into the urban area had been recognised by those who attended the planning meeting on the afternoon of 14 January.⁵⁸

It appears, however, that, although most senior personnel at the Emergency Services Bureau recognised this potential threat, Mr McRae did not. His analysis was indicating something to the contrary and, notwithstanding Mr Cheney's expertise in the field, he did not contact Mr Cheney to seek an explanation, a reason for Mr Cheney's views, or any additional information. Mr McRae, in effect, ignored Mr Cheney's expert opinion.

I have concluded from the evidence that:

- Mr Cheney did inform Mr Lucas-Smith that the fires would burn into Canberra under the influence of strong westerly or north-westerly winds.
- Mr Cheney's opinion about the threat of the fires was brought to the attention of those who were present at the ESB planning meeting on the afternoon of 14 January 2003.
- Mr Cheney's opinion was ignored or dismissed by senior personnel of the Emergency Services Bureau.

7.5 Events on 15 January

7.5.1 The morning planning meeting

At the 9.30 am planning meeting on 15 January Mr Graham reported that the Stockyard Spur and Mount Gingera fires had joined overnight. Mr Ian Mason from the Bureau of Meteorology told the meeting that the weather conditions expected for Friday to Monday 17 to 20 January 2003 were strong winds from the north-north-west gusting to 50 kilometres an hour on Friday and 60-plus kilometres on Monday, temperatures in the mid to high 30s, low humidity, and a very

low dew point. The minutes of that meeting recorded, ‘The weather briefing would indicate that Monday is the ... deadline to secure operational strategies’.⁵⁹

The information provided about the weather suggested that Saturday 18 January would be a bad fire day and that Monday 20 January would be even worse. Both Mr Lucas-Smith and Mr Castle understood this.⁶⁰ It would appear that, despite the comments recorded in the minutes, senior ESB personnel recognised that the operational deadline was the night of Friday 17 January. Mr Graham recognised that the forecast weather conditions would put pressure on containment lines.⁶¹ Mr McRae recognised that the conditions forecast would combine to create extreme fire danger; he said in evidence, ‘I had already told people they should aim to have things finished before Friday afternoon. What I am saying here is it is a true deadline. On Monday, if they haven’t done it, you are going to wish you had done it, basically’.⁶²

I have concluded that senior personnel of the Emergency Services Bureau, including Mr Castle and Mr Lucas-Smith, received from the Bureau of Meteorology information suggesting that Saturday 18 January 2003 and Monday 20 January 2003 would be days of extreme fire danger for Canberra.

7.5.2 Mr Lucas-Smith’s meeting with Mr Koperberg

Some time later that morning, Mr Lucas-Smith met with Mr Phil Koperberg and other NSW personnel involved in fighting the McIntyres Hut fire. The meeting took place in Queanbeyan, and there are some discrepancies in the evidence of those present as to exactly what was said and by whom. According to Mr Lucas-Smith’s statement, Mr Koperberg and others ‘expressed great confidence they had the [McIntyres Hut] fire contained and that it was not going to be an issue for the ACT’.⁶³ On the other hand, Mr Koperberg’s statement summarised the meeting as follows:

Upon Mr Lucas-Smith’s arrival we discussed the progress being made on the containment of fire on both sides of the ACTNSW border. Advice provided earlier by the Bureau of Meteorology was discussed in some detail. The Bureau of Meteorology had been suggesting for some days the possibility of extreme fire weather for Saturday 18 January 2003. I expressed concern during this briefing about potentially serious implications for the western suburbs of Canberra were the fires not to be contained before the onset of predicted weather. I considered that, were the forecast conditions to prevail, a significant threat existed to the ACT if the fires currently being worked on were not completely contained by 18 January, and I subsequently expressed this concern both at the briefing and during the course of media interviews on the same afternoon.⁶⁴

In his evidence, Mr Lucas-Smith said he did not recall Mr Koperberg expressing concern about the western suburbs of Canberra. Mr Koperberg said in his evidence he did not accept that anyone at the meeting said the McIntyres Hut fire would not be a problem for the ACT. He said, ‘We consistently stated that, whilst the McIntyre’s Hut fire was contained, we also harboured the view that it would only remain contained if the forecast conditions did not prevail’.⁶⁵

Mr Lucas-Smith said he was told of Mr Koperberg's statement to the media on the afternoon of 15 January, in which Mr Koperberg said, among other things, to the ABC:

This is probably the worst threat to this part of the state in many, many decades. The Brindabella Complex of fires are certainly a potential threat to some very valuable assets, not the least being some mature pine forest on the border of Canberra, and indeed, the ACT itself. Given the fact that the weather is going to deteriorate at the weekend and possibly quite severely, the job is still ahead of them.⁶⁶

Mr Lucas-Smith said he was surprised by this statement but did not ring Mr Koperberg to question him because he understood Mr Keady was intending to speak with Mr Koperberg.⁶⁷ That conversation never occurred.⁶⁸

Mr Koperberg conceded later in his evidence that he may well not have mentioned the western suburbs of Canberra specifically as being affected by the fire. Mr Lucas-Smith did, however, say that, as at 15 January, if the fires were not contained he had concerns about their impact on the western suburbs.

Chapter 5 provides a detailed consideration of the evidence on this matter, and it is not necessary to repeat it in its entirety here. Given the contradictions in the evidence and the varying reliability and accuracy of individual recollections, it is impossible to determine precisely what was said at the meeting on 15 January 2003. It is a fact, though, that on the afternoon of 15 January, regardless of what he said to Mr Lucas-Smith at their meeting earlier that day, Mr Koperberg did make a public statement in which he expressed his serious concern about the fire invading Canberra during the coming weekend.

Additionally, counsel representing Mr Lucas-Smith submitted on his behalf:

Mr Koperberg's warning about a possible impact upon Canberra was not news to Mr Lucas-Smith. He knew of this possibility already ... Mr Lucas-Smith knew before he spoke to Mr Koperberg that the fires had the potential to impact upon the Canberra urban area. It was not a revelation to him'.⁶⁹

There is no dispute that, in the discussion between them, Mr Koperberg offered Mr Lucas-Smith NSW resources for deployment in the ACT to assist with the firefighting effort.⁷⁰

7.5.3 Further ACT requests for Commonwealth assistance

There were other noteworthy events on 15 January. At 1.00 pm Mr Castle made two further requests to the Commonwealth for physical assistance, seeking provision of a 30 000-litre water tanker to fill portable water reservoirs and an extension of the Defence Force resources that were already participating in firefighting operations. Mr Castle provided the following information in these requests for assistance:

Two of the three fires have now joined, forming two large fires. The weather forecast for the weekend and early next week predicts temperatures in the high 30s with strong winds gusting to over 60km/hour from the north-west, causing concern for the ACT urban environment. The current inversion layer has reduced visibility preventing aerial water bombing operations, which has impacted on the ACT's ability to implement

successful control strategies. A civilian helicopter accident occurred on Monday, seriously injuring the pilot and putting the helicopter out of action, which also reduced the aerial fire fighting capability.

Operations for nearby NSW fires are now impacting on ACT operations, and vice versa, requiring significant coordination.⁷¹

The requests refer to the expansion of the fires, the unfavourable weather forecast, problems with firefighting operations and, significantly, ‘concern for the ACT urban environment’. Mr Castle agreed in his evidence that, with the potential for the forecast wind change, his degree of concern for the urban area was no longer small.⁷²

Mr Lucas-Smith did not agree with Mr Castle’s description: he said he felt ‘we still had potential for intervention if we got the resources that we needed’.⁷³ It was put to him that the risk to the ACT urban area was ‘a distinct possibility if certain things happened’, and he replied:

In relation to the Bendora and Stockyard fires, if they were under a north-west wind influence, they were going to be pushed further to the south and south-west; if they went due west the Bendora fire certainly had the potential to impact upon the southern suburbs of Canberra and rural properties, which is our first concern.⁷⁴

Having identified that risk, Mr Lucas-Smith was asked whether warnings were being issued to the people who lived on the rural properties, and he said he was ‘not aware of any direct things that were put in place to provide those warnings, other than the media stuff that was already in place and the fact that a lot of those rural people were a part of the volunteer brigade system anyway’. He agreed that warnings should have been issued to those people at this stage and said he assumed that responsibility for the lack of warnings was his. He added that the ESB Media Unit is part of the Planning Section and should obtain advice from that section. Mr Lucas-Smith also agreed that, at least at that date, ‘our media arrangements and our advice to the community was sadly lacking’.⁷⁵

7.5.4 The afternoon planning meeting

The minutes of the planning meeting held at 4.00 pm on 15 January record Mr Lucas-Smith reporting that a request for NSW assistance had been accepted, but there is no reference to his discussions with Mr Koperberg and others earlier that day about the risk to Canberra suburbs or the concern about the McIntyres Hut fire breaching its containment lines.

Mr Graham reported on the containment work, which had not been completed and was running up against time limits. Mr McRae reported, ‘Monday will potentially present the worst fire weather forecasts seen in a long time. The Fire Danger Index is forecast to be within the range of 110–140’. He added, ‘We need to be as ready as possible for these extraordinary conditions’. Monday was identified as having the worst weather potential, with a one-in-20-year fire forecast and a one-in-40-year fire weather forecast.⁷⁶

Mr McRae described in his statement what he meant by his report to the meeting:

I commented on what should be understood by it. In particular I said words to the effect of ‘Gentlemen, we currently have the worst situation you will see in your careers. And

you have just heard a forecast for the worst fire weather you will experience in your careers. Do the maths’.

I then elaborated on this broad statement by explaining that we could expect large fire runs from any of the fires in a south-east direction. However, this was a comment about possibilities commencing at the earliest on Saturday and I therefore did not speculate on where these fire runs might occur pending developments over that day and the following two days. I said that the big question was when over the 4-day period 18–21 January 2003 these adverse weather conditions would occur.⁷⁷

The minutes also record that Mr McRae ‘warned that if the fire reached any of the worst case containment lines, then there are potentially public land, infrastructure, property and assets impacted upon’.⁷⁸

Additionally, Mr McRae’s evidence was that the McIntyres Hut fire could be in the ACT in less than an hour if it had a big run to the south-east. His planning was taking into account the possibility of that fire breaking out at various points from containment lines, and he referred to the primary problem being the fire entering the ACT pine plantations; he agreed the fire would then be difficult to stop, regardless of any containment lines between the forests and the plantations.⁷⁹

Mr McRae said his projections did not go as far as identifying the possibility of the McIntyres Hut fire breaching the containment lines, running through the ACT pine plantations and threatening the urban area. He said the situation was unstable and dynamic and this made predictions unreliable. He also said, however, when asked whether he thought there was any possibility that any of the fires might affect the urban area, ‘My feeling was that by Monday there would be a likelihood of that’.⁸⁰ He did not use those words to tell anyone of his views, ‘but the general terms I was using in the planning meeting were telling people that Monday was when things would be most dangerous’.⁸¹

7.5.5 A media release by the NSW Rural Fire Service

The NSW Rural Fire Service issued a media release during the afternoon of 15 January. It was headed ‘RFS crews sent to assist with ACT fires’ and contained the following statement: ‘The current weather forecast, and the fact that vegetation in the southern part of NSW and the ACT is extremely dry, means the potential for fire to impact on increasingly more populated areas is very high’.⁸²

Both Mr Castle and Mr Graham said they had not seen the press release on 15 January, and Mr Graham acknowledged it would have been useful had they seen it.⁸³ Mr McRae did not recall seeing the press release, or others that were issued, because he did not monitor NSW Rural Fire Service media releases. He said he obtained his information about the efforts with the McIntyres Hut fire at the planning meetings.⁸⁴

7.5.6 Mr Jeffery's warning

Tharwa resident Mr Val Jeffery mailed a letter to people in his local area on the afternoon of Wednesday 15 January. He did this on his own initiative as captain of the Southern Districts Bushfire Brigade because he was concerned about the progress of the fires:

I'd been elected as captain of the brigade. I believed by being elected I had an obligation to protect my area from fires in all manner of means. And with my experience, I believe I had an obligation to my community to let them know and warn them ... I was certain in my own mind that these fires would impact on our area. The only thing as far as I could see that was going to stop them was rain, and that was unlikely'.⁸⁵

Mr Jeffery's letter contained information about the location of the fires and the expected west to north-west wind change and a serious warning that it would be impossible to hold the fires within containment lines when they broke out of the mountains. Mr Jeffery nominated the following Monday or Tuesday as the most likely days. He added, 'When these fires break out of the mountains they will burn virtually all our country. Suppression forces will be overwhelmed so you will need to ensure that you are well prepared to protect your own property and this can be very successful with a few simple precautions and preparations'. There followed suggestions on what measures residents should take to protect property, and he added, 'I don't want to alarm people, just to forewarn you'.⁸⁶

7.5.7 A telephone conversation between Mr Graham and Constable Byrnes

At about 5.30 pm on 15 January Constable Jason Byrnes of the Australian Federal Police telephoned the Emergency Services Bureau and spoke with Mr Graham about whether the police needed to be involved in traffic operations because of a back-burn that was planned on the Brindabella Road. In that conversation Constable Byrnes said to Mr Graham, 'Obviously our bosses are a little bit concerned now. They're sort of worried that Canberra is gonna burn'. Mr Graham replied, 'Yeah, well it's not beyond possibility on Saturday or Monday'.⁸⁷

When questioned about his remarks, Mr Graham said he was not referring to the fires burning in the city; rather, he had in mind the areas towards and up to the city. This does not make sense. If Mr Graham was thinking of Canberra in terms of the wider area outside the city, a large part of that area was already burning and had been burning for the preceding eight days. He was present at the planning meeting, which had probably just finished, and had heard Mr McRae's predictions. He heard Mr Mason report earlier in the day on the weather forecast for the period until Monday 20 January—high temperatures and north and north-west winds. Mr Graham might well have thought, as he said, and hoped, that the fires would be contained in the grasslands, but I do not accept that he was referring only to the non-urban area in his conversation with Constable Byrnes.

By late afternoon on 15 January 2003 senior personnel of the Emergency Services Bureau were in receipt of information that either confirmed or was the basis on which they formed certain views about the risks of the fires.

I am satisfied that:

- By late afternoon on 15 January 2003 Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each recognised that the fires—including the McIntyres Hut fire—presented a serious risk to Canberra and to rural settlements west of the urban area.
- Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each acknowledged the risk to the urban area if certain conditions prevailed, but Mr McRae considered that Monday 20 January 2003 was the probable day of impact.

7.6 Events on 16 January

7.6.1 The Cabinet briefing

At about 9.00 am on 16 January Mr Castle, Mr Lucas-Smith and Mr Keady briefed the ACT Cabinet. Among those present at the meeting were the Chief Minister, Mr Jon Stanhope; the Treasurer, Mr Ted Quinlan; the Health Minister, Mr Simon Corbell; the Police and Emergency Services Minister, Mr Bill Wood; the Chief Executive of the Chief Minister’s Department, Mr Robert Tonkin; the Cabinet Secretary, Mr Mark Kwiatkowski; and Cabinet Secretariat Officer Ms Claire Wall. In his statement Mr Castle said:

This briefing comprised information about the fires, what assistance had been sought from the Commonwealth and mechanisms of that process, and the continuing liaison with NSW. Potential vulnerable areas were identified in broad terms. There was discussion as to the process of declaring a State of Emergency. I went on to advise the cabinet of the process involved in that eventuality. We offered advice on the potential risk to urban areas due to the extent of the fire front.⁸⁸

Mr Castle had prepared a briefing paper the night before the meeting. Mr Lucas-Smith saw the paper before it was distributed at the meeting and agreed that its contents were appropriate.⁸⁹ The meeting lasted about 45 minutes and several matters were discussed. The evidence those who attended the meeting gave in relation to the discussion often varies on important matters because some of the discussion could not be recalled. As a result, the most reliable sources of information about what was discussed and what was brought to the attention of the Cabinet are the written records—the briefing paper prepared by Mr Castle; notes taken by Mr Tonkin, Mr Kwiatkowski and Ms Wall; the subsequent Cabinet Minute Decision No. 0516; and ABC news footage and audio of parts of the briefing.

The briefing paper contained information on the history, size and operational strategies relating to the Bendora and Stockyard Spur fires. It also noted:

McIntyre’s fire to the north-west has secure containment lines to the south and east following back-burning operations. However, with stronger winds from the north-west there is always the potential for spotting over the containment lines which has potential serious impact to ACT forest pines and subsequently the urban area.⁹⁰

Under the heading ‘Planning contingencies’ the paper noted that Friday 17 January was the first deadline for securing operational strategies because of the likely wind change. Below that, under the heading ‘Assets under potential threat’, was a list that read, ‘Cotter catchment area; ACT pine forest plantations; isolated communications infrastructure; Tidbinbilla Nature Reserve; Tidbinbilla Tracking Station; Rural Leases; Urban edge’. There is a summary of the weather forecast for Thursday 16 January through to Monday 20 January—strong, gusting winds from the north-north-west, high temperatures, low humidity—and an additional notation for Monday 20 January: ‘This is very unusual and severe hot dry weather currently being described as a one in 40 year event’.

A map attached to the briefing paper showed the location of all the fires, including the McIntyres Hut fire, and their position in relation to Canberra. The map also showed that the Stockyard Spur fire covered 3500 hectares, the Bendora fire 2100 hectares, and the McIntyres Hut fire an estimated 9100 hectares.

Mr Tonkin made notes about ‘one in 40 year weather. Already a one in 20 year fire event’ and ‘Uriarra Forest is at 70 per cent risk. Cost to date is at least \$1m. Cost could go beyond the \$4.78m disaster threshold’. Under the heading ‘Decisions’ he noted ‘c. note that public information system will be activated as required by Emergency Services in consultation with [the Department of Urban Services], d. note that if situation deteriorates, the [Chief Minister] can declare a state of emergency with Murray as Controller’. He also noted, ‘... Cabinet and [Chief Minister] to make decision on choices of assets to be protected or abandoned’ and that the Chief Minister would be acting Minister for Emergency Services in the following week.⁹¹

In his notes, Mr Kwiatkowski referred to the weather report and, in particular, remarked that Monday would be an ‘extreme situation’. He also noted that the McIntyres Hut fire was about 1 to 2 kilometres from the ‘nearest forest’, that ‘spotting is main problem and can occur over several kms’, and that Mr Keady had said something about ‘urban firefighters’ and the urban periphery being another important potential effect. Mr Kwiatkowski further noted, ‘Principal threat to major infrastructure and urban is McIntyre Bendora – Tidbinbilla TS [Tracking Station] threat. May need to be very quick decisions made depending on where to deploy resources’. There is also a reference to a question from ‘MFP’ [presumed to be a reference to the Minister for Police and Emergency Services, Mr Wood] about State Emergency Service capacity, that SES assistance could be used if necessary around urban areas, and that there was discussion about declaration of a state of emergency, which ‘would be called when getting major infrastructure loss’.⁹²

Ms Wall noted that there was discussion about the costs of the fires to date and the Commonwealth options available for providing assistance. She noted, ‘If defence aid to civil community then it doesn’t cost the ACT. Can ask ADFA for ambulance if necessary’. There is also reference to Cabinet being recalled if necessary to make a quick decision on priorities about assets to save and there being a 40–60 per cent chance that a state of emergency would have to be declared. Ms Wall further noted, ‘Suburbs of greatest risk—Dunlop, Weston Creek’.⁹³

Cabinet Minute Decision No. 0516, relating to the briefing on the fire situation, noted the advice provided by the ESB officials, the advice on costs incurred, and that a public information system had been made ready and would be activated as required by the Emergency Services Bureau. It

also noted arrangements for declaration of a state of emergency if the situation deteriorated and the need to recall Cabinet if decisions had to be made about abandoning or protecting specific property or assets.⁹⁴

From the briefing paper and other documents created for and as a result of the briefing, it is readily apparent that the following matters were brought to the attention of Cabinet members and were subjects of discussion:

- The weather forecast for the coming five days was alarming.
- The weather and fire risk situations were described as a one-in-40-year event and a one-in-20-year event respectively.
- The fires were formidable in size and growing.
- It was part of a planning contingency, and presumably an expectation, that the fires, in the ACT at least, would almost double in size, from 5600 hectares to 10 445 hectares if they were kept within the then current containment lines.
- The cost to that point was about \$1 million, but there was an estimate that it could more than quadruple to beyond the \$4.78 million disaster threshold.
- There was a warning of the potential for spotting from the McIntyres Hut fire in the event of stronger winds from the north-west. Such winds were predicted for the ensuing days.
- There was a warning that spotting from the McIntyres Hut fire had the potential to seriously affect ACT pine forests and the urban area.
- It was noted that the McIntyres Hut fire was already 1 to 2 kilometres from the nearest forest and that spotting can occur over several kilometres.
- Among the areas—or assets, as they were called—that were listed as being under potential threat were rural leases and the urban edge.
- Dunlop and the suburbs of Weston Creek were mentioned as being at greatest risk.
- There was discussion about assistance from the State Emergency Services, if necessary, around the urban areas.
- Reference was made to ‘urban periphery’ and ‘urban firefighters’.
- There was discussion about Commonwealth resources that could be called on to assist.
- There was discussion of the procedures for declaring a state of emergency and the situation in which this would need to be done.
- The likelihood of a state of emergency needing to be declared was assessed as between 40 and 60 per cent.
- There was discussion of ‘major infrastructure loss’.

- There was discussion of the need to recall Cabinet in the event that decisions had to be made to abandon or protect specific property or assets.

It is difficult to reconcile some of the evidence given by witnesses who attended that Cabinet briefing meeting with the notes of the discussion and the information that was provided to them.

Mr Stanhope was the only Minister who gave evidence before the inquiry. At the time of the firestorm on Saturday 18 January, he was Chief Minister, Attorney-General (with responsibility for the Department of Justice and Community Safety) and acting Minister for Police and Emergency Services (in the absence of Mr Wood, who was on leave). Mr Stanhope said in evidence he ‘did not believe that the state of my concern and the concern of any of my colleagues on Thursday was materially different than the level of concern or alarm that we would have felt or held on Monday [13 January]’.⁹⁵

He had no specific recollection of particular words used at the briefing or of reading about the spotting potential of the McIntyres Hut fire and the possible serious impacts of that spotting; nor had he any memory of anyone raising with him the prospect of fire reaching the suburbs. Mr Stanhope said there was no discussion of threat to the urban area in terms of ‘real possibility’; instead, he said such discussion was in terms of nothing more than a ‘theoretical possibility’.⁹⁶ He did, however, concede that he was concerned about the fire situation because it was serious. Nevertheless, it was his evidence that, on the basis of the information he had received in the days before the Cabinet briefing and:

... the nature and tone of the briefing that Cabinet was receiving ... this was not at that time a real live possibility [the fire actually burning into the Canberra suburbs], that it was not a possibility of any high expectation ... I don’t think it had occurred to me at that stage that there was any possibility that the fire would cause damage within the suburbs of Canberra. I simply had not reached that state of understanding. I did not have that mindset. I had not received advice that led me to believe that this fire would destroy property within the suburbs of Canberra.⁹⁷

Mr Stanhope said there was no discussion about warning the residents of Dunlop and Weston Creek—despite the evidence that these areas were mentioned as being at greatest risk.⁹⁸

In his evidence, Mr Tonkin said, ‘The potential impact of the fire coming closer to the city certainly was discussed’.⁹⁹ He had, however, no recollection of Mr Keady making reference to ‘other potential effects’, ‘urban periphery’ or ‘urban firefighters’.¹⁰⁰ Mr Tonkin did not recall being particularly concerned about the reference in the briefing paper to ‘potential serious impact to ACT forest pines and subsequently the urban area’ because, he said, ‘of the overall context in which it was presented. It wasn’t stressed as an area ... of significant concern in the presentation’.¹⁰¹ He recalled ‘a general discussion about the whole western extremity of the territory which runs from Dunlop to Southern Tuggeranong’ but did not recall a specific reference to Dunlop or Weston Creek or any discussion about warning the people who lived in those areas.¹⁰² Mr Tonkin said discussion of the declaration of a state of emergency was simply a discussion of the process, and no particular reason or situation was cited where this may have been needed.¹⁰³

Mr Keady generally had a very poor recollection of the details discussed at the briefing. On his evidence, it was his idea to brief Cabinet because:

... we were already aware that we had a very serious fire situation on our hands. It was certainly the worst that had occurred in my time in Canberra and it seemed as bad or worse than anyone else could recall. To the extent that the suggestion has been made here that the situation is very serious and likely to get worse, I think we were already aware of that.¹⁰⁴

Mr Keady could not recall Mr Castle's comment in the ABC news footage of a one-in-20-year fire; nor could he recall (in contrast with Mr Kwiatkowski's notes relating to Mr Keady) mention of the urban periphery and urban firefighters or a reference to Uriarra forest being 70 per cent at risk. He recalled discussion about when a state of emergency should be declared but did not recall the detail, apart from reference to the possibility of a loss of power supply to the ACT. Mr Keady was sure that the possibility of fires entering the urban area was discussed.¹⁰⁵ But, when asked if he remembered a discussion about Dunlop and the suburbs of Weston Creek being at greatest risk, he said, 'No, I don't particularly. I suppose, depending on what kind of scenario one was working to, they were the areas that—no, I don't'.¹⁰⁶ He could not recall the Chief Minister, or any other Minister, asking questions about the probability of impact on the suburbs or for any other information about the nature of any impact.¹⁰⁷

On the question of warnings—apart from the notation on the Cabinet minute that 'a public information system has been put in place ...', which appears to be a reference to Canberra Connect—Mr Keady could not recall any discussion about warning the people of Canberra. When asked why, after the Cabinet briefing, the people in the suburbs could not have been told there was a potential for serious impacts from the McIntyres Hut fire, he replied, 'There is no reason why not. I guess the more relevant issue is any reason why. I think at that stage the level of risk didn't appear sufficiently high enough'. Although he accepted that it might have given people an advantage to prepare, he also said:

The question might arise about what it was we could say to them. Particularly given that the inevitable demand would be for more specific information—times, likely impact and that kind of thing—which I don't think anybody at that stage would have been in a position to provide.¹⁰⁸

Mr Keady saw no disadvantage in the people being given the same information as had been given to Cabinet. He said, however, that the Cabinet members had been briefed on the basis of a worst-case scenario, which at that stage was not within the realm of immediate expectations: 'It was a discussion which was intended to canvass it widely, the possibility. There is a difference in terms of people's mindset at the time between possibilities and probabilities. It wasn't at that stage a probability'.¹⁰⁹

Mr Castle also had difficulty recollecting many details of the Cabinet briefing—even when they related to the items listed in the briefing note he had prepared. His evidence on some matters was inconsistent, vague and confusing. For example, he agreed that the ABC footage showed him referring to one-in-40-year weather conditions and a one-in-20-year fire event, yet later in his evidence he was unsure whether he created the impression that the then current forecast conditions pointed to a fire event worse than the December 2001 fires.¹¹⁰ He could not recall

what was discussed, if anything, about Mr Lucas-Smith's meeting the previous day with Mr Koperberg and other NSW personnel concerned with the McIntyres Hut fire, and he agreed there was no reference in any of the notes to any detail about what was said at that meeting. Mr Castle could not remember what was said, presumably by Mr Keady, about the urban periphery or urban firefighters, but he did recall that there was discussion about the possibility of the fire affecting the urban area, although he could not recall what was said or by whom.¹¹¹ Similarly, he did not remember that Dunlop and Weston Creek had been mentioned as being at greatest risk, but he accepted that it was said—'because someone has written it down'—despite not knowing who said it or even if it had been him.¹¹²

Mr Castle did not recall any discussion about the need to warn the people of Canberra and thought it was not discussed. He said there was talk about the Canberra Connect system being used to inform the public but no discussion of when it was to be activated. The discussion about declaring a state of emergency was, he said, focused on the process.¹¹³ He did, however, think that a state of emergency would be declared in circumstances of 'widespread impact, widespread disruption on a very large scale', and he agreed that one such circumstance would be impact on the urban area.¹¹⁴

Counsel representing Mr Castle submitted that it was wrong to suggest 'that Mr Castle at any stage in his evidence equated the possibility of a declaration of a state of emergency with an impact by fire on the suburban area'.¹¹⁵ They submitted that when Mr Castle was asked questions about 'impact on the urban area' he understood that to be impact not by fire but, instead, by a loss of power in the event of the fires disrupting supply to the Macgregor Power Station. Further, Mr Castle's references to 'widespread impact, widespread disruption on a very large scale' and 'major infrastructure loss' were references, they submitted, to power loss—not loss by fire. Counsel referred to evidence from Mr Keady and Mr Stanhope in support of their submission that discussion about the need to declare a state of emergency was directly related to the possibility of power loss and not fire invading the suburbs.¹¹⁶

I do not accept this submission. It is contrary to common sense and contrary to the evidence. I am willing to accept that concern about the impact of the fires on Canberra's power supply might well have been one matter in Mr Castle's mind during the briefing of Cabinet. But I do not accept that it was the only, or even the predominant, matter. He made no reference to it in his briefing paper and gave evidence that his recollection, such as it was, of the discussion about declaring a state of emergency centred around the process involved. There is a reference in Mr Kwiatkowski's notes to 'Macgregor sub-station plus lines leading into', but it is a comment attributed to 'MFP' (in context, Mr Wood, as Minister for Police and Emergency Services) and appears earlier in the briefing. There is a later reference to a comment by Mr Castle to 'provide explanation of when emergency declaration might be made', but this follows references to 'urban periphery', 'urban firefighters' and 'principle threat to major infrastructure and urban is McIntyre Bendora – Tidbinbilla TS [Tracking Station] threat'. None of the other notes makes mention of the power station or concern expressed for the power supply. The Cabinet minute refers to the declaration of a state of emergency under the heading 'Noted that if the situation deteriorates'.

Further, in the course of oral submissions counsel assisting commented that counsel representing Mr Castle had misquoted the transcript by selectively leaving out two questions asked of

Mr Castle in the middle of the questions counsel relied on to support their argument. Those questions make a direct reference to ‘widespread’ meaning to include impact on the urban edge or urban community and the fires.¹¹⁷

As noted, before the briefing paper prepared by Mr Castle was distributed, Mr Lucas-Smith saw it and thought it appropriate.¹¹⁸ He was asked, ‘So I take it by the 16th at 9.30 am or indeed when this briefing was finalised, it was now recognised that there was a potential serious impact to the urban area of the ACT?’ Mr Lucas-Smith replied, ‘Well, yes. I suppose that is the simple answer to your question. But it needs to be also put in the context ... I am painting a worst-case scenario to the best of my ability’.¹¹⁹

He agreed that the potential for fire to reach the urban area existed if things went wrong with the weather, containment lines and resources and that members of Cabinet were very interested in this. He did not recall many questions being asked about Mr Castle’s notation on the briefing paper about the McIntyres Hut fire and ‘potential serious impact to ACT forest pines and subsequently the urban area’. He was asked, ‘This briefing makes it clear, doesn’t it, that as at the morning of 16 January there was now a recognised potential serious impact to the ACT urban area? That can be taken to be, can’t it, the state of mind or the state of the situation within the ESB on the morning of the 16th?’ And he replied, ‘Eventually, if intervention failed’.¹²⁰ He was then asked, ‘The Government itself was on notice that people within your office and you as a corporate group thought that was now a serious potential?’ And he replied, ‘The potential existed, yes’.¹²¹ He added:

I would have thought that if I was making a statement to Cabinet, and I thought that the most serious potential for impact on the urban edge existed, I would have made it far more prominent than make it the second last dot point. What I was saying there quite clearly, in my view, is that there are all these other areas of potential threat, which particularly included rural assets of some sort. However, we can’t deny the fact that it could reach the urban edge.¹²²

Mr Lucas-Smith could not recall any questions being asked or any discussion about the need to warn people of the existence of the threat.¹²³

On the evidence before me, I am satisfied that:

- On the morning of 16 January 2003 Cabinet members—including Mr Stanhope, who was Chief Minister and Attorney-General with responsibility for the Department of Justice and Community Safety (which also organisationally housed the Emergency Services Bureau)—were told that there was serious potential that the fires would affect assets in the ACT; among these assets were pine plantations, Tidbinbilla Nature Reserve, Tidbinbilla Tracking Station, rural leases, and the Canberra suburbs.
- Dunlop and Weston Creek were the areas identified as being at greatest risk.
- No specific warnings were issued to people living in those areas identified as being at greatest risk, and no general information about the serious risk was made known to the people of Canberra.

7.6.2 The morning planning meeting

The morning planning meeting of 16 January was opened by Mr Graham at 9.30, and he gave an update on fire operations. There was a report on the weather forecast for the following seven days; it did not suggest any major change to the outlook that predicted north to north-west winds with strong gusts on Saturday and Monday. Under the heading ‘ACT Fire Brigade operations’ the minutes of the planning meeting record, ‘The ACT Fire Brigade is focussing on outlying structures and there will be a planning meeting this afternoon to discuss the potential for a Structural Rural Task Force. The ACT Fire [Brigade] and ACT Ambulance Service are to meet to discuss urban contingencies’.¹²⁴

Mr Graham recalled that there was some discussion about formation of the task force, but he could not remember what was said about urban contingencies and did not know why the Fire Brigade and Ambulance Service were discussing this. Nevertheless, he did agree that the reference in the minute did suggest recognition of a potential threat to the urban area.¹²⁵ He did not recall anyone speaking with him on the Wednesday afternoon or that morning about the information in the Cabinet briefing paper referring to potential serious impacts on ACT forest pines and subsequently the urban area, and he said he still believed that Saturday would be a bad day.

Mr McRae was at the meeting. He did not remember whether there was any discussion of the timing of any anticipated impact but did say, ‘My expectation would be we were still telling them Monday was a likely day for the impact’.¹²⁶ Mr McRae said in his evidence that it was important for the Fire Brigade and the Ambulance Service to plan for impacts on the urban environment.

Mr Ian Bennett (at that time Commissioner of the ACT Fire Brigade) also attended the meeting, and he informed those present that Mr Lucas-Smith would be providing a briefing to representatives of the Fire Brigade and the Ambulance Service that afternoon. He recalled that the discussion of urban contingencies concerned ‘looking at the possibility of establishing strike teams that were going to respond outside our primary jurisdiction, and whether or not we had the appropriate resources in order to do that’. He could not recall any discussion of contingencies in the context of a threat to the urban environment; nor could he remember being told there was a threat to the urban area.¹²⁷

7.6.3 The midday press conference

At noon on 16 January Mr Castle and Mr Lucas-Smith gave a press conference on the progress of the fires and the firefighting operations. Counsel assisting submitted that, in saying in response to a question, ‘At the moment I don’t think that there’s any threat to the urban areas’ and other similar comments¹²⁸, Mr Lucas-Smith was being untruthful about his real state of mind in relation to the threat to the urban area and that the information was in stark contrast to that provided to Cabinet a few hours earlier.¹²⁹

On the other hand, counsel representing Mr Castle and Mr Lucas-Smith submitted that Mr Lucas-Smith ‘clearly intended to convey [his] assessment of an element of risk if not

immediately, in the very near future'. They provided several examples of words and statements used by Mr Lucas-Smith to support the submission:

- Friday and Saturday to be difficult fire management days
- 'an interesting thing to watch' whether containment lines could be held
- reference to speaking with the NSW Rural Fire Service about evacuations in the Brindabella Valley
- comment that there was still a long way—over 20 kilometres—between the fires and the Canberra urban area
- the critical and desperate need for assistance from NSW firefighters to help with finalising control lines before weather conditions deteriorated
- reference to the next five days being critical
- response to a question that the closest property under threat was in the Brindabella Valley.¹³⁰

His counsel referred to these statements by Mr Lucas-Smith as being evidence of his view that there was a potential risk to the urban area but that it was not 'at the moment' and that intervention would succeed.

The difficulty with this submission is that at no time did Mr Lucas-Smith say at the press conference what is conceded to have been his view—namely, that there was a risk of a potentially serious impact on the urban area. None of the comments referred to by Mr Lucas-Smith's counsel is sufficient to convey to people that there was a risk of the fires reaching the suburbs. In fact, what Mr Lucas-Smith said could well be seen as being to the contrary, conveying the message that the fires were a long way from Canberra and that hope of bringing them under control was high. He said there would be more thick smoke during the coming days but that the fire had a long way to travel before it 'starts to threaten the ACT community'. He also said about 8 kilometres of back-burning was still needed at the south-east corner of the Stockyard Spur fire in order to create a safe edge and that he was 'very hopeful that the work that we've put in will be sufficient to hold those fires and also to ensure that we don't get too much long-distance spotting out of the fires by stuff that will still be burning inside when these strong winds and very hot temperatures start to come forward'.¹³¹ Mr Lucas-Smith said the Bendora, Stockyard Spur and McIntyres Hut fires were all burning well inside the established control lines. Comments were made about the expected deterioration in the weather and difficult times ahead in the next five days. In my view, however, a comparison of the records of the comments made at the Cabinet briefing and the comments made at the press conference shows that the threat from the McIntyres Hut fire—which at the Cabinet briefing was described as having a 'potential serious impact [on] ACT Forest pines and subsequently the urban area'—was greatly played down at the press conference, when there was no mention of any potential threat to the urban area.

If it was Mr Lucas-Smith's intention to convey to those present at the press conference that there was an element of risk to the urban area in the very near future, as his counsel submitted, this

intention also appears to have been lost on the media. An article by Megan Doherty in the *Canberra Times* the following morning reported on the press conference and quoted Mr Lucas-Smith saying, ‘At the moment I don’t think there is any threat to the urban edge’.¹³²

Mr Lucas-Smith gave evidence that on the night of 16 January it was genuinely his state of mind that there was no threat to the urban edge of Canberra.

Mr Castle was asked by counsel assisting about Megan Doherty’s report in the *Canberra Times* and Mr Lucas-Smith’s comments. It was suggested to Mr Castle that the quote attributed to Mr Lucas-Smith—that he did not think there was any threat to the edge of Canberra—was simply wrong. Mr Castle agreed that it appeared so.¹³³ Mr Castle could not explain what Mr Lucas-Smith might have been thinking when he made that comment or why he made it.¹³⁴

Mr McRae also was asked to comment on whether or not he agreed with Mr Lucas-Smith’s comment to the media that, as at midday 16 January, there was no threat to the urban area. He replied that he needed to know what was meant by the word ‘threat’. He was given a definition of ‘a risk of some harm at some point in the future; in a broad sense it is something that is in prospect’, to which he replied that the definition did not help him, but he agreed that a threat was something that might or might not eventuate. He also agreed that what he had identified as some likely impact on the urban area on Monday was a threat of the fire burning in on that day.¹³⁵

7.6.4 A briefing of the ACT Fire Brigade and the ACT Ambulance Service

At 2.00 pm on 16 January 2003 Mr Lucas-Smith briefed representatives of the ACT Fire Brigade and the ACT Ambulance Service. He said the reason for the meeting was that ‘we needed to engage the ... ACT Fire Brigade into the arrangements because the potential existed for impact on rural ACT ... If rural property was to be threatened, it was a fire brigade issue and responsibility’.¹³⁶

Mr Lucas-Smith recalled talking about the weather and the forecast temperatures and winds and said that Monday was predicted to be the worst day of fire danger in Canberra’s history. He displayed a map of the ACT and marked where the fires were burning. He detailed a history of the fires of 1939, 1952 and 1985 and said they had all started in the Brindabella Ranges and had a major effect on the ACT, the 1952 fire coming through to the current Canberra Hospital site. When examined on this, Mr Lucas-Smith he did not recall saying there was a fifty-fifty chance the fires would break their containment lines under westerly winds but thought he would have said there certainly would have been pressure on the containment lines because of the winds.¹³⁷

There are discrepancies between the evidence of some witnesses who were present at the briefing. Mr Peter Cartwright, a District Officer with the ACT Fire Brigade, attended that meeting. His statement notes that Mr Lucas-Smith said the current fires could do the same as the earlier ones he had detailed and that he then identified Weston Creek and Tuggeranong as being at risk. Mr Lucas-Smith said he might have said this fire was doing the same kind of thing, but he added that, although he certainly recalled talking about areas at risk, ‘... being that specific I certainly don’t recall and I think it is doubtful that I would have said such a thing’. When asked again whether he had said there were risks to the western suburbs of Weston Creek and

Tuggeranong, he replied, 'I cannot be definitive. I cannot remember what I said, but I certainly find it doubtful that I would have included Weston Creek in any such statement'.¹³⁸

Mr Cartwright also noted in relation to Mr Lucas-Smith during the briefing, 'He advised that he didn't want to alarm the public and that this information was not to leave the room. If it got into the media he would deny it'.¹³⁹

Mr Lucas-Smith replied that he could not recall making a statement of that kind. Asked if he denied making it, he replied, 'I don't know. I might have been—there might have been some friendly discussion or even banter about it. But we were talking fairly frankly'.¹⁴⁰ He later said that there might have been discussion about a coordinated response to the media and that he might have said something about concern at alarming the public, but he did not recall it.¹⁴¹ Similarly, he thought it very unlikely that he said the information should not leave the room and he would deny it if it got to the media.¹⁴²

Mr Lucas-Smith admitted he did not recollect making some of these comments, but he did not deny he made them. Mr Cartwright was clear in his evidence that he made notes at the meeting and then transcribed those notes into his diary the same evening.¹⁴³ He agreed that he did make some additions to the notes a few days later but that these primarily involved recording the names of people who attended the briefing. Mr Cartwright had no doubt that what was being discussed as a possible consequence of the fires was a risk to urban dwellings. When questioned, he conceded that Mr Lucas-Smith did not say there was a possible risk from the Namadgi fire to the western suburbs of Tuggeranong and Weston Creek.¹⁴⁴ He agreed he had omitted to make a note of references to the McIntyres Hut fire and what Mr Lucas-Smith had said about the threat from that fire.

I do not, however, accept the submission of counsel representing Mr Lucas-Smith that, because of an error and some omissions, the accuracy of Mr Cartwright's notes and his evidence about the other comments attributed to Mr Lucas-Smith should be doubted. Mr Cartwright's account of what Mr Lucas-Smith said about not wishing to alarm the public, naming suburbs at risk and not wanting the information to leave the room has support from others who were present at the meeting.

Mr Conrad Barr¹⁴⁵ was the Station Officer in charge of the Fyshwick fire station. Acting Superintendent Peter Newham had asked him to attend the meeting. Mr Barr provided a taped record of interview that was tendered into evidence.¹⁴⁶ He had taken notes during the meeting and gave a very detailed account of the information Mr Lucas-Smith provided about the situation with all the fires surrounding and in the ACT and the state of containment of those fires. Mr Barr said:

He then spoke to some degree about where the New South Wales McIntyre's Hut fire would go with the wind pushing it and basically indicated it would come towards the western suburbs of Canberra in the northern and central areas ... He then went on to talk about some issues that he said he didn't wish to leave the room and I didn't actually take notes of those issues, however, I remember them very clearly. He spoke about his assessment of the control lines that had been put around the ACT fires. And he indicated that he believed that those ... control lines, had a less than fifty per cent chance of containing those fires ... What he did then was he had ... a map of the ACT

... and he put that on the wall ... He indicated where the fires were, where they'd grown in the last few days ... and it was on that same map that he indicated where the McIntyre's fire may come towards the city if it did and then he indicated where the other two fires could possibly move and how they could then change with further wind directions ... Also in his discussion ... Mr Lucas-Smith said—indicated that—... statements he'd been making in the media ... did not accurately reflect what his assessment of the fires were ... He didn't indicate why he—his media statements were different to what his beliefs he was sharing with us were but that's what he indicated and again that was one of the elements he said he didn't want to leave the room.¹⁴⁷

Mr Barr also said that Mr Lucas-Smith spoke about earlier fires that had burnt into the Woden area, that he commented on the Rural Lessees Association members who were old enough to remember the previous fires and who were advising others to evacuate the area in the path of the fires, and that Mr Lucas-Smith thought this was not helpful in maintaining a calm public face. Mr Barr said, 'They weren't all his exact words but that was the sentiment he conveyed'.¹⁴⁸

In relation to comment about what Mr Lucas-Smith had said about the media, Mr Barr said:

I can't remember his exact words but ... the sentiments he expressed indicated that ... what he had been saying in the media did not accurately reflect his true assessment of the situation of the threat ... that it could possibly pose to the ACT ... he didn't say but I was of the understanding that he had been downplaying what he was saying in the media because he didn't ... wish to alarm the public unduly or something like that ...¹⁴⁹

Mr Lucas-Smith did not agree with Mr Barr's assessment that he (Mr Lucas-Smith) was presenting to the media a version about the threat of the fires that differed from the view he actually held.¹⁵⁰ Nor did Mr Lucas-Smith agree with Mr Ian McCleary's¹⁵¹ recollection of what he had said at the meeting. Mr McCleary, a station official, provided a taped record of interview in which he said he recalled Mr Lucas-Smith saying there was a real possibility of the fire entering the suburbs, and Monday was likely to be the worst day.¹⁵² He recalled a reference to the western suburbs being at risk and a history of previous fires reaching the location of what is now The Canberra Hospital. Mr McCleary said Mr Lucas-Smith used a map of the ACT to indicate a worst-case scenario of fire impact and said the map was not going to leave his control and he did not want that information released to the media at that time.¹⁵³ He recalled a reference to the suburb of Duffy and the western border area being at risk.¹⁵⁴

Mr Peter Hobbs¹⁵⁵ tendered a record of conversation in which he said Mr Lucas-Smith advised that the information he was about to provide was not for public dissemination but only for the use of Fire Brigade members when planning their involvement in the fire-suppression work. The information was to be treated as confidential and was not to be used in a way that could create alarm in the community. Mr Hobbs said they were informed that the containment lines were fragile and that, with the forecast weather, there was probably a less than 40 per cent chance of containing the fires within those lines over the weekend. The fires were described as being more severe than those in 1939 and 1952 and they could burn as far into the ACT as had happened before, to the current site of The Canberra Hospital, if they were not contained. Monday was expected to be the worst fire weather conditions for 40 years and, if the fires did break their containment lines, there was a high probability they would enter the Mt Stromlo pine plantation and affect the Stromlo Observatory and settlement. Mr Hobbs said Mr Lucas-Smith had also

said, ‘If these fires did reach the Mt Stromlo pine plantation ... they would almost certainly get into the Duffy pines and if that were the case we could expect fires to get into the suburbs’.¹⁵⁶

In his evidence Mr Lucas-Smith agreed that he had thought potential existed for the fires to get into the Stromlo pine plantation and affect the Stromlo Observatory and settlement, and he agreed with Mr Hobbs that he could have said as much. He also agreed that he might have said that if the fires did enter the Stromlo pines they would almost certainly enter the Duffy pines and then move into the suburbs, but he did not recall having said this. When asked if he would allow for the possibility that he did say that, Mr Lucas-Smith replied, ‘Oh well, as I have said, our planning is already indicating to us that this is the case’.¹⁵⁷ He also agreed with Mr Hobbs’ statement that ‘it was absolutely clear to everybody in the room at the time that the weather was going to deteriorate across the weekend, but everybody expected Monday to be the very worst day, and I believe that the people in the room were then thinking we had until Monday to prepare for the onslaught’.¹⁵⁸

Mr Tony Ross¹⁵⁹, a District Officer with the ACT Fire Brigade, is another who provided a taped record of interview. In it he said he recalled, among other things, Mr Lucas-Smith talking about previous fires, showing a map of the ACT, and saying that extremely high winds from the north-west were predicted for Monday, which raised concern that, if the predicted conditions did eventuate and ‘if the fires jumped their containment lines ... they would get into the pine forests around the ACT and with the strength of the winds he sort of mentioned to the effect that ... the Weston Creek area was the area of most vulnerability if it did happen’.¹⁶⁰

Mr Lucas-Smith responded that he had been saying for a decade or more that if a fire were to get into the Stromlo pine plantation, and particularly into the Narrabundah Hill area, the potential for an impact on Duffy would be quite high.¹⁶¹ Mr Ross also said Mr Lucas-Smith explained that nothing of what he was saying to those at the meeting was to leave the room.¹⁶² Mr Lucas-Smith’s response was again ‘No, I don’t recall saying that. But there was a fair bit of—as I said, this was a discussion amongst firefighters—there was a fair bit of free discussion, and there was a fair bit of humour, I suppose, added to the discussions at the end’.¹⁶³

Mr Bennett was at the meeting, and he said Mr Lucas-Smith showed a map and outlined a history of fires in the region in the past 70 years, saying one of the fires had reached the current Canberra Hospital site. He recalled Mr Lucas-Smith discussing the potential of the fires in Namadgi and the Brindabellas and saying the overall success of the various containment lines would depend on the weather, which was expected to put pressure on those lines during the weekend.¹⁶⁴

Mr Bennett had a vague recollection of Mr Lucas-Smith telling those at the meeting how to treat the information he was providing: ‘It’s my recollection that very early on in the meeting Mr Lucas-Smith did make a reference that the information he was providing to us should not leave the room’. He also recalled Mr Lucas-Smith using words to the effect that he did not want to alarm the public and the media and he would deny the information if it reached the media. Mr Bennett said, however, he took those comments to be in jest—a tension breaker, not a threat.¹⁶⁵

Mr Bennett could not recall any specific areas being identified as at risk, but he said he had no reason to doubt the information in the contemporaneous notes taken by Mr Cartwright, which

referred to suburbs of Tuggeranong and Weston Creek.¹⁶⁶ He said the information provided alerted the ACT Fire Brigade to the need to ‘respond outside the interface area ... but also in preparation for any potential involvement closer to the city’. He left the meeting believing that Monday was to be a day of probably the worst conditions ever experienced.¹⁶⁷

Mr David Prince was Acting Superintendent of the ACT Fire Brigade. He attended the meeting, and his statement notes that Mr Lucas-Smith said Saturday 18 and Monday 20 January would be extreme fire danger days. He (Mr Lucas-Smith) spoke of the expected north-westerly winds gusting up to 60 kilometres an hour on Saturday and said he had experienced a fire in the early 1980s in Bundanoon that had spotted 15 kilometres in strong winds. Mr Prince said he was gravely concerned by this information because it meant the fires could jump their containment lines.¹⁶⁸ He recalled Mr Lucas-Smith referring to Mr Cheney’s comment that the fires would reach the city under the influence of westerly winds and that Mr Lucas-Smith was concerned that Mr Cheney was saying this to the public and being alarmist.¹⁶⁹

Mr Prince also recalled Mr Lucas-Smith commenting that the information he was providing was sensitive; Mr Prince added that they all realised this and did not want to alarm the media or the public.¹⁷⁰ Mr Prince further recalled Mr Lucas-Smith wanting to make sure he was the one who would be authorising the release of information to the public and saying something ‘... along the lines that he wanted to make sure that the information stayed within the room and that he managed it—but I can’t remember the exact words’.¹⁷¹ Mr Prince said he did not feel himself under any constraint in dealing with the information as he saw fit.¹⁷² He added that what was said at the meeting was not recorded, but he recalled that both Mr Cartwright and Mr Barr took numerous notes.¹⁷³

Mr David Dutton was Operations Manager for the ACT Ambulance Service. He recalled the discussion about the history of the fires in the ACT, and he understood that the Territory was facing a serious threat.¹⁷⁴ He said it would be unfair to say there was a prediction by Mr Lucas-Smith that the fires would reach Canberra, but ‘that was one of the scenarios that was presented at the time’.¹⁷⁵ In his taped record of interview Mr Dutton said two potential scenarios were discussed that were identified as being of interest to ambulance operations: ‘... the first was the potential for fire to enter the pine forests and rapidly progress towards Canberra and in particular the urban fringe. There was also concern for rural communities to the south of Canberra, particularly in the Naas Valley’.¹⁷⁶ Mr Dutton said he left the meeting with the distinct impression that the fire could move close to or reach the urban fringe.¹⁷⁷ He could not recall anything being said about information being restricted or kept within the room, and he felt he was not prevented from using it if he wished.¹⁷⁸ He did not take notes at the meeting.¹⁷⁹

Mr Michael Collins, District Officer and Fire Safety Officer, recalled Mr Lucas-Smith providing a situation report and some background from the time the fires started on 8 January. He said in his taped record of interview:

Within the ACT border there were three fires that were largely out of control and uncontained at that time. And on the day he spoke to us they were still uncontained and burning freely. Despite this, his resources were providing some type of an indirect fire attack on the fires and they were trying to put containment lines through but it didn’t feel as though [they] would be able to provide some type of full-frontal fire suppression

on it or direct attack. He was able to impart to us a warning that there was a possibility that these fires could impact on the urban infrastructure. He gave us examples of previous fires that had done so ... Peter ... provided some type of level of comfort or he qualified those large ... large fire movements into the urban infrastructure by stating that due [to] today's technology, our awareness of the fires, our planning and the resources we had available that that was less likely to occur in today's environment ... But he did state to us—he did warn us—that there was a possibility that the fires could break through and come up.¹⁸⁰

Mr Collins also recalled comments Mr Lucas-Smith made about the weather: 'He didn't mean to alarm us in any way or to be an alarmist but he provided us with quite a good warning that on Monday due to the weather these fires might impinge on the urban infrastructure'.¹⁸¹ Mr Collins did not recall Mr Lucas-Smith making reference to any particular suburbs or locations where the fires could impinge¹⁸² because, Mr Collins said, 'Peter was being very careful in not creating undue alarm ... but at the same time covering his duty of care and his role as an Incident Commander to warn other agencies of what this fire could possibly do. So there was a fine balance between not meaning to alarm us but providing us with a warning to empower us to make some decisions'.¹⁸³

In evidence presented to the inquiry on 17 May 2004 Mr Collins said he left the 16 January 2003 briefing session with the impression that the probability of the fires breaking containment lines and making the runs Mr Lucas-Smith had described was low. But this is at odds with the statement in his record of interview dated 28 March 2003:

I can recall that as a result of what he [Peter Lucas-Smith] said that the people in the room—they were all concerned about this fire and that it would impact on our area of jurisdiction, that being the urban area, and that, yeah, so that there was an air of, I don't know, concern about these fires as a result of Peter talking to us.¹⁸⁴

On the question of the sensitivity of the information provided at the meeting, Mr Collins said Mr Lucas-Smith was 'very careful in not leaving any evidence or anything that could fall into inappropriate hands ... very careful not to be an alarmist but careful in passing on the situation to us'.¹⁸⁵ Mr Collins said he could not recall any discussion about how the information from Mr Lucas-Smith was to be treated.¹⁸⁶ In answer to a question about whether or not the media should be told, however, Mr Collins said, '... I got the impression that Peter was concerned that the information he's imparting to us shouldn't be passed on to the media'.¹⁸⁷

Mr Peter Newham did not recall much of the discussion about Canberra fires of earlier times but did understand from Mr Lucas-Smith's comments that it was a genuine possibility that the fires would breach the containment lines and that intervention by firefighters would not have a significant impact.¹⁸⁸ Mr Newham also recalled Mr Lucas-Smith saying 'he thought it would be difficult to contain this [sic] particular fires—the fires in the Namadgi, in the mountains'.¹⁸⁹

Mr Newham did recall some discussion at the meeting about suburbs at risk but could not recall who raised it and what was said.¹⁹⁰ He also recalled that it was his view that there was 'a strong possibility that the fire would break out of the Namadgi'.¹⁹¹ In his evidence on 11 May 2004 he said he could not recall any discussion about information not leaving the room or not being passed on to the media or about alarming the public, but he did not deny this was said.¹⁹²

Nevertheless, in his record of interview dated 18 March 2003 he did say that Mr Lucas-Smith might have said something like ‘Look this is what I’m telling you ... I’m briefing you and the information is pretty much for the people in this room’.¹⁹³

Counsel for the ACT submitted that, in the light of the apparently competing versions of what Mr Lucas-Smith said in his briefing to fire brigade and ambulance personnel, there is scope for genuine misunderstanding. They submitted that a reasonable construction of what Mr Lucas-Smith meant when he spoke about dissemination of information was that this should be done by the Emergency Services Bureau. The problem with this construction is that it is not supported by the evidence. No person who attended that meeting—not even Mr Lucas-Smith—provided evidence that Mr Lucas-Smith said the Emergency Services Bureau would inform the public and the media of the information he was imparting, and no one present understood this to be what he was saying.

In addition to submitting that I should have serious reservations about Mr Cartwright’s evidence, counsel for Mr Lucas-Smith submitted that there was nothing sinister in any comments Mr Lucas-Smith made. Counsel’s focus appeared to be on what was meant, rather than what was said. Nevertheless, counsel submitted the following:

- that Mr Lucas-Smith achieved the objective he set out to achieve—to inform the ACT Fire Brigade and the Ambulance Service of the risk and what might be required of them¹⁹⁴
- that those who attended the meeting ‘were alerted to the fact that there was a risk of fire to the urban area and that the Brigade and Ambulance set about making preparations to deal with this risk’¹⁹⁵
- that ‘the extent to which the risk of an impact on the urban area was conveyed was consistent with Mr Lucas-Smith’s understanding of the risk at that time’¹⁹⁶
- that after the briefing the ACT Fire Brigade and the Ambulance Service set about making various preparations¹⁹⁷
- that Mr Lucas-Smith thought there was potential for an impact on rural property in the ACT¹⁹⁸
- that Mr Lucas-Smith acknowledged that containment lines would be under pressure—although he did not recall saying there was a fifty-fifty chance they would be breached¹⁹⁹
- that Mr Lucas-Smith acknowledged that the bottom end of the Tuggeranong area was at risk²⁰⁰
- that ‘Mr Lucas-Smith suggested that there may have been some friendly discussion or banter about not alarming the public’²⁰¹
- that ‘Mr Lucas-Smith thought it unlikely that he said the information he was imparting was not to leave the room ... [and] thought it was “very unlikely” that he said that he would deny it if it got into the media’²⁰²

- that Mr Lucas-Smith acknowledged there was ‘the potential or possibility that property would be affected by the fire’²⁰³
- that Mr Lucas-Smith acknowledged ‘that if the fire got into the Stromlo pine plantations and the Narrabundah Hill the potential [for] impact on Duffy would be quite high’²⁰⁴
- that Mr Lucas-Smith believed there was a possibility the fire would affect property²⁰⁵
- that any discussion about dissemination of information was meant to convey the message that such information should be disseminated through a single channel.²⁰⁶

All the foregoing are concessions but do not reflect the entirety of the evidence given by Mr Lucas-Smith and other witnesses.

It was also submitted that the term ‘urban interface’, as used in the briefing, could have meant the area between the mountains and the built-up areas, rather than the suburbs²⁰⁷, and, in connection with Mr Cartwright’s notes, that even if those words were an accurate record of what Mr Lucas-Smith said ‘those words cannot have been intended to have been interpreted literally’.²⁰⁸ And, more curiously, counsel for Mr Lucas-Smith submitted that, in the course of being cross-examined on his evidence, Mr Lucas-Smith tended to use words such as ‘I certainly don’t recall’, which counsel submitted was evidence of an intention by Mr Lucas-Smith to dispute the proposition that was put to him.²⁰⁹ The first two of these submissions are without substance and the last is plainly incorrect, as is evident from the context of the statement made by Mr Lucas-Smith. It is important to set this statement out in its entirety because the meaning is clear.

Counsel assisting was questioning Mr Lucas-Smith about the notes Mr Cartwright made:

Q: His [Mr Cartwright’s] statement and note indicate that you advised the meeting that you did not want to alarm the public and the media about the risk. His note records that the information that you were providing was not to leave the room. His note also records that you said that you would deny it if it got to the media. Then his written note, the next thing that he writes in handwriting is ‘suburbs at possible risk from the Namadgi fires were the western suburbs of Tuggeranong and Weston Creek. Is that correct, Mr Lucas-Smith?

A: No. I certainly don’t recall it being in that sort of context, no.

Q: You know why this is important, so I want to be clear about your answer. Did you say that there were risks to the western suburbs of Weston Creek and Tuggeranong at the meeting?

A: I cannot be definitive. I cannot remember what I said, but I certainly find it doubtful that I would have included Weston Creek in any such statement.

Q: Did you in the course of this meeting say that you did not want the public alarmed and that the information which you were imparting at this briefing was not to leave the room?

A: I certainly don’t recall making that sort of a statement.

Q: Do you deny making it?

A: I don't know. I might have been—there might have even been some friendly discussion or even banter about it. But we were talking fairly frankly. I find it interesting, because the whole reason I called this meeting was to actually engage the fire brigade into the process and to try and bring them on board. Why would I say it is not to leave the room? I am having difficulty thinking about the logic of that.²¹⁰

Contrary to the submission of counsel representing Mr Lucas-Smith, what Mr Lucas-Smith is saying in response to the questions just quoted is 'I certainly don't recall', 'I don't know', 'I cannot be definitive'. It is wrong to suggest that these responses represent Mr Lucas-Smith disputing the propositions. He is not making any denials; he is simply saying he cannot remember. Throughout the inquiry many such responses were made by several witnesses.

On the evidence before me, I am satisfied on the balance of probabilities that Mr Lucas-Smith did brief the ACT Fire Brigade and the ACT Ambulance Service in the terms of Mr Cartwright's evidence, which is supported by other witnesses. I found Mr Cartwright an impressive and credible witness. No motive was suggested for his having fabricated his notes or his evidence. The attempts to have his evidence discredited failed. The lengthy cross-examination of Mr Cartwright by counsel representing Mr Lucas-Smith in relation to the accuracy or otherwise of his note on 'suburbs at possible risk from Namadgi fires' achieved little in the end because Mr Lucas-Smith himself could not recall what he had said. There most probably *was* a reference made to 'Namadgi' because both Mr Newham and Mr Bennett recalled it being said.

Furthermore—unlike Mr Cartwright and the other witnesses who prepared statements or participated in recorded interviews within two or three months of the fires—Mr Lucas-Smith did not submit his statement until 14 October 2003, after the inquiry had begun. There is no reference in his statement to the briefing of Fire Brigade and Ambulance Service officers; nor is there reference to briefing Cabinet members or the police. I consider the evidence of those who made statements closer to the date of the event and recorded their recollections more reliable than that of Mr Lucas-Smith, who made no mention of the briefing in his statement and who admitted in evidence, frankly, that he could not recall much of what was discussed.

I am satisfied that:

- On 16 January 2003 Mr Lucas-Smith briefed members of the ACT Fire Brigade and the ACT Ambulance Service about the serious possibility that the fires would break their containment lines and reach urban areas some time on Saturday 18 January or Monday 20 January.
- Mr Lucas-Smith told the people who attended the briefing on 16 January that the information he was providing to them about the serious risk of the fires reaching the suburbs was not to 'leave the room'. This remark was not said in jest.
- Mr Lucas-Smith said the reason for keeping the information from the media was to avoid alarming the media and the public.

7.6.5 A briefing of the Australian Federal Police

Shortly after the briefing to the ACT Fire Brigade and the ACT Ambulance Service, Mr Lucas-Smith, accompanied by Mr Castle and Mr Bennett, briefed the Australian Federal Police. The briefing was attended by Chief Police Officer John Murray and Commander Mandy Newton. Ms Keane also attended.

The meeting lasted about 45 minutes and was started by Mr Castle, who said in evidence he believed he would have provided broad information about the potential serious impacts on ACT forest pines and subsequently the urban area.²¹¹ He said he believed he would have followed the broad content of the briefing paper he had prepared for Cabinet and that he did not think he gave Chief Police Officer Murray or Commander Newton a copy of that paper but had it with him:

I believe I used this document. But I don't believe I gave them a copy. I believe they used the same broad map. So I would have enunciated the locations and so forth. But I may also have given them the feedback that New South Wales were confident in relation to McIntyres.²¹²

When cross-examined about his evidence, Mr Castle admitted, however, he had no recollection of having the Cabinet briefing paper in front of him at this meeting and he could not recall the exact words he used to describe the location of the fires—or, indeed, anything else he said. Importantly, Mr Castle admitted that his belief that he told AFP members of a risk to the urban area was probably an assumption on his part. He also could not recall informing Chief Police Officer Murray or Commander Newton about the information on page 2 of the Cabinet briefing paper, which contained the material about the risk from the McIntyres Hut fire and assets under threat.²¹³

Mr Lucas-Smith arrived at the briefing shortly after it had begun. He said he provided information about the developing fire situation to the west and the possibility of high fire risk in the coming days because of the weather forecast of high temperatures and high winds. He agreed that he said the weather would create a moderate risk, escalating to severe on Sunday and Monday 19 and 20 January.

Mr Lucas-Smith said he provided no documents to Chief Police Officer Murray or Commander Newton and did not know whether others had provided documents to them.²¹⁴ He was asked to comment on a statement Chief Police Officer Murray made about the briefing, to the effect that there was no reference to the possibility of urban areas being under threat. Mr Lucas-Smith was asked if Chief Police Officer Murray was right: 'He could very well be. I may not have mentioned that'.²¹⁵

Mr Lucas-Smith agreed, however, that the police would need to be involved if the fires reached the suburbs.

Mr Bennett could not recall if there was any discussion at the briefing about the probability of the fire entering the suburbs; nor could he recall any mention of a state of emergency being considered and discussed earlier that day in the Cabinet briefing.²¹⁶ Similarly, Ms Keane had no memory of any discussion about risk to the suburbs from the fire or about the declaring of a state of emergency.²¹⁷

Chief Police Officer Murray said he did not obtain from the briefing the sense that the fires presented a high-risk or emergency situation. He did say it was clear from the briefing that there was a threat to rural property but not to the pines or urban areas.²¹⁸ Chief Police Officer Murray said this information would have been crucial to him. He said he was not given a copy of the briefing paper provided to Cabinet and was not told of the discussion about suburbs identified as at risk or the potential state of emergency.²¹⁹ He said the situation was being ‘played down’, and he was being led to believe that it was a rural matter and everything was under control.²²⁰

Commander Newton’s evidence about the briefing largely mirrors that of Chief Police Officer Murray, which none of those present appears to dispute. Commander Newton said if she had been informed of the potential risk to the pines and the suburbs she would have acted differently:

I would have escalated our activities from a holding perspective far higher than we did at the time. We would have activated the Police Operations Centre much earlier. We would have a planning team preparing plans in consultation with the Emergency Services Bureau personnel.²²¹

Counsel assisting submitted that the AFP was not briefed on the risk to the urban area because of the concern on the part of Mr Castle and Mr Lucas-Smith that the information would become public. Further, they submitted that, had the AFP been told a genuine risk existed at that time, the question of informing the public would have arisen earlier and certain actions would have been taken earlier, for example:

- a. the AFP would have activated the Police Operations Centre either late on 16 January or on 17 January;
- b. as a result, plans would have been developed by the AFP, in consultation with the ESB, over the course of 17 January on community information and warnings;
- c. inevitably, in the course of that planning, the ESB and AFP would have discussed and resolved well in advance of the crisis, questions over the AFAC [Australasian Fire Authorities Council] stay or go early policy and briefed AFP members accordingly;
- d. timely resolution of questions over the AFAC policy would have ensured that a more ordered process would have been in place in the afternoon of 18 January, giving greater opportunity for residents to stay and protect their homes or gain access to their homes through roadblocks to fight spot fires and flare-ups sooner after the worst of the fires had passed; and
- e. it is likely that, with the AFP fully engaged in the process of community information a day in advance, opportunities for AFP members to be involved in door-knocks and other similar information dissemination processes would have been identified and implemented, as occurred at the time of the December 2001 fires.²²²

Counsel for the ACT submitted that the briefing Mr Castle and Mr Lucas-Smith gave to the AFP on 16 January was inadequate but added that it is speculative to say that the AFP would have taken the action submitted in the paragraphs just quoted.²²³

Counsel for Mr Castle and Mr Lucas-Smith submitted that there was no conspiracy and no secret about the situation because, among other things, a member of the AFP, Sergeant Kirby, attended ESB planning meetings as the AFP Liaison Officer—although his first attendance was at the planning meeting at 4.00 pm on 16 January. Counsel did not deny that Chief Police Officer Murray and Commander Newton were not told about a threat to the urban areas because, it was submitted, Mr Lucas-Smith’s main concern was the ACT rural properties. It was also submitted that, contrary to the submissions of counsel assisting, there is no clear evidence of precisely what the AFP would have done had they received information detailing a greater risk to the suburbs.²²⁴

The submissions of counsel for Mr Castle and Mr Lucas-Smith fail to deal with some important matters. First, why were the Chief Police Officer of the ACT and his Commander of Operations not given the information that had earlier been conveyed to Cabinet members, urban firefighters and ambulance personnel? To say the reason for this is that Mr Lucas-Smith was primarily concerned with rural properties is naïve: Mr Lucas-Smith had not told the people living in these areas either. It is incomprehensible that Mr Castle discussed with Cabinet the possibility of having to declare a state of emergency and recall Cabinet, yet made no mention of this to Chief Police Officer Murray, who was the person who would become Territory Controller in the event of such a declaration. If it had been given the information that had earlier been given to the Cabinet, the ACT Fire Brigade and the Ambulance Service, surely the AFP would have acted differently. With the limited information it had received, the AFP had no reason to do more than it actually did at that time.

I am persuaded by the submissions of counsel assisting—which are also consistent with the submissions of counsel for the AFP—that, had the AFP been fully and frankly informed by Messrs Castle and Lucas-Smith, it is more likely than not the AFP would have done the following:

- activated the Police Operations Centre virtually immediately, or at least by the following day
- begun work with the Emergency Services Bureau to develop community information and warnings
- closely considered the pros and cons of the Australasian Fire Authorities Council policy on ‘stay or go’
- disseminated information throughout the AFP, to alert the force to the serious situation that was likely to develop in the following days.

Lest there be any doubt on this point, I note that the ACT Fire Brigade and the Ambulance Service began preparing for the imminent emergency immediately following the briefing they had received from Mr Lucas-Smith on 16 January. There is no reason to believe that a highly professional organisation such as the AFP would not have acted in the same way as the Fire Brigade and the Ambulance Service; that is, it too would have begun to prepare for the emergency.

On the evidence, I have concluded that:

- At a briefing on 16 January 2003 Mr Lucas-Smith and Mr Castle did not inform Chief Police Officer Murray and Commander Newton that there was a serious risk of fire reaching the Canberra suburbs on Saturday 18 January or Monday 20 January 2003.
- This was a grave omission: it exacerbated the confusion and chaos that subsequently occurred during the evacuation of residents fleeing the fires.

7.6.6 A telephone conversation between Mr Lucas-Smith and Mr Jeffery

At about 12.30 pm on 16 January 2003 Mr Jeffery sent an email to all the operational members of his brigade. The text was as follows:

The Chief Fire Control Officer Peter Lucas-Smith has asked me to pass on to all involved his thanks for all your work on these fires. The facts of the situation [are] that despite a massive effort now, even if the fires are controlled before the bad weather that is forecast for Monday, Tuesday arrives, containment lines will not be deep enough for the fires to be held. I believe, (and the [Chief Fire Control Officer] also), that the fires will escape from the mountains. The only question is, really, when and where and in how big the fronts are. I have advised all the residents of the district of this and warned them. Please look closely at your availability over the next few days. At this stage I expect that I will need some bodies on standby over the weekend and if the weather comes as forecast, every available body on Monday and Tuesday so please look carefully at your commitments over that period.²²⁵

Mr Jeffery said Mr Lucas-Smith had telephoned him on either 15 or 16 January to pass on his thanks to the members of the brigade for their efforts during the preceding week in fighting the fires. Mr Jeffery said he (Mr Jeffery) suggested that, even if the containment lines were completed, they would not be deep enough to hold the fires when the expected extreme weather arrived. Mr Jeffery said Mr Lucas-Smith agreed with this comment 100 per cent and he maintained that the comment was made.

Mr Lucas-Smith agreed that he had a conversation with Mr Jeffery because he rang each volunteer brigade captain to express his appreciation for their efforts. He did not, however, agree that he said to Mr Jeffery that the fires would escape from the mountains:

No. I certainly didn't put it in those sort of terms. I think they are Mr Jeffery's words. There is no doubt whatsoever I would give him a very accurate assessment as to what was going on as best I possibly could. At that time I would have been reflecting the fact that we had containment lines established, but the fires were still burning quite vigorously and there were still uncontained areas.²²⁶

Mr Lucas-Smith said he told Mr Jeffery he believed they would have difficulty holding the containment lines, but he did not say that would happen.

Mr Jeffery was captain of the Southern Districts Volunteer Bushfire Brigade and a former chairman of the Bushfire Council. He has considerable experience in bushfire fighting and is a respected citizen. I found him a most credible witness. I can see no reason why he would have

felt he needed to supplement his message to his members by adding that the Chief Fire Control Officer held certain views if Mr Lucas-Smith had not actually said what Mr Jeffery said he had. Whatever he may or may not have recalled saying and in whatever terms, I am persuaded that Mr Lucas-Smith did express his opinion that the fires would escape from the mountains if the forecast bad weather did eventuate.

7.6.7 The afternoon planning meeting

At the afternoon planning meeting on 16 January Mr Graham reported on the progress of operations that day and on operations planned for the evening. He is recorded in the minutes as saying that progress was being made with the containment lines and the Bendora and Stockyard Spur fires and, in relation to the McIntyres Hut fire, ‘There are no real concerns with this fire, NSWRFWS [Rural Fire Service] is considering using aerial incendiaries on the fire’.²²⁷ Mr Graham said he had obtained this information on the McIntyres Hut fire from the ACT liaison officer at the Yarrowlumla fire control centre in Queanbeyan²²⁸, but he could not recall the name of that person. He said that although he was still concerned about this fire he was heartened by information that it was being contained. He also said he was a little concerned about the use of aerial incendiaries on the fire because he had been told by others that that was a risky operation during severe weather.²²⁹

The minutes of the meeting record that, because of the weather forecast, a total fire ban was to be declared for 17 to 21 January. The Fire Danger Rating for the following day (Friday 17 January) was expected to be within the range of 46 to 50 and worse for Saturday.²³⁰

7.6.8 Mr Lucas-Smith’s radio interview

ABC Radio 666 interviewed Mr Lucas-Smith at about 5.00 pm on 16 January 2003. Mr Lucas-Smith was asked, ‘What’s the situation with the bushfires in Namadgi now?’ and he replied:

We’ve got our containment lines in, and the major task of back-burning from these containment lines is commencing at 18.00 hours tonight ... We critically need to get this back-burning operation in tonight, to protect the south-east corner of the fire, so, when the north-westerlies do come [expected the following afternoon] it will hopefully prevent the spotting across into unburned areas outside our containment line.

The interviewer asked whether the spotting would be close to the ACT and was told that the fire was in the ACT. The interviewer then said, ‘Oh, I’m sorry, yes, but closer to the suburbs?’ Mr Lucas-Smith replied, ‘Close to the suburbs, no, that’s not right ... It will go further to the south in Namadgi, so it will go to the south-east part of Namadgi, more into the back into the western side of the Cotter River and towards Mt Gudgenby’.²³¹

Counsel for the ACT submitted that at this interview, Mr Lucas-Smith was responding to questions about the ACT fires. Further, he did not have a copy of the NSW Rural Fire Service media release—if it had been released by then—that warned about the activity of the McIntyres Hut fire. Counsel submitted that any criticism of Mr Lucas-Smith for not informing the Canberra community about the threat from the McIntyres Hut fire is thus unwarranted on those grounds and, they added, because Mr Lucas-Smith conceded that he was not a skilled media performer.²³²

It is inconceivable that a person in Mr Lucas-Smith's position, charged with his responsibility, would ignore and choose not to comment publicly on the activity of the largest fire in the region and the one that, only hours before, was being cited at various briefings as posing a serious risk to the ACT. If he did not have the most up to date information on this fire, one must ask why. Simply because the interviewer did not ask a direct question about the McIntyres Hut fire in no way prevented Mr Lucas-Smith from commenting on it: in fact, to fail to do so was to provide incomplete and misleading information about the real situation with the fires and the potential threat.

7.6.9 The NSW Rural Fire Service media release

At some time during the afternoon or evening of 16 January 2003 the NSW Rural Fire Service issued a media release stating that, in relation to the McIntyres Hut fire:

Control lines are complete on this fire, which has burned 7000ha and is being fought by about 120 NSW firefighters from Yarrawlumla, Queanbeyan and Yass Rural Fire Districts, crews from RFS Region East and Cumberland, as well as NPWS firefighters.

Containment was achieved with the completion of backburning yesterday and aggressive mop up and patrol of these lines today. Intensive ground and air patrols will continue to be conducted as active fire remains along the Goodradigbee River.

Aerial incendiary drops on the northeastern area of the fire, east of Baldy Range, has been planned for this afternoon, if weather conditions permit.

West northwest winds expected Saturday and Sunday will pressure lines to the east and southeast and force the fire to the ACT border.²³³

Under the heading 'Cross border effort on Bendora, Stockyard and Namadgi fires', the release noted:

ACT and NSW fire authorities are working together to battle blazes in the Namadgi National Park, which crossed into NSW and are threatening to move back to the ACT under expected wind shifts.

Close communication between ACT and NSW fire authorities is occurring through liaison officers and daily joint planning meetings.

This media release contains information contrary to that which Mr Graham said he received from the ACT liaison officer and passed on to those attending that afternoon's planning meeting. Mr Graham agreed that, in order to reach the ACT border, the McIntyres Hut fire would have to cross the containment line to the east. He also agreed that the media release appeared to be saying this would happen. Mr Graham said he was not told the Rural Fire Service was expecting the fire to run to the border. He had not seen the media release just quoted before giving his evidence. This is not the first media release Mr Graham had missed seeing: he also gave evidence that he did not see one issued by the Rural Fire Service on 15 January.²³⁴

The evidence indicates that:

- Liaison between the Emergency Services Bureau and the NSW Rural Fire Service was inadequate.
- Within the Emergency Services Bureau there was no formal process for collection and distribution of media releases received from outside organisations.

7.6.10 The role of the Emergency Services Bureau Planning Unit

Mr McRae was the Planning Officer within the service management team based at the Emergency Services Bureau. He said his role was to manage ‘a team of specialists who manage information relating to the event itself, resources at the event, the media and incident analysis. This work includes, as required, fire weather mapping, fire behaviour prediction, risk analysis, resource and Incident Action Plan preparation’.²³⁵

It is clear from his evidence that, as at 16 January 2003, if not before that date, Mr McRae held the view that it was likely the fires would reach the urban area on Monday 20 January. The minutes of the planning meeting held at 9.30 am on 16 January make reference to the ACT Fire Brigade and the ACT Ambulance Service meeting to discuss ‘urban contingencies’.²³⁶

Mr McRae said his recollection of the discussion about contingencies was as follows:

Both of these agencies conduct most of their business in the urban setting. It was considered most important for them to put together planning for impacts on the urban environment which, although arising from the bushfire, were not associated with management of the bushfire ... my expectation would be we were still telling them Monday was a likely day for the impact.²³⁷

When asked whether he was aware of what was being planned to warn the community of this threat, Mr McRae said, ‘Our priority was the rural part of the ACT community because they were going to be impacted on first. If you are asking about the urban community, it was my understanding that the media people were looking at arrangements’.²³⁸ He then made reference to Canberra Connect as being part of a strategy for dealing with the community in the city should the city come under threat. He added, ‘There were also people planning the likely wording for things and how to structure messages—that sort of general content’.²³⁹

Mr McRae could not recall any discussions on Thursday 16 January about warning the Canberra community that fires were likely to be upon them on Monday. He thought work was being done behind the scenes on a message:

All the people involved in doing that had been briefed in planning meetings and were aware of the schedule that we were working to and that there was an expectation that the planning unit’s work would provide a trigger to when they would need to start producing such messages.²⁴⁰

Mr McRae confirmed that what he meant by this was that the media people and others in the organisation were waiting for him to tell them the time had come to deliver the warning message to the community. He did not tell them the time had come on 16 January because he did not think

it had.²⁴¹ This is despite the fact that Mr McRae had thought an impact on the urban area was likely on Monday. He explained his reasoning:

There wasn't a need to alert the entire urban community ... my expectation was at some stage during the phase of forecast dire weather or nasty weather or bad weather—whatever you want to call it—there would be break-outs, and analysis of those would provide the starting point for the final run that, should it eventuate, would take the fire toward the city and that would allow us to pin down the subset of the urban community that needed to be alerted.²⁴²

Mr McRae believed the people were already being told a good deal about the fire situation, the need to be careful, road closures, and things to do. He thought this was enough first-level advice and that the advice would be escalated as the situation evolved. He explained why the community was not told:

We didn't know which part of the urban community to work with ... [and] my view of the matter was that we shouldn't be giving specific alert to the whole community. The whole community should be getting general material at this point. The specific stuff should be used when we knew exactly which parts of the community to target.²⁴³

Mr McRae had no discussions with Mr Lucas-Smith or Mr Castle about what should be said to the public about the threat; any information from the Emergency Services Bureau was being given to the community through interviews and media releases, and Mr McRae was not involved directly in either of these. He said liaising with the community involved a 'fairly complex and detailed area of expertise' and he was not aware of the complexities involved in emergency warnings. He did not have a view about whether warnings should have been issued on 16 January.²⁴⁴

Mr McRae provided an explanation of the process involved, and presumably used by him, in risk management and what he meant by the term 'trigger'.²⁴⁵ It would appear from what he said that various triggers are activated, commensurate with the escalating level of threat. Mr McRae said some of the triggers had been activated before the fires struck the suburbs, but the final trigger—telling people to take steps to ensure their safety—was not activated because 'we didn't see a need to activate it'.²⁴⁶ The reason he gave for this was that he had not expected the fires to evolve as they did on Saturday 18 January. But Mr McRae had said earlier in his evidence that he did have an expectation that the fire—presumably in a different form—would still cause damage to up to three rows of houses in from the rural–urban interface. He was asked why, then, did he not consider it appropriate to cause a general warning to be given to the community:

Firstly, I felt that the warning that was provided was sufficient. But basically, I made a professional call on the level of trigger for warnings that was appropriate at that time. When you are working in an emergency management situation, you make a call. That's what I did.²⁴⁷

In summary, it would appear that on 16 January Mr McRae believed the warnings that had been issued to the public until that time were sufficient. It was his professional judgment that nothing more specific or detailed was needed because he had not identified the specific segment of the community that might be subject to impact. He was expecting that impact to occur on the following Monday and was expecting the fires would cause damage to houses in the suburbs. His

philosophy appeared to be that it is better to wait and say nothing rather than say something and perhaps be wrong. He believed the situation serious enough to warn the Fire Brigade and the Ambulance Service to prepare for the likely impact but believed the final trigger for warning the community had not yet been reached.

Counsel for Mr McRae submitted that it was not Mr McRae's responsibility to issue warnings to the community.²⁴⁸ They said it was Mr McRae's role 'to bring a science-based approach to providing predictions upon which his colleagues could legitimately base decisions about undertaking works, committing resources, manpower and so forth'.²⁴⁹ Counsel further submitted that Mr McRae performed this role and provided the information, then it was up to others—the operational managers or community relations people—to make use of the information as they saw fit.

True, it was not Mr McRae's role to personally issue media releases or participate in interviews about the situation and the threat the fires posed to the community. It was, however, his role and responsibility, as head of the Planning Section, to tell the ESB media people and others when warnings should be issued and the nature of those warnings. Mr McRae acknowledged this. He said that in the planning meetings he was providing information he assumed was being used by someone to produce something for the public. He said the community was being told many things, but he also said he did not have any direct discussions about or input into the content of media releases, nor was he 'involved in the final product that went out to the community nor was I actually monitoring. It was my belief that the products that were going out to the community were sufficient to achieve the goal, if put in combination with the pre-fire season warning'.²⁵⁰

But how could Mr McRae claim to know what the community was being told if he had no input, did not see the final product, and did not monitor what was being put out? All this activity was part of his role.

It appears, on the basis of his actions, that Mr McRae displayed extremely poor judgment. Although he recognised it was important to warn the Fire Brigade and the Ambulance Service to prepare for fire damage to houses and injuries to people in the suburbs, he did not consider it was the right time to activate his final 'trigger', to warn the community of the impending danger.

7.7 Events on 17 January

7.7.1 A report in the *Canberra Times*

On 17 January 2003 an article appeared in the *Canberra Times* under the heading 'Next five days critical'.²⁵¹ It contained information Mr Lucas-Smith had provided the previous day at the noon press conference. Among other things, the article made reference to the McIntyres Hut fire and the pressure that would be placed on containment lines protecting the Uriarra pine plantation, the fact that the Bendora and Stockyard Spur fires were running uncontrolled towards containment lines, and that the nearest flames were still more than 20 kilometres from the outskirts of Canberra. There was further comment about firefighting resources, weather, closure of access to forests and parks, and the area already burnt by the fires. The article also contained a

quotation attributed to Mr Lucas-Smith: ‘At the moment I don’t think there is any threat to the urban edge ... we’ll certainly see a lot more smoke than we’ve seen in the last few days’.

Mr Nicholson, an expert engaged on behalf of Messrs Castle and Lucas-Smith, at first gave evidence that he thought the information in the *Canberra Times* article did serve as a warning to the community in a broad sense. Later, he agreed that a resident of Duffy could read the article and conclude, ‘There is no immediate risk to us’.²⁵²

Mr Castle was asked about Mr Lucas-Smith’s comment and agreed that Mr Lucas-Smith would be seen as saying, ‘Don’t worry, there is not any threat’.²⁵³

Counsel representing Mr Lucas-Smith submitted that the newspaper article contained the substance of the information Mr Lucas-Smith had conveyed the day before during his briefing of the Fire Brigade and the Ambulance Service.²⁵⁴ This is not an accurate representation of the evidence discussed in Section 7.6.4. Furthermore, in his own evidence Mr Lucas-Smith said in relation to the briefing and in the context of the type of fire and flame height that would come out of the pine plantations:

As far as I am aware, and as far as the residents and so forth were concerned, that was the very reason on 16 January I had the meeting with the ACT Fire Brigade and they continued on with their planning meeting to start to put in place their incident management requirements to deal with structure and residential fire. So I would expect that Mr Prince would have a better picture of potential effects in the residential area than I would have had.²⁵⁵

Consequently, the *Canberra Times* article could not be seen as constituting a warning to the community about the threat posed by the fires.

7.7.2 The morning planning meeting

The 17 January morning planning meeting was held at 9.30 and began with Mr Graham providing information about the progress of operations overnight and planned operations for the day. He reported that back-burning for the Bendora and Stockyard Spur fires did not occur for various reasons (one of them being safety). Mr Lucas-Smith had said in his ABC Radio 666 interview the previous afternoon that these back-burning operations were crucial before the forecast north-westerly winds arrived, to prevent spotting across containment lines. The minutes of the morning meeting record that the NSW Rural Fire Service ‘will be focusing on commencing incendiary work on the large unburned sector of the north-east section of the [McIntyres Hut] fire’.²⁵⁶

Mr Mason from the Bureau of Meteorology provided an update on the weather, which included north-north-west winds for the next five days, gusting to possibly 60 kilometres on the Friday and Saturday, high temperatures, and low dew points. The minutes then record Mr McRae saying:

... due to the variable winds expected, the fire behaviour may be erratic, with the worst fire runs to the south-east. There is potential for worsening conditions when the north-west winds arrive this afternoon. The containment lines are not strong and people need

to be aware today of extreme fire behaviour ... due to the dry fuel moisture content, there is significant danger of embers igniting new fires and further analysis needs to be undertaken on fallback positions.

Mr Lucas-Smith is recorded as asking for 'information on the potential fire growth without intervention' and noting the 'potential for the fire to run up hills, across creeks, rivers and containment lines [with] the potential for a 10 km spot over distance'. There are references in the minutes to 'erratic fire behaviour', 'pressure on various lines', 'spot fires' and 'significant risks of fire runs'. Under the heading 'Safety' the minutes record that Mr Lucas-Smith expressed concern about the aerial incendiary back-burning operation planned for McIntyres Hut, where there was potential for many uphill runs and 10-kilometre spot-overs that, with a north-west wind, would reach the ACT. He asked for a map detailing potential spot-over distances for all fires for the day.

Mr Castle in his statement referred to concern about the aerial incendiary operations at the McIntyres Hut fire and noted that after the planning meeting he emphasised to the NSW Rural Fire Service liaison officer the ACT's objection to this operation.²⁵⁷ Mr Castle recalled that the wind on Monday was forecast to be less severe than on Saturday, which now looked to be a worse day than Monday, but he did not recall this being discussed at the meeting.²⁵⁸

Mr Graham agreed that the fire situation deteriorated rapidly on 17 January as the day progressed. Back-burning operations on the Stockyard Spur and Bendora fires had ceased during the morning, and the Bendora containment lines were only half completed. He received a message that aerial incendiary operations had begun at the McIntyres Hut fire and was concerned about the potential for the containment lines to be breached.²⁵⁹

Mr McRae also noted that the weather forecast was suggesting that Saturday and Monday would be much the same in terms of fire weather.²⁶⁰

It appears that by midday on Friday 17 January senior officers of the Emergency Services Bureau knew the following:

- The winds forecast for Saturday—the next day—were to be north-west at 20–25 kilometres an hour, gusting to 45 kilometres and possibly to 60 kilometres and turning back to a westerly direction.
- Saturday was shaping up to be as bad a fire day as Monday, if not worse.
- There was potential for all the fires to make runs—up hills, across creeks and rivers, and across containment lines.
- Back-burning operations had stopped on the Bendora and Stockyard Spur fires, and the containment lines had not been completed.
- The containment lines were not strong.
- Aerial incendiary operations on the McIntyres Hut fire were causing concern, and formal objections had been made to the NSW Rural Fire Service at Queanbeyan.

- There was potential for a 10-kilometre spot-over from all fires.
- Severe and deteriorating conditions were causing concern for the safety of all crews and plant operators.

It appears that senior officers of the Emergency Services Bureau recognised the severe and rapidly deteriorating conditions and the increased risk of erratic fire behaviour and fire spread. It also appears, however, that, in the face of the increasing risk from the fires, there was no discussion of this at the planning meeting, and there is no evidence that any of the senior officers turned their minds to the need to warn the community—rural or urban.

7.7.3 A midday press conference

At about midday on 17 January Mr Castle and Mr Lucas-Smith gave a press conference. Mr Castle made reference to the Emergency Services Bureau ‘trying to improve our communications information to the public’ by using the Canberra Connect number. Mr Lucas-Smith gave an overview of the status of the fires:

The fires in the ACT are still within the containment lines that we established over the last week in our efforts to contain these fires. They’re still in those containment lines. The main fires are still well back from these containment lines but under our current weather conditions the chances of those fires approaching our containment lines in a rapid sort of way which may cause some spotting and cross-over is a concern to us particularly as the wind conditions and temperatures rise this afternoon, later today. At the present time the fires are still within the containment lines.²⁶¹

Mr Lucas-Smith was then asked what he thought, given the expected extreme weather, the chances were of those fires breaching the containment lines:

They’re well back from the actual fire front and as long as overnight we continue our back-burning it will be during the day that causes the greatest amount of concern. As long as we can continue back-burning operations during the night there’s a good chance that we will be able to still keep those fires well in our containment lines.²⁶²

He was later asked if there was a need to evacuate property:

No, at the present time the fire is, under the current weather conditions—if the fire does escape our containment lines it will burn in a south-easterly direction further into the Namadgi National Park. However, I think that under the current conditions, the conditions we’re likely to face in the next few days, it’s very prudent to ensure if you live adjacent to Namadgi National Park in any way, you need to be making sure that you have taken precautions around the property to ensure that you have cleared around your household, you have decided what you are going to do should the fire start approaching that way, or if you’ll stay or if you’ll evacuate. If you are going to evacuate, you need to do that very early.²⁶³

Mr Lucas-Smith said he was not concerned about Tidbinbilla Tracking Station or historic sites. He then provided information about the Emergency Services Bureau’s plan of attack for the following five days and said the threat to firefighters on the fire line from the conditions in the next few days was going to be quite significant.²⁶⁴

To the next question, about how far the fires were from Canberra and what the chances were that they could reach the urban edge, Mr Lucas-Smith replied, ‘Well, the fires are a fair way, I have [not] measured it in kilometres, and they’re a fair way away from the edge of the urban area of the ACT. Under north-west wind conditions the chances of meeting the urban edge [are] pretty slim’.²⁶⁵ Mr Lucas-Smith said that at that time his level of anxiety was not much different from what it had been in the preceding week, but he also said, ‘We’re certainly getting to the point where it’s becoming the most critical’.²⁶⁶ He said he had seen thousands of fires in the past 31 years and had been involved in bushfire fighting in what he described as similar sorts of events—except that the weather conditions in January 2003 probably were worse.²⁶⁷ In response to a question about how people living adjacent to Namadgi National Park should prepare, Mr Lucas-Smith said, in effect, that he presumed these people probably knew what to do and had already decided whether to stay to protect their property or to go. He said the Emergency Services Bureau was not suggesting these people should be evacuating because there was no immediate threat at that stage.²⁶⁸

Mr Cameron Wade of the NSW Rural Fire Service media unit briefed the press immediately after Mr Lucas-Smith and Mr Castle. He started by saying the McIntyres Hut fire had burnt out some 8000 hectares and was still burning within containment lines but, because of the strengthened north-west winds, these lines were being tested fairly extensively on the south-eastern side. He said the fire was about 2 kilometres from the ACT pine plantations and was being closely monitored. He added, ‘At this stage there is no threat to any property in the area, it is more those pine plantations we’re keeping a close eye on ... The threat is now to the southern and eastern sides and of course that means it’s more heading back towards the ACT’.²⁶⁹ Mr Wade described the fire activity as being fairly intense and said the fuel loads and wind conditions were making the situation ever more desperate. When asked about the threat to the pine plantations, he replied:

Speaking with the incident controllers, there is a certain concern for it. It’s 2 kilometres or so. We have seen spotting activity up to a kilometre-and-a-half with these fires. So we have staged resources on the border, we certainly are looking at what we can do as a secondary containment should it break the containment there. There is a real threat to that pine forest, but at this stage everything’s holding at the moment.²⁷⁰

In evidence, Mr Lucas-Smith said that at midday on 17 January 2003 the McIntyres Hut fire was not at the forefront of his mind and he was not giving it a great deal of attention.²⁷¹ He said his comment at the press conference that the chance of the fires reaching the edge of Canberra was ‘pretty slim’ was a reference to the Bendora and Stockyard Spur fires, not the McIntyres Hut fire.²⁷²

Similarly, in his evidence Mr Castle said Mr Lucas-Smith’s reference to the ‘pretty slim’ chance related to the ACT fires.²⁷³ He commented in his statement that a protocol existed between the ACT and NSW whereby each fire control agency commented publicly only on the fires in their own area.²⁷⁴ Mr Lucas-Smith contradicted Mr Castle on this, however, saying there were no such arrangements between ACT and NSW authorities and that he did not feel restrained in any way from commenting on the McIntyres Hut fire at the press briefing if he chose to do so.²⁷⁵

Mr Castle was questioned further on this and said that perhaps it was an overstatement to say arrangements and protocols existed because it was more of an understanding, but he was unsure how it was arrived at.²⁷⁶ He denied the proposition put to him by counsel assisting that when he had drafted his statement he had made reference to a protocol in order to establish an excuse or explanation for not saying more at the press briefing about the real threat of the fires.²⁷⁷ Ultimately, Mr Castle agreed that nothing prevented him or Mr Lucas-Smith from providing information about the McIntyres Hut fire, but he felt it a courtesy to NSW authorities not to do so.²⁷⁸

When asked why neither he nor Mr Lucas-Smith made reference at the press briefing to a threat to the urban area, Mr Castle said, 'I suppose because of a degree of focus on the ACT fires and a degree of confidence still by NSW about McIntyre's'.²⁷⁹ To the best of his recollection, Mr Castle said he thought he had stayed at the briefing for all of Mr Wade's presentation, but he did not remember Mr Wade using the word 'desperate' or saying there was a real threat to the ACT pines. He thought, however, there *was* some threat to the pine plantations because of their proximity to the McIntyres Hut fire.²⁸⁰

7.7.4 Noon media releases

The Emergency Services Bureau issued a media release at about the same time as Mr Lucas-Smith and Mr Castle began their press conference. The release is contrary to the briefing being provided to the press because it identified some break-outs from containment lines to the north and south of the Bendora fire, whereas Mr Lucas-Smith told the media the fires in the ACT were still within their containment lines.²⁸¹ There is some information in the release about operations on the Stockyard Spur fire, the extreme weather conditions, the total hectares burnt to that point, the numbers of personnel and amounts of equipment deployed, and road and nature park closures; there was also a health warning to people with asthma and other chronic medical conditions. The release directed the ACT community to the Canberra Connect call centre and website for more information about the Bendora and Stockyard Spur fires. It directed those who might be seeking information about the NSW fires to the NSW Rural Fire Service media unit telephone number and website. No information was provided about the McIntyres Hut fire, its proximity to the ACT pine plantations, and the risk to the ACT community should the fire enter those plantations. The release also contained no warnings—to rural residents or to urban residents—other than the health warning for asthmatics and people suffering other chronic conditions.

The NSW Rural Fire Service also issued a media release at noon; it was headed 'Wind shifts pressure containment lines on ACT/NSW border fires'. It stated:

Control lines will be tested today with the weather forecast showing strong north-westerly winds, 37 degree temperatures and very low humidity. The wind shift will place considerable pressure on the eastern and southern containment lines and could potentially turn fires back towards the east, however the potential threat to properties in the Brindabella Valley has eased a little for the moment.

The release then continued:

There is currently no immediate threat to any property. Firefighters are concerned that strong wind gusts could cause spot overs which could impact major pine plantations in the ACTThe south eastern corner of this fire is the main concern. Although the fire is remote it is impacting on the water catchment area. No properties are immediately threatened at this time.²⁸²

At just over one page long, the release contained six separate references to containment lines being tested and pressured—including by the ACT fires—and to concern about spot-overs. In contrast, the Emergency Services Bureau release was three pages long and contained not one mention of concern about containment lines being tested or potentially breached or about spot-overs.

Mr Castle gave evidence that if a Canberra resident wanted to know what was happening with the McIntyres Hut fire they could telephone Canberra Connect or go to its website, then be directed to the Emergency Services Bureau or to the Rural Fire Service centre in Queanbeyan. He agreed that this was neither a satisfactory nor a direct method. He also gave evidence that he did not know, and had no way of knowing, whether the ACT media were receiving press releases from the Rural Fire Service and was not aware that anything was being published in the ACT about threats from the McIntyres Hut fire. Mr Castle did not know whether there was a system in operation in the Media Unit for receiving and distributing NSW press releases.²⁸³

The evidence on this matter is that, in fact, in the Media Unit of the ESB Planning Section there was no mechanism for receipt and distribution of such information. Mr Tony Corrigan was the ACT liaison officer at the Rural Fire Service centre in Queanbeyan, and he gave evidence that he faxed Rural Fire Service media releases to the ESB Planning Section in Curtin daily.²⁸⁴ Ms Marika Harvey was located in the Planning Section and involved with media liaison but reported primarily to Mr Castle and Mr Lucas-Smith.²⁸⁵ Her evidence on this was as follows:

We had a process in place to be receiving, you know, media statements that a number of other organisations put out, including ACT police statements and ActewAGL because of possible water contamination issues after the helicopter came down ... I am afraid I don't recall whether we got the New South Wales Rural Fire Service ones, but it certainly would have made a lot of sense to. I guess I would be surprised if we didn't.

She said, however, there was no formal process for monitoring releases or for collection or distribution to Mr Castle or people in the Planning Section.²⁸⁶

7.7.5 Conclusions: midday press conference and media releases

Counsel assisting submitted that at the midday press conference Mr Castle and Mr Lucas-Smith had an important opportunity to say what must have become obvious to them but that the opportunity was lost. It was submitted that Mr Lucas-Smith compounded what was said to have been the harm done by the morning's report in the *Canberra Times* by saying at midday that under a north-west wind the chance of fire reaching the urban edge was 'pretty slim'. It was further submitted that, by talking in terms of fires being 'behind' or 'within' containment lines, Mr Lucas-Smith tried to convey an impression that the fires were, in effect, under control

(without using those words) because they would be stopped by a barrier and that he said these things even though he knew there was virtually no prospect of containing the fires. Additionally, counsel assisting submitted that Mr Lucas-Smith's evidence that he was referring only to the ACT fires when he made his prediction about the 'pretty slim' prospect of impacts on the urban edge should be rejected because it is absurd that someone in Mr Lucas-Smith's position, briefing the media on threats to Canberra, would ignore the largest and most threatening fire—the McIntyres Hut fire.²⁸⁷

Counsel assisting also asserted that Mr Castle's attempt to talk in terms of—non-existent—protocols and agreements between the ACT and NSW in relation to each agency making statements only on the fires in their own jurisdiction was a concoction. Consequently, counsel assisting submitted, it is open on the evidence to conclude that at the media conference Mr Lucas-Smith made a decision to not tell the Canberra people the true position about the risk from all the fires and that Mr Castle was a party to that decision.²⁸⁸

Counsel representing Mr Lucas-Smith and Mr Castle submitted that, although the NSW Rural Fire Service personnel perceived a threat from the McIntyres Hut fire to the ACT pine plantations, until late on the morning of Saturday 18 January 2003 they had 'little to no expectation or appreciation' that this fire would burn into suburban Canberra. Furthermore, they submitted that the words Mr Wade used at the noon media briefing and those in the Rural Fire Service media release were 'not significantly different to the language used by Mr Lucas-Smith'.²⁸⁹ In connection with Mr Castle's comments on protocols, his counsel submitted that, in effect, counsel assisting alleged that Mr Castle committed perjury, which his counsel denied. They submitted that, when questioned, Mr Castle conceded almost immediately that he had overstated the position and that what he meant to reflect was that there existed an understanding or agreement based on courtesy in respecting one another's jurisdiction.²⁹⁰

Counsel for the ACT submitted that the two-part form of the media briefing and Mr Wade's involvement give overwhelming support to Mr Lucas-Smith's evidence that he was talking only about the ACT fires. They further submitted that an analysis of what Mr Wade said about the threat from the McIntyres Hut fire was not in such terms as to imply that it was a serious or immediate threat and that this is supported by the comments in the Rural Fire Service's noon media release.²⁹¹

An examination of the evidence reveals a stark discrepancy between the information that was known to and discussed by senior personnel of the Emergency Services Bureau at the planning meeting of 9.30 am on 17 January and the information that Mr Castle and Mr Lucas-Smith conveyed to the media at the press conference at noon and that was in the media release. Among the most obvious and most serious omissions from the media briefing were the following:

- a failure to report the concerns held by ESB personnel about the real potential of all the fires to break their containment lines, which were known to be vulnerable
- a failure to say at the media conference that the Bendora fire had already breached lines to the north and south

- a failure to report the concerns held about the ‘erratic fire behaviour’, the ‘significant risks of fire runs’, and the potential for 10-kilometre spot-overs
- a failure to say that back-burning operations had stopped on the Bendora and Stockyard Spur fires
- a failure to inform the media and the public about the proposed, and imminent, use by the NSW Rural Fire Service of aerial incendiary devices on a large unburnt area within the containment lines of the McIntyres Hut fire and about the concerns ESB personnel held over the potential ramifications for the ACT of this operation
- a failure to express, reiterate and strengthen statements of concern made by Mr Wade about the real threat to the pine plantation
- a failure to say that Saturday—the very next day—was shaping up to be a very serious fire day.

In my view, what was said by Mr Lucas-Smith in Mr Castle’s presence instead served to downgrade the impression of what was obviously a highly volatile and dangerous situation.

By omitting to provide the information just listed, and by making such statements as ‘the ACT fires are within containment lines’, ‘no need to evacuate property’, ‘no concern for Tidbinbilla Tracking Station or historic sites’, ‘pretty slim chance of fire meeting the urban edge’, ‘their level of anxiety had not changed since the previous week’ and ‘the rural people knew what to do and probably had already done it’, Mr Lucas-Smith and Mr Castle, failed to convey to the media at noon on 17 January 2003 the truth about the danger they and others at the Emergency Services Bureau knew the fires posed for the ACT community.

The reasons they failed to do this are, however, not clear. Mr Castle said there were no conscious reasons for a warning, even worded as a potential threat, not being publicised at noon on 17 January.²⁹² I have no doubt that one reason was that Mr Lucas-Smith held a hope that the fires could still be stopped—somehow. I do not accept Mr Lucas-Smith’s evidence, nor the submission from counsel for the ACT, that Mr Lucas-Smith was speaking only of the ACT fires and did not have the McIntyres Hut fire in mind during the media briefing. Even if he did, though, he still did not describe the true situation and potential threat from the ACT fires, and there was no impediment on him, since he admitted to supplementing and commenting on the information being provided by Mr Wade. It is not credible that Mr Lucas-Smith failed to think of the McIntyres Hut fire in terms of its threat to the ACT on 17 January: he had regarded it as a potential threat as soon as it ignited on 8 January, when he travelled to Queanbeyan to meet with NSW fire officials.

There are differences between what Mr Wade and Mr Lucas-Smith said at the media conference. The most important difference is that, on the basis of the evidence, Mr Lucas-Smith did not provide a full and frank disclosure of what he knew and what he regarded as being the worst-case scenario. Mr Wade did not give evidence but, on the basis of his statement, there is no evidence to suggest that the information he provided at the media conference about the

McIntyres Hut fire differed from the information in the briefing he had received from the Yarrowlumla fire control centre in Queanbeyan that morning, before the noon conference.²⁹³

In relation to Mr Castle's comments about protocols, having considered all the evidence on this matter, I concluded that, on the balance of probabilities and despite his words, Mr Castle did not intentionally seek to mislead the inquiry by saying there existed between the ACT and NSW fire control agencies formal protocols that served to prevent or restrict comments by either agency on any of the fires burning in the region.

I have concluded as follows:

- At the media conference of noon on 17 January 2003 Mr Castle and Mr Lucas-Smith did not reveal information of which they were aware and did not express concerns they held about the true situation of the fires and the threat the fires posed to rural and urban areas of the ACT.
- The reason for this is most probably that Mr Lucas-Smith hoped the fires could be controlled before they reached the rural–urban interface.
- The Media Unit within the Planning Section of the Emergency Services Bureau did not operate effectively, and no procedures existed for collection and dissemination of information that was relevant and important to senior ESB personnel and to the media.

7.7.6 Deteriorating conditions during the afternoon

At about 1.00 pm break-outs over the containment lines were reported in the south-eastern sector of the Bendora fire, and they could not be contained. Additionally, by mid-afternoon the Stockyard Spur fire had spotted over at various places to the east of Corin Dam, and the resultant fire run could not be slowed. Because of the deteriorating fire conditions, all crews working on the Bendora fire were withdrawn to the staging area at Bulls Head. There were reports of several spot-overs in Tidbinbilla Nature Reserve at about 4.00 pm, and crews from the Stockyard Spur fire were tasked with property protection in the Tidbinbilla and Naas Valley areas.²⁹⁴

At about 2.00 pm Mr McRae recorded that he and others at the Emergency Services Bureau began receiving reports of problems with the McIntyres Hut fire burn-out block, where aerial ignition of an unburnt patch was causing vigorous burning. The burn-out was stopped because of the risk of embers flying over the containment lines. Mr McRae also received reports of spot-overs on the northern sector of the Bendora fire and fires on the eastern side of Corin Dam that were running quickly east into Namadgi National Park. About that time he also received reports of 'uncertainty about fires burning to the west and the possibility of those fires then looping east towards the ACT'.²⁹⁵

Mr Graham's statement recorded that at about 1.00 pm he was advised that the Bendora fire break-out could not be contained; at about the same time he received from the Yarrowlumla control centre in Queanbeyan news that the McIntyres Hut fire had jumped containment lines on its south-east boundary. He also received the information about the other developments.²⁹⁶

Mr McRae said he took some time to verify the reports he had received and discussed options with the operations and logistics sections:

I expressed the view that the Stockyard fire would quickly head east towards Smokers Gap; that the Bendora fire would also head east towards the Cotter river and probably cross the river; and that the McIntyre's Hut fire was likely to break containment and run towards the Uriarra pine plantation. I expressed these opinions at a meeting of the SMT [service management team] involving Peter Lucas-Smith, Tony Graham, Dave Ingram and myself prior to the larger planning meeting that afternoon. I repeated these views during the planning meeting. There was a general consensus that this was the likely situation. The immediate planning task, therefore, was to identify assets at risk. We identified immediate assets at risk to be the rural residences, the pine plantations, Corin Dam Ski Resort and the Tidbinbilla National Park.²⁹⁷

Despite his expressed view about the McIntyres Hut fire entering the Uriarra pine plantation, Mr McRae said he thought the likelihood of that happening to be low and expressed confidence in the NSW crews' ability to deal with any break-outs.²⁹⁸ This expressed confidence is contrary to the concern he voiced at the planning meeting earlier that day.

Mr Kevin Cooper, a volunteer member of the NSW Rural Fire Service, was in the operations room that afternoon and had a conversation with Mr Graham at about 2.30 pm. He remembered it well and said in evidence:

It was clear that the Stockyard fire was now travelling great distances ... I stood beside him [Mr Graham] and I said 'Do you have a plan? Is there a plan?' ... I certainly can't remember the exact words. By my approach was ... [to] look at the map on the wall in the operations room and what I outlined from my perspective what happens if this fire reaches Canberra. And subsequently, when it reaches Canberra, outlined my finger down the western edge, particularly at the southern end, south-western side of Canberra, what sort of plans were in place or being developed to actually cope with that. And initially Tony said, 'Well, the urban fire service will look after that'. I said, 'Well are they capable of developing an overall plan for staging water supplies, shut off gas, community education, those sorts of things?' I was reminded again that it was an urban service responsibility when the fire reached the urban edge.²⁹⁹

Mr Cooper said that about an hour later he had a conversation with Mr McRae in the operations room: 'Basically, I just said to him, "In the unravelling of the situation at the moment, do you have a plan for when the fire reaches the urban interface of Canberra?" ... It was a pretty short conversation to say, "We don't at the moment"'. Mr Cooper did not ask any other questions because, he said, that was not his role: 'So really I shouldn't have been pushing buttons. That wasn't our responsibility. I guess part of what I was trying to do was potentially sow a few seeds that might have facilitated something happening'.³⁰⁰

Mr Graham was asked about what Mr Cooper had described of their conversation. He accepted that Mr Cooper might well have asked, 'What are you going to do if the fire hits Canberra?' Mr Graham did not, however, recall the conversation or his response, but he thought it unlikely he said what Mr Cooper recalled him saying about the urban fire service responsibility.³⁰¹

I found Mr Cooper a professional and experienced person. I was impressed by the forthright manner in which he gave his evidence and his good recollection of events. I accept his evidence.

My conclusion is that on the afternoon of 17 January 2003 the Emergency Services Bureau had no adequate plans for dealing with the fires in the event that they reached the suburbs of Canberra—other than leaving the problem to the ACT Fire Brigade.

7.7.7 The ACT Fire Brigade Incident Action Plan

After the 9.30 am planning meeting on 17 January, the ACT Fire Brigade incident management team met and prepared an Incident Action Plan. The time noted on the plan is 1630, 17 January 2003. The plan states that the fires in the Brindabellas and Namadgi National Park were approaching Canberra from about 20 kilometres to the west and spotting near Tidbinbilla and Corin Dam. It notes that control lines had been established but that if spotting occurred in front of the fire or if the lines were breached the fire would come close to Canberra and the ACT Fire Brigade would be the primary response agency for the urban area and properties close to Canberra. It also notes, ‘Spot fires may occur up to 10–15 km in front of the fires. Predominant NW winds are likely to initially cause grass fires within 5 km of Canberra’s western boundary, and later to structures and bushland areas within the Canberra urban area’. The plan lists Stromlo Observatory, water treatment works, Tharwa village, Lanyon Homestead and numerous farms and properties as being in the path of the fires and at risk.³⁰²

Fire Commissioner Bennett did not discuss the plan with ESB personnel because they were planning their own response. He said that if the fire did move closer to the urban interface it would be a collective effort between the ACT Fire Brigade and the ACT Bushfire Service.

7.7.8 A media release at 3.45 pm

At 3.30 pm a three-paragraph draft media release was prepared by someone at the Emergency Services Bureau. The first paragraph was about smoke and telling residents not to be concerned because the McIntyres Hut fire, which was causing the smoke, was within containment lines. The second paragraph read: ‘Mr Castle said, however, that residents in some areas may see flying embers and XXX, but not to be concerned??’ [sic] The third paragraph provided contact details for Canberra Connect.³⁰³

Shortly before the release was issued, at 3.45 pm, Mr Keady altered it to remove the second paragraph and add another sentence. The release that was issued thus read:

ACT Emergency Services Bureau Executive Director Mike Castle said today that the smoke that is currently blanketing the ACT is coming from the McIntyre’s Hut fire in New South Wales, and that residents should not be unduly concerned as the NSW Rural Fire Service reports that the fire is still within containment lines.

Because of the prevailing winds, ash and burnt materials may be deposited in some suburban areas of Canberra’, Mr Castle said. ‘The McIntyre’s Hut fire and the two fires in the ACT continue to be closely monitored both on the ground and from the air.’ Residents can access the latest information on ACT bushfires through the Canberra Connect call centre and website.

Details of the contact information followed.³⁰⁴

Mr Castle could not recall the circumstances in which Mr Keady became involved in redrafting the media release.³⁰⁵ Ms Amy Lowe, who worked in the Media Unit, also could not recall how Mr Keady incorporated the amendments but thought she may have been involved in preparing the first draft.³⁰⁶ Mr Keady was not asked.

During his evidence, Mr Castle agreed that the message in the media release was that everything was under control with all the fires. He also agreed that, if the statement attributed to him—that the McIntyres Hut fire was within containment lines—came from the NSW Rural Fire Service noon press release, it did not say everything that was contained in that release and he could not say why the full message from the Rural Fire Service about that fire was not delivered in the 3.45 pm release.³⁰⁷

7.7.9 Conclusions: the afternoon of 17 January

Counsel assisting submitted that by the afternoon of 17 January the only realistic strategy left to the Emergency Services Bureau if it were to limit the fire damage in rural communities and the suburbs was to warn all residents who might be affected to prepare immediately for the fires' impact. Instead, they submitted, the people were told by means of a press release not to be concerned about the smoke or deposits of burnt materials because all the fires were within containment lines. This, they said, is another example of a decision to hide from the people of the ACT the seriousness of the risk from the fires.³⁰⁸

Counsel for the ACT submitted that only one pessimistic comment in the NSW Rural Fire Service noon press release was excluded from the 3.45 pm ESB release—namely, reference to containment lines being tested—and queried how informative that statement would have been to the average member of the Canberra public.³⁰⁹ This submission is inaccurate. Apart from an unwarranted implication about the Canberra public's limited ability to understand to a reference to containment lines being tested, there is much more significant material in the Rural Fire Service noon press release than in the 3.45 pm ESB release. Counsel appeared to treat the omission as of no consequence. In the Rural Fire Service release, however, there were five references to pressure on containment lines and there was one reference to concern about spot-overs. None of this appeared in the ESB release. Nor is there any mention in the ESB release of the worrying weather forecast, concern about the fire entering the pine plantations, or the aerial incendiary drops being considered by Rural Fire Service—all of which could be regarded as pessimistic comments. In short, there is no similarity between the two releases.

Counsel for the ACT also submitted that, in relation to the change of words by Mr Keady, from 'flying embers' to 'ash and burnt material', it is debatable whether the change in words would have conveyed to the average Canberra resident a different level of risk.³¹⁰ It is difficult to know how to respond to this submission other than to say it is a safe assumption that the average Canberra resident would know the difference between flying embers and ash. Counsel further submitted, 'There is also little doubt that ESB lost an opportunity on this occasion to disseminate relevant information to the public'.³¹¹ I agree.

The press release the Emergency Services Bureau issued at 3.45 pm comprised six sentences, three of which provided details about how to obtain further information. What was in the other three sentences was, in my view, misleading. It did not report the situation that existed at the time of the release—that all the fires, including the McIntyres Hut fire, had breached their containment lines and were spotting and making runs. Senior personnel at the Emergency Services Bureau knew this from 1.00 pm onwards. Mr Castle should not have been party to the issuing of a media release in which he is quoted as making comments until he had verified the accuracy of those comments. The only message that on any sensible reading of it comes from the ESB release is, ‘Don’t worry about smoke and bits of flying ash, everything is under control with the fires’.

I am satisfied that the media release issued by the Emergency Services Bureau at 3.45 pm on 17 January 2003 was misleading: it did not accurately report the fire conditions and therefore seriously misrepresented the grave situation that existed.

7.7.10 Another request for Commonwealth assistance

At 4.30 pm on 17 January Mr Castle made a fifth request for Commonwealth assistance. In the request he summarised the situation:

The bushfires that commenced on 8 January continue. The weather forecast for the weekend and early next week predicts temperatures in the high 30°s with strong winds gusting to over 60 km/hour from the north west causing concern for the ACT urban environment. Fire operations are currently focussing on strengthening control lines, however, there is the potential for 10 m spot fires threatening the containment lines.³¹²

Mr Castle agreed that reference to ‘10 m spot fires’ should have read ‘10-kilometre spot fires’ and that this was what he believed to be possible.³¹³

7.7.11 Radio interviews

During the afternoon Mr Castle and Mr Lucas-Smith gave short radio interviews. At 3.00 pm an interviewer said, and it was broadcast on Radios 2CC and 2CA, that hot and gusty north-westerly winds were fanning two large fires in Namadgi National Park and that ‘ACT fire chief Peter Lucas-Smith says the fires are still within containment lines, though that could change quickly’. Mr Lucas-Smith was recorded as saying:

Under our current weather conditions, the chances of those fires approaching our containment lines in a rapid sort of way which may cause some spotting and cross over is a concern to us, particularly as the wind conditions and the temperatures rise this afternoon, later today.³¹⁴

At 4.30 pm Mr Castle was reported saying on Radio 2CC:

Today will not be a good fire day weather-wise and the same probably for tomorrow. We just ... if we can continue to pick up any of the spot fires that do come over, with the water-bombing aircraft if they’re close to our containment lines and within hose

length, then, we can put crews on it, but if not, then it's back to that sort of rugged country again, and water-bombing and then pull back outside those containment lines to establish new containment lines.³¹⁵

Finally, at 5.00 pm Mr Castle was again reported on Radios 2CC and 2CA saying, after a comment by the interviewer, that the Bendora fire front had been meeting with containment lines and that winds were causing concern about embers starting spot fires:

With the Bendora fire, our containment lines along that sort of easterly and southeasterly corner, the back-burn had gone in and met the fire front, it's just a case of how far it is likely to spot, as opposed to a fire front, the fire front coming towards it. We had even cut some trees down and done that sort of preparation, but it is the spotting distance, fanned by the strong winds, that's sort of the most concern.³¹⁶

Counsel representing the ACT submitted that these statements by Mr Lucas-Smith and Mr Castle show that they were not trying to conceal the true situation about the fires but were instead trying to pass the information on to the public.³¹⁷

It is difficult to accept this submission. An analysis of the content of the statements makes it apparent there is no allusion in any of them to the facts that, as at 3.00 pm, the time of the first broadcast:

- The containment lines of all the fires had been breached.
- Spot fires had been reported.
- The fires were making runs.
- ESB personnel were concerned about potential impacts on rural residents, various assets and the Canberra suburbs.

Most importantly, the three radio broadcasts offered an ideal opportunity to tell it as it was—to make a clear, unequivocal statement of the facts as they were known and of the potentially serious consequences. This was not done.

7.7.12 Predictions of fire spread

At the 9.30 am planning meeting on 17 January Mr Lucas-Smith had asked for a map detailing the potential spot-over distances of all the fires for that day.³¹⁸ Messrs Nicholas Lhuede, Hilton Taylor and Nicholas Gellie set about this task and analysed the distances for the McIntyres Hut fire. At Mr McRae's request they started late morning or early afternoon to urgently look at where the fires were likely to be by Saturday afternoon.

Messrs Lhuede, Taylor and Gellie gave evidence and described what they did, what they used, and their methods. They looked at the weather forecast and used their knowledge of fire behaviour, previous fires, fuel levels and types, and the terrain. They used the McArthur fire-spread meter as a fundamental tool for their predictions and supplemented this with their local knowledge.³¹⁹ Mr Gellie said, 'It was very difficult to know the extent of the [McIntyres Hut] fire; because it had broken out and was quite large, it meant that the possible spread for the

following day would be even larger. We were just basically working on a single outbreak' into the pines near the border in the Uriarra pine forest.³²⁰

Messrs Lhuede, Taylor and Gellie created the map and prepared a message form identifying the estimated spread from the McIntyres Hut fire to the Stromlo treatment plant at 6.00 pm on Saturday 18 January and to the Narrabundah Hill pines at 8.00 pm.³²¹ There was no reference to the urban edge because, as Mr Lhuede said, '[it] just wasn't specifically identified reaching the urban edge. We just identified the Narrabundah Hill pines, I suppose, as the last easternmost component of the rural land to be affected'.³²²

Mr Gellie said they used a rate of fire spread of between 3 and 7 kilometres an hour for the eaten-out grasslands and somewhere between 4 and 6 kilometres an hour for the pine forest.³²³ He said the predictions stopped at 8.00 pm because 'Generally speaking, around 20.00 hours ... one tends to get an abatement of fire spread activity ... we felt around 8 o'clock was a reasonable time to assume when field fire crews could start to work on uncontained edges and start to do some containment action'. Mr Gellie said containment action was not going to be possible before 8.00 pm because of the extreme conditions forecast for about midday until 5.00 pm and the expected intensity of the fire. He said their predictions showed that any direct attack on the head fire would be unlikely to succeed and would be unsafe for crews, even in the eaten-out grasslands and paddocks.³²⁴

7.7.13 The evening planning meeting

The evening planning meeting of 17 January started at 6.00, and Mr Graham provided a report on fire operations. He said all crews had left the Bendora fire area at 5.50 pm and crews had been withdrawn from the Stockyard Spur fire at 4.00 pm. He recorded in his statement that the meeting was held 'to discuss the current situation and to determine strategies for the escalating incident'. Monitoring the fires' growth and obtaining situation reports back from the field, altering the strategy of indirect attack to one of property protection, and ways of stopping the fire reaching ACT pine plantations were all discussed. It was agreed that crews would not be placed near the fire front the next day. It was also accepted that crews would not be tasked with fighting the fires in pine plantations.³²⁵

The minutes of the meeting report numerous spot fires from the Bendora and Stockyard Spur fires and one possibly from the McIntyres Hut fire. Under the heading 'Planning' the minutes record a report from Mr McRae:

Rick McRae stated that we need to assess the risks of the new situation, given the weather and the fire behaviour conditions. Rick provided an overview of the unattended fire behaviour for various periods until tomorrow afternoon. There is the potential for fire to reach Uriarra by midday tomorrow, the Cotter Pub and Reserve at 1600, and Mt Stromlo and potentially Narrabundah Hill by 2000 hours ... There is a significant threat to the pine plantation as a result of the McIntyre's Hut fire.

Liaison was to occur with the NSW Rural Fire Service on McIntyres Hut fire situation, strategies to cover spot-overs, growth predictions, and intervention to prevent fire from reaching the pine plantation.

Mr Lucas-Smith confirmed in evidence that Narrabundah Hill lies directly to the west of the suburb of Duffy and agreed that what was outlined at the meeting meant that the risk to the suburban area was significant because there was a clear line of the fire to the suburbs.³²⁶ He said, however, that the spread was predicted on the basis of no intervention, and he went on to say, ‘... We had in our minds the strategy of the extensive clear area or open area of the grasslands to the east of the Murrumbidgee River, which gave us very strong—certainly in my view—control line opportunities to prevent that’.

It was suggested to Mr Lucas-Smith that the situation was serious enough to warrant warning people of the potential danger if things went wrong. He agreed and said there was no plan for potential break-outs from the McIntyres Hut fire but there certainly was for the Bendora fire, and he described the process of telephoning people on rural properties. He added:

The media people were part of our planning meeting; they got the information; they went away and prepared the material ... [but] we didn’t emphasise what people really needed to do in the most direct way that we possibly could. The media continued to concentrate on interviews and obviously, as you hear and see and read transcripts, I obviously wasn’t able to convey the message adequately.³²⁷

After hearing Mr McRae’s report on the fire-spread predictions, Mr Castle agreed that he (Mr Castle) was probably more concerned about the urban areas than he had been up to that point, but he noted that the predictions related to unattended fire spread.³²⁸ He agreed that he was responsible for ensuring that the Emergency Services Bureau’s mission was fulfilled; this included issuing warnings to the public at the first opportunity. He did not, however, recall asking either Mr Lucas-Smith or Mr McRae whether the fire-spread predictions meant the fire was likely to be in the urban area by the following night. The reason he gave was that he held an optimistic view of the ability to suppress the fires, which, he said, had been wishful thinking. He agreed that it would have been more appropriate for emergency services generally to more closely consider the worst-case scenario.³²⁹ Mr Castle said there was no specific discussion at the meeting about warning people in the urban area because the focus was on rural areas.³³⁰

Mr McRae’s view was that the McIntyres Hut fire posed a significant threat to the pine plantations. He was not sure, however, whether the NSW Rural Fire Service could prevent the fire from spotting because he did not know the exact location of the break-outs. When asked about the predicted fire spread and whether that meant potential for impacts on the urban area, he said, ‘It was not my assessment that the fire behaviour we based our forecast on would cause damage at the urban interface on the afternoon or evening of the 18th of January’. His assessment was that if the fire did reach Narrabundah Hill by 8.00 pm the weather would abate with the forecast wind change, which would push the fire in the other direction. He denied the suggestion that this was an optimistic assessment.³³¹ He said the projection produced by the planning team was the ‘worst case’ and it was presented to the incident controller and operations officer ‘as something for them to work to for making sure that operations did the best possible to prevent impact on the urban interface’.³³²

Mr McRae knew that the plan for that night and the following days was for firefighting resources to be deployed on property protection; he did not know of any ESB plan to prevent the predicted run by the McIntyres Hut fire to Narrabundah Hill by 8.00 pm on Saturday 18 January.³³³ His

assessment and calculations were not, however, based on unattended fire, since he expected operations in NSW and the ACT to have some impact on the fire spread.³³⁴ Mr McRae's view appears to have been that if the worst-case scenario eventuated and the fires did reach Narrabundah Hill at 8.00 pm, the expected spotting would have been dealt with by fire crews. As noted, he also expected a wind change at about that time, so spotting would not have been a problem in any event. He did not allow for the possibility of the wind change failing to arrive and the spotting still occurring.³³⁵

Mr Graham did not recall Mr McRae reporting the potential for the McIntyres Hut fire to reach Narrabundah Hill by 8.00 pm, but he did understand that the predictions were based on unattended fire spread. He could not recall what plans were developed that night for arresting the fire spread the following day, but he did recall that it was agreed no crews were to be placed near the fire front the following day. He could not recall what, if any, strategy was devised to stop the fire reaching the pine plantations but agreed that nothing was done on the night of 17 January to prevent that occurring. He still held the view that the fires would possibly have been contained in the grasslands after they left the mountains but could not recall any plans for containing the fire run. Mr Graham said that on the evening of 17 January he did not think there was a significant risk of impact on the urban area, but he did think this on Saturday morning.³³⁶ Later in his evidence, when questioned about this, he agreed that the potential for impact was within his thinking on Friday night.³³⁷ He said he did nothing to alert the community because that was not his focus.

Ms Janelle Wheatley attended the planning meeting. At the time she was employed in the Department of Education, Youth and Family Services, which was responsible for providing recovery services to people affected by an emergency. The Recovery Co-ordinator, Ms Barbara Baikie, had asked Ms Wheatley to attend the meeting. Ms Wheatley arrived early and offered her services to Ms Marika Harvey in the Media Unit. Ms Harvey asked Ms Wheatley to check all media websites for information about the fires around the ACT. Ms Wheatley did not search for NSW fire authorities or NSW media outlets. After she completed her task she handed the information to Ms Harvey and then attended the 6.00 pm planning meeting. At the meeting Ms Wheatley recalled discussion about concern for the Corin rural area, which she referred to as southern Tuggeranong, and the need to inform and alert the people in that area.³³⁸

Ms Harvey also attended the meeting and took some notes of the discussion. She said she recalled only very generally the discussion about the predicted fire spread for the following day but came out of the meeting with a feeling that they needed to warn people living in the rural areas and that this was a top priority, but 'we were also beginning to think about what else we needed to do ... for the public, for the more general Canberra community'.³³⁹ Ms Harvey was asked whether there was any discussion of the need to warn people beyond the rural area—people in the city:

I don't recall any specific discussions, but I also don't recall exactly what the discussions were about warning the rural residences. I just know that we came out of that meeting and started working on that straight away, but I just don't recall the nature of any of the discussions really.³⁴⁰

Ms Harvey said she began to write a strategy for communicating with the broader community but did not complete this because of other work and being overtaken by events.³⁴¹ She said that on Friday evening she had a sense there was a chance the fires would reach the suburbs but that it would be more like the 2001 fires, when no property was destroyed and no lives were lost.³⁴²

7.7.14 Efforts to contact rural lessees

Shortly after the planning meeting ended, Mr David Prince, Ms Harvey and others began trying to contact rural lessees to warn them of the threat posed by the fires. Mr Prince said Mr Keady and Commissioner Bennett directed him to work with Ms Harvey to develop a process for the media, Canberra Connect and the lessees. They met and obtained contact lists of the lessees in the areas under threat.³⁴³ Mr Prince said he contacted Mr Keirin Stiles of Environment ACT, who produced the telephone contact numbers for the rural lessees at about 10.00 pm. The telephone calling began, and Mr Prince thought that, of about 96 lessees on the list, about 47 were contacted. He was not sure if the list included people who lived in the forestry settlements and could not recall any discussion about using means other than the telephone—such as radio or television—to contact people.³⁴⁴

Mr McRae became involved in this activity by providing a catalogue of the locations of rural residences in the ACT, so that a copy could be given to every fire truck to ensure that no one was overlooked. He said, ‘Also, to use the terms I used before, I activated the trigger for direct involvement of the community in those areas. I was working with the media section in trying to identify the best way to identify the subset of that community that needed to be directly involved’.³⁴⁵

Ms Wheatley said that at about 8.00 pm a group that included Mr Prince, Ms Harvey, Sergeant Steve Kirby and Mr Stiles met to discuss ‘and plan for recovery needs in the event of the situation escalating and the requirement for some preparedness for evacuation’.³⁴⁶ She said they had a ‘brainstorming’ exercise to identify resources if evacuation was necessary and communication channels for dissemination of information to the public.³⁴⁷ Her notes refer to the suburb of Dunlop, but she could not recall the context of the notation. Ms Wheatley said that telephoning of the rural lessees was completed about midnight and was focused on those in the southern Tuggeranong area and included Coree, Paddys River, Tennant and Booth but did not include residents of the forestry settlements at Uriarra, Pierces Creek and Stromlo.

7.7.15 A further request for Commonwealth assistance

At 8.30 pm on 17 January Mr Castle signed a further request to the Commonwealth for physical assistance, describing the ‘situation’ in the following terms:

Further to request ACT 0005, numerous spot fires have significantly spread the fires. The predicted unattended rate of spread, with the current extreme fire weather conditions, indicate that the fires will spread into rural residential areas. Current operational focus is on identifying assets under potential threat and determining protection strategies. There is also a concern over significant assets at risks [sic] associated with spot fires from the NSW McIntyre Fire.

There was no elaboration on what was at risk, but there were comments about the problems with communications between the Defence (Navy) air support resources and the ACT Bushfire Service because the radios and frequencies were incompatible.³⁴⁸

7.7.16 A media release at 8.50 pm

The Emergency Services Bureau issued a final media release at 8.50 pm. It was headed ‘ACT bushfire status’ and under the subheading ‘Fire status’ there followed five dot points:

- The adverse weather conditions experienced in the ACT today have caused a number of spot fires across containment lines, which have not been contained.
- The current threat to property in Tidbinbilla is serious, with ACT Fire Brigade, ACT Bushfire Service, and NSW Rural Fire Service crews deployed to the area to assist with property protection.
- West to north westerly winds are expected to ease overnight, but with stronger north westerly winds expected from mid-morning tomorrow. This will result in significant smoke over the urban area.
- The ACT will be coordinating with NSW to manage a spot fire from the McIntyres Hut fire, close to the ACT border. Ground crews and aerial operations continue to monitor all spot fires.
- The bushfire logistical support staging areas are being relocated tonight from Bulls Head and Orroral Valley, to the North Curtin district playing fields, resulting in these fields being closed to the public. For details on sporting event relocation, please phone the Sports Ground Ranger on 0418-652-567.

The following page of the release provided information on road and park closures, contact details for Canberra Connect, and media contact details for the McIntyres Hut fire and the Mount Morgan fire, which was also burning in NSW, close to the ACT border. At the bottom of the page there was also a notice referring to an ESB media conference at noon on Saturday 18 January 2003.³⁴⁹

The media release provided no information about predicted fire spread the following day; nor did it provide any warnings to rural or urban residents. Mr Lucas-Smith agreed the release did not include warnings and said it was ‘more or less a status report’.³⁵⁰ Mr Castle thought he may have assisted in the preparation of the release and agreed that there was no mention in it of a threat to the urban area. He then added:

But could I say that I recall that one of the primary reasons for putting this out was the identification that the North Curtin district playing fields would be closed because we intended to relocate, and a degree of time was involved in organising that through Urban Services.

Mr Castle could think of no reason why the release should not have contained information about the recognised potential threat to the suburbs—except to say that the Emergency Services Bureau was preoccupied with the rural areas.³⁵¹ But the release contains no warning to rural residents either.

Mr McRae was not involved in preparation of the media release, although he said he ‘would have anticipated what we said in the planning meetings would be reflected in that material’.³⁵² Ms Harvey could not recall being involved in preparing the release but said she might have been. When asked if she could think of any reason why the opportunity was not taken on Friday night to start alerting the community, she said she could not answer that question.³⁵³

Ms Lowe remembered drafting the statement with Mr Castle, who told her it had to look different from the other media releases and say something different. She thought this might have been because the fire had spotted and had not been contained. She did not recall any discussion with Mr Castle about a potential impact on the urban area.

7.7.17 Other developments during the evening

At some stage during the evening of 17 January Mr Prince had a discussion with Mr Gellie, who gave him a map showing where the McIntyres Hut fire would burn. As a result of this, Mr Prince said he knew on Friday that there was potential for the fire to reach the urban area.³⁵⁴ He recalled discussing this with Mr Bennett, who did not recall being shown a map but did recall the discussion of predicted fire spread at the planning meeting that evening.³⁵⁵

Mr David Dutton, Operations Manager for the ACT Ambulance Service, returned to the Emergency Services Bureau at Curtin at 9.00 pm to gain a better understanding of the situation and the potential risks that might confront ambulance staff. He spoke with Mr Graham about the fire and movement of resources and gained the impression from what he was told that ‘the situation had moved from serious to very serious [because] the fire was spreading and there was a change in the nature of operations that were being undertaken’.³⁵⁶ Mr Dutton prepared and distributed to staff of the ACT Ambulance Service a memorandum updating the position and informing staff that the situation was serious because the fires had grown and were moving towards the Canberra suburbs.³⁵⁷

Another fact worthy of note is that—apart from the presence of Mr Robert Gore and two ComCen (communications centre) operators—the ESB headquarters were unattended during the night of 17 January. Mr Gore had been a volunteer with the ACT State Emergency Services since 1986, had joined the Jerrabomberra Volunteer Brigade in 1994, and by January 2003 had been captain of that brigade for three years. He went to ESB headquarters at about 4.00 pm on 17 January to help out, and at 10.00 pm Mr Graham asked if he would stay overnight to look after operations. Mr Gore said no planning officer and no incident management or service management staff were at headquarters overnight. He had Mr Graham’s contact details and did call him once, but he did not have contact details for Mr Lucas-Smith, Mr McRae or anyone else in the event that he needed to speak to them. Mr Graham arrived back at headquarters at about 6.30 am on Saturday 18 January and Mr Gore handed over to him.³⁵⁸

7.8 Overall conclusions

Counsel assisting submitted that, after Messrs Lhuede, Taylor and Gellie had calculated the fire spread and made their predictions, there was no question that there was a high risk that suburban Canberra would be affected by the fires.³⁵⁹ They further submitted that, apart from a belated effort to warn some rural lessees, there were no discussions about warning, and no action was taken to warn, people in the urban area and that that failure was ‘an omission on the part of the ESB and its senior personnel that directly contributed to the extent of the property damage and injury caused by the fires the following day’.³⁶⁰

Counsel assisting also submitted, in short, that Mr McRae failed to discharge his responsibilities by refusing to admit the possibility that the fires would reach the rural–urban interface during the afternoon or evening of 18 January because he refused to admit to a worst-case scenario.³⁶¹

To the contrary, counsel representing Mr McRae submitted that no action or inaction by Mr McRae caused any of the deaths or the destruction of or damage to property.³⁶² They also submitted that the giving of warnings was not one of Mr McRae’s duties—despite the fact that he had management responsibility for media staff. In their submission, Mr McRae’s responsibility was to predict fire behaviour, and he did this with assistance from several professionals from outside the Emergency Services Bureau and passed that information on to others to use as they saw fit.

Counsel for Mr Lucas-Smith and Mr Castle submitted that there is no evidence the 6.00 pm planning meeting was told the fire would reach the suburbs. The predictions, they said, were based on ‘unattended spread’ and were expressed as ‘worst case’. They submitted it was always envisaged that the fires would be attended by NSW resources, that the fires exceeded everyone’s expectations, and that there was a realistic expectation that the fires could be managed once they came out of the mountains and into the eaten-out grasslands.³⁶³

Counsel for the ACT submitted it was unfair of counsel assisting to single out Mr McRae for criticism: there were many people at the planning meeting, the fire-spread predictions were the subject of debate, and none of those present apparently expressed concern about the need to warn the residents of the suburbs on the edge of Canberra. They submitted:

The failure to appreciate the possible outcomes is explained by the fact that subsequent events were wholly outside the contemplation of experienced firefighters and ESB officials. The Territory agrees that, with hindsight, it would have been prudent to inform residents on the urban edge about the risk identified during the evening planning meeting. However, it did not happen because no one expected the residents to be affected. This should be contrasted with the rural lessees, where a potential for them to be affected was recognised and consequent steps to warn them were taken.³⁶⁴

The crux of the submissions by counsel representing the interested persons is that—the rural lessees aside—warnings were not given because it was still not definite as at the late in the evening of 17 January that the fires would reach the suburbs the following afternoon or evening. Further, had it been recognised that there was a reasonable prospect of that happening, action in the grasslands by firefighters, or weather or some other force, would successfully intervene to prevent it from happening. Finally, the argument appears to be that, if all the foregoing failed,

that would be because no one could have anticipated, or did anticipate, the type of fire that came out of the mountains, its speed, its ferocity, its intensity, or its unusual characteristics.

These submissions must be examined in the light of the evidence of, first, what was known to the senior personnel of the Emergency Services Bureau by the end of the evening of Friday 17 January and, second, what these ESB personnel did with the information they possessed.

What did they know? They knew the following:

- All the fires had breached their containment lines and were making runs.
- All the fires were spotting, and spotting could occur over distances greater than 10 kilometres.
- The McIntyres Hut fire was about 2 kilometres from ACT pine plantations, which represented a significant threat.
- The fire situation, generally, was unravelling.
- The weather forecasts were for dire conditions—unlike what many had ever seen—and the weather showed no signs of easing.
- Fire crews had been withdrawn from the Bendora and Stockyard Spur fires because of increasingly dangerous fire behaviour and safety risks to crews.
- It had been decided not to place crews near the fire front the following day, Saturday, and not to task crews with fighting fire in the pine plantations.
- Concern was held, and had been expressed to the NSW Rural Fire Service, about the use of aerial incendiary devices.
- Predictions of the spread of unattended fire placed fire at Uriarra by midday on Saturday, the Cotter Pub and Reserve at 4.00 pm, and Mt Stromlo and Narrabundah Hill—near Duffy—by 8.00 pm.
- Concern had been expressed for the Corin rural community and other rural lessees.
- Direct attack on ACT fires was to stop, but there were no plans for preventing them from reaching the urban edge—other than to say that the situation was then the responsibility of the ACT Fire Brigade.

What did they do or not do?

- The predictions of fire spread calculated by Messrs Lhuede, Taylor and Gellie were largely ignored, despite the fact that there is no evidence those predictions were doubted, disputed or believed to be wrong.
- At the evening planning meeting there was no discussion of warning the urban community.
- No warnings were issued to residents of Canberra.

- ESB staff and others started to warn rural lessees at about 10.00 pm. A contact list was not available until that time, and then there was uncertainty about its accuracy.
- Telephone contact was made with only about 50 per cent of the rural lessees.
- Residents of the forestry settlements were not contacted.
- A media release was issued at 8.50 pm. It contained no warnings to urban or rural residents and provided no relevant information to residents of Canberra other than to tell them that the North Curtin district playing fields would be closed to the public and, yet again, that there would be smoke over the urban area.
- Apart from one volunteer officer (who, despite his best endeavours, had no opportunity to plan for the following day) and two radio operators, ESB headquarters were unattended overnight.

Senior ESB personnel provided varying reasons for warnings not being issued:

- Despite recognising that the risk of the fires reaching the urban area was significant, Mr Lucas-Smith said he thought they could be stopped, or would stop, in the eaten-out grasslands. It is difficult to understand why he was confident of this: the Emergency Services Bureau had no plan and no strategy for dealing with the McIntyres Hut fire if it broke its containment lines.
- Mr Castle said he was more concerned than before about the rural areas after hearing the fire-spread predictions but was optimistic about the ability to suppress the fires, although he said that, in hindsight, this was wishful thinking.
- It would appear that Mr McRae recognised the serious risk to the pine plantations, was unsure if the NSW Rural Fire Service could prevent spotting, but did not believe there was a risk to urban areas the following evening because, even if the fire reached Narrabundah Hill by 8.00 pm, it would be stopped or diverted by a change in the weather.
- Mr Graham believed the fires would be controlled in the eaten-out grasslands, despite the fact that he was not aware of any plans or strategies for dealing with the fires there the following day, but it was not in his focus to alert the community.

Mr Castle acknowledged that responsibility to warn rested with him and that it was not the role of an emergency services organisation to take an optimistic outlook. Nevertheless, this appears to be what happened. The worst-case scenario presented at the planning meeting was ignored in favour of an unrealistic, optimistic expectation. Given what was known to senior ESB personnel by the evening of 17 January, there was little, if any, reason for optimism. Mr Nicholson said in his evidence that, if an opinion had been formed within the Emergency Services Bureau that the McIntyres Hut fire was likely to burn to Narrabundah Hill by 8.00 pm the following evening, the bureau was obliged to disseminate that information to the public.³⁶⁵ This was not done.

Despite submissions to the contrary by some counsel, the fact that Messrs Lhuede, Taylor and Gellie did not predict fire spreading beyond Narrabundah Hill cannot be sensibly interpreted as a

prediction that the fires would simply stop and not proceed across the road to the houses of Duffy. Messrs Lhuede, Taylor and Gellie did not have to say this: it can safely be assumed that everyone at the meeting knew what they meant. This is why no questions were asked. Similarly, it is not correct to say that, because the NSW Rural Fire Service had firefighting resources devoted to the McIntyres Hut fire, the service had a plan or strategy that was known to the ACT authorities and approved by them. The Emergency Services Bureau had no plan or strategy, and none of the senior personnel provided evidence that they were aware of what, if anything, the Rural Fire Service was planning to do in the event that the fire broke out of its containment lines—apart from following it across the border. There was no plan in the Emergency Services Bureau to prevent the fire from entering the pine plantations, no plan to fight it in the plantations (understandably, because of the risks to safety) and no plan to deal with the fire after it reached the grasslands, except to rely on ACT Fire Brigade personnel.

Counsel's submission that many people were at the planning meeting and no one expressed concern about warning urban residents is not an answer to the question why those people—who were the professionals charged with the responsibility to warn residents—failed. The senior personnel of the Emergency Services Bureau were the people who had the accumulated knowledge of the situation with the fires since their ignition on 8 January, and they were in the best position to appreciate the ever-growing risk the fires posed.

The criticism of Mr McRae by counsel assisting is warranted. Mr McRae was the person responsible for providing the information predicting fire behaviour. The fact that he enlisted the help of professionals is commendable, but then he did not accept the information provided because, it would appear, it did not accord with his own views. He had made many and early dire predictions of what the fire season would hold, and still he failed to heed his own predictions. He was telling those at the planning meetings that Monday 20 January was a likely day for a fire impact, yet as at Friday night he still had not activated his 'trigger', as he described it, to cause warnings to be issued. He said this was because he had not identified the appropriate subset of the community and did not want to alert the entire community. He never reached the position of activating his final trigger because events overtook him. His activation of the trigger to warn the rural lessees came very late in the day—late at night, to be precise—and this, too, was very late in view of the information he had before the evening of 17 January. Mr McRae's philosophy in relation to warnings appeared to be that it is better to wait and tell no one about a threat that could have serious consequences for life and property than to tell some, or even all, the people and be wrong.

This is not acceptable for a person in an emergency management position, charged with responsibility for recognising and acting to alert people to dangerous situations. By the evening of 17 January—if not well before—Mr McRae should have activated his trigger. The subset of the population had been identified, as had the serious potential risk; even the timing had been predicted. The Media Unit was located in Mr McRae's section. He agreed that the people in that unit, and others, were waiting for him to tell them that it was time. He should have taken a far more proactive approach, in keeping with his responsibilities, rather than presuming but not checking or monitoring and not knowing whether the messages he thought he was providing were being understood and acted on.

I have concluded from the evidence before me that:

- By the evening of 17 January 2003 the senior personnel of the Emergency Services Bureau—Messrs Castle, Lucas-Smith, McRae and Graham—were in possession of information confirming what they already believed; namely, the fires posed a serious risk to the edge of Canberra, and the impact was likely to occur within the following 24 hours.
- The same senior personnel of the Emergency Services Bureau did not consider it necessary to issue warnings to those people in the urban area who were in the direct path of the fires and, consequently, no warnings were issued.
- The decision to warn the rural lessees was made too late, and crucial time was lost because the Emergency Services Bureau was not suitably prepared in that it did not have contact information for the lessees.
- On 17 January 2003 no contact was made with and no warnings were given to the people living in the forestry settlements of Stromlo, Uriarra and Pierces Creek.
- The media update issued at 8.50 pm on 17 January 2003 was inadequate and misleading and did not reflect the situation that pertained and was known to senior personnel at the Emergency Services Bureau at that time.
- By the evening of 17 January 2003 the Emergency Services Bureau had no plans and no strategies for dealing with the fires the following day, when it had been predicted the fires would enter the ACT pine plantations and advance towards the urban edge (other than to leave it to the Fire Brigade personnel).
- Despite the recognised risk to the Canberra community, apart from one volunteer and two radio operators, there were no senior personnel at ESB headquarters overnight on 17 January 2003 and as a result no planning was done.
- Mr McRae failed to heed the evidence presented to him about the predicted fire spread and so did not activate his so-called trigger to cause warnings to be issued to the residents of Canberra.

7.9 Events on 18 January

7.9.1 Mr Lucas-Smith's prediction in the early morning

At about 6.30 am on Saturday 18 January 2003 Mr Lucas-Smith received information that the McIntyres Hut fire had crossed the border into the ACT and was in the Uriarra pine plantation. It was from that time, he said, he thought it inevitable that the fire would burn into Canberra's suburbs. He was asked, 'Did you reach a state of mind yourself at some time before 2.00 pm on 18 January where you knew in your heart of hearts that whatever was done could not prevent the fire from burning into Canberra?' He replied, 'Certainly. Yes ... Once the fires had crossed—the McIntyre's fires had crossed the border into New South Wales [sic] on the morning of the 18th ... I thought it was inevitable. However, the Bendora fire burning into rural ACT was significantly well before then'.³⁶⁶

At that time Mr Lucas-Smith had not formed a view about when the fires would reach the suburbs or the extent of the fires' likely impact on the suburbs. He said the only information he had about that was the predictions presented to the planning meeting the previous evening.³⁶⁷ He also said he needed to make a choice about how to use his resources because he was 'caught between a rock and a hard place'. Should he pull the firefighting resources out of the south, where they were engaged in rural property protection, and send them to the north, where more properties were then under threat? He chose to leave the resources where they were. He said he was concerned about the McIntyres Hut fire impinging on the urban area from the north and the Bendora fire from the south. He said he needed to establish a unified arrangement with what he called the NSW resources associated with the McIntyres Hut fire and following the front of that fire, but he did not have a clear picture of those resources.³⁶⁸

7.9.2 Mr Castle's media interviews

Shortly after 6.00 am on Saturday 18 January ABC journalist Ms Natalie Larkins interviewed Mr Castle. She telephoned him at his home, seeking an update on the fires' progress overnight and any damage to rural properties. In her statement, Ms Larkins said she had not been overly concerned about the urban area because she had been monitoring news stories and interviews throughout Friday and had the impression the authorities were saying the fires were a long way from Canberra, moving slowly, and unlikely to affect the city.³⁶⁹

Ms Larkins said that during the interview Mr Castle told her the Bendora and Stockyard Spur fires had broken their containment lines overnight and crews were battling spot fires from the McIntyres Hut fire. He said some buildings had been damaged at the Corin Dam tourist facility and Tidbinbilla residents had been placed on alert but not evacuated; he also talked about road closures and the weather conditions. Ms Larkins said they spoke about the possibility of the fires entering the Uriarra pine forest and, when discussing the McIntyres Hut fire, Mr Castle said the Emergency Services Bureau would focus on that fire only when it came into the ACT. She asked Mr Castle if it was likely that fire would enter Canberra, and he replied that he 'appreciated community concerns, but gave no indication that there was any risk to Canberra'.³⁷⁰

Ms Larkins made notes of the conversation and is confident about her recollection of what was said. In contrast, Mr Castle recalled very little of the discussion but said that at that time his state of mind would have been that there was still no immediate threat to Canberra and he could have said something like that to Ms Larkins.³⁷¹ At 7.05 am the newsreader on ABC Radio 666 reported on the fire situation and quoted Ms Larkins reporting the information she had obtained from Mr Castle.³⁷²

At Ms Larkins' suggestion, Mr Castle gave an interview on ABC Radio 666 at 7.30 am. During the interview, which went to air live, Mr Castle responded to various questions and said, among other things, the following:

- All the fires had spotted quite some distance overnight.
- Fire had reached the Corin Dam Road and damaged some outbuildings.

- There had been substantial spotting the other side of Paddys River Road, but this was now controlled.
- More property damage was not expected that day but that did depend on how people in the rural areas had prepared around their property.
- Of greatest concern was the Paddys River Road area.
- The decision to evacuate is up to the people in the rural areas because properties have the best chance of avoiding damage if people are prepared and stay to combat ember attacks.
- The main strategy for the day would be property protection, and people were advised to stay east of the Murrumbidgee River and out of rural areas and not to go to places around the Cotter, Kambah Pool or Tidbinbilla Nature Reserve.
- Fires had not yet reached the Uriarra pine forest but were expected to do so as a result of spot fires and the strength of the winds.
- Firefighters would not be sent into the plantations in the event that the fires entered those areas.

Mr Castle's final statement was 'I would warn people that the exact locations of the fires are particularly difficult to assess, and therefore my advice is for people to stay east of the Murrumbidgee River and stay out of the treed areas'.³⁷³

Mr Castle agreed that he did not mention the Uriarra forestry settlement as an area of concern given that he said it was likely the fires would enter the pine forest. Nor did he mention the Stromlo pine forest or the observatory; he said this was because he hoped for success in controlling the fires in the grasslands.³⁷⁴

7.9.3 The evacuation planning meeting

At 8.00 am a meeting was held at ESB headquarters; it was attended by various people, among them Mr Prince, Mr McRae, Sergeant Kirby, Mr Tonkin, Ms Bitmead, Ms Baikie, Ms Wheatley, Ms Harvey and possibly Mr Keady.³⁷⁵ Ms Harvey prepared an agenda headed 'January 2003 bushfires. Meeting on preparedness for evacuation 8.00 AM Saturday 19 [sic] January 2003'. The agenda listed items such as 'Evacuations—how they are run and what is already on stand-by', 'Public Information Strategy—key items—alerting the community to heightened risk—alerting the community to immediate evacuation' and 'Communication mechanisms—doorknock/telephone, media, call centre, internet'.³⁷⁶

The purpose of the meeting, according to Mr Prince, was to prepare Canberra Connect for responding to calls from the public. Ms Harvey, who with Mr Prince had organised the meeting, said the focus was on public communication, evacuation and community warnings.³⁷⁷ Mr Prince said he spoke about where the fires might hit the urban–rural interface and used the map he had obtained from Mr Gellie the evening before. He said Mr McRae spoke about the fire weather and the erratic nature of the fire and reiterated the information from the previous evening.

Ms Wheatley had a clear recollection of the presentation by Mr Prince and Mr McRae. She said those present were told the major concern was the McIntyres Hut fire and its potential to push into the forests. She also said they were told the major concern was Stromlo forest, Woden, Weston, Duffy, Holder, Dunlop, Holt, Higgins and Macgregor, but there was confidence about attacking the fire in the grasslands. Ms Wheatley took notes: 'McIntyres major concern, push through forests Stromlo concern—Woden/Weston, Duffy, Holder: Dunlop/Holt/Higgins, McGregor'.³⁷⁸

Notes taken by Ms Harvey include reference to 'Duffy, Rivett, Holder and don't go west of Murrumbidgee', but in evidence she said she could not recall how or why she made those notes.³⁷⁹

Ms Wheatley said there was no mention of the timing of the risk to the areas identified, and the only discussion about warnings was that the Canberra Connect website was set up to provide information. Mr Tonkin said one purpose of the meeting was to keep information flowing, and Ms Harvey raised her concerns about obtaining up-to-date information and disseminating it to the media and to the Canberra Connect website.³⁸⁰ Mr McRae said that before the 9.30 am planning meeting he 'informed the media unit that there was presently no immediate risk to assets or personnel east of the Murrumbidgee River, but that as the day progressed this might change, and they should be prepared for that eventuality'.³⁸¹ He explained how he identified areas that were under threat, leading to the issuing of warnings:

The way I viewed that task was as follows. The operational arrangements put in place that morning were that we divided the rural areas west of the city into a number of sectors, with a number of those having existing issues which were taking up the time of the fire crews in protecting dwellings and structures in those rural areas. We expected later in the day that other sectors which weren't initially resourced would need to be resourced as crews tried to keep ahead of the fire. Now, had some of those sectors been resourced, then that would have been a trigger to start saying 'OK, with the fire being suppressed in those sectors, what's down wind of those? Which part of the urban community do we need to engage.

Mr McRae said that if he received information that the fires were not being held in a particular area he would conduct an assessment to see what was next downwind and issue a warning at that point.³⁸²

When asked what would be wrong with informing the public on Saturday morning that there was a general threat to the western edge of Canberra, Mr McRae replied that he believed the information had gone out, even though he accepted that he had not seen any such information. It was his understanding that, once he provided information, the Media Unit began to prepare some kind of release warning the urban community. Mr McRae said it was not his job to draft and formulate that message.³⁸³ His reference to 'no immediate risk' was to there being no fire activity that could make an immediate run, but this was subject to change within a couple of hours because of the dynamic situation.

7.9.4 The morning planning meeting

The morning planning meeting of 18 January started at 9.30 with Mr Lucas-Smith saying they needed to take stock of the situation. Mr Graham reported on fire operations and said the focus for the day was to be the Tidbinbilla Valley and the Uriarra area and to allocate resources to concentrate on property protection. Mr Bartlett reported that he had just completed an hour of aerial reconnaissance and that the McIntyres Hut fire was spreading east and had entered the pine plantation, the Bendora fire had spread into the Tidbinbilla Valley and the pines, and the Stockyard Spur fire had a long tongue extending to Naas and Tharwa.³⁸⁴

Mr Davis from the Bureau of Meteorology provided a briefing on the weather forecast for the day: a temperature of 40 degrees; wind speeds in the afternoon of 35–40 kilometres an hour, gusting to 55–60 kilometres on the ridges; an upper fire ground temperature of 31 degrees; and a dew point of 3 degrees. Mr Davis said in evidence, ‘There was considerable discussion about the impact of the fires on western Canberra as a possibility during the day ... [and] they were looking at it for later in the afternoon’.³⁸⁵

Under the heading ‘Planning considerations’ in the minutes of the meeting there was reference to significant potential for long-distance spotting and potential for parts of fires to become head fires. The following were noted as current areas of concern:

- a potential run from McIntyre’s fire impacting on Weston Creek to Greenway and potentially west and south Belconnen resulting from a more westerly wind;
- a potential run from Tidbinbilla impacting on the Bullen Range and southern parts of Tuggeranong;
- a potential threat from the Stockyard fire to the west of the Murrumbidgee River to Williamsdale.

Ensure there is an active link between operations and planning.

There followed a reference to Ms Baikie outlining the community recovery strategy, which identified three evacuation centres, the involvement of Lifeline and the Red Cross, and an evacuation team located at the Winchester Police Centre in Belconnen. Sergeant Byrnes was noted as reporting that the Police Operations Centre was operational, and there was a notation that ‘Communication and information plan between POC, ESB and NSW is considered critical’.

The last item in the minutes was headed ‘Media’. It noted that Mr Castle was to determine regular radio interview times, that a press conference would be held at noon, and that a community advice and information strategy was being developed; this strategy would outline processes for quick information sharing, with the focus being Canberra Connect and local radio.

Two sets of handwritten notes taken at the meeting record the predictions of fire spread to Uriarra at noon, to the Cotter at 3.00 pm, and to the western side of Mt Stromlo at 6.00 pm.³⁸⁶ The notes made by Ms Ferry used the phrase ‘high levels of exposure’, and she was confident that was in fact said, even though it was not recorded in the minutes.³⁸⁷

After his reconnaissance flight, Mr Bartlett said he had little doubt that the potential for the northern and central fires to reach the suburbs was great, and he said so at the planning meeting:

I indicated that the McIntyre's fire could make a run to the urban interface from Weston Creek to Greenway and possibly even affect west and south Belconnen if the wind was more westerly than forecast. I also indicated that the fire in the Tidbinbilla Valley could impact on the Bullen Range and then the southern Tuggeranong suburbs. I then expressed a view that the southernmost fire could cross the Murrumbidgee River, impact on Williamsdale and continue into the NSW rural areas around Burra. I do not recall any discussion about communicating the situation to the Canberra community, but I do know that a senior officer from the Police was present in the briefing as was the ESB media liaison officer. I am unaware of any discussions that might have taken place about communications messages following the Planning Meeting. The Planning Officer reminded everyone of the potential for long distance spotting and the need to ensure firefighters observed the Watchouts. It was also made clear that information flow on fire development would be critical. The situation officer (Hilton Taylor) indicated that the McIntyre's Fire could reach the top of Mt Stromlo by 1700 depending on the time it broke out of containment lines ... I mentioned my concern about the traffic on the Uriarra Road and the need to consider closing it to the public.³⁸⁸

Mr Bartlett said no one at the planning meeting disagreed with the views he expressed.³⁸⁹ He recalled that Mr Lucas-Smith asked what suburbs might come under threat during the day, and that is when Mr Bartlett gave his views about where he believed the fires would run; this is recorded in the minutes and notes. Mr Bartlett said he did not make the detailed predictions about the times of the impacts but recalls those being raised.³⁹⁰

Mr Lucas-Smith acknowledged in his statement that the possibility of the fires reaching Canberra suburbs was discussed at the planning meeting, together with the fire-spread predictions, which were regarded as a worst-case scenario.

Mr Castle recalled a reference to the fires being active in the forests but also Mr McRae saying there was an ability to extinguish the fires in the grasslands, despite there being no reference to any strategy apart from property protection. Mr Castle was concerned about the high level of exposure from the McIntyres Hut fire but had no plan to provide information to the media and the public before the noon press conference. Asked why he waited when he had information about the threat, the high level of exposure and the potential areas, he replied that all he could have given was a general warning without precise details.³⁹¹

Mr McRae said he stressed to those at the meeting the serious weather conditions that were forecast but that this was apparent to all concerned. He said that at 9.30 am he recognised the potential for the McIntyres Hut fire to run and affect from Weston Creek to Greenway, as well as west and south Belconnen if the predicted westerly wind eventuated. He said this information was necessary for the Fire Brigade and the Ambulance Service, and it was a goal of the planning meeting to allow those organisations to effectively coordinate their operations with those of the Bushfire Service:

They needed to know which parts of the urban interface they should be putting their resources into to carry out their legislative obligations. I wasn't going to tell them, 'No, there's no need to do anything'. So, for them to know where to go, they had to go from

Weston Creek down to Greenway, which if you look at the map on the stand is where the prediction is pointing at.³⁹²

Mr McRae said the Fire Brigade should have been preparing for an immediate fire impact and be deploying units accordingly because the planning meeting was saying, ‘This is where you should go and this is where you should go now’. He tried to explain, however, that this was not his thinking and that it did exaggerate the position of the projections because he ‘would still stick with the notion of a forecast that puts the fire on Narrabundah Hill at—I believe it was 2000 hours I said’.³⁹³ Asked why, if he thought it important for the Fire Brigade and Ambulance Service to be warned and ready for impact on the urban area some time on Saturday, it was not also appropriate to warn residents of those areas of the potential for impact, he said:

My assessment on the balance was that that wasn’t needed yet. As I say, I was viewing it on a risk assessment which permits a range of different risk treatments. In my view, the risk here was that the most prudent risk treatment would be to have resources available from within the urban interface to immediately tackle the spot fires to prevent them becoming a problem. But with that in place, my view was that suitably addressed the immediate risk and that the next steps to be taken weren’t required yet ... Having fire brigade crews, if not ambulance crews, deployed appropriately on the basis of what were the areas of concern would be sufficient to manage the then identified risk.

He added that if the risk had escalated he would have re-assessed the situation to determine if more ‘triggers’ needed to be activated for actions to be taken, which would involve the community.³⁹⁴ He accepted that he did not activate this trigger and did not inform the Media Unit that it was time to do so, and, as it turned out, events escalated so rapidly that the process that had recently been introduced was overrun. Nevertheless, Mr McRae also said his expectation was ‘the need to activate the trigger to fully engage parts of the urban community ... would not occur on Saturday’. Mr McRae did not recognise the need to scale-up warnings to the community until about 3.00 pm, as the fires were about to engulf Duffy.³⁹⁵

Mr Graham said all the agencies who attended the planning meeting that morning were told of the potential for the fires to reach urban areas. He recalled discussion of Weston Creek and other areas as being likely targets and said that, while he thought the impact was probable, he still held out hope that once the fires left the mountains and forests they would be contained. He did, however, admit that his hope diminished as the day progressed.³⁹⁶

Ms Harvey made many notes during the meeting and was questioned at length about the discussions those notes related to. Generally, however, her recollection was very poor, and she eventually said she could not recall anything whatsoever of the meeting.³⁹⁷ Ms Harvey was then asked questions about whose responsibility it was to ensure that information about an identified threat was conveyed to those who would be affected. She said she imagined it would be Mr Castle and Mr Lucas-Smith. She said it was not her responsibility because she was simply coordinating information as she was asked to do and passing on to the media statements that had been cleared by Mr Lucas-Smith and Mr Castle. She also said, ‘At the 8 am meeting we then had another, sort of, I guess, level of direction coming from the people who were at the meeting: the head of the Public Service, Robert Tonkin, and Lucy Bitmead were guiding us as to what we were to do’.³⁹⁸

Ms Harvey added that she did not have much to do with Mr McRae in terms of being given any directions and that she reported to Mr Castle and Mr Lucas-Smith, not Mr McRae—despite the fact that Mr McRae was responsible for the Media Unit.³⁹⁹

7.9.5 Revised fire-spread predictions

After the planning meeting Mr Hilton Taylor, an ACT Forests Manager with scientific qualifications, completed a message form that contained a revised prediction about the spread of the McIntyres Hut fire. It was noted that the fire had the potential to affect the rural lessees and the rural–urban interface from Hawker to Weston Creek from around 3.00 pm that afternoon. Mr Taylor could not locate Mr McRae, so he handed the completed message form to Mr Graham⁴⁰⁰, who admitted signing an acknowledgment that he had received it but was unable to explain why he could not recall seeing it. It would appear that Mr McRae did not see the message from Mr Taylor and was not aware of how Mr Taylor had reached his predictions. But this did not stop Mr McRae from saying he did not agree with the revised prediction of the time of impact or the nomination of Hawker as being under threat on that day. Despite the fact that Mr Taylor’s prediction was accurate about the time of impact, Mr McRae still disputed it because it was not based on the particular specifications he required from the Planning Section.⁴⁰¹

7.9.6 Activation of the Police Operations Centre

After attending the ESB evacuation planning meeting at 8.00 am, Sergeant Kirby telephoned Commander Newton, told her of the deteriorating conditions and recommended activation of the Police Operations Centre at the Winchester Centre in Belconnen. This was authorised. Sergeant Kirby informed Mr Keady and Mr Tonkin of this and of arrangements to appoint liaison officers. He left the Emergency Services Bureau for the Police Operations Centre and met with Superintendent Lines and Commander Newton at 10.00 am. He began preparing contingency plans for evacuating Duffy. Warning the residents was not discussed because Sergeant Kirby said he expected that, because of the nature of the discussion at the evacuation planning meeting, the Emergency Services Bureau would have already begun doing that.

7.9.7 Mr Prince’s briefing of the Australian Federal Police

Sergeant Kirby asked Mr Prince to attend the Police Operations Centre to brief the Australian Federal Police. Before he left Curtin, Mr Prince spoke with Mr McRae, who told him he was concerned that the fire would not ‘recognise’ the rural–urban interface. Mr McRae told him the reason for this was the wind speed and direction, the drought factor, the intensity of the fire, and the drought-affected forests. Mr Prince said he understood Mr McRae to mean the fire would go beyond the rural–urban interface and into the suburb of Duffy.⁴⁰² Mr McRae recalled having a conversation with Mr Prince in the terms related by Mr Prince.⁴⁰³

Mr Prince arrived at the Winchester Centre at about 11.30 am. He spoke to about 10 police and civilians and gave them an overview of the fires and the predicted travel as he knew it to be. He told the group the fire was expected to reach Duffy at 6.00 pm and that, once the fire reached

Stromlo forest, it would take about five to 10 minutes to reach the top of Mt Stromlo and be at Eucumbene Drive in Duffy about 30 minutes to an hour later. Mr Prince continued:

... Superintendent Lines asked me what the firefighters and residents could expect when the fire arrived. I answered that the height of the flame would be double the height of the material that was burning. Because 30 foot pine trees were in that area, then 60 foot flames could be expected. Chris Lines then asked me if the residents of Duffy should be evacuated. I recall that I told the meeting the normal response to fire, if residents are prepared, is to stay with their houses and fight the fire. I then told the group that in this case the residents were not all prepared and that evacuation should be considered.⁴⁰⁴

Mr Prince said Mr Gellie had told him the night before of the prediction of the fire reaching Duffy at 6.00 pm and shown it to him on the map he had been given. Mr McRae was asked about this prediction and said he did not agree with it because he did not know what model Mr Gellie used in his forecast. He said:

It's a technical aspect of modelling. You can disagree with models in different ways. From the point of view of the planning officer, I had clearly taken the stance there would be an agreed position on how the fires would evolve. That would be the basis for planning for operations and for liaising with other agencies, in fact as was going on here, and that stance was being, in a sense, short circuited.⁴⁰⁵

Commander Newton recalls Mr Prince telling the group the fires would cause serious risk to Duffy area residents and their homes, endangering lives and destroying property. He spoke of the effects of the radiant heat that would precede the fire by about 500 metres and said this heat would affect the homes immediately adjacent to the pine plantation. There was discussion about evacuation—particularly of people who were not prepared and could not defend their homes. Commander Newton said that after this briefing by Mr Prince she made the decision, which he supported, to develop evacuation contingency plans for the Duffy area.⁴⁰⁶

Commander Newton said the briefing by Mr Prince—together with her unsuccessful attempts to speak with Mr Castle and others at the Emergency Services Bureau—raised her concerns about what the day ahead held. She formed the view that the level of threat and possible level of impact would potentially be such that the emergency powers of the Territory Controller needed to be invoked.

At about midday Commander Newton tried to contact Sergeant Byrnes, the liaison officer at the Emergency Services Bureau. She explained in her evidence that the police had an independent capability to advise the community of risk, but the processes necessitated liaison with the ESB media officers to ensure that messages to the community were consistent; this was particularly important when the police did not have full information about the movement of the fires. She went on to say that the police would have assisted in preparing for and dealing with the fires in the community had they received information from the Emergency Services Bureau.⁴⁰⁷

7.9.8 Contact with residents of the forestry settlements

Ms Wheatley said that at about 10.50 am on Saturday 18 January Mr Prince advised her to start making telephone contact with residents of the Pierces Creek and Uriarra forestry settlements. She obtained from ACT Housing a list of the residents of those areas and the Stromlo settlement and faxed the information to the Police Operations Centre, which was staffed by various people, including people from Lifeline and the recovery team from the previous night. At 4.10 pm a copy of that list was faxed back to Ms Wheatley, along with advice that contact with the people on the list had been attempted, although it appears from the list that only 18 people were spoken to.⁴⁰⁸

7.9.9 The midday media release

The midday media release was the first release issued by the Emergency Services Bureau that day. It provided a brief summary of the status of the three fires threatening the ACT and started with a comment that the weather conditions had caused a number of spot fires across containment lines and that those fires had not been contained. The release then noted the following:

- The Northern Fire—previously called the McIntyres Hut fire—covered about 8000 hectares and had crossed the ACT–NSW border and entered the Uriarra pine plantation.
- The Middle Fire—previously called the Bendora fire—covered about 10 000 hectares, and a spot fire from it threatened property in the Tidbinbilla and Paddys River Valleys. Rural residents in the area had been contacted the previous night and told to prepare for fire approaching their property. No residents were evacuated, but recovery plans were being prepared.
- The Southern Fire—previously called the Stockyard Spur fire—covered about 13 500 hectares, and a spot fire from it was threatening property in the Naas and Top Naas areas, as well as posing a potential threat to property at Williamsdale and Royalla.

Under the heading ‘Community safety’ was a subheading ‘Property and personal safety’, after which the following appeared:

Members of the public are urged to stay away from the fire areas in the west and south of the ACT. They are advised they may compromise their own safety and the safety of fire crews by entering the fire areas unauthorised—sightseeing is not permitted.

On page two, the following appeared:

- **INDOOR: IF FIRE APPROACHES YOUR HOUSE:**
 - **CLOSE** all the doors and windows.
 - **FILL** the bathtub, any buckets etc. and soak towels to place in any crevices such as under the door.

- If you have time and can do it, take down **curtains**, and push **furniture** away from the windows.
- **OUTDOOR: IF YOU HAVE TIME, AND ONLY IF IT IS SAFE TO DO SO, YOU CAN DO THE FOLLOWING:**
 - **Connect hoses** that will reach all corners of your house.
 - **Store flammable liquids** away from the house.
 - **Close in open eaves and the space** under the house.
 - Block your down pipes (ie rags etc) and fill your gutters with water.
 - Use water to dampen all areas on the side of the house facing the fire.

There followed a health warning for asthmatics and information about the weather forecast of high temperatures (40 degrees) and increasing winds, which ‘are expected to increase the levels of smoke across ... Canberra’. The release concluded with information about the total fire ban, road closures (including Cotter Road, Eucumbene Drive, and Uriarra Road at Coppins Crossing) and the resources that had been deployed on the fires, plus another health warning to asthma sufferers and contact numbers and website details for Canberra Connect for people seeking further information about the Bendora and Stockyard Spur fires.⁴⁰⁹

The media release provided no information about predictions that the Northern Fire would reach the urban area from Weston Creek to Greenway that afternoon or evening. Mr McRae agreed that this was the case and said the reason was that ‘this material is consistent with the outcome of the morning planning meeting and the absence of a trigger from me ... It is consistent with waiting for the trigger to be activated. But it hadn’t been activated so the material wasn’t in there’.⁴¹⁰

The release was issued at midday—more than two hours after the 9.30 planning meeting and four hours after the 8.00 evacuation planning meeting, when it had been agreed that hourly statements were to be issued. When asked why it took so long for the information to be provided to the community, Ms Harvey said she did not know but was surprised. She said one reason could have been that it was difficult to get people to stop still long enough to provide factual information.⁴¹¹ She could not explain why there was no mention in the media release of the information discussed at the 8.00 and 9.30 meetings about the threat of the fires to urban areas. She said she had no authority to issue anything since everything she prepared had to be cleared by others.⁴¹²

Ms Lowe, one of the people working in the Media Unit with Ms Harvey, said she was involved in preparation of the media release. She was in Mr Castle’s office after the 9.30 planning meeting with Mr Tonkin and Ms Harvey. She recalled:

There may have been other people there, but I can’t remember who they were. I had a draft of this document and I remember Mike and Robert Tonkin talking about which order to put things in and renaming the fires. If you notice it says ‘Northern, middle and southern’. There was some talk about renaming them. That discussion went on for a little while, so there was that process. I remember that taking some time—that entire

sort of drafting process. That would probably be why it didn't get out until later that day.

Ms Lowe could not recall any discussion about including in the media release information about a threat to the urban area. She recalled discussion about the location of the section on community safety but not of its content. She had drafted the information about indoor and outdoor precautions, which was part of a script of information provided the previous evening to the rural lessees and had been taken from a brochure entitled *Will You Survive?*⁴¹³

It appears that the information on precautions was first formally notified to the public in the midday media release. There may have been some information of this type posted on the Canberra Connect website late the previous evening, but the evidence on this is not at all clear. Given the late hour and the task facing those trying to contact the rural lessees, on the balance of probabilities it is doubtful that the information was in fact posted on Friday night. It is more likely that it was placed on the website at some time on Saturday morning.

7.9.10 The midday press conference

The midday press conference began with Mr Castle providing a brief overview of the situation. He started by saying that, fanned by strong winds, the three fires—now called the Northern, Middle and Southern Fires—'now [posed] some difficulty for the ACT' because of several spot-overs caused by the north-westerly winds. There would be smoke. Resources had been directed at property protection, and fire crews had been pulled back from containment lines because the fires had jumped those lines and spotted—8 to 10 kilometres in some instances. He went on to say that crews had abandoned the two base camps at Bulls Head and Orroral Valley and relocated to North Curtin oval for logistical reasons.

Mr Castle also said the ACT Fire Brigade was looking at contingencies around the urban edge. He mentioned the telephoning of rural residents the previous evening and gave information on road closures. When asked how close the fires were to houses, he said the closest fire was probably 8 to 10 kilometres away 'as the crow flies' and that there were rural residences in a lot of the grasslands and the residents had been asked to be mindful of fire around their property and the precautions they could take. Asked if that was in the suburbs near Tuggeranong, he replied, 'No, no, that's rural residents I'm talking about, people out in the rural areas, farms'. He was then asked, 'How close are we getting to the suburbs then?' and he replied, 'Maybe if I ask Peter to talk specifics about the fire and what we're actually doing. The risk to Canberra is, is there, we would not want to alarm people but it is some distance yet and we have resources that we will deploy at various stages to provide maximum property protection'.

In response to the next question about which areas were of greatest concern, Mr Lucas-Smith said the fires were in the Uriarra pine plantation in the north-west, close to Tidbinbilla Nature Reserve and Paddys River gully, and at the Corin Ski Resort, where two sheds had been burnt. He went on to say the fire was still spreading eastwards, which was giving rise to some concern about southern parts of Canberra. He said the fire would grow more rapidly as the day warmed up but that it would be much easier to contain once it came into the grasslands because it would be far less intense and far easier to control, even with garden hoses on the back fence. He then added:

There is no doubt whatsoever that people need to be taking precautions that may live adjacent to the grassland area on the western side of the suburbs of Canberra and they need to be making sure that they have nothing combustible near their homes. They need to make sure that their gutters are clear, their hoses are connected and they can reach all corners of their houses and to be vigilant for any flying embers that might come as the day progresses.

Asked if that advice applied to the residents of Tuggeranong, Mr Lucas-Smith said it was prudent for anyone who lived on the western side of the urban area to take those sorts of precautions, and that included Weston Creek and south from there. He thought Belconnen was a bit too far north but added that it was prudent for anyone who lived in that sort of rural–urban interface area to take precautions by clearing around the house, connecting hoses and being comfortable about having what was needed to protect their property.

This question was then asked: ‘You were saying yesterday that there was a minimal chance of the fires reaching suburban Canberra. Is that still your assessment or have you re-evaluated?’ Mr Lucas-Smith replied, ‘I think the word “minimal” was your word but there has always been a chance that the fire would reach the urban area. I think that chance still exists and is certainly not out of our planning arrangements, but they’re precautionary arrangements at this stage’.

In response to questions, Mr Lucas-Smith said the front of the fires would not be fought and there was a prospect of the fires meeting, but this depended on the wind. He said the fire had passed through the Pierces Creek plantation and damaged the plantation at Uriarra. He did not believe more resources were necessary at that stage. Someone asked whether ‘this’ fire was burning faster than those in December 2001. Mr Lucas-Smith explained that fire spread was governed by weather conditions and moisture content, that the December 2001 fires were burning in milder conditions but that, apart from in the plantations, the fuels were well to the west of the ACT and nowhere near the urban edge. He added that the fuels were different and therefore the fire behaviour would be different from what it was in 2001.⁴¹⁴

In his evidence, Mr Lucas-Smith accepted that at the media briefing he had not adequately emphasised the potential risk of the fires. He agreed that the language he used to describe the potential for the fires to reach the urban area was hesitant and neutral and said that more direct words, such as ‘People ought to be aware that there is an extremely high risk that the fire will hit the suburbs and they need to prepare for it’ could have been used. He explained that he would have preferred to speak in terms of the likely level of risk but said:

Our planning situation hadn’t quite clearly indicated as to exactly what that impact was likely to be. Obviously there is a consequence to making a statement about the high risk ... I think from my point of view if I am going to make such statements then I want to do so with fact and I want to be able to answer all the questions that are a consequence of making such a statement.⁴¹⁵

Counsel for the ACT asked Mr Lucas-Smith to explain, in his own words, what his position was on the morning of 18 January 2003 and his expectations of what might happen with the fires that day. Mr Lucas-Smith’s response was lengthy, but it can be summarised as follows:

- The Bendora and Stockyard Spur fire fronts were not being fought from the afternoon of 17 January.

- All ACT resources and a large number from NSW were committed to protection of rural properties, some of which had already been lost.
- There was a need to identify the fire front and make decisions about commitment of resources.
- There was concern about the McIntyres Hut fire because it had crossed the border and moved into the Uriarra pine plantation, although it was still some distance from the ACT urban edge.
- There was concern about the potential for impacts, but they did not know exactly when or where or the form of those impacts.
- There was a need to assess the risk to the northern part of the ACT from the McIntyres Hut fire, but Mr Lucas-Smith did not know exactly what resources NSW was deploying on that fire.
- The predictions suggested impacts from the McIntyres Hut fire at 8.00 pm—if at all—so at noon on 18 January there were still eight hours in which to decide on suppression methods.
- He had confidence and a reasonable expectation that something could be done and some suppression effort would succeed, and ‘there would be some amelioration of the impact on the ACT’.
- Events overtook them at about 1.00 pm, when the situation started to accelerate; the Standard Emergency Warning Signal started being issued at about 2.00 pm to tell the community what to do.
- The fires’ speed was rapid, and the situation was dynamic.
- He did not know when the fire front went through Duffy but burning embers and firebrands were carried well ahead of the fire front.
- ‘I think we didn’t emphasise the warnings adequately enough. I thought we had more time to do that ... Maybe we should have done it earlier ... but, as far as I was concerned it was—I was trying to fight the fire at the time, and my job was really to protect property’.⁴¹⁶

Mr Lucas-Smith said the reason he did not tell the media at midday the state of affairs as he believed it to be was he did not know the ‘where and when’. He said the area from Warragamba Avenue in Duffy to Gordon presented 72 kilometres of urban–rural interface, and the potential for the Bendora, Stockyard Spur and McIntyres Hut fires to eventually reach that interface really existed.⁴¹⁷ He accepted that it was one of his obligations to keep the community informed of the circumstances for their own safety⁴¹⁸ but denied that he was trying to mislead anyone or withhold information.⁴¹⁹

Mr Castle agreed that his comments at the press conference understated the risk to residents.⁴²⁰ He said it was his view that the fires would reach the urban edge, but he did not think they would

have an impact. His thinking on this was influenced by the success he said they had with the 2001 fires.

Ms Larkins formed the impression from what was said at the press conference that the fires were closer than people were being told and that the situation was far more dangerous than was being conveyed. She said the information was contradictory, and she became alarmed when she realised that at noon the fires had the potential to spot into her home suburb of Rivett. She then realised the suburbs were in danger and that her home and possessions were under threat. But this realisation did not come from what was being said directly to the media by Mr Castle and Mr Lucas-Smith because their focus was on the threat to rural, not urban, areas.⁴²¹ Ms Larkins said, ‘I lived there and I had been given no reason that I should be keeping an ear out for any warnings’.⁴²²

In her statement Ms Larkins recorded that she returned to the ABC Radio studio in Dickson to prepare her 1.00 pm news broadcast. She said she was alarmed by what she had heard and what she knew, and she felt that the people who lived in her suburb at least should also have been made aware of what was happening. She rang home to alert her partner, telling him to prepare things around the house and start collecting valuable items. Her statement continued:

Shortly after 1.00 pm Julie [Derrett] and I went live to air. Utilising general information previously made available by the Emergency Services, we advised listeners of precautions and preparations that should be taken around the home with regard to fire. This was all despite the fact we hadn’t been officially told to do this. This course of action had been entirely due to our own initiative based on my level of concern and belief that the public should have been aware of what was happening.⁴²³

Mr Keady did not think he attended the midday press conference. He did not remember any discussion with Mr Castle about what was going to be said, and he could not recall whether he had any views about what should have been said, other than that his general stance would have been to convey whatever information was available.⁴²⁴ When it was suggested to Mr Keady that the situation at midday was more serious than had been described by Mr Castle as ‘the three fires now do pose some difficulty for the ACT’, he replied:

I can’t recall exactly what we knew about the fire situation. The information flow into Curtin tended to be erratic, but, yes, certainly looking back on it, it was a serious situation and perhaps the comment understates it slightly ... It wasn’t deliberately understating ... Looking back on it, Friday may have been the time to provide people with some indication that the situation was getting serious to the point of being unpredictable. It would not have been possible on Friday to have anticipated in a way that would have led to specific warnings to the public [about] what actually occurred. That was not—certainly in my own mind—not even conceived of as a possibility until after the event when we realised it could happen.⁴²⁵

7.9.11 A conversation between Mr Castle and Commander Newton

At about 12.20 pm Commander Newton telephoned Sergeant Byrnes at the Emergency Services Bureau and discussed the status of the fires and events at the Police Operations Centre and the bureau. She asked Sergeant Byrnes to locate Mr Castle, which he did. Commander Newton said

that in their conversation she clearly informed Mr Castle of her view that a state of emergency should be declared and told him her reasons for wanting him to support that position. She said Mr Castle did not share her view and that the following discussion occurred:

He said, 'What does the declaration give?'

I said, 'Powers to evacuate if needed'.

He said, 'I don't see a need to evacuate'.

I said, 'You can answer to the Coroner if people die'.

He said, 'If people die I will answer to the Coroner'.⁴²⁶

This was the first conversation Commander Newton had had with Mr Castle that day, and she made notes at the time and later that afternoon, after she had heard of the first reported death.⁴²⁷

Mr Castle said his recollection of the conversation was that he might have asked Commander Newton why she thought a state of emergency was necessary and recalled that her main reason was to give the police power to evacuate people. Mr Castle believed he said that evacuations were not being planned but did not recall saying 'If people die I will answer to the Coroner'. He said he was shocked when he later read this. He does, however, recall that Commander Newton said words to the effect of 'You can answer to the Coroner if people die'.⁴²⁸

7.9.12 A media update and Canberra Connect

A media update was issued at 1.00 pm but, with two very important exceptions, it provided the same information about fire status, community safety and health warnings as the midday release.

The 1.00 pm media release reported the McIntyres Hut and Stockyard Spur fires to have increased greatly in size compared with the midday report. The McIntyres Hut fire was said to have expanded from 8000 hectares to 18 000 hectares and the Stockyard Spur fire from 13 500 hectares to 24 000 hectares. The release offered no explanation for these changes to the size of the fires.

The Canberra Connect website at 1.30 pm contained the same information as the media releases. The first subject heading was 'Fire status', and under it was recorded as new information the difference in the sizes of the McIntyres Hut and Stockyard Spur fires. Immediately after that the website noted, 'Fire has moved into Belconnen, Stromlo and Tuggeranong regions, LMWQCC [Lower Molonglo Water Quality Control Centre] under threat'. There followed information reflecting the noon media release on the size of the three fires.

The next subject heading was 'Current threats': nothing was noted there. After that came information on road closures, the health warning, and advice to stay away from the fire areas.

At the end was a section headed ‘fire Prevention’ which displayed the following information:

SUBJECT: FIRE PREVENTION

What do I do if the fire is approaching my home?

Personal protection

1. Protect your exposed skin areas—cover up with natural fibre and jumpers if possible.

Make a decision

Make an early decision to stay and protect your property or vacate to a safe area.

If you decide to vacate, close all windows and doors and leave before the fire front approaches. Take all children and pets with you.

If you decide to stay

Close all windows and doors.

Fill the bathtub and buckets

Connect hoses to taps

Move flammable liquids away from the house

Damp down the house and garden on the fire side of the house

Block your down pipes, remove leaves and twigs and fill your gutters with water.

Turn on the radio to a local station to receive any updates.

When the fire front approaches

Shelter inside your house as the fire passes through.

After the fire has passed

Keep checking your property inside and out for burning embers and small fires.

Most building losses occur after the fire front has passed.⁴²⁹

Mr Castle did not know who drafted the information that appeared on the website or when it was put there.⁴³⁰

7.9.13 The Standard Emergency Warning Signal

The Standard Emergency Warning Signal, or SEWS, is an emergency announcement that is broadcast following a formal request from the Emergency Services Bureau. Mr Castle recorded in his statement that the request to broadcast the signal was first distributed to radio stations at about 1.45 pm on Saturday 18 January. He noted:

We had a series of meetings through the early afternoon. The difficult thing was to keep up with information as it came to us. I suppose we started to become concerned about what was likely to threaten us when reports indicated the fire had crossed the Murrumbidgee some time between 1 pm and 1.30 pm and we decided to put out the standard emergency warning signal ... at about 1.45 pm ... we outlined a major deterioration of the situation and listed suburbs under threat. We urged residents to return to their homes and included advice on what to do if fire approached their location.⁴³¹

In evidence, Mr Castle agreed that the SEWS would not have been broadcast before it was authorised and dispatched for release. He also agreed that he signed what appeared to be the first SEWS authorisation at 2.05 pm and that, consequently, the SEWS would not have been broadcast until some time later.⁴³²

The SEWS form contained a request that the announcement be broadcast verbatim every 15 minutes for the following two hours. It provided instructions and these words: ‘This is an official emergency announcement. The ACT Emergency Services Bureau has advised that there has been major deterioration in the ACT fire situation. There is increasing risk due to fire spotting from the fires to the west. The following suburbs should be on alert ...’ Listed were several suburbs in the Belconnen area, plus Duffy, Rivett, Chapman and Holder. Then there was a statement urging residents of those areas to return to their homes. This in turn was followed by the statement:

Residents should take the following precautions:

- Indoor: If fire approaches your house:
 - Close all the doors and windows.
 - Fill the bathtub, any buckets etc, and soak towels to place in any crevices such as under the door.
- Outdoor: If you have time, and only if it is safe to do so, you can do the following ...

Then came a list of activities. There was also an announcement about evacuation centres that had been opened, but it was said that ‘no evacuations are taking place’.⁴³³

At 3.20 pm Mr Castle authorised a further SEWS announcement request; this announcement contained a statement that ‘severe fire conditions now exist at Eucumbene Drive, Duffy’ and added suburbs to the original list. An extra indoor precaution was included—to take down curtains and move furniture away from windows if there was time. The statement about no evacuation taking place was repeated.⁴³⁴

The information on the Canberra Connect website at 3.00 pm was essentially the same as that contained in the first SEWS, except that Lanyon, Kambah Pool, Pine Island and Mt Stromlo were listed as being subject to threat.⁴³⁵

Mr Castle agreed that the information on the Canberra Connect website at 3.00 pm to the effect that the McIntyres Hut fire had crossed the border and was burning in the Uriarra pine plantation

was ‘old news’ because by then the fire would have been in the Stromlo plantation.⁴³⁶ He did not know why the information was not more current, other than there was a great deal of information that had to be collected and updated and then posted on the website.⁴³⁷

7.9.14 Declaration of a state of emergency

Shortly after 2.00 pm on Saturday 18 January a meeting was held at the Emergency Services Bureau to discuss the declaration of a state of emergency. The meeting was attended by Chief Minister Stanhope, Chief Police Officer Murray, Mr Keady, Mr Tonkin, Fire Commissioner Bennett, Mr Castle, Mr Lucas-Smith, and others. Mr Murray said the meeting was in progress when he arrived and Mr Castle and Mr Lucas-Smith were providing an update on the situation. Mr Murray said:

My opening comments to the group were that I was strongly of the opinion a state of emergency needed to be declared. I explained that on the basis of the briefings I had received from the Commander in the [Police Operations Centre], the views expressed to me by Sergeant Kirby and Sergeant Byrne and from my experience in the ‘Ash Wednesday’ fires in Adelaide in 1983, a state of emergency declaration was critical. There was a need to have the authority to evacuate people, if necessary, against their own personal judgement. There had been an example at Uriarra where people’s lives may have been put at risk because of their failure to heed the warning of police to leave. Mr Lucas-Smith said as a general rule it was best, if people were prepared and able, that they should stay and protect their property ... I emphasised my opinion to the Chief Minister in the strongest possible terms that a state of emergency should be declared. The Chief Minister asked the opinions of other Chief Executives present and there was considerable discussion on the need for a state of emergency declaration and whether evacuation was necessary.⁴³⁸

Mr Castle agreed that there was debate about the need to declare a state of emergency. It was his position, and that of Mr Lucas-Smith, ‘that people were best off staying with their home to protect their property. The ember attack, it was likely to be the biggest impact and that people should stay. So we were not at this stage in support of forcible evacuation’.⁴³⁹ This was why Mr Castle opposed the declaration of a state of emergency. He said his position was that advocated by AFAC (the Australasian Fire Authorities Council). Mr Castle produced the AFAC guidelines. He noted in his statement:

Its [AFAC’s] opinion about evacuation is to evacuate early if you are not confident in maintaining your property and weathering a huge fire. However, the collective advice of the fire authorities around Australia is that property can be saved, and people are better off in their house to protect it from ember attack—it’s the spot fires that tend to burn houses down, particularly after a fire front has passed ... The bottom line in our advice was to evacuate early if one felt the need, or stay and try to protect houses.⁴⁴⁰

Mr Castle said the Chief Minister was concerned about the public perception that if a state of emergency was declared control over the fire situation would pass to the Chief Police Officer. Mr Castle offered advice that an Alternate Controller could be appointed under the legislation, and the Chief Minister then agreed to declare a state of emergency, appointing the Chief Police Officer as Territory Controller and Mr Lucas-Smith as Alternate Controller with responsibility for the emergency fire situation.⁴⁴¹ Mr Murray was to be responsible for the recovery effort.⁴⁴²

Mr Stanhope recorded in his statement that his decision to declare a state of emergency was based on unanimous advice:

... I approved the appointment of Mr Lucas-Smith as Alternate Controller in accordance with the advice that to do so would avoid any potential confusion in the control and direction of the fire fighting activities. The discussion around the desirability of declaring a State of Emergency reflected the fire situation as at the time and the potential for the fires to reach the urban areas of Canberra. I recall the reports at that time indicated the fires were advancing upon the western fringes of Canberra. The declaration was made in order to provide police with the powers to compel the evacuation of private residents.⁴⁴³

The state of emergency was declared at 2.45 pm.⁴⁴⁴ Mr Stanhope and Mr Castle held a press conference at 3.00 pm, when the first Duffy houses were about to burn.

7.10 The evidence of the residents

Any examination of the adequacy or otherwise of warnings to the Canberra community about the dangers of the fires would be deficient without consideration of what the affected people had to say. Of its nature, this evidence is compelling and probative; it reflects the reality of what the people knew and experienced. The commonly used, well-understood legal term for this type of information is 'best evidence'. The 'best evidence' is how I regard the evidence given by all the Canberra residents who came before the inquiry and recounted and relived their experience of the afternoon on Saturday 18 January 2003.

Counsel assisting submitted that I should find 'the failure to give that warning by or before midday contributed in a material way to the scale of the loss and damage to property and injury experienced during the afternoon and evening of 18 January 2003 and thus was a cause of that loss and damage to property'.⁴⁴⁵

On the other hand, counsel for the ACT submitted on behalf of the ACT:

This is not [to] say that no warnings should have been given; the submission however, is that no reliable conclusions can be drawn as to what members of the community would have done if warnings had been disseminated through the media. Further, no reliable conclusion can be drawn as to the extent that loss and damage could have been prevented, save perhaps for personal possessions that those who decided to leave could have taken with them.⁴⁴⁶

Counsel representing Mr Castle and Mr Lucas-Smith submitted on their behalf:

... the concept of making a factual finding about whether a warning was or was not given on the basis of what is asserted to be evidence of 'the public' is quite an extraordinary proposition and one Your Honour cannot possibly adopt in a judicial proceeding ... It seems Counsel Assisting's submissions, particularly those asserting that 'no warnings were given until 1430' are improperly informed by some concept of 'doing it for the victims'.⁴⁴⁷

In the same vein, counsel representing Mr McRae submitted on his behalf:

Counsel Assisting also do not state what they mean by the so-called ‘clear warning’. A warning to do what, when and how, and what difference would its making have made anyway? ... It is also abundantly clear that there is not the slightest evidence that any ‘particular’ warning, that might have been given, would have saved a single item of property from destruction or damage.

And perhaps the most extraordinary of the assertions by counsel representing Mr McRae:

Further, while it may not be politic to say so, there may be an understandable tendency on the part of those who lost something in the fires to assert that they were not warned, or did not understand any warnings which may have been given, or would have acted differently if they had been warned, or warned in a particular way at a particular time. In our oral submissions on 19 May 2006, we drew Your Honour’s attention to remarks in judgments of the High Court of Australia in a number of civil cases about the problems posed by evidence of the kind given by plaintiffs seeking damages and alleging a failure to warn. These remarks are no less relevant to the assessment of this subject matter.⁴⁴⁸

Twenty-three residents gave evidence; at the time of the fires they all lived in the affected suburbs, rural areas and the forestry settlements. Counsel representing Mr Castle argued that these residents were ‘hand-picked’ by counsel assisting and, by implication, that their evidence must be tainted or regarded as unreliable or slanted in a particular direction.⁴⁴⁹ This is not the impression I formed. I found the evidence of all these witnesses to be truthful, credible and compelling. Many people submitted statements and completed questionnaires, and I considered their comments, even though not all these the people were called before the inquiry.

The evidence given by the 23 residents was edited for the purposes of this part of the report, to focus on the question of warnings.

7.10.1 Mr Michael Anderson

Mr Michael Anderson lived at the Uriarra forestry settlement with his father. He had watched the smoke from the fires since they first ignited and became concerned about how close the smoke was getting to his home on about 15 January. He had no bushfire-fighting experience. He spent the night of Friday 17 January at Wanniasa and was told by his cousin at about 10.30 or 11.00 on Saturday morning that things ‘were looking pretty grim’ and he should return home, which he did at about midday with five or so friends, to prepare his house. His neighbour was hosing down around his house and the other residents were worried about what they were to do and whether there would be any help.

Mr Anderson said he could see the flames coming down the hills and told his friends to leave because he feared for their safety. He rang 000 and was advised by the operator to leave, but the operator was uncertain about which roads were open. Mr Anderson said he walked across a paddock to where a fire tanker was standing and told those in the tanker there were about 30 residents at Uriarra who needed help. Mr Anderson was told to stay where he was just as the firestorm hit.

He said he, another man and two children climbed into the cabin of the tanker and stayed there until the fire passed over. He returned to the settlement after some time and saw that his house and some others were on fire. He was able to save some possessions—‘a few bits and pieces’—and some items from the shed, but his home was burnt. Mr Anderson said no one from ACT Housing or any emergency services contacted him to tell him what was going on. When asked if there was anything further he wished to raise, he replied, ‘I was just wondering when I went back down to Uriarra Station, as it is called, there were fire tankers, light units and firemen standing guarding fences, cattle yards and sheep yards and I have still been wondering when did these become more important than human life?’⁴⁵⁰

7.10.2 Mr Michael Boyle

Mr Michael Boyle lived in Chapman with his wife and son. Using binoculars, he had been watching the McIntyres Hut fire from his front step for about 10 days and was reasonably confident that action would be taken to contain and control it. He was very aware of the possibilities of fires because they occurred regularly at Coleman Ridge and the horse paddock and riding school opposite his street. He was also mindful of the December 2001 fires, the path they took, and the consequences of fire getting into Stromlo forest and the Duffy pines.

On Saturday 18 January Mr Boyle was less confident about the fire being contained but still felt that if there was a risk and a real danger that the forests would burn they would be told. He said, however, he was not aware of the fires that were burning behind his property and did not realise the extent of the Bendora and Gingera fires. He started to take precautions by clearing gutters and checking for cracked tiles, and while he was on his roof he saw Mount Stromlo Observatory hit by the fire and then saw flames in Duffy. He said at that point he knew they were ‘in for trouble’, but he had heard nothing from emergency services or the fire brigade or the police. Mr Boyle was hastily descending from his roof when the fire hit his ladder and rolled over him. He said he was wearing a T-shirt, shorts, sandals and a hat at the time.

Before the fire hit, Mr Boyle said his daughter, who lived in Hackett, rang and expressed her concern because of what she could see of the fires on the horizon. Additionally, Mr Boyle’s sister-in-law rang from Melbourne to inquire about the family’s safety because she had seen a television report that said the fires were dreadful. Mr Boyle said, ‘So there you have a situation where people in Melbourne are seeing it on TV, and we are still wandering around in a state of naive innocence’.

Mr Boyle described in detail the efforts he and his family made to control the fire as it spread through his house. He spoke of how a ‘great blizzard of embers’ invaded his property and how he was overcome with exhaustion and became disoriented in his attempts to control the flames. His house was alight and he said his wife and son started to evacuate. He grabbed his wallet in the dark and a file of important papers, which he put on the porch—and then forgot about. He had gone back inside for more belongings when police officers arrived and said to him, ‘You’ve got to get out. If you don’t get out, you are going to die’. Mr Boyle and his wife and son left in their two cars, seeing their house and others consumed by flames. Mr Boyle stopped and picked up a man who was stranded and then was directed by police to the evacuation centre at Phillip

College. There he saw neighbours and others dressed as he was, in T-shirts, shorts and thongs. Mr Boyle's wife was in hospital because she had been injured.

Mr Boyle gave evidence that he had considerable professional experience in contingency planning, including for terrorist incidents. He was asked what concerns he had about contingency planning from 8 to 18 January and he replied that it was the lack of warnings. He said he hoped that a judgment had not been made *not* to warn people but wanted to know why no warnings were given:

... even though Chapman now is perhaps largely populated by people in their 50s and older, most of us are still fairly able and given warnings we could have done a lot to lessen the impact of that fire on our homes and our belongings. How many houses might have been saved, I have no idea. Certainly people could have got elderly people out. They wouldn't have gone off and done other things, which the lack of warnings encouraged them to do. Most of us would have got out many of those things that are most precious to us, particularly family records.

Mr Boyle gave examples of what people in his neighbourhood could have done to try to save their homes and possessions if they had been given warnings. He said:

Decent planning would have placed those who were involved in making these types of decisions in a situation where they would have foreseen not the exact situation that happened but something similar to it ... and perhaps months before worked out 'when this happens, we have to warn people. If we are to prevent panic, we must warn people'—not the other way around.⁴⁵¹

7.10.3 Mr Michael Connell

Mr Michael Connell and his wife lived in Duffy at the time of the fires and returned to their home after it was rebuilt in March 2004. Mr Connell was aware of the fires and followed the reports on their progress and the firefighting effort on television news. He was not aware on the evening of Friday 17 January that his area was under threat, even though he saw the glow of the fires in the distance. Mr Connell said the previous year there were fires in the Duffy area and they had received warnings and been advised by police to water lawns, but they received no warnings in 2003, so he was quite confident and assumed the authorities would tell them of any danger.

Mr Connell and his wife went shopping in Woden on Saturday morning and arrived back at the house at about 2.30 pm. As they drove through the suburbs they did not notice people preparing their houses until they saw their neighbour hosing down her house. The neighbour said she was uncomfortable because of the strong wind and smoke. Mr Connell put on shorts and 'runners' and went up a ladder to check his gutters, which he had cleaned out about two months previously. Clearing and filling gutters with water was the only knowledge Mr Connell had about protecting his house from fire, and he said he knew this because it was a sensible precaution against any type of house fire, not just a bushfire. While he was on the roof Mr Connell saw flames and a grass fire; then he felt the embers burning his body. He saw his back fence alight. He left the roof and ran to the front of his house and his wife. At this point they saw the fire coming towards them, and the entire street was alight. He lost contact with his wife,

grabbed the cat, and fled in his car with a young neighbour, picking up another neighbour as he drove away. Mr and Mrs Connell saved nothing from their home.

The subject Mr Connell wanted to raise before the inquiry was the lack of warnings. He said the situation in January 2003 was different from that in December 2001, when they were well informed by people who knew what they were doing. Mr Connell said in 2001 police came around with loud speakers and door-knocked, telling people about a large fire in the area and suggesting they start preparing their homes and make ready to evacuate. Mr Connell said, by comparison, in January 2003 there was no real direction from anyone in authority: ‘You just got the feeling that there was no planning, no nothing, which is strange when you knew it had been going on for approximately two weeks and everybody was aware of that’.⁴⁵²

7.10.4 Ms Tracey Devitt

Ms Tracey Devitt lived in Duffy with her 19-year-old son. Neither on the evening of Friday 17 January nor on the morning of 18 January was she aware that there was any threat to her from the fires. She went to work as usual on Saturday morning, in Woden, but received a telephone call from a friend at about 2.00 pm, telling her that Duffy was under threat from the fires.

Ms Devitt’s supervisor would not allow her to leave work, so she did not arrive home until about 4.30 pm, after hearing about the fires on the radio. The entire street was alight. Her house was surrounded by fire and burning at one corner. She ran inside her house and wakened her boyfriend, who was asleep; she found her son in the back yard trying to put out spot fires, but there was no water. Ms Devitt said she grabbed a few photos and the animals, and they all left in her car. The house was burnt to the ground along with all their other belongings. Ms Devitt said she felt that residents should have been given more notice that the fires were going to hit.⁴⁵³

7.10.5 Mr Alan Evans

Mr Alan Evans lived in Eucumbene Drive, Duffy, with his wife and two daughters. He followed the progress of the fires with greater interest towards 18 January because they seemed to be moving closer and were becoming more visible. He was aware of the media reports about the fires and was aware that the fires were not under control. He was not aware on Friday evening that the fires posed a threat to the area but was concerned by the bright-orange glow he saw in the night sky. He had cleaned up the shrubbery around his house before Christmas because he had lived in a rural environment in Tasmania and understood the potential risk from fires and the preparations that should be made.

On the morning of 18 January Mr Evans went to Woden Plaza and his wife and one of his daughters took their dogs to be clipped. After he returned home, his wife told him about a conversation she had had with the woman who clipped the dogs. That woman had told her a friend in the Rural Fire Brigade said the fire would hit Duffy by 8.00 pm that night. Mr Evans and his wife discussed this information but dismissed it because they believed that if the fires were so close they would have been told by someone in authority.

Mr Evans said one of his daughters received a text message from a friend at about 2.00 pm; the friend said he had heard on a radio broadcast that residents of Duffy were being told to return to

their homes. Mr Evans turned on the radio and heard the same warning. He and his family then ‘immediately went into overdrive’ and started to prepare the house and pack up some possessions. A Rural Fire Brigade truck drove past; the occupants told Mr Evans the fire was in Stromlo but not to be concerned for a while. But the wind changed, embers started to blow toward Duffy from Stromlo, and the fire came over the hill. The fire truck returned and they heard a loud-hailer message telling them to evacuate. Mr Evans and his wife left their house as it caught alight and encountered a traffic jam on Eucumbene Drive. The house and most of their possessions were destroyed.

Mr Evans said he had difficulty understanding why they were given notice in 2001 but not in January 2003. He said the last-minute evacuation caused a high risk of accident on the roads. He added, ‘People are capable of acting in an orderly manner if they are given sufficient information and notice’.⁴⁵⁴

7.10.6 Mr David Ferry

Mr David Ferry lived with his wife and daughter in the Stromlo forestry settlement. Before retiring in 2001, he had worked for ACT Forests for about 30 years and had been on the Bushfire Council. He had lived at the Stromlo settlement since 1972. He said he had a slight concern about the fires because he could see them building and he knew they were not contained as they should have been: ‘With the experience I had, from the first ignition of the lightning strikes, like before when I used to be with Bushfire Council, whenever there was a lightning strike everything was thrown at it’.

Mr Ferry was aware that the NSW Rural Fire Service had set up a base camp at the Stromlo settlement, and he was told by someone from Uriarra that the fires were in the Glovers’ property. He thought they were in trouble because the Glovers’ property adjoined the pines, and the fires were closing in on the Uriarra settlement. Mr Ferry then asked the Rural Fire Service personnel for a standpipe and some hoses to connect to the hydrant outside his house, but he was told not to worry—that is why the Fire Service was there—and was given nothing. He returned to his home and began preparing by filling gutters and putting the sprinklers on in the garden. He said, ‘Next thing, we see the Rural Fire Service personnel rolling up their gear, threw it in the truck and they all left in a convoy down past our place. Never made eye contact, never said boo, just kept going. We knew we would be in trouble then’.

Mr Ferry said his wife and daughter then prepared inside the house, pulling down curtains and soaking towels. He saw pine trees alight in Deeks Park and told his daughter to get into her car and leave. He said a Rural Fire Service person came past and told them to ‘get out’. Mr Ferry’s wife drove away and was almost hit by a fireball. He stayed and tried to protect his house but flames hit him in the face and he could not see. Personnel from the Rural Fire Service returned and took him to hospital. His house was saved.

Mr Ferry said he had no contact from anyone at Emergency Services, ACT Housing or the Winchester Centre before the fires hit. He also said that at about 1.15 pm, and again at about 2.30 pm, his daughter tried to ring Canberra Connect but constantly received a busy signal. When she finally made contact the operator told her the fire was not heading their way but if it

did they would still have about one hour. That was about 15 minutes before fire hit the settlement.⁴⁵⁵

7.10.7 Mr Graham Franklin-Brown

Mr Graham Franklin-Brown had lived in the Stromlo forestry settlement since 1977. He was very aware of the fires and felt on the evening of Friday 17 January that the danger had increased, so he was more alert. NSW Rural Fire Service personnel told him that he, his wife and son, and his mother-in-law (who was visiting) would be safe and he was comforted by that information. He said he had not heard much on the radio about the fires because he listened to FM, not AM. Embers started to fall earlier than he expected, and then he saw the fire jump the Cotter Road.

Earlier, Mr Franklin-Brown had put his pets, a few personal papers and some clothes in his car. He and his family tried to leave the settlement just as the fires entered it, after the Rural Fire Service had left. He described how his wife and mother-in-law drove through a tunnel of fire and he had not known whether they had survived. Mr Franklin-Brown could not drive out because he could not see and sat in his car until the fire passed. He said they were not given any warnings of any kind about what was coming and what to do to evacuate. The house and their possessions were destroyed.

Mr Franklin-Brown said he had heard some horrible stories since the fires:

The people diagonally opposite Dolly's house were trapped in their house and called the Fire Brigade, and of course the Fire Brigade couldn't respond and told them so. I heard that they tried to take shelter in the bath and then realised that the bathroom was burning and then they ran out onto the road.

7.10.8 Mrs Jill Hardy

Mrs Jill Hardy lived in Weston with her husband and son. She had been following the media reports about the fires, and at no time since the fires started had she thought she was at risk. On Saturday 18 January she drove her son to Tuggeranong Hyperdome to work, returning home at about 12.20 pm. She started to prune around the house and took other precautions such as filling gutters, blocking downpipes, and putting buckets at doors. She said she did this because of an atmosphere she perceived. Her son came home from work and helped with the preparations. Neighbours in the suburb were going about their business as usual. She could see cars coming down from Duffy and Holder onto Streeton Drive but still had no sense that she and her family were at risk. She then saw fire coming across a paddock near Holder High School and towards her home. Her husband and son tried to hose the fire and used buckets without effect. They were told by police to evacuate.

Mrs Hardy took some personal papers such as birth certificates and the deeds to the house and left. Her husband stayed behind for a short time and saw fire enter the house, which was ultimately destroyed. She said her husband was an artist, his studio was destroyed, and all his paintings were gone, including work for two exhibitions that had been planned. 'Forty years of

creative life, apart from those [works] that people had bought along the journey.’ She said she had no idea where they were going when they left.

Mrs Hardy said she was a person who loved information and liked to make her own decisions about how to deal with information she received. However:

It wasn’t there. We took nothing. A different emphasis on the information put in the newspapers—I might have put something in the car. It is as simple as that. I would have liked to know what was coming. I would like to have some tangible evidence on my personal history. I don’t have that ... I wasn’t given the choice.⁴⁵⁶

7.10.9 Mr James Hoare

Mr James Hoare owned two properties affected by the fires, one in Duffy and a 600-hectare rural holding at Tingaringa, on Mountain Creek Road. He had extensive experience as a fire ecologist and for 25 years had researched fire behaviour and fuel management. He had followed the progress of the fires and the suppression activities with great interest because his rural property was potentially at risk, as were his fire ecology plots at Piccadilly Circus. He was not concerned about his Duffy house until about the evening of Friday 17 January, when he observed the progress of the McIntyres Hut fire. Mr Hoare was a member of the Fairlight Rural Bushfire Brigade; he drove around the area and noticed that his property at Tingaringa was also exposed to the fires.

Mr Hoare went to his property at 9.30 am on Saturday and was told by a Fire Brigade volunteer that the fires were out of control. He telephoned his wife in Duffy and told her to prepare the house because he realised that a firestorm had started in the mountains. Mr Hoare took a series of photographs, which he presented to the inquiry and explained as showing the progression of the firestorm. He stayed at Tingaringa, which escaped the fires. His wife and son escaped from their Duffy home with the neighbours and pets just as the firestorm hit the house. Mrs Hoare took nothing—not even her handbag. When Mr Hoare returned to the Duffy property two or three days later, he realised, judging by what he saw of the rubble, the fire must have been intense.

Mr Hoare said the main question he wanted to raise was why the fires were allowed to burn for so long in the mountains without the full complement of fire-suppression forces being brought to bear to contain them there. Further, Mr Hoare’s wife had told him Duffy residents received no forewarning about the impending disaster, so there was no time to prepare for the event or for evacuation and no time to save possessions. In cross-examination, it was suggested to Mr Hoare that, although he might have been apprehensive, he did not realise the fire would reach Canberra with the speed that it did:

I did realise it ... I suspected, given that extreme fire behaviour and the strength of the north-westerly winds at the time and my understanding of fire behaviour and the outcomes of previous fire inquiries, that there was a very strong likelihood that the fire would spot into Canberra within a matter of a couple of hours.⁴⁵⁷

7.10.10 Mr Jason Houghton

Mr Jason Houghton lived at the Uriarra forestry settlement with his wife and three children. He was aware of the fires, having seen the smoke, listened to the radio, and spoken with the helicopter pilots and firefighters who had a base camp nearby. Mr Houghton said that until 18 January he was not concerned about the fires because no one had warned him. He woke about 10.00 am on 18 January and saw fellow residents rolling out hoses. He helped them and then packed his caravan with a few belongings and drove his wife and children to his in-laws' home in Chapman, returning to the settlement at about 11.30 am. Most of the residents were there hosing their houses and Mr Houghton did likewise.

Mr Houghton saw the fire come down the hill as he and some other residents were hosing the school. He and others decided to move all the cars into the top paddock because the water had run out and he was concerned the cars would explode. They did this as the houses started to catch fire, and Mr Houghton sheltered beside his car as the fire front came through the settlement.

Mr Houghton stayed in the paddock for about 15 minutes with about 15 others: they were trapped. He made a 000 emergency call and asked the operator to send help to evacuate them. He was told to sit it out and wait. Mr Houghton rang his wife and his parents to say 'goodbye' because he thought he and the others were going to die. Shortly after, a resident came up the hill with firefighters in a light unit followed by a tanker, and Mr Houghton and the others followed them out of the paddock to the houses below. They stayed there and used buckets of water in an effort to put out fires around some of the houses. His house was not destroyed, but his shed, his camping gear, all his tools and a motor bike were.

Mr Houghton thought he was safe at the settlement because it was the base camp for the volunteer firefighters and because of the constant movement of the helicopters. He said he received no advice from the firefighters to evacuate, nor was he told of any plans. He said he was concerned that the water supply at the settlement had been drained from the tanks by the firefighters during the preceding days, and that was why he ran out of water when the fires hit. He also said he heard after the fires that there was a third, back-up tank that held about 10 000 litres of water, but it was turned off and not used. Mr Houghton said if he had known this at the time he would have turned it on.⁴⁵⁸

7.10.11 Ms Reimke Kampen

Ms Reimke Kampen lived in Duffy. She was aware that fires were burning in the distant forest—as was conveyed by television, radio and the newspapers—but on the morning of 18 January she had no sense at all that there was any danger. She and a friend walked their dogs at 6.00 am in the forest and noticed black leaves everywhere. She was not sure what this meant, so she bought a newspaper; the paper did mention black leaves, but there was no mention of approaching fire and no sign of impending danger. Ms Kampen went to the Belconnen Markets at about 11.30 am and arrived home at about 2.00 pm. She checked the Canberra Connect website but saw no warnings. She also scanned radio stations and heard nothing there.

Ms Kampen left for Woden to do some shopping, and as she arrived she heard the radio warning for residents of Duffy to return home and prepare their houses. That is what she did. She wasn't sure what to do, so she rang her sister, who also lived in Duffy, but she didn't know either. It became dark and Ms Kampen tried to hose outside, but there was no water pressure. She rang her sister again, her brother, and her friend in Rivett, who told her he was packing his car. The smoke alarms went off and she was surrounded by fire. She grabbed her dogs and a torch and drove away from her burning house. She met a policeman but he was not sure where she should go and told her to keep driving. Ms Kampen said many cars were driving towards Duffy as she was leaving.

Ms Kampen said she was very disappointed because there was no communication in the days leading up to the fires and none on the Saturday. She said the message to go home 'when you know you were literally putting a life in danger still upsets me today. I think that we weren't told is upsetting at many, many different levels. But most of all it allowed me to make no choices about what I was going to do, until it was far too late to make any choices whatsoever'. The main concern for Ms Kampen was the lack of warnings and the fact that nobody seemed to take responsibility for making a decision by saying, 'Let's give these people some fair warning'.⁴⁵⁹

7.10.12 Ms Natalie Larkins

Ms Natalie Larkins gave evidence in her capacity as an ABC journalist. She and her partner were living in Rivett, in a rented property that was destroyed by the 18 January fires. She said she was aware of the fires because she had presented some stories about them the weekend before. She had had direct contact with representatives of the Emergency Services Bureau, discussing the progress of the fires and the benefit of all the information being disseminated by the bureau. She spoke to Mr Castle at 6.00 am on Saturday and also made contact with the weather bureau, police operations in Canberra, Queanbeyan and Goulburn, NSW Rural Fire Service staff, and Parks and Wildlife staff to obtain information updates.

Ms Larkins had an interview with Mr Castle scheduled for 11.00 am, but he was unavailable. She attended the midday press conference and found the information being given by Mr Castle and Mr Lucas-Smith contradictory and not generating the level of concern she felt was warranted. She gained the impression that the suburbs were under threat, even though this was not said. On her own initiative, at 1.00 pm Ms Larkins and Ms Julie Derrett presented a live broadcast about the fire situation and the precautions and preparations people should take around their houses. She then went home convinced the house would burn that day. Everything in the streets appeared normal.

During the following hour Ms Larkins, her partner, and some friends and relatives began to prepare the house, and she gathered valuables together. At about 2.30 pm Ms Larkins heard the emergency warning siren sound on the radio and heard a colleague reporting from somewhere in Eucumbene Drive. She then noticed the smoke becoming thicker and saw flames coming from the pine forests at Duffy and heading directly towards her. She and the others left the house as fires started to burn in the yard; they drove out of the suburb among many cars, as well as horses that were coming onto the road from the equestrian centre. As they were driving away Ms Larkins heard radio broadcasts telling people who lived in the affected areas to return to their

homes: she thought this information hopelessly outdated because it did not reflect the fact that the fires had already entered the suburbs. Ms Larkins contacted the radio station and gave a live interview about the situation.

Ms Larkins believed that if the information about what was happening with the fires and about the associated risks had been given to the public on Saturday morning, or even at the midday press conference, that extra hour or two would have made a great difference to people. She said there should not be a concern about alarming people because people have a right to be alarmed. Ms Larkins considered that the information flow from the Emergency Services Bureau to the media was ‘woefully inadequate, bordering on non-existent’.

Ms Larkins managed to save only a few personal possessions, including a few files, photos and a camera, but would have taken more had she had more warning.

For several months after the fires Ms Larkins was concerned—on a professional level and a personal one—about whether she had done everything she could to inform people. She underwent counselling in the hope of coming to terms with the situation because it played on her mind, and, she said, it still did. She said, ‘You know, had we had better information, could we have done more; could it change the outcome for people who lost their lives; people who lost everything they ever owned?’⁴⁶⁰

7.10.13 Mrs Melinda Latta

Mrs Melinda Latta lived in Eucumbene Drive, Duffy, with her husband and 12-year-old daughter. They had been following the progress of the fires but were not particularly concerned because they had experienced fires on the south coast of NSW. Mrs Latta’s husband had been a volunteer firefighter with Eurobodalla Shire for 20 years. He was due to fly to Brisbane on the afternoon of Saturday 18 January, and they both went shopping in Woden during the morning and returned home about 1.00 pm. Mrs Latta had not been watching television or listening to the radio. She went for a walk in the street, looking for her cat, and said everything looked normal and quiet. She then went to the video shop in Weston; on her return, a roadblock was being set up on the corner of Eucumbene and Hindmarsh Drives, but she was allowed through. She reached home and told her husband she was frightened. Mr Latta told her to go indoors and start packing things and told his next-door neighbour to change into long trousers and start preparing the house by hosing. It was about 2.50 pm, and Mrs Latta started to collect some clothes and photos, which she put at the front door. Mr Latta started to hose the house and was told by two police officers who drove past that the fires were about an hour-and-a-half away. He told the police it was more like 10 to 15 minutes and then told the neighbours to leave.

Mrs Latta described how the situation deteriorated very quickly. It became dark, water pressure was lost, power failed, the smoke intensified and conditions became hotter, very windy and very noisy. Mr Latta screamed to his wife that the fires were coming. She tried to find her two dogs and her two birds. The roof of the house was on fire, and Mrs Latta could not breathe. Mr Latta was telling her to leave the house. She said:

I screamed at him, ‘I haven’t got my handbag’. I knew we had to leave everything that I packed at the door. Most certainly the animals were our priority. But I desperately

wanted my handbag ... I ran to get my handbag, which was just at the door ... I got my handbag but nearly lost my life in the process. Allan said as I ran through the door a huge flame followed me ... and this huge flame just flew over my head.

Mrs Latta left in the car with her next-door neighbour; her husband stayed behind. As she was leaving, everything around her was on fire. She turned on the radio to ABC 666 and heard an announcer telling people to stay in their homes and prepare for the fires, but she did not hear any emergency warning signals. Mr Latta stayed at their home for a time and then went to another part of Duffy to help friends (whose house was also on fire) evacuate; he then stayed on to help the police with evacuations and roadblocks. Mrs Latta did not hear any news of her husband for many hours and was concerned that he may have been killed. She found him manning a roadblock in Duffy at 11.30 pm.

Mrs Latta was asked if she recovered anything from the house:

No. Everything was gone. My photos. Nothing. We were just left with the clothes we were standing in. I didn't have a chance to get anything out. Thank God Allan was there, because we would have died. There was no one there to help us. No one. And that's what I can't come to terms with. There was no one there to help us.

When Mrs Latta had experienced fires in Moruya, she said they were told constantly about the progress of the fires and what they needed to do. 'We were able to put precious things aside so that if we had to go we were able to go. Yet nothing like that happened to us on the 18th of January, absolutely nothing. That's what I find so very, very difficult to come to terms with.' Mrs Latta said she spoke with two lots of her neighbours: they also had no idea of what was happening and no feeling of the impending danger.⁴⁶¹

7.10.14 Sir Peter Lawler

Sir Peter Lawler and his wife lived in Eucumbene Drive, Duffy. Sir Peter followed the progress of the fires to the extent that they were reported in the *Canberra Times* and on radio and television. On the morning of 18 January Sir Peter was aware of a threat from the fires because of the unusual morning sky, but he had no sense that the fires were close or threatening or about to be upon them. He had no greater sense of threat after reading the newspaper and went to the airport to collect an elderly, incapacitated friend who was arriving at about 9.30 am on a flight from Hong Kong. After that, Sir Peter went grocery shopping at Cooleman Court in Weston and remarked how throughout the busy complex there was no hint that anyone had any intimation that a bushfire was bearing down on Weston Creek. He arrived home, unloaded the shopping, and then worked on his computer in the study until about 3.00 pm. Sir Peter's wife and their friend were resting. He did not listen to the radio or watch television, and when he left the study he walked up the driveway of his home and saw a large fire truck filling up with water from the hydrant between his house and the one next door. He asked the firemen, 'Should we cut and run?' and they told him to go inside, close the doors and windows, and keep calm. Sir Peter was on his way back into his house when he noticed one neighbour packing his car and the other hosing his house. Sir Peter had started to do likewise when one of his sons arrived and said they had to leave quickly.

Sir Peter said his first task was to get their 80-year-old friend into the car, which they did. He and his wife then had only enough time to grab medications and an armful of files, among them a biographical record he was making of the family. Lady Lawler was able to collect some old photographs. As they drove out of the street, Sir Peter saw the flames in the pines about 15 metres from the houses. His son remained at the house for a short time in a vain effort to save the house. Sir Peter said about 15 minutes elapsed between the time he spoke to the firemen and the time he drove away from his house amid flying embers.

After the Lawlers and their friend had left and joined ‘the slow lines of escaping vehicles bumper to bumper’, an official vehicle travelled up Eucumbene Drive announcing on a loud-hailer that people should evacuate immediately. Sir Peter said:

If, some hours earlier, there had been an official vehicle with a loud-hailer travelling up and down Eucumbene Drive and other streets announcing ‘Be ready to evacuate’ lives might have been saved and we and others would have been in a position to save at least some of our valuable and valued personal possessions. If, by any of various means available, we had had even an hour’s forewarning my wife and I would have been able to fill our Toyota utility and our Mazda sedan with many of our cherished and irreplaceable items and records and been ready to drive off. Other fire victims would have been similarly placed.⁴⁶²

Sir Peter said his archives, his computer, his library and his collectibles were all destroyed.

The main question Sir Peter raised concerned why the ACT Government and its relevant authorities ‘failed to keep ACT urban households properly informed about the developing threat to them from the January 2003 bushfires and why the Government and its authorities failed to call an effective “be ready” alert for threatened suburbs when the threat became imminent’. Sir Peter provided the inquiry with copies of the submission he presented to the McLeod inquiry, his evidence to the House of Representatives Select Committee, and correspondence he had had with the ACT Minister for Police and Emergency Services, Mr Bill Wood. In that correspondence Mr Wood wrote that, in general terms:

I can say that the lack of warnings given to the public related directly to the speed of events which unfolded on 18 January and the unexpected nature of some of the fire behaviour. It is true that on the evening of 17 January warnings were given by telephone to some rural residents when fires jumped containment lines and posed a direct threat to those people and their properties. However, the fire which affected the urban areas of Canberra on 18 January appears to have had a different source. This fire spread very rapidly during the middle part of the day and was accompanied by a tornado which accounted for some, at least, of the property damage suffered within the urban area.⁴⁶³

Sir Peter disagreed with these remarks and wrote back to Mr Wood, telling him that the comments just quoted did not constitute an acceptable reason for not warning people.⁴⁶⁴

7.10.15 Mr Michael Lecocguen

Mr Michael Lecocguen had lived at the Pierces Creek forestry settlement for most of his life. He followed developments with the fires through the newspapers and on radio and television. On the evening of 17 January he was not aware that the fires were a danger to him, even though late that evening he did hear they were spotting into Tidbinbilla. On Saturday morning he and a friend went to Gunning; his brother called him at about 12.10 pm and told him to return home, which he did at about 1.45 pm. Mr Lecocguen had about 13 years' bushfire-fighting experience and had worked for the NSW Department of Parks and Conservation for a short time and with the equivalent ACT department in the forestry area. He had already done some clearing up around his house, and he said that when he reached home the place was in uproar. There were 13 residents at the settlement, and all but four were still there. Some others were leaving when the fire swept around Mount McDonald and hit the town and then their houses.

Mr Lecocguen and others were trapped by the fire:

When the fire hit there were a total of eight of us ... Five of us were in the gully opposite home, between my place and Bob's place, who is a ranger at Forestry. There was a hydrant there. Ron, Jean and Tom unfortunately got trapped at the top of the hill where Eric Hayes drove up in blinding smoke and hurricane-force winds and found them huddled up in the middle of the road badly burnt. He left his ute because he got it stuck. Came down to see the ranger to try and get his help. When he returned, his ute had gone [it had been moved] and Tom, Jean and Ron's son got the ute out of the drain and drove themselves to the Cotter, where a Care Flight was called and they were flown into Canberra'.⁴⁶⁵

Mr Lecocguen and the others stayed in the gully in their vehicles until the fire passed over them. His house was destroyed; they managed to save one house in the settlement. He saw no firefighters at all, but he heard that a police officer did come to the settlement about 12.15 pm and warn three households, including the Reardons' house; Mr Reardon had been home from hospital for only a few days, having suffered a heart attack. Mr Lecocguen said Mrs Reardon told him the policeman assured people they would be safe and help would arrive soon. That was the only warning the residents received, and no help arrived.

Mr Lecocguen said, 'I lost virtually all my tools, all my memories, my photographs, clothes, a Holden that I had when I was an apprentice that I had almost all my life, my motorbikes, just everything. All my parent's antiques, all the stuff they treasured. Everything. It is all gone'. He said they had no warning and no assistance: 'We never saw a fire truck. The only people that saw anyone were ... the three households who spoke to the police officer ... I just want to know why we weren't forewarned and why we had no help'.⁴⁶⁶

7.10.16 Mr James Lewington

Mr James Lewington lived in Kambah with his wife and three children. On the morning of 18 January he was not concerned about the fires affecting his house and was not making any preparations. At about 12.30 pm he, his wife and daughter drove down Kambah Pool Road and saw thick smoke drifting along the other side of the river corridor but no flames. He returned home and watched the tennis on television between 1.00 pm and 3.00 pm; there were no

warnings about the fires reaching suburbs. Mr Lewington went outside at about 3.00 pm because his wife called him to look at the red sun; there was even more smoke. He had a conversation with his neighbours, who were filling their house gutters with water. He asked whether they had heard any warning and they replied that they had not, nor had other neighbours, who did not appear unduly concerned.

Mr Lewington's wife and daughter were concerned. They collected possessions and loaded up the cars. His son called at about 3.10 pm, saying he could see the fire at Kambah Pool Gorge. Shortly after 3.15 pm a vehicle drove into Mr Lewington's street and a person with a loud-hailer began telling people to prepare to evacuate and be ready to leave in about an hour. Mr Lewington set about making preparations around his house, and his wife and daughter continued to pack belongings. Mr Lewington said that at this stage he did not believe that the fire would reach his home.

At about 4.00 pm Mr Lewington saw a spot fire from Mount Arawang: embers travelled across the Tuggeranong Parkway and hit Mount Taylor. He saw flames about 20 minutes later and the firestorm coming from his neighbour's back fence, with a firewall that appeared to be 'fifty feet' high. Mr Lewington then described how during the next hour he, his two sons and two of his neighbours fought the spot fires at his home and surrounding homes. His wife had already left, but his daughter had misplaced the keys to her car, so she stayed behind. He saw houses burn around him. The power failed at about 5.30 pm, and water pressure dropped. He was told by two people—either police or firemen—to evacuate the house because it could not be saved. Reluctantly, Mr Lewington left with his sons and daughter and drove away through a canopy fire. He returned to his house at 6.10 pm and was surprised to find it still standing—thanks to four of his neighbours. Three houses adjacent to Mr Lewington's house had been destroyed. He and his neighbours continued to put out spot fires in the vicinity.

Mr Lewington said that after the 2001 fires he had received a letter, in April 2002, signed by both the Minister for Urban Services and the Minister for Emergency Services. The letter delivered the 'bushfire safety message'⁴⁶⁷, and Mr Lewington took the measures described in the letter in order to reduce fuel levels around his house. Using the number nominated in his letter, he telephoned the ACT Bushfire Service and expressed his concern about the fuel build-up in the area behind the back of his house and the authorities' lack of action reduce it. This was one of the greatest concerns for Mr Lewington.⁴⁶⁸ The others were the loss of water pressure and the policy of forced evacuation. Mr Lewington said he was opposed to force evacuation because his house was saved by virtue of his neighbours staying on after he had left and fighting the spot fires.⁴⁶⁹

7.10.17 Mr Leonard Norris

Mr Leonard Norris lived in Duffy with his wife. He had been following the ABC news and television broadcasts about the fires' progress, and on the evening of 17 January and the following morning he did not have the impression the fires would come through the suburb. Mr Norris went shopping on the morning of 18 January, arriving home at 10.30. Then he and his wife went into Civic, returning at 12.30 pm. He had done nothing to prepare his house and was going about his usual activities when his daughter rang from Sydney at about 2.50 pm and told

him the fire information was on the radio in Sydney and that he should take the situation seriously. Mr Norris turned on the radio and heard the 3.00 pm news bulletin, which warned residents of Duffy to ensure that their downpipes were blocked, told them to fill the gutters with water and make other preparations, and to evacuate if necessary.

Mr Norris said he had some knowledge of what was required, and he and his wife began to prepare. He noticed the first spark come onto his property at about 3.20 pm; he was on the ladder when the embers hit the house. Mr Norris went into the house, changed into his old gardening clothes, and went back outside to fight the fire. He and his wife battled the spot fires and embers while the houses around them were burning, in one case from a gas installation outlet that had broken away from the wall. Mr Norris called 000 and asked to be connected to the gas authorities. His request was refused, and he was connected instead to the fire emergency operator. Mr Norris said he heard the emergency signal on the radio and kept hosing. He tried to hose fires in surrounding houses but some were beyond rescue and continued to burn. He noticed other residents battling the flames, but many houses in the street were destroyed. With his wife's help, Mr Norris saved his home and put out fires in neighbouring houses that were unoccupied.

Mr Norris said that at no time was he told to evacuate his home. He thought he would have left if he had been told to, but then he would have lost his home and all his possessions. Mr Norris said the evacuation policy and the question of whether to stay or leave one's home are crucial. If there is to be a protocol, people who are not fit enough to stay should leave early and possessions should be removed early, rather than at the time the fire hits.

Additionally, Mr Norris noted that people were not permitted to return to their homes before the fires arrived. He believed such a policy is inappropriate if people are fit and able to protect their property. He also said that in the 30 years he had lived in Duffy he had never received any information in his letterbox or by way of advertising about what to do to prepare for fire.⁴⁷⁰

7.10.18 Mr Reginald Park

Mr Reginald Park lived in Chapman. He was aware of the fires burning in the Brindabellas but did not regard them as a tremendous risk. He worked on the morning of 18 January, arriving home at about 11.30. He thought the fires were getting a little close but did not think they would become serious enough to burn his house. He had the radio on but was not taking much notice because there was no advice to be on full alert. Mr Park had started to clear up his garden as part of his usual Saturday routine when conditions worsened. He started to hose down his roof because he saw his neighbours doing this; then he saw flames on the top of Cooleman Ridge. The wind was very strong and trees were being 'flattened'. Mr Park said that shortly after that he learnt police were in the area telling people to prepare to evacuate.

Mr Park went inside his house and gathered his car keys, his cat and a folder of documents that included his passport. He got into his car and drove out onto a very busy street: the cars were bumper to bumper. Mr Park said he drove through flying embers and wind that lifted the back of his car off the road. He said the experience was frightening. His house and all his possessions were destroyed. Mr Park said he did not blame anybody for the mistakes that had been made, but he added:

My one thing I would have preferred is that ... we weren't really aware of the danger until actually the fires were coming over the ridge. I thought that was a little bit late. I would have loved to have been able to save some photos of my mum or my family or something like that, which I didn't.⁴⁷¹

7.10.19 Mrs Judith Poulos

Mrs Judith Poulos lived in Duffy with her husband and her 23-year-old daughter. She had another property in Duffy that was rented to tenants. During the week before 18 January Mrs Poulos said that, although she did not feel particularly safe, she did not feel her home was under threat from the fires because no one had mentioned that they would encroach upon the suburbs.

On Saturday 18 January she was at home with her husband and her daughter when her elder daughter rang from Fadden, telling her to listen to an emergency message on the radio. The message said not to panic because there was no immediate danger, but people should stay with their property and prepare in a number of ways. Mrs Poulos made notes and then started to take the recommended action. She said she rushed inside to fill the bath with water but said she still did not know what that was for. The daughter of her next-door neighbour arrived to collect her father, who had recently returned from hospital, and yelled at Mrs Poulos to get out because houses were burning in the street. This was the first she had heard of houses being alight: the radio message just kept telling people to stay with their property.

Mrs Poulos said the power failed and the atmosphere became dark and filled with smoke. She rushed inside the house, which was filling with smoke, and tried to help her daughter, who was having difficulty breathing. The noise was horrendous and her husband shouted to her to get out of the house; she and her daughter both drove away. Her son-in-law arrived just as she was leaving, at about 3.30 pm, but her son was refused entry to the suburb. Mrs Poulos' husband and son-in-law stayed at the house and tried to save it, but the house and all their possessions were destroyed.

Mrs Poulos said that even two hours after her house was destroyed the radio was still broadcasting messages telling people they were in no immediate danger and to stay with their homes. She was very critical of the radio messages:

I feel the advice we were given via the radio was totally inappropriate for people in the frightfully dangerous situation in which many of us were placed. Rather than waste the very short time we had trying to 'secure our property', as we were instructed, we should have been advised to prepare for evacuation. In fact, because of the radio messages, I was diverted from pursuing the priorities I would have had I known we would have to leave our home in a very short time. I would have collected my personal papers, photographs and some clothing at the very least, instead of having to flee my home with nothing.⁴⁷²

Mrs Poulos' rental property was also destroyed, compounding the financial loss. Her husband and son-in-law both suffered injuries as a result of trying to fight the fire. She said she felt anger and grief, but it centred around the fact that they were not given any warning and had no opportunity to give thought to evacuating. She was very distressed about the loss of Mount

Stromlo Observatory, which she said should have been protected. It seemed to her that there was not any proper planning.⁴⁷³

7.10.20 Mr Perry Smith

Mr Perry Smith lived in Duffy with his wife and two adult sons. He had observed the progress of the fires since their ignition and had listened to reports on the radio. On the evening of 17 January, having been to Belconnen, he was well aware from the smoke that there was a general, if not specific, threat. On Saturday 18 January Mr Smith did what he described as ‘the standard things’ that morning, but they were also partly associated with fire preparation. He went to Woden at about 10.30 and then to Cooleman Court in Weston. As he was leaving for home at about 2.00 pm he noticed that conditions had deteriorated considerably. He became extremely concerned and tried to drive home the most direct way. He saw houses on fire in his street. He arrived at his home to find a note from his wife telling him that she and their sons had evacuated and to meet them in Woden.

Mr Smith said his house was not alight but others were burning around him, and there were embers and burning debris close by. He started to put out spot fires on his property, but then the water pressure failed. Other fires started; he could not control them all. Mr Smith said he saw a fireball coming towards his house and decided he should leave. He had sustained an injury as a result of being hit by flying debris, and he saw a fire underneath his car. Mr Smith said the flames around him were about ‘60 feet’ high and it was ‘very, very scary’. He drove away past more fires in the adjoining streets, hit a bottleneck, and drove slowly past the burning service station in Duffy.

Mr Smith had no contact with anyone while he was trying to defend his house. He said his wife told him later that a neighbour who had been to Eucumbene Drive had been told by a fireman that the fire was at the top of Duffy. When Mr Smith’s wife and sons left the house they took very few possessions with them, apart from some jewellery, some documents and a guitar. Mr Smith and his family were allowed to return to the block on the following Monday; they found smouldering ruins.

Mr Smith felt they should have been informed better and much earlier about the possibility of an impact from the fires:

... I think the warning bells should have been ringing from, say, the same time that all the senior briefings of the ACT Government took place. I think the difference—we wouldn’t have made our home completely fireproof in those three days, but it would have made a considerable difference and undoubtedly a large number of other residents would have done the same.⁴⁷⁴

Mr Smith said he was very frustrated as he was driving away from his burning house to hear a radio message advising Duffy residents to stay with their homes. He said this created great uncertainty for him because he was not sure whether he was supposed to return to his home. He thought, in the end, that this was poor advice because he was at risk remaining, just as his family would have been had they stayed. Mr Smith said his wife and sons had done as much as they could to prepare the house before they left.⁴⁷⁵

7.10.21 Mrs Jane Smyth

Mrs Smyth had lived in Chapman with her husband for about 28 years. After the December 2001 fires she took the initiative and arranged through the Emergency Services Bureau for members of the ACT Bushfire Service to give a presentation to about 17 residents of Chauvel Circle and Monkman Street.⁴⁷⁶ This occurred in November 2002, and Mrs Smyth recalled being told at the time that, in the event of fire, the instructions were to remain with your home until the police told you to evacuate. She said she felt confident because they were told this was the safest thing to do, and they had received instruction in how to deal with spot fires and what precautions to take around the house and grounds.

Mrs Smyth said she and her husband read the newspapers, listened to ABC radio, and watched television. She was anxious about the fires from the beginning but was reassured mid-week by something she heard being said about the controlling of the fires. She said, ‘... I had such confidence in the services—that they would protect us—that the lack of information we were receiving seemed to have the effect on me that therefore we must be alright, which in retrospect was quite dangerous’.⁴⁷⁷

On the morning of 18 January Mr Smyth was at work. Mrs Smyth read the *Canberra Times* carefully. She was to have gone to the markets and then meet a friend, but she decided someone should stay at home because the situation was looking dangerous. She and her husband had prepared the house earlier by clearing gutters and doing other basic things. A neighbour who was holidaying on the north coast of NSW telephoned to ask her about the conditions. Mrs Smyth told the neighbour:

Look, conditions really couldn’t be worse. I can’t imagine anything more highly dangerous than the situation we’re in now. But we have heard nothing. There have been no warnings. I have been listening really carefully all day—I had ABC 666 on from quite early—I can tell you, Ron, we are in no danger or we would have been told ... We haven’t been warned so we are not in any immediate danger.⁴⁷⁸

As she completed the call Mrs Smyth noticed that the wind had picked up, so she called her neighbour back and told him to head for home. Just at that point Mrs Smyth heard the announcement on ABC Radio 666 advising Duffy and Chapman residents to return to their homes. She said that was the first and only warning she heard and it was at about 2.30 pm. She contacted her husband and asked him to come home and quickly rang around some neighbours and asked them to ring other neighbours.

Mrs Smyth said she then dressed in appropriate clothes and began preparations such as filling the bath with water, moving furniture and closing all doors and windows. Her husband arrived home and put the dog into the car, ready to evacuate as soon as they were told to do so. An evacuation message failed to come, so Mr and Mrs Smyth took the dog back into the house and started to collect photo albums and put them in the car. The spot fires started outside, but the Smythes coped well for a time, even though they were virtually surrounded by fire. They then heard a sound described as a 747 jet airliner, and wind blew sparks all over their place in a shower of fire.

Mr and Mrs Smyth ran inside the house, but the sparks began to invade and the house started to burn. They left the house after the glass started to crack. They remembered to run to where the fire had been and tried to leave, which, after some drama and personal risk, they finally did. Mrs Smyth had left her handbag, containing her wallet, jewellery and precious family photos, ready to take with her when she left, but she did not have the opportunity to fetch it. They watched their home burn. Then they drove away to the sound of other houses burning.

Mrs Smyth said in her evidence and in the submission she made to the inquiry that she was disturbed by the lack of warnings and she could not understand why information was not provided in the week leading up to the fire. She wanted information: ‘The warnings did not have to tell me exactly what to do, but I would have liked to know that an evacuation centre was being set up. That would have given me the information I needed’.⁴⁷⁹

7.10.22 Mr William Todkill

Mr William Todkill had been a resident of the Stromlo forestry settlement for 24 years. A neighbour of Mrs Dorothy McGrath, he lived there with his wife and young son and had 24 years’ firefighting experience with ACT Forestry and the Rural Fire Service.⁴⁸⁰ On the evening of Friday 17 January he was aware that the fires had the potential to impinge on the settlement because of the increasing amount of smoke and the burnt leaves and embers that were being deposited in his yard; he received no telephone call to warn him of impending danger.

On the Saturday morning he and his family went to the Botanic Gardens. Before they left he had not heard or read anything to alert him or others to danger. He said in December 2001 the police had come by, using a loudspeaker to tell them to make preparations, which they did by packing up possessions and documents.

The family arrived back at the settlement at about 1.30 pm after receiving some information from a friend about the progress of the fires. Mr Todkill put some possessions in the car and sent his wife and son out of the settlement at about 2.00 pm. NSW Rural Fire Service personnel were hosing down his house and another one. Mr Todkill put on overalls. Embers started falling and he and a few other residents and friends were preparing to hose the spot fires. Suddenly the fire front came over the top of them and they took shelter behind a stump. Sheets of tin started to fly about and the smoke was intense; after trying to fight some of the fire, Mr Todkill and his friends decided to leave because the situation was dangerous. He saw houses on fire, including Mrs McGrath’s cottage, but he had not seen her that day.

Mr Todkill and his friends returned to the settlement about half an hour after they had left. He walked among the burnt-out houses and found Mrs McGrath’s body in the yard near her cottage. He could not use his mobile phone, but a light unit (a small fire truck) came by and the police and ambulance were contacted. Mr Todkill’s house had survived the original fire front but it ignited at about 7.00 pm. Part of it was destroyed. Mr Todkill said:

I would just like to know why the fires ... were left to burn like they did. I mean, in the 24 years that I had there—I mean especially in summer time when the conditions were like that—the old practice was detection and response. You would go there and stay there till they were blacked out.⁴⁸¹

7.10.23 Ms Niki Van Buuren

Ms Niki Van Buuren was 20 years old and lived with her parents and younger sister in Oxley. They owned a horse called Drew, who was agisted at the Canberra Equestrian Centre, at Kathner Street in Chapman. Niki and her mother, Mrs Wendy Van Buuren, discussed Drew's safety at about midday on Saturday 18 January, after they had received a telephone call from Ms Marg Oldigs, a woman whose horse was in the same paddock. They contacted the owner of the Equestrian Centre and were told there had been no instruction to evacuate the horses because the paddocks were dirt and the horses would be safe there. Ms Oldigs called again, however, telling Ms Van Buuren she was worried. So Ms Van Buuren and her mother set off for Chapman to collect Drew.

As they were driving Ms Van Buuren heard a radio warning announce that residents of Duffy and Chapman and all the suburbs of Weston Creek should return to their houses. When they arrived at the paddocks they began to hose down areas and fill buckets with water. Ms Van Buuren was clearing bits of wood away from the sheds and her mother was packing horse feed into the back of their car. They were waiting for Ms Oldigs to arrive so that they could tow the horse float. They saw the fires come over Cooleman Ridge. Ms Van Buuren and her mother tried to lead two horses out of the paddock and into the indoor stables, but they did not make it out of the paddock. The wind came up very quickly, the horses panicked, and there was no choice but to let the horses go. The horses ran into the fire. Ms Van Buuren was knocked backwards by the wind. She thought she was going to die, but she picked herself up off the ground and ran into a stable, where she found her mother. They sheltered there for a short time, until the roof was blown away and they were surrounded by flames. Mrs Van Buuren said they were not safe there, so Ms Van Buuren ran from the stable towards a car but it was in flames so she kept on running towards the indoor arena, where she thought she would be safe. She came upon another car and its occupants sheltered her. Her mother, too, was brought to the car. Ms Van Buuren said:

It was very surreal. The lady kept going out and getting water out of a water trough that miraculously still had water in it. She was pouring water all over us from the drink bottle and telling us not to drink it because the water had gone bad. The three of them, the lady and her husband and my mum, were all telling me to breathe slower and keep talking.⁴⁸²

Ms Van Buuren, her mother and the two people who rescued them were driven to Canberra Hospital by Ms Jocelyn Newman. Ms Van Buuren sustained burns to almost every part of her body; she and her mother, who was also seriously injured, were transferred to Concord Hospital in Sydney the following morning.

Ms Van Buuren stayed in Concord Hospital for 10 months. She had been rescued from the burning paddock by Mrs Trish Thomas and her husband Mr Richard Thomas, both of whom were also badly burned and otherwise injured.

Ms Van Buuren said she and her mother had received no warnings that it was unsafe to go to the paddock to evacuate their horse. There was no one at the gate telling them to go back, and it was not until after the fires had passed that they saw police.

7.11 Would people have acted differently if they had been warned?

Contrary to the submissions on behalf of the ACT and Messrs Castle, Lucas-Smith and McRae—to the general effect that there was no evidence that people would have acted differently if they had been warned—the evidence of the residents, whom I consider representative of the community, made it clear they would have acted quite differently had they been warned.

7.12 Submissions of counsel

Counsel assisting submitted that even as late as the morning of Saturday 18 January there were several occasions on which warnings could have, and should have, been issued to alert the Canberra community to what by then was an inevitable impact on them from the fires. These opportunities were not taken, and it was submitted that, on the contrary, Messrs Lucas-Smith, Castle and McRae in particular continued knowingly to withhold vital information from the people without a valid reason for doing so. Counsel assisting further submitted that the failure to provide this vital information on or before midday on 18 January was a dereliction of the duty the Emergency Services Bureau and its senior officers owed to the public.⁴⁸³ Additionally, counsel assisting submitted that I should conclude there were no meaningful warnings issued until the first Standard Emergency Warning Signal, at about 2.40 pm, and the later declaration of a state of emergency and that this was a cause of the loss of property, the destruction of houses and, more importantly, the death of Mrs Alison Tener.⁴⁸⁴

Counsel representing Mr Lucas-Smith and Mr Castle conceded in their submissions that ‘there can be little dispute that earlier and better warnings could and should have been issued by the authorities’.⁴⁸⁵ They disputed, however, the claim that no warnings were issued by the Emergency Services Bureau until after 2.30 pm on 18 January 2003, and they then analysed the various announcements made by Mr Lucas-Smith and Mr Castle during the morning (and before), which, they said, show that quite specific and clear warnings were issued well before 2.40 pm.⁴⁸⁶

Counsel representing Mr McRae made several submissions on his behalf about his role in relation to warnings. Those submissions can be summarised as follows:

- Based on scientific analysis, there was simply no recognisable or justifiable basis for Mr McRae to suggest that the fires would impinge on any part of urban Canberra.⁴⁸⁷
- Mr Lucas-Smith could, however, have issued some kind of warning if he thought fit to do so.⁴⁸⁸
- It was too difficult for Mr McRae, and others, to make any meaningful projections of fire behaviour beyond one day.⁴⁸⁹
- Mr McRae was waiting to identify the specific community subset that needed to be alerted, so that any warning would be targeted and not aimed at the entire urban community.⁴⁹⁰

- Mr McRae did not expect the fires to evolve as they did but instead expected separate, independent runs by a number of fires towards the rural–urban interface.⁴⁹¹
- Mr McRae thought there had been adequate general warnings to the urban community.⁴⁹²
- Mr McRae was not responsible for warning the community—only for providing the information upon which a decision to warn could be based.⁴⁹³
- Counsel assisting misunderstood Mr McRae’s evidence in relation to warnings because they were at cross-purposes with Mr McRae.⁴⁹⁴
- There is no basis to criticise Mr McRae because he did all he could to alert the responsible people of his fear of a wildfire reaching Canberra.⁴⁹⁵
- Mr McRae’s view was that the point had not been reached at which a targeted warning needed to be given to an identified section of the public about the threat.⁴⁹⁶
- Mr McRae’s advice to Mr Prince, to prepare the ACT Fire Brigade for possible impact of fire from Weston Creek to Greenway, was sensible in that they could prepare and not be ‘caught short’.⁴⁹⁷
- It is conceded, with hindsight, that Mr McRae did not perceive ‘the potential utility of some kind of targeted warning, if possible, having been given on the morning of 18 January 2003 to residents in the suburbs to which the fires reached later that day’. This is not, however, to be seen as ‘an unwillingness to impart frank information to the community’.⁴⁹⁸
- Submissions by counsel assisting that Mr McRae knowingly withheld vital information from the people should be rejected.⁴⁹⁹

Counsel representing the ACT conceded on behalf of the ACT that warnings to the people on the western edge of Canberra should have been given earlier than on 18 January 2003 and that the Emergency Services Bureau should have provided a clear indication about the possibility of fire reaching the urban edge.⁵⁰⁰ Further, counsel stated, ‘The ACT accepts that events on 18 January were chaotic, and in a large part that arose from a lack of preparation for, and a lack of warning about, the size and magnitude of the fires which in fact impacted on the urban edge’.⁵⁰¹

It was submitted, however, that the failure to issue adequate and timely warnings should not be seen as the result of a deliberate decision by ESB officers to withhold information.⁵⁰² Rather, counsel for the ACT submitted there were numerous reasons why adequate and timely warnings were not given:

- The event was ‘extraordinary and unexpected’, as were the speed and intensity of the fire that struck Duffy.⁵⁰³
- Officers of the Emergency Services Bureau did not appreciate the seriousness of the risk.⁵⁰⁴
- Officers of the Emergency Services Bureau did not appreciate the risk because of their limited experience in large fire events and their previous record of success.⁵⁰⁵

- Senior officers of the Emergency Services Bureau experienced a physical toll by virtue of working long hours for up to 10 days in stressful conditions and having to make many complex decisions and judgments.⁵⁰⁶
- In stressful circumstances ‘individuals are likely to be distracted from important issues and may make judgments which on closer analysis are not the best judgments which could be made’.⁵⁰⁷
- In relation to the events of 18 January 2003, the ESB officers ‘had the theoretical appreciation but not the actual expectation’ of what might occur.⁵⁰⁸
- The ESB officers acted in good faith and were optimistic about their ability to suppress the fires.⁵⁰⁹
- There is no reason a broad precautionary warning could not have been given on 16 or 17 January 2003, but, ‘given the theoretical nature of the possibility, and the nature of what was thought possible ... it is understandable why warnings were deferred and if given would necessarily have been very broad’.⁵¹⁰
- Apart from not understanding the magnitude or the imminence of the risk, there was no knowledge of the ‘where, when or what’ of the impact of the fires.⁵¹¹
- ‘Mr Lucas-Smith and Mr Castle were acutely aware of the need to keep the public informed. It was not done well, as both men acknowledged ... but they did so to the best of their ability based upon the knowledge and expectations that they had at the time.’⁵¹²
- Any criticisms of Ms Lowe and Ms Harvey in connection with the way they performed their duties is unjustified because neither of them was experienced in ‘handling the media requirements in a large fire event’.⁵¹³
- It was common knowledge that the fire had been burning for 10 days, and 86 per cent of people surveyed said that, as a result of pre-season information, they knew what to do in the event of bushfire.⁵¹⁴
- ‘Even those residents who [were] informed and well-prepared, such as the residents of Chauvel Circle Chapman were unable to prevent the severe impacts of wind and fire on their residences’.⁵¹⁵
- Fatigue, long hours and pressure impaired the judgment of senior ESB personnel, who were focusing on suppression, and they failed to have sufficient regard to issuing appropriate warnings.⁵¹⁶
- Mr Lucas-Smith lacks media skills, and that is the reason he did not comment at a press briefing on the size of the McIntyres Hut fire—assuming he knew the situation in relation to that fire.⁵¹⁷
- Even if a warning had been given, it is questionable that people would have done more than they did.⁵¹⁸

- The midday press release on 18 January should have been released earlier but personnel were too busy with operational demands.⁵¹⁹
- In relation to the Standard Emergency Warning Signal message advising residents to return to homes that might have been on fire, in such a dynamic situation it is understandable that a correct and up-to-date message might not have been broadcast.⁵²⁰

7.13 Fire experts' evidence on warnings

Following is a summary of the evidence given by people with expertise in bushfires and bushfire fighting. Although not the totality of what was said on the subject by each of the witnesses, it does reflect the essence of their opinions.

7.13.1 Commissioner Phil Koperberg

Commissioner Koperberg was familiar with the fire situation in the ACT, particularly in the few days leading to 18 January. He was asked when the Canberra community was entitled to be informed of the risk and what he would have done if he had had responsibility for this:

It would have been a two-phase approach. By Thursday evening or Friday morning there would have been a general advising of the potential; and by Friday evening the second phase would have commenced and that would have continued through to lunchtime on Saturday the 18th, which would have been far more intensive inasmuch as there would have been staff of agencies visiting streets, brigades would have been assisting in preparing households which were particularly vulnerable, decisions would have been taken on whether or not to evacuate the most vulnerable—the aged, the young, the infirm.

Written material would have been distributed warning of the potential consequences of the next—of the weather over the next 24 hours. An asset threat analysis would have been undertaken in those areas considered to be most at risk resourced to try and minimise that risk. So, chronologically, about 36 hours would have seen the introduction of a two-phase program.⁵²¹

7.13.2 Mr Trevor Roche

Mr Roche noted in his report prepared for the inquiry that under the AIIMS Incident Control System, 'the responsibility to develop information for distribution to the community rests with the Planning Unit. The [incident controller] has the responsibility to authorise the release of information and the Information Unit in the Planning Section has the responsibility to distribute the information'. Mr Roche noted that the service management team model adopted by the ACT Bushfire Service did not vary those responsibilities—except that Mr Castle assumed primary responsibility for media and information management and information was provided for radio and television interviews from a number of potentially inconsistent sources and without the endorsement of the incident controller.⁵²²

Mr Roche described a three-stage approach to a community education system, in which an emergency warning is the final phase. In the case of the 2003 fires, his opinion was that the final phase should have occurred in the ACT on 14 January and should have contained information on possible impacts and actions to be taken. The warnings should escalate in urgency, he said, in keeping with the escalation of the likelihood of impact.⁵²³

Mr Roche expressed concern about the Emergency Services Bureau's failure to promulgate adequate and timely warnings and advice to the community on 17 and 18 January:

The SMT failed in their obligation to provide sufficient warning to the community in time to enable residents and the owner/occupiers of commercial premises to consider their options and to take action either to leave their property, prepare for any impact or to remain and defend their property.⁵²⁴

It was Mr Roche's opinion that people tend to panic if warnings are given too late and they have to flee in the face of fire. He said early and progressive provision of information to the community minimises the prospect of panic.⁵²⁵

7.13.3 Mr John Nicholson

Mr Nicholson was also of the opinion that it was important to avoid engendering panic when providing warnings to the community and that, as a result, advance work needed to be done on what to say and when to tell people to go if evacuation is the option they choose.⁵²⁶ In his view, the information the Emergency Services Bureau provided to radio and television broadcasters in Canberra during the period 8 to 17 January was such that it should have served to alert the community to the gravity of the developing situation with the fires. He said:

Having considered the papers referred to above and the good co-operation of the Canberra media, significant work was done by the ESB to alert the community to a need for individuals to be thinking about their own well-being and preparing just in case ... there was regular and comprehensive advice to Canberrans on the developing fire situation, where to obtain information and what action those people with homes in threatened areas should be taking, with the emphasis on ember attack.⁵²⁷

It became clear during his evidence that Mr Nicholson had not been provided with—and he admitted he had not had—an opportunity to read and review a great deal of the information relevant to the events of the days leading up to 18 January and the actions of various people during that time.⁵²⁸ His focus was limited. I formed the view that Mr Nicholson was not well-informed about the facts and that this affected the validity of some of his opinions. Nevertheless, he did make some remarks that I consider very relevant:

- He agreed that firefighting authorities must be honest with people about the risks they face.⁵²⁹
- He agreed that it is important for firefighting authorities to give people timely advice about how to protect themselves and their property.⁵³⁰
- He agreed that it is too late to give advice or warnings just as a fire is striking an area because this could have disastrous consequences.⁵³¹

- He said, ‘Recent history is littered with unprepared communities who suffer enormous losses because governments and what might be described as inwardly focused emergency management agencies keep problems to themselves and fail to recognise their limitations and then are overwhelmed when disaster hits’.⁵³²
- He did not resile from an earlier view he had formed that ‘the Canberra community, including its emergency services, were not well prepared’.⁵³³
- He agreed that if the Emergency Services Bureau had formed a view about a predicted impact of the fires on the urban community at particular times it was obliged to disseminate that information to the public.⁵³⁴
- He agreed that the people of Canberra were entitled to know that Mr Lucas-Smith held the opinion on 15 January that the Bendora fire, under certain conditions, had the potential to impinge on the southern suburbs and on rural properties.⁵³⁵

7.14 Other expert opinion

7.14.1 Sir Peter Lawler

During the inquiry I had the benefit of the opinions of Sir Peter Lawler, a man with considerable experience in public administration and with extensive knowledge of the Westminster system of responsible government.

Earlier in this chapter I describe the evidence Sir Peter gave in his capacity as a Duffy resident whose home and possessions were destroyed in the fires. In addition to this evidence, the inquiry received evidence from Sir Peter by way of a sworn affidavit dated 29 April 2004.⁵³⁶

During a career spanning four decades in public administration Sir Peter served as advisor to nine prime ministers, as ambassador for Australia, as permanent head of two Commonwealth departments and as deputy secretary in the Department of the Prime Minister and Cabinet. He also distinguished himself in numerous other Commonwealth Public Service roles, including being seconded to the British Cabinet Office in London and having departmental responsibility for the Commonwealth Fire Board.⁵³⁷ Sir Peter put forward his opinion about the lack of warnings in the following terms:

The failure to warn in January 2003 cannot properly be dismissed as the result of unexpected changes in the savage onrush of the bushfires as they developed and spread ... Given the nature of government, it is highly likely that this failure derives, for whatever reasons, from the structures, directives, staffing, financial provision, operational processes, audits and the like which are the stuff of public administration and the governance which controls it and to which it is responsible.⁵³⁸

Various counsel submitted that, in effect, the senior personnel of the Emergency Services Bureau did their best and nothing more could be expected of them. To this, Sir Peter said:

In my opinion, simply to wave the issue away by saying that those involved did their best and, without proper analysis of the failure, rush to set up a new emergency services agency risks perpetuating failure.

If responsible officers in the relevant departments and agencies of the ACT Government did their best, then in this case their level of competence proved unequal to the demands of their office ... Their integrity and honesty are not necessarily in question.

Responsibility might properly fall on those who appointed them or those within administration or governance responsible for their supervision, direction and support.⁵³⁹

This opinion is particularly relevant in the context of the fact that, as Sir Peter noted in his affidavit, there had been seven reports in nine years in relation to the Emergency Services Bureau—all of them referred to in the 2003 McLeod report. Of special importance is the 1994 McBeth report, which Mr McLeod described as ‘very prescient’ in that, as Sir Peter noted, ‘it foresaw the risks which became reality in January 2003’.⁵⁴⁰ Mr McBeth unequivocally endorsed recommendations made by Mr Phil Cheney in relation to an earlier report known as the Hannan report of 1991—another of the seven reports referred to by Mr McLeod.⁵⁴¹ Among the many comments Mr Cheney made, under the heading of ‘Potential for conflagration’ were the following:

My estimate is that a 1–50 year conflagration fire will burn a total area of around 60 000 hectares in one day and severely damage suburban dwellings where they are adjacent to forests, hill parks and nature reserves. Under this scenario the fire fighting resources of the ACT will be totally overwhelmed. They will not have enough tankers or pumpers to attend every house threatened, and by and large destruction will be limited only by the action that residents themselves take both before the fire occurs to reduce the fuels around their homes and during the fire to suppress embers and spot fires starting in their gardens and dwellings.

In a year such as this summer [1991] it is easy to develop an apathetic attitude toward bushfires. However, it is not the average fire season which does the major damage. It is that season where you get a combination of drought, high winds, high temperatures, low humidity and an ignition source combined with a pre-existing heavy fuel load that lead to conflagration fires which overall do 90–95 per cent of the total damage of all fires.⁵⁴²

Earlier I referred to Sir Peter’s observations about governance and responsibility for supervision, direction and support of the Emergency Services Bureau. Sir Peter further observed:

Ministers are appointed to administer Departments and associated agencies. They are required to be pro-active and to accept responsibility. There has been a convention that if things go seriously wrong the Minister responsible may feel compelled to resign ...

It is not good enough for Ministers to say that they simply relied on expert advice. In my experience no Minister worth his or her salt ever did that in tricky situations ...

In any examination of the anatomy of ‘failure to warn’ the element of Ministerial and Cabinet responsibility is real and deserves close attention.⁵⁴³

Sir Peter concluded his sworn affidavit as follows:

During the January 2003 bushfires residents living on the suburban fringe of Canberra had a right to expect, and to rely on, a process by which they would be warned of an impending risk from bushfires. The ACT Government and its authorities had a public duty of good governance to provide it. They failed to do so. In the event four lives were lost. Serious injuries and trauma occurred. There were large property and financial losses both for citizens and the public purse. In my opinion, the omission involved a gross failure in a public duty of care by the ACT Government through its responsible Ministers and authorities.⁵⁴⁴

The opinions expressed by Sir Peter Lawler are very apposite.

7.14.2 The Australasian Fire Authorities Council

The Australasian Fire Authorities Council position paper *Community Safety and Education during Bushfires* states, ‘where adequate fire protection measures have been implemented, able-bodied people should be encouraged to stay’. It goes on to say, ‘Research into Australian bushfire fatalities shows that last minute evacuations from bushfire contributed to the majority of deaths. Late evacuation is inherently dangerous and can cause greater risks than remaining in the fire area’.

Under the heading ‘Information and warnings’ the paper states:

During the course of a bushfire it is essential that all people in threatened communities have ready access to accurate information to assist them in their decision-making.

The fire authority should be responsible for providing advice for residents who are likely to be threatened by a bushfire. Fire authorities have access to the necessary information and the expertise to determine the level of bushfire threat.

It is essential that the Fire or Incident Controller provides timely advice and consults closely with Police or Emergency Co-ordinator and with other support agencies.⁵⁴⁵

7.15 What the community was told on Saturday 18 January 2003

Because they had not received adequate information by the end of 17 January, what the people of Canberra needed to be told at first light on Saturday 18 January was that the situation with the fires had deteriorated to the point that an impact on the urban edge was inevitable. The evidence shows that what they were actually told—and, even then, not told until the fires entered Duffy—is as follows:

- During his interview with Ms Larkins at 6.00 am Mr Castle gave no indication that any suburbs were at risk.
- During his 7.30 am live radio interview Mr Castle gave no indication that any suburbs were at risk. He did not even mention that the Uriarra forestry settlement was an area of concern. People were advised—not warned—to stay away from particular areas. The word ‘warn’

was used only in the context of warning people that the exact location of the fires was difficult to assess.

- No information about the 8.00 am evacuation planning meeting was released to the public—not even the fact that the meeting had been held.
- No information from the 9.30 am planning meeting was released to the public immediately after the meeting had ended.
- From about 10.50 am attempts were made to contact residents of the forestry settlements, but, on the evidence, this contact was limited.
- At midday a press release was issued. It contained no information about suburbs being at risk. It ‘urged’ people to stay away from particular areas, ‘advised’ them that it could be unsafe to enter unauthorised areas, and prohibited sightseeing. It also provided information about preparations in the event of fires approaching houses. The only reference to ‘warning’ related to health. Road closures were mentioned but, in the context, these could well have been seen to be aimed at sightseers. This press release was devoid of any meaningful information about the then imminent threat of fire.
- Similarly, the midday press conference did not serve to inform the large media presence, and thus the public, of the growing threat. Information about the fires was provided, but no link was made between the fires and urban residents. Mr Castle categorically denied that the fires were close to houses in the suburbs of Tuggeranong; he then said he did not want to alarm people because the fires were still some distance away. What Mr Castle should have said, however, is that the fires were approaching and were expected to be in Canberra later that afternoon or evening. He did not say this. Nor did Mr Lucas-Smith, who told people to take precautions but did not tell them why or, importantly, that it was urgent. Mr Lucas-Smith told the media it would be ‘prudent’ for people who lived on the western side of Canberra to take precautions. There was no warning—merely advice that it would be wise to take some precautions at some stage. Mr Lucas-Smith corrected a journalist who used the word ‘minimal’ when referring to the chance of the fires reaching the urban edge: he said that was not his word but then added that there was always a chance and that planning arrangements were in hand, but these were precautionary at that stage. Mr Lucas-Smith agreed that these words did not adequately convey the potential risk; Mr Castle agreed too.
- The item about the fires on the 1.00 pm news bulletin on ABC Radio 666 was very brief and included a reference to the Emergency Services Bureau’s belief that the fire would become easier to contain after it had left forest areas and entered the grasslands. It also announced, ‘Residents on the western side of Canberra were being warned to prepare for the approaching fires, taking all precautions to protect their homes’.⁵⁴⁶ The word ‘warned’ was used by the announcer, but it was not used by either Mr Lucas-Smith or Mr Castle during their midday press conference. Among the words they used were ‘take precautions’, ‘fire easier to control’, ‘not want to alarm’, ‘some concern’, ‘be mindful of the fire’ and ‘prudent’.

- After the 1.00 pm news bulletin (according to her evidence, which I accept) Ms Larkins, on her own initiative and after discussion with Ms Derrett at Radio 666, decided they should provide additional information. Ms Derrett provided the information from the midday ESB press release about the size of the fires—including the grossly underestimated size of the McIntyres Hut and Stockyard Spur fires—and the precautions people should take. This is probably the first time this information was broadcast. Ms Larkins then reported on what she had heard from the midday press conference at the Emergency Services Bureau. This included the comment, ‘The Emergency Services Bureau is suggesting that people who live in the Weston Creek area and south of that area ... should certainly be starting to take precautions at this point’. She also used words and made comments that were not used or made by either Mr Lucas-Smith or Mr Castle in an effort (as she said in her evidence) to deliver the message that the situation was more dangerous than had been conveyed by Mr Lucas-Smith and Mr Castle. Ms Larkins said that the next 24 hours would be horrific because of the forecast high temperatures and the strong winds that would push the fires towards Canberra. She said the situation certainly was very dangerous and that people should have an evacuation plan and organise their pets in the event that they needed to retreat from any fire.⁵⁴⁷
- Shortly after, perhaps just before 2.00 pm, Ms Derrett made an announcement updating road closures and said, ‘We have had some reports from the Emergency Services Bureau of people going to do some sightseeing in that part of the world. Don’t, please. Don’t’. Soon after, there followed this statement:

We have just had a caller call in with some new information which we are gathering at the moment ... A caller has just rung from Pine Island where everyone has been asked to leave the area. So, effectively, if you are out socialising in any of Canberra’s recreational areas today, any of the fire districts, think about pulling away. There is another piece of information that we need to give to Weston Creek listeners and people in that part of the world—particularly if your street abuts any of the open land there—that the Weston Creek area is in some danger at the moment as fire moves towards that area. It is some kilometres away at the moment, we understand, but it is moving towards the area and the Emergency Services Bureau has asked people in the Weston Creek area to be fire ready.⁵⁴⁸

- The news report at 2.00 pm on ABC Radio 666 was short and announced that Canberra residents were stepping up preparations for a fire front and that Mr Lucas-Smith had said the fire was less than 10 kilometres from Canberra and rural properties between the fire front and the city were at greatest risk. Ms Derrett then continued the broadcast at 2.05 pm with live commentary from Mr Cameron Wade (from the NSW Rural Fire Service), who said fire was expected to reach the NSW townships of Burra, Williamsdale, Michelago, Fernleigh and Royalla in the next hour and asked residents to be prepared. There was further discussion between Ms Derrett and Mr Wade and then a repeat of the information on road, park and reserve closures. It was announced again that people in the Weston Creek area should prepare for possibly confronting fire and make indoor and outdoor preparations. Mr Mark Jennings, a Radio 666 program producer, was at Ginninderra Falls and reported that he could see flames three to four times the size of the trees and fire fronts moving against the wind. Ms Derrett asked how far the fire was from any residential area and

Mr Jennings replied, 'I don't think its going to be too long before they're there, it's not that far. I can't see the residential areas from here, from where I'm standing, but the flames are licking through the grasslands at an enormous rate'.⁵⁴⁹

- Shortly after, Ms Derrett said, 'Stand by now, please' and the Standard Emergency Warning Signal siren sounded, whereupon she read, verbatim as instructed by the notice, the emergency announcement.⁵⁵⁰ When she had finished Ms Derrett announced the time as 2.40 pm. She replayed some of the earlier interview with Mr Wade, repeated information about road closures and precautions people should be taking, and then, as instructed in the SEWS notice, repeated the siren and the contents of the notice, which, among other things urged people to return to their homes if they lived in areas notified as being on alert.
- At about 3.00 pm Mr Castle called the radio station and spoke with Ms Derrett. His comments were broadcast live. He said the Chief Minister had just declared a state of emergency, assigning powers to Mr Murray, the Chief Police Officer, who then appointed Mr Lucas-Smith to continue with fire-control functions. Ms Derrett asked Mr Castle, 'How bad are the fires at the moment? We have been reading your Emergency Services Bureau warning asking people to return to their homes in suburbs. Do we actually have fires in suburbs at the moment?' Mr Castle replied:

No, to my latest knowledge we don't have them in the suburbs ... but the issue for us ... is that we are concerned about the possibility of embers spotting into the suburbs. So people need to be around their homes so they can actually take action to put out any possible spot fires that are likely to land in their backyard.⁵⁵¹

- The Chief Minister, Mr Stanhope, was then on the line and was asked what declaring a state of emergency involves. He replied that it was essentially an administrative measure to enable emergency arrangements to be activated, should they become necessary, to authorise the police to direct evacuations. Mr Stanhope said he was at the control centre at the Emergency Services Bureau, and he was asked about the atmosphere there:

Well, the atmosphere here is as you would expect, there's certainly an air of anxiety, but the Emergency Services Bureau's, as you say, thoroughly professional, I have 100 per cent confidence in them, as we all should have, they're thoroughly professional, they're well-trained, they're cool, they're calm, they're professional, and they're approaching the emergency that we are facing in that light, and, you know, we owe them a great deal.

- When asked if there was anything else he wanted to say, Mr Stanhope expressed his thanks to all those people who were facing and dealing with the fires. He then added:

I hope that people won't be too anxious about this. People certainly have no need to be unduly alarmed, [but] they should of course take precautions that have been advised ... The message that we're asking people to take on board is to be alert, no, don't be unduly anxious, don't be unduly alarmed, but certainly be alert.⁵⁵²

(Mr Stanhope essentially repeated this message during an interview broadcast on Radio 2CC at 3.24 pm, telling people to be alert, but not to be anxious or alarmed, not to panic, and to stay indoors.⁵⁵³)

- Immediately after Mr Stanhope’s comments, Ms Derrett crossed live to ABC 666 reporter Mr Michael Turtle, who was in Duffy, at the edge of the pine forest. He reported seeing people on the roofs of their houses, hosing and filling gutters, a truck taking on water from a pump, and helicopters overhead. Mr Turtle then said, ‘I mean, people out here are very alarmed, they don’t know actually where the fire is, but they’re taking all precautions they can, just in case’. Ms Derrett replied, ‘Well, I hope they are listening to us because, as we’ve just heard from Mike Castle, there aren’t actually any fires in the suburbs at the moment, it’s the potential for spot fires from embers that is the big danger’.
- Shortly afterwards Ms Derrett announced that a caller had telephoned to report that the hill behind Bonython was on fire, and Mr Turtle said he was leaving the area because the fire was about 20 metres away from houses in Duffy, with 20-metre-high flames ... Simultaneously, there were reports of houses burning in Duffy, and Ms Derrett announced the time to be 3.19 pm. Soon after this, Mr Lucas-Smith was heard saying, among other things, the best advice he could give under the circumstances was for people to stay with their house because it was the safest place, and mass evacuation would congest the roads, which would be worse because it would be more dangerous.⁵⁵⁴

7.16 What the community should have been told

The community should have been told at first light that the authorities were not sure precisely where the fires would travel and precisely when, but that some impact was a certainty. Information in clear, precise and authoritative terms should have been delivered about the predictions that had been made the previous afternoon, identifying specific areas along the rural–urban interface and the forecast times of the predicted impact.

- The people should have been told what preparations they should make and precautions they should take, even at that late stage, to be as ready as they could be for what was to be a formidable fire.
- The people should have been told that if they were able, fit and willing they should consider staying with their homes because in all probability they would have a good chance of saving their home.
- The people should have been told that, on the other hand, if they were elderly, disabled or infirm or concerned for their children or pets they should consider leaving or relocating their children and animals.
- The people should have been told that if they decided to leave their homes they should do so well before the fire front arrived.
- The people should have been told to gather together their belongings and be ready to evacuate in the event that their efforts against the fire were unsuccessful.
- The people should have been told—specifically and in very clear terms—exactly what measures to take and why.

- The people should have been told that evacuation centres were being established and the location of those centres in the event that they needed to abandon their homes.
- The people should have been told about a possible drop in water pressure and the potential for electricity failure and to be prepared for this.
- The people should have been told what measures the authorities were planning to take to fight the fire as it approached the urban edge and what the expectations of success were.
- The people should have been told that, despite the efforts of the ACT bushfire-fighting resources and the large number of NSW resources, the fires had continued to grow and prospects of success that day were slim.
- The people should have been told that the police, the ACT Fire Brigade and the ACT Ambulance Service were fully briefed—because they ought to have been—and the full resources of those agencies would be available to help the community.
- The people should have been told to listen to the radio and watch television for regular updates on the situation.
- Finally, and importantly, the people should have been told not to panic but to decide what they would do, call for assistance if they needed it, and start preparing.

Apart from a late notice about some indoor and outdoor preparations, the people were told nothing.

7.17 Conclusions

Until the first Standard Emergency Warning Signal was sounded at about 2.40 pm on Saturday 18 January, there had been no official warnings to the people of Canberra. The SEWS message was too little, and it was delivered far too late.

The evidence makes it clear that the senior personnel at the Emergency Services Bureau—Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham—knew that a potent threat existed. Many others who were working at ESB headquarters in Curtin, as well as the senior bureaucrats who attended the planning meetings, also knew.

If any of these people were to claim they had doubts before 17 January about the potential of the fires reaching the suburbs—and it is difficult to envisage how they could legitimately claim this—there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting of 17 January. They all knew the fires would burn into Canberra. They might not have been sure of the precise place or the precise time, or even the precise nature of the fire, but they all knew impact was inevitable. Those people who said in their evidence they still hoped the fires could be stopped were living with false hope, not reality, choosing to ignore the information and the evidence presented to them. It is inexplicable that there was no reaction to Mr Taylor's revised prediction on the morning of

18 January, that the fire had the potential to reach the rural–urban interface at 3.00 pm. Mr Graham saw the message but appears to have ignored it.

They knew.

Mr Lucas-Smith said he knew once the McIntyres Hut fire had crossed the border into the ACT: ‘It was on the morning of the 18th that I thought it was inevitable. However, the Bendora fires burning into rural ACT was significantly well before then’.⁵⁵⁵

If there were any doubts about the fire-spread predictions made by Messrs Lhuede, Gellie and Taylor the previous afternoon—and no doubts were expressed by anyone who heard them—there should have been no doubts whatsoever after Mr Bartlett’s report of the fire activity he had observed from the air that Saturday morning. He was in the best position to know what was happening and what it meant. Mr Bartlett informed all those who attended the morning planning meeting of the ‘great potential for the northern and central fires to impact on the suburbs of Canberra ... during the day’. The risk to the suburbs was discussed and acknowledged at the meeting. There was no dissent. Suburbs and areas at high risk of exposure were mentioned, and the times of potential impact were identified. Those areas and the risks to them had been discussed earlier that morning at the evacuation planning meeting, which was attended by senior bureaucrats.

The Fire Brigade and the Ambulance Service were on alert and were preparing. The police were placed on heightened alert, had activated the Operations Centre, and were preparing evacuation plans for Duffy. Yet, amid all the information and frenzied activity, there was no discussion and no decision was made to warn the people in the suburbs.

In fact, apart from being inadequate, the information that was being released through the media conveyed the impression that, as far as urban residents were concerned, everything was under control. To use Ms Larkins’ words, by Saturday morning—if not long before—‘people [had] a right to be alarmed’.⁵⁵⁶

Until the issue of the first Standard Emergency Warning Signal at 2.40 pm, people in the suburbs of Canberra were not given any information that would serve to warn them that they and their property were at risk that day.

During the morning and at midday there were opportunities to make clear statements reflecting the facts, rather than hopes. The opportunities were not taken. Shortly before 1.00 pm Ms Derrett and Ms Larkins provided some information about precautions residents should take if fire approached, but there is no evidence that this information, which was in the noon and 1.00 pm press releases, was broadcast by any radio stations other than ABC Radio 666. It is not clear when precautionary information was placed on the Canberra Connect website, but in all probability this was not done until about mid-morning. In any event, this method of disseminating emergency information is inadequate because of its obvious limitations. It is not nearly as effective as radio and television. Many people are out and about on Saturday mornings, and not everyone has access to a computer.

The Emergency Services Bureau's management of information was very poor. It appears there was no system for coordinating information flows and no effective collection and dissemination of important information. No one appeared to know what, if anything, was being said, and ESB personnel were not sure who was responsible. Mr Lucas-Smith thought information about what people should do to prepare was being put out through a number of press releases when in fact the first such release came at midday on 18 January.⁵⁵⁷ Mr McRae said he was not familiar with the content of media releases because it was not his responsibility, although in fact—despite his assertion to the contrary—his position was responsible for dissemination of public information. He thought the media people were working behind the scenes.⁵⁵⁸ He also thought information about a general threat had been publicised by Saturday 18 January.⁵⁵⁹ Mr Graham said information dissemination was not his responsibility.

In my view, if Mr Castle was ultimately responsible for authorising the publication of information, he did not ensure that it was disseminated in a timely fashion, in keeping with the urgency of the situation. The midday press release was issued hours after the evacuation planning meeting and the 9.30 am planning meeting. The Standard Emergency Warning Signal notice was signed by Mr Castle at 2.05 pm, yet was not publicised until about 30 minutes later.⁵⁶⁰ Further, the information in some of the press releases was out of date or wrong, and generally the content was inadequate and misleading. One glaring mistake was the information underestimating the size of the McIntyres Hut and Stockyard Spur fires.

Mr Castle appeared to be out of touch with the situation as it was developing. He provided inadequate information in his media interviews, and the press releases did not contain important facts that could have served to raise the level of awareness and alert in the community about the deteriorating conditions. Mr Castle had—and should have taken—the opportunity immediately after the 9.30 am planning meeting, in consultation with Mr McRae, to issue a press release providing all the information that had been presented and discussed at the meeting about predicted fire spread. He said nothing about this at the midday press conference; nor was that information in the 1.00 pm media release update. Even after declaration of the state of emergency—at that late hour—in his comments Mr Castle still seemed to be denying the danger then confronting the community.

Mr Lucas-Smith also did not provide adequate information during the midday press conference. People who were in the path of the fires had a right to know, and Mr Lucas-Smith had an obligation to tell them.

On the evidence, it is difficult to reconcile the important role that should have been played by Mr McRae, in his capacity as Planning Officer, and what he actually did—particularly in the few days leading up to 18 January. His counsel made several submissions on his behalf, saying, in short, that it was not Mr McRae's responsibility to issue warnings. Nevertheless, Mr McRae did provide the information that enabled others to issue warnings, even though he believed that was not necessary because he was missing information that was precise as to the time and location of impact. All of this is contradictory and difficult to reconcile because also in the mix is Mr McRae's belief that the ACT Fire Brigade and the Ambulance Service should have been informed and fully prepared for the impact on the urban area, but he also believed it was not yet time to tell the residents. At the 9.30 am planning meeting on 18 January he did not appear to voice his disagreement with the fire-spread predictions, but in evidence to the inquiry he said he

believed the fire would reach Narrabundah Hill at 8.00 pm on the Saturday and he believed the fire would most likely evolve and impinge on the urban area on or by the end of the following Monday, so there was no need to activate the trigger and cause warnings to be issued on Saturday.⁵⁶¹

Mr McRae enlisted the assistance of experts Messrs Gellie, Lhuede and Taylor and then effectively ignored their predictions. Mr McRae was not told of Mr Taylor's revised prediction of impact on the suburbs at 3.00 pm, instead of 6.00 pm, but his evidence was that even if he had been he would not have agreed with it.⁵⁶² He believed general warnings had been issued to the community and thought these were adequate. The problem is that no general warnings were issued by the Emergency Services Bureau, and Mr McRae should have been aware of this.

Mr McRae accepted that his failure to activate the 'trigger' on Saturday 18 January was the reason for the midday press release not containing information about the predicted impact on the suburbs of Weston Creek and south to Greenway. But Mr Lucas-Smith and Mr Castle also heard the predictions and could have, and should have, disseminated that information immediately by holding a press conference—not waiting until midday—and issuing a media release. Both Mr Lucas-Smith and Mr Castle acknowledged it was their responsibility to keep the community informed.

Counsel for Mr McRae submitted that, with hindsight, Mr McRae did not see the need for or the benefit of a general warning on the morning of 18 January, but, they submitted, this should not be seen as 'an unwillingness to impart frank information to the community'. In the end, though, the result for the community was the same: people were not told. Mr McRae was responsible for setting in motion the warning process.

Whatever his own calculations were telling him, Mr McRae did not see the need to warn at all on Saturday 18 January. Further, in evidence he said that 'today' he would rely on the same method he used in January 2003—which failed him and, ultimately, the entire community.⁵⁶³

Counsel representing the ACT conceded in their submissions that earlier and better warnings should have been issued. They then proceeded to provide numerous and varied reasons for senior personnel of the Emergency Services Bureau not issuing such warnings. I found at least 19 of these reasons sprinkled throughout the submissions; they are listed earlier in this chapter. What counsel submitted to be reasons are, in reality, excuses. And not one of them is compelling enough to explain why, in the face of what must be a very clear and serious duty to inform people of a situation that is potentially dangerous to them, the senior ESB personnel who were charged with that duty failed to honour it.

The exact type of impact might well have been beyond their collective experience. But they all knew the fires were large and growing and that some form of impact was almost inevitable. They knew the fuel levels, the fire weather forecast, the fire-spread predictions, and the estimated times and likely areas of impact. They were obliged to share that information, and not one of the excuses proffered adequately explains why they did not.

They had little, if any, reason for optimism because they had no strategy to limit the progress of the fires on Saturday as they rolled towards the suburbs, and efforts to that time—valiant as they

were on the part of the people actually fighting the fires—had not been successful. The senior personnel of the Emergency Services Bureau recognised the worst-case scenario but did not prepare for it. They just hoped.

They were influenced in their thinking and planning by their experience with the fires in December 2001 and the success they had in controlling those fires. This was a mistake: it led to a perception—certainly on the parts of Messrs Lucas-Smith, Castle, McRae and Graham—that the fires could be controlled once they reached the eaten-out grasslands on the urban fringe. This notion persisted despite the views expressed publicly, by Mr Lucas-Smith and Mr McRae at least, that conditions in January 2003 were much worse than those in December 2001⁵⁶⁴ and despite the expert opinions previously expressed by Commissioner Koperberg and CSIRO expert Mr Cheney—to say nothing of the dire predictions of Mr McRae in his earlier emails, which are on the public record.

The decision to issue the Standard Emergency Warning Signal was made far too late, and there is an important question about whether, in the circumstances, it contained appropriate advice. Nothing in the announcement told people the fire was advancing and that impact was highly likely, if not certain. The announcement downplayed the real risk, which was known to all senior ESB personnel and was expressed in the imprecise terms of ‘there is increasing risk due to fire spotting’. No mention of a fire front. To announce that ‘there has been a major deterioration in the ACT fire situation’ could have been meaningful only if the people already knew the true situation, and they did not because they had not been told. The SEWS message listed suburbs that should be ‘on alert’, instead of saying these suburbs were at very high risk, which is what should have been the focus of the announcement. The message urged residents in these suburbs to return to their homes: this was dangerous advice at 2.40 pm, just before the fire arrived in Duffy and the forestry settlements, because people who were away from their homes were being urged to drive towards the fires without any information about what to expect. The continued broadcasting of this message every 15 minutes—after houses had been destroyed, roads were blocked and access to certain areas was denied—was also very dangerous: it caused further confusion in an already turbulent situation. It would appear that the Emergency Services Bureau was not monitoring what was being broadcast. This is not a criticism of the broadcasters: they were following ESB instructions.

There was an opportunity to update the second Standard Emergency Warning Signal, authorised by Mr Castle at 3.20 pm, by saying the fires had reached the city, but instead the second signal was in the same terms as the previous one, apart from listing additional suburbs to be placed on alert. People were being urged to return to their homes after the firestorm had already destroyed many Duffy houses, and the statement that no evacuations were taking place was not correct.

The information about precautions residents should take was inadequate and failed to explain why people should take particular actions and in what order of priority. It said nothing about wearing appropriate clothing and nothing about the dangers of smoke inhalation or radiant heat; nor were there other essential instructions for people to improve their chances of surviving a fire. The instructions were inadequate, incomplete and misleading. It is highly likely that 2.40 pm was the first time many people had heard such information—if, of course, they happened to be listening to the radio or watching television that afternoon. Even if people had heard the signal and were at home in the forestry settlements and Duffy, Rivett, Chapman and the other affected

areas, they had little time to act and were robbed of their choices. Should they pack or should they prepare their houses? Should they leave or should they stay? These decisions were made all the more difficult because at no time were people given information about what they could expect from the fire that was about to hit them.

In different circumstances the messages in the Standard Emergency Warning Signal authorised by Mr Castle and aired on Saturday 18 January might have been appropriate. But for members of the Canberra community, facing what they were and having received no meaningful information, the content and form of the warning were completely inadequate.

Mr Stanhope either misunderstood or deliberately downplayed the seriousness of the situation in his comments on ABC 666 and 2CC radio station at about 3.00 pm, referring to the declaration of a state of emergency as ‘essentially an administrative measure’ and telling people who were obviously in danger not to be unduly anxious or alarmed.

There is no doubt that the people of Canberra were unprepared for the firestorm: the reason for this is that no one in authority told them to be prepared for it. The announcers on Radio 666 made efforts to pass on information, such as they knew it, including using live broadcasts from reporters at the scene. This information was very useful, and Ms Larkins and Ms Derrett are commended for their initiative and their efforts. Announcers and reporters from other radio and television stations that were broadcasting information about the situation are also commended.

None of the residents who gave evidence said they were warned and ready. They were supported by others who did not give evidence but made statements or responded to questionnaires the police distributed. Ms Dee Watson analysed the questionnaire responses at the request of Mr Castle. The results showed that, of the 411 respondents, 286 (75.7 per cent) were at home on Saturday 18 January and, of those, 246 (86 per cent) answered ‘yes’ to the question ‘Were you aware of how to prepare your home?’ But not all of those who said they knew what to do took action to prepare their homes, and the overwhelming comment by the people was about the lack of warnings provided.⁵⁶⁵

It is gratifying that many residents believe they know how to prepare their homes against a bushfire threat. Ultimately, though, this knowledge is useful only if people are given the opportunity to use it by being given notice.

The situation of the residents of the forestry settlements and Weston Creek can be compared with that of the residents of Tharwa, who had been warned and were prepared. Thanks to the foresight and guidance of Mr Val Jeffery, the village of Tharwa was spared. On Wednesday 15 January, on his own initiative, Mr Jeffery mailed a letter to every household, approximately 80, in the Naas, Tharwa, Tidbinbilla, Lanyon and Smiths Road areas of New South Wales. The letter was headed ‘Fire situation update and warning’, and in it Mr Jeffery expressed his frank opinion that the fires that were burning out of control would be almost impossible to hold within containment lines and warned:

[There is a] very real possibility that these fires will break out of the mountains. At this stage it is looking like this could happen about Monday or Tuesday. Be aware that we have sitting to our west ready to hit us, a combination of the disastrous 1939 Brindabella fires PLUS the 1983 Gudgenby scenario. When these fires break out of the

mountains they will burn virtually all our country. Suppression forces will be overwhelmed so you will need to ensure that you are well prepared to protect your own property and this can be very successful with a few simple precautions and preparations.

Mr Jeffery then listed a number of measures people should take and ended by saying he did not want to alarm people, simply to forewarn them.⁵⁶⁶ During the ensuing three days people in the village, with the help of others, worked to protect the village from the fires, which hit at about lunch time. When two police officers came to the village shortly after to order evacuation, Mr Jeffery convinced them he needed everyone to stay to put out the embers because to evacuate would have resulted in the village being lost. This is a clear example of the benefits of community education and timely warnings. I highly commend Mr Jeffery for his foresight in the days leading up to the fires and the actions he took to warn the people in his area and help them prepare.

The inquiry received evidence from people who were forced to leave their property and regretted that they did so because it prevented them from trying to save their home and possessions. There is also evidence showing that last-minute evacuation can be dangerous, frightening and traumatic.

My overall impression is that senior personnel at the Emergency Services Bureau lacked competence and professionalism and that the bureau was disorganised and was functioning in a chaotic, uncoordinated fashion, particularly during the most critical period of the fires. It seems the left hand did not know what the right hand was doing, and neither hand was actually doing very much to deal with a crisis that was escalating, day by day, hour by hour.

It must be remembered that every position in the ACT Government and Public Service—from Chief Minister to the most junior Public Service position—exists solely to serve the people of the ACT.

The Emergency Services Bureau should have warned the people of the ACT of the potential for disaster by fire. For at least five days, and possibly 10, this was within the knowledge of ESB personnel. Instead of warning the community they served, they said nothing until it was too late to do anything in any real or practical sense. Furthermore, there is a strong argument that, in accordance with the Westminster tradition and the convention of ministerial responsibility, direct action should have been taken by the responsible Minister.

7.18 Observations on the evidence

On the evidence before me, I am satisfied that:

- By the early morning of Saturday 18 January 2003, senior personnel of the Emergency Services Bureau—Messrs Castle, Lucas-Smith, McRae and Graham—all recognised the potential for fires to impinge on the urban edge at some time during the afternoon or evening of that day. They failed to take action within their respective areas of responsibility to ensure that public warnings were widely broadcast and delivered to the community.

- The same senior ESB personnel lulled themselves into a false sense of security because they had been successful in preventing the December 2001 fires destroying any urban structures. As a result of this self-delusion, they deliberately withheld information from the community in the belief that they would—as they had in 2001—stop the fires in the grasslands, and they did not want to alarm the community.
- On the morning of Saturday 18 January Mr Taylor accurately predicted that the firestorm would reach the suburbs at 3.00 pm that day. He told Mr Graham of this, but his prediction was not acted on; nor was it used as the basis for an urgent warning to the community.
- The Emergency Services Bureau had been specifically warned as long ago as 1991, again in 1994—in Mr Cheney’s assessment of the Hannan report and the later endorsement of Mr Cheney’s assessment in the McBeth report—and subsequently of the potential for a firestorm of the type experienced in 2003, but the bureau failed to implement procedures to take account of such an eventuality arising from a combination of drought, high winds, high temperatures, low humidity, an ignition source, and a heavy fuel load.
- At all relevant times, as Chief Minister and Attorney-General, Mr Stanhope was responsible for the Department of Justice and Community Safety (which organisationally housed the Emergency Services Bureau). Mr Stanhope was also acting in the role of Minister for Emergency Services at the time of the conflagration on 18 January 2003 and on the previous day. As such, in accordance with the conventions of the Westminster model of responsible government, which apply in Australia, Mr Stanhope was the relevant Minister at the most critical time of the firestorm.
- On Thursday 16 January, two days before the firestorm hit the suburbs, the Cabinet generally, including Mr Stanhope, knew a potential disaster was on Canberra’s doorstep but did nothing to ensure that the Canberra community was warned promptly and effectively.
- The Emergency Services Bureau lacked effective lines of control, operational protocols and communication systems for the purpose of conveying information to the media and the community.
- The Emergency Services Bureau failed to promptly inform the Australian Federal Police of the true situation, and this resulted in a lost opportunity for better coordination of the police role in evacuations on 18 January.
- The liaison arrangements and protocols in operation between the Emergency Services Bureau and the NSW Rural Fire Service were ineffective, despite the fact that an ESB liaison officer was present at the fire control centre in Queanbeyan.
- The Emergency Services Bureau issued no official warning to the community until about 2.40 pm on 18 January. By then it was far too late to enable people to take effective precautions for their safety and to make an informed decision about whether to stay with their home or leave in the face of oncoming fire. This late notification caused people to be placed in even greater danger, in their homes and trying to flee in vehicles in the face of a fire that arrived 20 to 30 minutes later.
- The declaration of a state of emergency was made far too late. It was made as fires were entering Duffy but should have been made, at the latest, immediately after the planning meeting at 9.30 am on 18 January.

- In his comments on radio stations ABC 666 and 2CC at about 3.00 pm on 18 January, Mr Stanhope either misinterpreted or downplayed the seriousness of the situation by describing the declaration of a state of emergency as 'essentially an administrative measure' and telling the community not to be 'unduly alarmed' or 'unduly anxious', despite the fact that by this time Mount Stromlo Observatory was burning and spot fires were entering Duffy. Minutes later, houses began to be destroyed.
- The system employed by Mr McRae—that is, his 'trigger' system, which involved waiting for a specific set of circumstances to be identified before taking any action to warn a specific subset of the community—is seriously flawed and constitutes a dangerous way to operate in an emergency management environment.

Notes

- ¹ Submission of counsel assisting, dated 23 May 2006.
- ² Submission of counsel assisting, para. 1199.
- ³ Submission on behalf of Mr Lucas-Smith and Mr Castle, para. 431.
- ⁴ Refer to Chapter 4.
- ⁵ ESB.AFP.0028.0112, *Rural Fire Control Manual*.
- ⁶ ESB.GSO.0005.0312, *Canberra Times*, 'Plan aims to avert fire threat', 29 November 2002.
- ⁷ ESB.DPP.0013.0085, email from Mr McRae, 23 January 2002.
- ⁸ ESB.DPP.0013.0097, email from Mr McRae, 30 December 2002.
- ⁹ Submission of counsel assisting, at 2.4.1.6.
- ¹⁰ T3113–3114.
- ¹¹ Refer to submission of counsel assisting, para. 1203.
- ¹² ESB.AFP.0007.0025, ACT Request for Commonwealth Assistance No. ACT 0001 10.55 am, 13 January 2003.
- ¹³ DPP.DPP.0004.0003, interview with Mr Castle, ABC Radio 666, 11.55 am, 13 January 2003.
- ¹⁴ T983–984, submission on behalf of Mr Lucas-Smith and Mr Castle, para. 156.
- ¹⁵ T983–984, 990–998.
- ¹⁶ DPP.DPP.0008.0051, report of Mr Cheney, pp. 34–35; ESB.AFP.0110.0481, statement of Mr McRae; email from Mr McRae, 23 January 2002; ESB.DPP.0013.0086, email from Mr McRae, 30 May 2002; ESB.DPP.0013.0088, email from Mr McRae, 31 May 2002; ESB.DPP.0013.0089, email from Mr McRae, 12 August 2002; AUS.AFP.0040.0110, minutes of a meeting of Land Managers Fire Liaison Group, 15 August 2002, p. 2; BOM.DPP.0001.0002, *NSW Climate Outlook*, October 2002; ESB.DPP.0013.0090, email from Mr McRae, 6 November 2002.
- ¹⁷ Submission of counsel assisting, paras 1203 and 1205; T434.
- ¹⁸ Submission of counsel for Mr Lucas-Smith and Mr Castle, para. 160.
- ¹⁹ T1018–1019.
- ²⁰ T434.
- ²¹ T528–529.
- ²² T7067.
- ²³ T7288.
- ²⁴ T985.
- ²⁵ T984–985.
- ²⁶ ESB.AFP.0110.0775, minutes of planning meeting, 4.00 pm, 14 January 2003.
- ²⁷ ESB.AFP.0110.0033 and ESB.AFP.0110.0048, planning meeting notes, 4.00 pm, 14 January 2003.
- ²⁸ T989–990.
- ²⁹ T990.
- ³⁰ ESB.AFP.0110.0551, Mr Lucas-Smith statement, para. 72.
- ³¹ Submission on behalf of Mr Lucas-Smith and Mr Castle, para. 162.
- ³² *ibid.*, paras 163 and 164.
- ³³ T986.
- ³⁴ DPP.DPP.0004.0004, interview with Mr Castle, ABC Radio 666, before 6.15 am, 14 January 2003.
- ³⁵ ESB.AFP.0111.0117, statement of Mr Castle, para. 91.
- ³⁶ Statement of Mr McRae, paras 91–95, 100.
- ³⁷ Minutes of planning meeting, 4.00 pm, 14 January 2003, p. 2.
- ³⁸ *ibid.*, p. 4.
- ³⁹ ESB.AFP.0110.0033 and ESB.AFP.0110.0048, planning meeting notes, 4.00 pm, 14 January 2003.
- ⁴⁰ Submission of counsel assisting, para. 1209.
- ⁴¹ T2061–2062.
- ⁴² T2382–2383.
- ⁴³ T2883.
- ⁴⁴ T3573–3574.
- ⁴⁵ T2520–2525; T2567–2570.
- ⁴⁶ T1016–1017.

- ⁴⁷ T1029–1030.
⁴⁸ T1029.
⁴⁹ T1505.
⁵⁰ T1517.
⁵¹ T1523.
⁵² T1526–1527.
⁵³ T3321.
⁵⁴ T3318.
⁵⁵ T3319.
⁵⁶ T3323–3324.
⁵⁷ T3326.
⁵⁸ Submissions of counsel for Mr Lucas-Smith, paras 163–165.
⁵⁹ ESB.AFP.0110.0142, planning meeting minutes, 9.30 am, 15 January 2003, p. 2.
⁶⁰ T1026–1028; statement of Mr Castle, para. 94.
⁶¹ T2909.
⁶² T3331–3332.
⁶³ ESB.AFP.0110.0551, statement of Mr Lucas-Smith, para. 82.
⁶⁴ NRF.DPP.0001.0014, statement of Mr Koperberg, paras 7–9.
⁶⁵ T2088–2089.
⁶⁶ DPP.DPP.0003.0508, ABC interview with Mr Koperberg, 15 January 2003, p. 1.
⁶⁷ T1034, T1038.
⁶⁸ T2097–2098.
⁶⁹ Submission on behalf of Mr Lucas-Smith and Mr Castle, paras 196–197.
⁷⁰ T1032–1035; statement of Mr Koperberg, paras 9–13.
⁷¹ ESB.AFP.0110.0115, ACT Request for Commonwealth Physical Assistance No. ACT 0003, 1.00 pm, 15 January 2003; ESB.AFP.0110.0117, ACT Request for Commonwealth Physical Assistance No. ACT 0004, 1.00 pm, 15 January 2003.
⁷² T1543.
⁷³ T1046.
⁷⁴ T1046–1047.
⁷⁵ T1046–1048.
⁷⁶ ESB.AFP.0020.0368, planning meeting minutes, 4.00 pm, 15 January 2003, pp. 1 and 3; ESB.AFP.0110.0159, planning meeting notes, 4.00 pm, 15 January 2003, p. 3.
⁷⁷ Statement of Mr McRae, pp. 22–23.
⁷⁸ Planning meeting minutes, 4.00 pm, 15 January 2003, p. 3.
⁷⁹ T3339–3341.
⁸⁰ T3345.
⁸¹ T3345.
⁸² ESB.AFP.0008.0336, NSW Rural Fire Service media release, Wednesday 15 January 2003.
⁸³ T2915–2916.
⁸⁴ T3348–3349.
⁸⁵ T5438.
⁸⁶ ESB.AFP.0012.0113, letter from Mr Jeffery to local residents, 15 January 2003.
⁸⁷ DPP.DPP.0006.0099, telephone call transcript, 5.34 pm, 15 January 2003.
⁸⁸ Statement of Mr Castle, para. 100.
⁸⁹ T1059.
⁹⁰ DPP.DPP.0003.0078, Cabinet briefing—‘January 2003 bushfires’.
⁹¹ ESB.DPP.0001.0104, Mr Tonkin’s notes of Cabinet briefing, 16 January 2003.
⁹² DPP.DPP.0003.0269, Mr Kwiatkowski’s notes of Cabinet briefing, 16 January 2003.
⁹³ DPP.DPP.0003.0266, Ms Wall’s notes of Cabinet briefing, 16 January 2003.
⁹⁴ DPP.DPP.0003.0084, ACT Government Cabinet minute, 16 January 2003, Decision No. 0516.
⁹⁵ T3606–3607, 3609.
⁹⁶ T3630–3632.
⁹⁷ T3617–3618, 3620.

- ⁹⁸ T3636.
- ⁹⁹ T4230–4231.
- ¹⁰⁰ T4228–4229.
- ¹⁰¹ T4224–4226.
- ¹⁰² T4236–4238.
- ¹⁰³ T4233–4234.
- ¹⁰⁴ T3488.
- ¹⁰⁵ T3496–3497.
- ¹⁰⁶ T3503.
- ¹⁰⁷ T3504.
- ¹⁰⁸ T3510–3511.
- ¹⁰⁹ T3510–3511.
- ¹¹⁰ T1579.
- ¹¹¹ T1851–1852.
- ¹¹² T1861.
- ¹¹³ T1588–1590.
- ¹¹⁴ T1846–1847.
- ¹¹⁵ Submissions on behalf of Mr Lucas-Smith and Mr Castle, para. 217.
- ¹¹⁶ *ibid.*, paras 229–232.
- ¹¹⁷ Transcript of proceedings, 18 July 2006, p. 389; T1846–1847.
- ¹¹⁸ T1059.
- ¹¹⁹ T1061–1062.
- ¹²⁰ T1062.
- ¹²¹ T1066.
- ¹²² T1083.
- ¹²³ T1063–1064.
- ¹²⁴ ESB.AFP.0004.0219, planning meeting minutes, 9.30 am, 16 January 2003, p. 2.
- ¹²⁵ T2922–2923.
- ¹²⁶ T3350.
- ¹²⁷ T1909–1911.
- ¹²⁸ DPP.DPP.0003.0468, press conference transcript, 16 January 2003, p. 4.
- ¹²⁹ Submission of counsel assisting, para. 1239.
- ¹³⁰ Submissions on behalf of Mr Lucas-Smith and Mr Castle, para. 236.
- ¹³¹ Press conference transcript, 16 January 2003, p. 2.
- ¹³² ESB.AFP.0110.0973 and ESB.AFP.0110.0972, ‘Next 5 days critical’, *Canberra Times*, 17 January 2003.
- ¹³³ T1624.
- ¹³⁴ T1673–1675.
- ¹³⁵ T3358–3368.
- ¹³⁶ T1051.
- ¹³⁷ T1053.
- ¹³⁸ T1054–1055.
- ¹³⁹ ESB.AFP.0049.0324, statement of Mr Cartwright, p. 4.
- ¹⁴⁰ T1055.
- ¹⁴¹ T1057.
- ¹⁴² T1057.
- ¹⁴³ T5336–5341.
- ¹⁴⁴ T5346–5349.
- ¹⁴⁵ Mr Barr had been employed by the ACT Fire Brigade since 1987. He is a member of the Institute of Fire Engineers and has a Bachelor of Science degree from the Australian National University, having studied, among other things, fire chemistry, botany and environmental law.
- ¹⁴⁶ AFB.AFP.0001.0058, TROC with Mr Barr, 13 March 2003.
- ¹⁴⁷ *ibid.*, p. 6, Q. 36.
- ¹⁴⁸ *ibid.*, p. 9, Q. 42.

- ¹⁴⁹ *ibid.*, p. 10, Q. 43.
- ¹⁵⁰ T1066–1069.
- ¹⁵¹ Mr McCleary was a Station Officer who at the time of the fires was employed in the Technical Support Section and had some 27 years’ experience as a firefighter.
- ¹⁵² ESB.AFP.0046.0374, TROC with Mr McCleary, 25 March 2003, p. 3, Q. 23.
- ¹⁵³ *ibid.*, p. 6, Q. 43.
- ¹⁵⁴ *ibid.*, p. 6, Q. 48.
- ¹⁵⁵ Mr Hobbs was the Acting Operational Superintendent with the Fire Brigade.
- ¹⁵⁶ ESB.AFP.0053.0103, TROC with Mr Hobbs, 2 April 2003, p. 2–3, Q. 13.
- ¹⁵⁷ T1071–1072.
- ¹⁵⁸ T1071–1073; TROC with Mr Hobbs, p. 3, Q. 13.
- ¹⁵⁹ Mr Ross was Acting District Officer working at the time from ESB headquarters in Curtin. He had been a member of the ACT Fire Brigade for 25 years, was a qualified fire investigator and held various other qualifications.
- ¹⁶⁰ ESB.AFP.0048.0216, TROC with Mr Ross, 7 April 2003, p. 4, Q. 36.
- ¹⁶¹ T1073–1074.
- ¹⁶² TROC with Mr Ross, 7 April 2003, p. 4, Q. 36.
- ¹⁶³ T1074.
- ¹⁶⁴ T1916–1917.
- ¹⁶⁵ T1921.
- ¹⁶⁶ T1922–1923.
- ¹⁶⁷ T1919–1920.
- ¹⁶⁸ AUS.AFP.0070.0002, statement of Mr David Prince, p. 2.
- ¹⁶⁹ ESB.AFP.0046.0282, TROC with Mr Prince, 18 March 2003, Q. 37; T6469.
- ¹⁷⁰ *ibid.*, Q. 40.
- ¹⁷¹ T6470.
- ¹⁷² T6492–6493.
- ¹⁷³ TROC with Mr Prince, 18 March 2003, Q. 32.
- ¹⁷⁴ T4254–4255.
- ¹⁷⁵ ESB.AFP.0048.0204, TROC with Mr Dutton, 14 April 2003, Q. 43.
- ¹⁷⁶ *ibid.*, Q. 38.
- ¹⁷⁷ *ibid.*, Q. 39.
- ¹⁷⁸ T4257.
- ¹⁷⁹ TROC with Mr Dutton, 14 April 2003, Q. 42.
- ¹⁸⁰ ESB.AFP.0049.0274, TROC with Mr Collins, 28 March 2003, Q. 49.
- ¹⁸¹ *ibid.*, Q. 52.
- ¹⁸² T5389–5390.
- ¹⁸³ TROC with Mr Collins, 28 March 2003, QQ. 56–57.
- ¹⁸⁴ *ibid.*, Q. 72.
- ¹⁸⁵ *ibid.*, Q. 73.
- ¹⁸⁶ *ibid.*, Q. 76.
- ¹⁸⁷ *ibid.*, Q. 93.
- ¹⁸⁸ ESB.AFP.0049.0264, TROC with Mr Newham, 18 March 2003, QQ. 28–29.
- ¹⁸⁹ *ibid.*, Q. 29.
- ¹⁹⁰ T5069–5070.
- ¹⁹¹ T5065.
- ¹⁹² T5062–5063.
- ¹⁹³ TROC with Mr Newham, 18 March 2003, Q. 39.
- ¹⁹⁴ Submission on behalf of Mr Lucas-Smith, para. 239.
- ¹⁹⁵ *ibid.*, para. 240.
- ¹⁹⁶ *ibid.*, para. 241.
- ¹⁹⁷ *ibid.*, paras 242–246.
- ¹⁹⁸ *ibid.*, para. 281.
- ¹⁹⁹ *ibid.*

200 *ibid.*
201 *ibid.*, para. 282.
202 *ibid.*, para. 283.
203 *ibid.*, para. 284.
204 *ibid.*
205 *ibid.*, para. 289.
206 *ibid.*, paras 290–291.
207 *ibid.*, para. 247.
208 *ibid.*, para. 278.
209 *ibid.*, para. 281.
210 T1054–1055.
211 T1593.
212 T1594.
213 T1811–1812.
214 T1081.
215 T1083.
216 T1924–1926.
217 T2557–2558.
218 T4297–4299.
219 T4301.
220 T4331.
221 T5265.
222 Submission of counsel assisting, para. 1246.
223 Submission on behalf of the ACT, para. 646.
224 Submission on behalf of Mr Castle and Mr Lucas-Smith, paras 293–312.
225 ESB.AFP.0012.0114, email from Mr Jeffery, 12.25 pm, 16 January 2003.
226 T1077–1078.
227 ESB.AFP.0010.0168, planning meeting minutes, 4.00 pm, 16 January 2003.
228 ESB.AFP.0001.1307, statement of Mr Graham, para. 154.
229 T2935–2936.
230 Planning meeting minutes, 4.00 pm, 16 January 2003.
231 DPP.DPP.0004.0006, ABC Radio 666, 5.00 pm, 16 January 2003.
232 Submission of counsel for the ACT, paras 647–649.
233 NSP.AFP.0047.0407, NSW Rural Fire Service media release, 16 January 2003.
234 See evidence of Ms Harvey, at T2390–2392, and Ms Lowe, at T2492, that no system existed within the ESB for receipt and distribution of media releases.
235 ESB.AFP.0053.0058, statement of Mr McRae, 1 April 2003, p. 1.
236 Planning meeting minutes, 9.30 am, 16 January 2003, p. 2.
237 T3350.
238 *ibid.*
239 T3350–3351.
240 T3351.
241 *ibid.*
242 T3352.
243 T3352–3353.
244 T3355–3356.
245 For Mr McRae’s explanation, see T3359–3362.
246 T3362–3363.
247 T3365–3366.
248 Submission on behalf of Mr McRae, para. 34.
249 *ibid.*, para. 22.
250 T3359–3362.
251 *Canberra Times*, ‘Next 5 days critical’, 17 January 2003.
252 T8183–8184.

253 T1691–1692.
254 Submission on behalf of Mr Lucas-Smith and Mr Castle, paras 287 and 292.
255 T1166–1167.
256 ESB.AFP.0110.0868, planning meeting minutes, 9.30 am, 17 January 2003.
257 Statement of Mr Castle, para. 106.
258 T1631–1632.
259 T2942–2945.
260 T3381.
261 DPP.DPP.0003.0476, transcript of ESB press conference, 17 January 2003, p. 9.
262 *ibid.*, pp. 9–10.
263 *ibid.*, p. 11.
264 *ibid.*, p. 13.
265 *ibid.*, p. 13. Transcript omits ‘not’.
266 *ibid.*, p. 14.
267 *ibid.*, p. 15.
268 *ibid.*, p. 17–18.
269 *ibid.*, p. 19.
270 *ibid.*, p. 22.
271 T1092.
272 T1094.
273 T1660–1661.
274 Statement of Mr Castle, paras 107–108.
275 T1092–1093.
276 T1638–1639.
277 T1684.
278 T1644–1645.
279 T1660–1661.
280 T1667.
281 ESB.AFP.0110.0900, ACT media update, noon, 17 January 2003, p. 1.
282 NSP.AFP.0047.0409, NSW Rural Fire Service, media release, noon, 17 January 2003.
283 T1689–1691.
284 T4675–4676.
285 T2352–2353.
286 T2390–2392.
287 Submission of counsel assisting, paras 1256–1259.
288 *ibid.*, paras 1260–1263.
289 Submissions of counsel representing Mr Lucas-Smith and Mr Castle, paras 387–403.
290 *ibid.*, paras 456–498.
291 Submission of counsel representing the ACT, paras 662–673.
292 T1692.
293 NRF.AFP.0002.0001, statement of Mr Wade, paras 8–9.
294 Statement of Mr Lucas-Smith, paras 97–100.
295 Statement of Mr McRae, paras 110–111.
296 Statement of Mr Graham, paras 169–170, 172–173.
297 Statement of Mr McRae, paras 112–113.
298 *ibid.*, T3388–3390.
299 T6135–6138.
300 T6138.
301 T2958–2960.
302 ESB.AFP.0110.0860, Incident Action Plan, ACT Fire Brigade, 4.30 pm, 17 January 2003.
303 ESB.AFP.0110.0904, draft ESB media update, 3.30 pm, 17 January 2003.
304 ESB.AFP.0110.0910, ESB media update, 3.45 pm, 17 January 2003.
305 T1698.
306 T2487.

³⁰⁷ T1695–1696.
³⁰⁸ Submission of counsel assisting, paras 1266–1270.
³⁰⁹ Submission of counsel for the ACT, paras 682–684.
³¹⁰ *ibid.*, paras 686–688.
³¹¹ *ibid.*, para. 689.
³¹² ESB.AFP.0110.0929, Request for Commonwealth Assistance, No. ACT 0005, 4.30 pm, 17 January 2003.
³¹³ T1708–1710.
³¹⁴ DPP.DPP.0004.0010, transcript of radio interview, 2CC and 2CA, 3.00 pm, 17 January 2003.
³¹⁵ DPP.DPP.0004.0008, transcript of radio interview, 2CC, 4.30 pm, 17 January 2003.
³¹⁶ DPP.DPP.0004.0009, transcript of radio interview, 2CC and 2CA, 5.00 pm, 17 January 2003.
³¹⁷ Submission of counsel representing the ACT, para. 690–696.
³¹⁸ ESB.AFP. 0110.0868, planning meeting minutes, 9.30 am, 17 January 2003, p. 2.
³¹⁹ T5027; T4995; T4944.
³²⁰ T5027.
³²¹ ESB.AFP.0110.1035, map of predicted fire spread, 17 January 2003.
³²² T4946.
³²³ T5031.
³²⁴ T5031–5032.
³²⁵ ESB.AFP.0110.0865, planning meeting minutes, 6.00 pm, 17 January 2003; statement of Mr Graham, para. 176.
³²⁶ T1100–1101.
³²⁷ T1102–1103.
³²⁸ T1721–1722.
³²⁹ T1723–1724.
³³⁰ T1725–1726.
³³¹ T3396–3397.
³³² T3397.
³³³ T3402.
³³⁴ T3405.
³³⁵ T3406–3407.
³³⁶ T2950–2951.
³³⁷ T2952.
³³⁸ DPP.DPP.0006.0169, statement of Ms Wheatley, p. 3.
³³⁹ T2400–2401.
³⁴⁰ T2401.
³⁴¹ ESB.AFP.0111.0196, statement of Ms Harvey, para. 32.
³⁴² T2405.
³⁴³ Statement of Mr Prince, para. 16.
³⁴⁴ T6456–6458. See also statement of Ms Wheatley, p. 5, regarding the incomplete list.
³⁴⁵ T3402–3403.
³⁴⁶ DPP.DPP.0006.0169, statement of Ms Wheatley, pp. 3–4.
³⁴⁷ *ibid.*, p. 4.
³⁴⁸ ESB.AFP.0110.0921, ACT Request for Commonwealth Physical Assistance, No. ACT 0006, 8.30 pm, 17 January 2003.
³⁴⁹ ESB.AFP.0110.0905, ESB media update, 8.50 pm, 17 January 2003.
³⁵⁰ T1103–1104.
³⁵¹ T1734–1736.
³⁵² T3408–3409.
³⁵³ T2406–2407.
³⁵⁴ DPP.DPP.0004.0040, TROC with Mr Prince, Q. 132; T6460–6461.
³⁵⁵ T1974.
³⁵⁶ T4276.
³⁵⁷ T4274–4275.

³⁵⁸ T4159–4160.
³⁵⁹ Submissions of counsel assisting, para. 1271.
³⁶⁰ *ibid.*, para. 1287.
³⁶¹ *ibid.*, paras 1272–1277.
³⁶² Submission of counsel representing Mr McRae, para. 3.
³⁶³ Submission of counsel representing Mr Lucas-Smith and Mr Castle, paras 323–379.
³⁶⁴ Submission of counsel representing the ACT, paras 705–713.
³⁶⁵ T8277–8278.
³⁶⁶ T998–999.
³⁶⁷ T1118, T1198–1199.
³⁶⁸ *ibid.*
³⁶⁹ DPP.DPP.0003.0054, statement of Ms Larkins, pp. 1–2.
³⁷⁰ *ibid.*, pp. 2–3.
³⁷¹ T1739–1741.
³⁷² DPP.DPP.0006.0001, transcript of ABC Radio 666, 6.00 am – 9.30 am, 18 January, pp. 6–7.
³⁷³ *ibid.*, pp. 9–10.
³⁷⁴ T1758–1760.
³⁷⁵ Mr Keady did not think he was present at the meeting (T4837), but other witnesses said he did attend.
³⁷⁶ ESB.DPP.0001.0064, preparedness for evacuation meeting agenda, 8.00 am, Saturday 19 [sic] January 2003.
³⁷⁷ T2409–2410.
³⁷⁸ GSO.GSO.0004.0038, Ms Wheatley’s notes taken at 8.00 am meeting, 18 January 2003.
³⁷⁹ T2407.
³⁸⁰ T2410–2411.
³⁸¹ Statement of Mr McRae, para. 121.
³⁸² T3410.
³⁸³ T3411–3412.
³⁸⁴ ESB.AFP.0010.0266, planning meeting minutes, 9.30 am, 18 January 2003, p. 1.
³⁸⁵ T105–107.
³⁸⁶ ESB.AFP.0010.0284 and ESB.AFP.0010.0278, planning meeting notes, 18 January 2003.
³⁸⁷ T2583.
³⁸⁸ ESB.AFP.0001.1140, statement of Mr Bartlett, paras 146, 148–149.
³⁸⁹ T6006.
³⁹⁰ T6511.
³⁹¹ T1768.
³⁹² T3416.
³⁹³ T3416–3417.
³⁹⁴ T3417–3418.
³⁹⁵ T3418–3420.
³⁹⁶ T2964–2965.
³⁹⁷ ESB.AFP.0024.0013, notes taken by Ms Harvey at evacuation planning meeting and 9.30 am planning meeting, 17 January 2003; T2429–2430.
³⁹⁸ T2431.
³⁹⁹ T2432.
⁴⁰⁰ ESB.AFP.0110.0693, message form prepared by Mr Taylor, 9.00 am, 18 January 2003; T5000–5001.
⁴⁰¹ T3414–3415.
⁴⁰² T6473–6474.
⁴⁰³ T3432.
⁴⁰⁴ Statement of Mr Prince, paras 27–28.
⁴⁰⁵ T3433–3434.
⁴⁰⁶ AFP.AFP.0110.0398, statement of Commander Newton, pp. 17–18.
⁴⁰⁷ T5271–5272.
⁴⁰⁸ Statement of Ms Wheatley pp. 7–8; T4198–4201; GSO.GSO.0004.0083, facsimile of rural residents contacted.

409 ESB.AFP.0014.0375, media update, noon, 18 January 2003.
410 T3421.
411 T2437.
412 T2438.
413 T2498–2499.
414 DPP.DPP.0003.0491, transcript of press conference, noon, 18 January 2003.
415 T1125–1128.
416 T1197–1202.
417 T1205.
418 T1211.
419 T1207.
420 T1774–1775.
421 Statement of Ms Larkins, pp. 4–5.
422 T2308.
423 Statement of Ms Larkins, p. 5.
424 T3508.
425 T3509–3510.
426 Statement of Commander Newton, p. 21.
427 AFP.AFP.0001.0902, notes made by Commander Newton.
428 T1780–1782.
429 ESB.AFP.0009.0095, Canberra Connect website information, 1.30 pm, 18 January 2003.
430 T1784–1785.
431 Statement of Mr Castle, para. 122.
432 T1785–1786.
433 ESB.AFP.0110.0768, Standard Emergency Warning Signal, 2.05 pm, 18 January 2003.
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⁴⁸³ Submission of counsel assisting, para. 1300.
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⁴⁸⁵ Submission on behalf of Mr Lucas-Smith and Mr Castle, para. 420.
⁴⁸⁶ *ibid.*, paras 421–455.
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⁴⁸⁸ *ibid.*
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⁴⁹⁷ *ibid.*, para. 115.
⁴⁹⁸ *ibid.*, p. 119.
⁴⁹⁹ *ibid.*, p. 120.
⁵⁰⁰ Submission on behalf of the ACT, paras 486, 516, 528, 536, 539, 566, 578, 713, 730, 737 and 742.
⁵⁰¹ *ibid.*, para. 741.
⁵⁰² *ibid.*, para. 494.
⁵⁰³ *ibid.*, paras 486, 517, 520, 524, 599 and 712.
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⁵⁰⁵ *ibid.*, paras 497, 528, 654 and 718.
⁵⁰⁶ *ibid.*, paras 510, 654 and 742.
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⁵¹⁵ *ibid.*, para. 612.
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⁵²² DPP.DPP.0009.0001, report of Mr Roche, pp. 186–187.
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⁵³⁷ *ibid.*, paras 1–2.
⁵³⁸ *ibid.*, para. 13.
⁵³⁹ *ibid.*, paras 13 and 14.
⁵⁴⁰ *ibid.*, para. 8(n). See also *Inquiry into the Operational Response to the January 2003 Bushfires in the ACT* by Mr McLeod AM—the ‘McLeod report’—1 August 2003, p. 265.
⁵⁴¹ McLeod report, p. 262.
⁵⁴² AFP.AFP.0087.0005, McBeth report, attachment 2, paras 20 and 21.
⁵⁴³ Affidavit sworn by Sir Peter Lawler, paras 22, 24 and 25.
⁵⁴⁴ *ibid.*, para. 26.
⁵⁴⁵ AFP.AFP.0001.0596, AFAC position paper on community safety and evacuation during bushfires, April 2001, pp. 2 and 5.
⁵⁴⁶ DPP.DPP.0006.0037, transcript of ABC Radio 666 broadcast, 1.00 pm – 2.00 pm, disc 3, 18 January 2003, p. 1.
⁵⁴⁷ *ibid.*, pp 2–5.
⁵⁴⁸ *ibid.*, pp. 7–8.
⁵⁴⁹ DPP.DPP.0006.0025, transcript of ABC Radio 666 broadcast, 2.00 pm – 3.00 pm, disc 4, 18 January 2003, pp. 1–5.
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⁵⁵¹ *ibid.*, pp. 10–12.
⁵⁵² DPP.DPP.0006.0045, transcript of ABC Radio 666 broadcast, 3.00 pm – 4.00 pm, disc 5, 18 January 2003, pp. 3–5.
⁵⁵³ DPP.DPP.0004.0016, transcript of 2CC broadcast, 3.24 pm, 18 January 2003.
⁵⁵⁴ Transcript of ABC Radio 666 broadcast, 3.00 pm – 4.00 pm, disc 5, 18 January 2003, pp. 3–26.
⁵⁵⁵ T998–999, 1209.
⁵⁵⁶ T2315.
⁵⁵⁷ T1103–1104.
⁵⁵⁸ T3349–3350.

⁵⁵⁹ T3411.

⁵⁶⁰ Submission of counsel on behalf of Mr Lucas-Smith and Mr Castle, para. 452.

⁵⁶¹ T3416–3420, 3393.

⁵⁶² T3414–3415.

⁵⁶³ T3398–3399.

⁵⁶⁴ *Canberra Times*, 29 November 2002; T3089; email from Mr McRae, ‘El Nino update’, 30 May 2002

⁵⁶⁵ ESB.DPP.0013.0234, statement of Ms Watson; ESB.DPP.0013.0237, ESB.DPP.0013.0250,

ESB.DPP.0013.0269, ESB.DPP.0013.0285, spreadsheets prepared by Ms Watson from questionnaires.

⁵⁶⁶ DPP.DPP.0006.0268, statement of Mr Jeffery and attached letter to residents.

Part Four

Repercussions

8 The deaths

On 16 October 2003 evidence was presented to the inquest into the deaths of four people—Mrs Dorothy McGrath, Mrs Alison Mary Tener, Mr Peter Brabazon Brooke, and Mr Douglas John Fraser—and I made interim findings.¹ I said at that time I would not comment on circumstances surrounding the deaths but I might do so at a later time², having in mind the completion of the inquiry into the cause and origin of the fires that entered Canberra on 18 January 2003 and a consideration of the evidence relating to that inquiry.

8.1 Mrs Dorothy McGrath

Mrs Dorothy McGrath, known as Dolly, was born on 7 August 1926 and lived alone at Cottage No. 5, Stromlo Forestry Settlement, RMB 113, Cotter Road, Duffy.³ She had lived at the settlement for over 30 years with her husband, Mr Peter McGrath, who was a forestry worker until his death some years ago.⁴ Mrs McGrath's body was found in her cottage yard, where it backed onto Cottage No. 7 and about 3 metres from the remains of her cottage, which had been destroyed by fire. Mrs McGrath was found lying on her left side, with both her arms drawn up to her face, which was on the ground. An amount of fluid lay on the ground next to Mrs McGrath's nose, and a piece of burnt timber lay across her body.⁵

Constable Gregory Booth, who attended the Stromlo settlement with Constable Kathryn Richens, gave evidence that, as well as his observations of Mrs McGrath's body, he noticed the following:

The premises are believed to be of a timber weatherboard house on a timber bearer and joist flooring. On the premises the remaining structures were two brick chimneys and the brick foundations. There was an amount of corrugated iron believed to be from the roof of the premises. There was a large amount of rubble, with the only items identifiable being the bathtub and the internal wires of the mattress.

Police are of the understanding there were 23 premises at the Stromlo Forestry Settlement, of which 20 had been razed to the ground by fire. Power lines were down and the area around the settlement was denuded of any vegetation.⁶

Police conducted investigations and made inquiries of people who were at the settlement on the day of the fires so as to obtain information about the circumstances of Mrs McGrath's death. Mr William (Bill) Todkill lived at Cottage No. 10, which was next door to and on the right of Mrs McGrath's cottage.

Mr Todkill said in evidence he had known Mrs McGrath for many years and knew her to be a reasonably independent person who drove a car and mowed her lawns. He did not see her on Saturday 18 January 2003 but saw that her house was on fire as he was trying to save his own house, just before he and others left the settlement as the firestorm arrived, at about 3.30 pm. Mr Todkill and his friend and fellow resident Mr Mark Graham returned later that afternoon, at

about 5.30 pm, and they found Mrs McGrath's body.⁷ Mr Todkill also gave evidence that ACT Housing had not contacted him or any member of his family on the Friday evening or the Saturday morning to warn them of the threat from the fires.⁸

Mr Graham, who lived in Cottage No. 7, provided information about his activities on the afternoon of 18 January. He described what happened at about 2.30 pm:

Um, well a big fire was coming towards our settlement. We couldn't see it because of all the pine trees in front of us. We just knew it was coming, ah, with all the emergency service people and everybody evacuating away from us. All the fire tankers, they asked us—they told—they asked us to go, myself and two other men, and we didn't go. We said we're going to try and save this house. Fire just approached with phenomenal speed, don't know, maybe 80, 100 kilometres an hour, who knows how quick the wind was coming. Everything was starting to turn pretty black with all the smoke and embers. Nearly turned night time actually. And as we were trying to contain the fire around Bill's house, over a bit to my left about a 45-degree angle I could see a person on the end of a hose, ah, next door to Bill's house, Bill was at number 10 on the corner. I believe that to be Dolly. Then once, once the fire balls just all came through and everything was alight, ah, we managed to get into a car and get just down past the flames—to the side flank of it and then when we returned, probably an hour or so later, ah, we—we just surveyed all the damage and it was then it jumped into my mind that I thought I'd seen Dolly an hour and a half or so previously and said to, um Kevin—Kevin Short—I better just go for a look over there, I thought I remember seeing someone over here. And I walked next door and found the body on the ground.⁹

Mr Graham said the NSW Rural Fire Service base camp, which had been set up at the Stromlo Forestry Settlement on 14 January 2003, had 'anywhere between 10 and 30 units, tankers, landcruisers' in the days before Saturday 18 January, but they started to leave the area during the morning of 18 January. He spoke very briefly to the driver of the last tanker, just before the driver left, and thought he saw Mrs McGrath hosing her house, but visibility was poor because of the smoke.¹⁰ Mr Graham said he did not know how close the fire was because no one told him, but he became concerned at about midday and evacuated the people who were in his house. He saw someone in uniform 'getting the people out of number 12 because they were a deaf family ... but nobody came and told us. Nobody came to tell Bill ... how close it was or you better get ready. It was just that I happened to be in my front yard when I saw these people get these people out'.¹¹ He also said it was at this time that he saw Mrs McGrath, but his main focus was wetting down his house and looking ahead to what was coming.¹²

Mr Graham said he and Mr Todkill then tried to defend Mr Todkill's house because it was the closest to a hydrant, but everything around them ignited—even the lawn and the oval.¹³ He said:

When the fire front really hit us ... I said to myself that I'd made the wrong choice in being here. It was definitely something that was just phenomenal. I'd never seen anything that fierce ... The flames were probably—well, they were engulfing all the trees. And all the trees would be 30 foot high around the houses. The depot, the flames were probably twice as high as the depot was, and just flames appearing everywhere—different heights depending on what they were burning—burning along the ground. Hot embers coming at you like a 3-D movie, just full on, just coming horizontally at you because the wind was that strong. And a huge noise, just everything burning, and the wind.¹⁴

Mr Graham said the cottages of Mrs McGrath and Mr Todkill were separated by a laneway. He was not aware of whether Mrs McGrath had made any plans to evacuate or whether she was prepared to do so.¹⁵

Ms Cheryl Gregory lived in Cottage No. 4 with her husband and two teenage children. She noted in her statement that on 14 January she had had a conversation with one of the firefighters from the newly established Rural Fire Service base camp; the firefighter told her it would be about three weeks before the fires reached them. She said she felt safe because the base camp was at the settlement.¹⁶ On 15 January firefighters at the camp told her the fires were about three or four days away if the wind picked up, so she left Canberra the following day and travelled to Shellharbour to collect her children and nephew. As she was returning to Canberra on the morning of Saturday 18 January she became concerned about the smoke, which she could see from Goulburn. She telephoned friends and fellow residents and became very concerned.¹⁷

Arriving at the settlement at 3.00 pm, Ms Gregory saw the deserted base camp and a few residents making preparations. She lived next door to Mrs McGrath and listened for her, but she heard no sounds from Mrs McGrath or her two small terrier dogs. She noticed that Mrs McGrath's garage door was down, which, she said, suggested to her that Mrs McGrath was not at home. Ms Gregory recalled that Mrs McGrath had left the settlement before the December 2001 fire, and she thought Mrs McGrath had left on this occasion too.¹⁸

Ms Christine Trebilco lived at Cottage No. 17 with her partner and two children, aged 5 and 3 years. She had lived at the settlement for about 31 years—all her life. Although she was aware of the fires she noted in her statement, 'My father Peter Trebilco worked all his life in ACT Forests and because of this I knew that fires were generally put out and also I realised how far away they were ... [so] I wouldn't have to worry'.¹⁹

Before 18 January 2003 Ms Trebilco said she had not heard or read any warnings or alerts about the fires. She said that in December 2001 the police had come and warned residents to prepare, which she did by packing papers and valuables and having transport and friends on standby to assist.²⁰ During the morning of 18 January 2003 Ms Trebilco became concerned about the increasing smoke and arranged for her mother to come to the settlement and collect the children. A security guard from the base camp gave her advice about leaving or staying if she felt safe to do so. She told the guard about Mrs McGrath, describing her as an old lady who lived alone and pointing to Mrs McGrath's cottage. She said the guard left and walked towards Mrs McGrath's property. Ms Trebilco did not see Mrs McGrath on 18 January, nor did she see any emergency services vehicles or personnel at Mrs McGrath's property. She said she felt safe because the base camp was at the settlement.²¹

Ms Ione Kitson, who lived at the settlement, saw Mrs McGrath shortly before 3.00 pm on 18 January. In her statement she said she saw Mrs McGrath's car in the driveway and saw Mrs McGrath chasing one of her dogs. Ms Kitson was watering down her house at the time, and said she assumed Mrs McGrath was preparing to leave, but she did not speak with her. Ms Kitson said Mrs McGrath did not appear to be distressed and then added:

A short time later I looked again across at Dolly's and couldn't see her vehicle any longer in the driveway. I assumed she had left the settlement. My daughter Valerie told

me later that she saw Dolly putting her vehicle back into the garage. I didn't see any emergency vehicles or emergency people at Dolly's house on 18 January 2003.²²

Ms Kerry Taylor was Mrs McGrath's niece and spoke with her by telephone at 2.30 pm on Saturday 18 January. Ms Taylor said she told Mrs McGrath she had heard the fires were heading in her direction and advised her to leave. Mrs McGrath replied that she had not heard any warning announcement on the television stations and had not been told by anyone to evacuate. Mrs McGrath referred to the firefighters' camp and said, 'You'd think they'd tell us if we had to leave'. Ms Taylor offered to collect Mrs McGrath, but Mrs McGrath refused, saying she would put a few things into her car and leave.²³ Ms Taylor said she was not aware of any preparations Mrs McGrath made to evacuate, and when she visited the settlement on 22 January 2003 she found the car, which she had recently sold to Mrs McGrath, burnt out in the garage.²⁴

Mr Roberto Montagnino was employed as a security officer at the firefighters' camp and was told at about 1.00 pm on Saturday 18 January that the fire had crossed the Murrumbidgee River, was in the pine plantation, and was advancing towards the settlement. The NSW Rural Fire Service was making plans to evacuate the base camp.

At about 2.00 pm Mr Montagnino and a firefighter decided to warn the residents about the approaching fire and proceeded to do so, emphasising that they did not want to alarm people. Mr Montagnino recalled going to Cottages 7, 11, 15, 17, 21 and 22 and to Cottage 12, home to the deaf family. He asked that the message be passed on to people in Cottages 18, 19, 20 and 23. Mr Montagnino said the message he was conveying was that the base camp was on standby to evacuate and he recommended that the residents leave, be prepared to leave, or start preparing their houses and grounds if they wanted to stay.²⁵ He said he was not aware of Cottages 2, 4, 5, 8 and 9 and did not go there.²⁶

At about 2.45 pm Mr Montagnino said it became clear that the base camp was to be evacuated:

I can't remember whether someone had specifically stated that we were leaving, but at this stage vehicles were being positioned ready for departure and fire fighters were gathering some of their fire fighting equipment including jackets. There were still fire fighters arriving at the base camp. Over the next 15 minutes or so I saw residents from the settlement talking to various members of the base camp. They had come across to the base camp and appeared to be seeking information. I remember a large bearded fire fighter that I think was from Mittagong checking with the cottages and giving advice. The advice at this stage was for residents to leave as soon as possible. This was independent advice. There appeared to be some panic from the residents of the cottages. I remember hearing, amongst other shouting, a crew member or members from the Mittagong Crew shouting out words to the effect: 'It's time to fucking go ...' These comments appeared to be directed to the residents who were still at their cottages. About five minutes before we left the base camp, the fire fighting light unit four-wheel drives put on their flashing lights and sounded their sirens. I then assisted the residents from Cottage 12 as they were evacuated from the settlement. I remember that they became separated and ended up leaving in two different vehicles. The base camp was then evacuated. The base camp left as a convoy, there were several civilian vehicles including my own among the fire fighting vehicles. We exited out the exit road towards the east and Cotter Road. I remember seeing the flames on the western side of the

settlement. As we left the settlement, the forest on the left hand side of the exit road was on fire and the fire had also come into the settlement in the vicinity of the depot.²⁷

Pathologist Dr Lavinia Hallam performed an autopsy on the body of Mrs McGrath on 20 January 2003. In her report Dr Hallam noted evidence of soot in Mrs McGrath's mouth and windpipe and evidence of smoke inhalation, with a carbon monoxide level of 19 per cent saturation. She went on to say:

However, the exact cause of death in fire victims is notoriously difficult to determine with confidence, with postulated mechanisms including the effects of

- a) thermal injury with induced neurogenic shock or cardiac arrest,
- b) asphyxia with oxygen starvation with or without inhalation of toxins, e.g. carbon monoxide, carbon dioxide,
- c) inhalation of hot gasses producing laryngeal spasm or reflex cardiac arrest
- d) natural disease e.g. ischaemic heart disease
- e) other pre mortem trauma.

The presence of carboxyhaemoglobin and/or smoke inhalation imply the deceased was alive at the time of the fire ... In this case there was no evidence of significant pre mortem disease or evidence of significant pre mortem trauma and therefore the death is presumably related either to thermal injury or smoke inhalation as discussed above. In view of these difficulties the cause of death is best recorded as due to the effects of fire.²⁸

In evidence, Dr Hallam said Mrs McGrath did not have any pre-existing heart condition. In Dr Hallam's opinion, therefore, the cause of death was more likely to have been thermal injury from the direct effect of flames and heat from the fire, with smoke inhalation being a contributory but lesser factor, but with all these factors stressing the heart and resulting in cardiac arrest. Dr Hallam added that her conclusion was supported by the evidence that Mrs McGrath was in the open and caught up directly in the fire, which caused her extensive burns and contributed to her death.²⁹

The extent of Mrs McGrath's knowledge about the bushfires before 18 January 2003 is not clear from the evidence or from the inquiries made by investigating police. It would appear, however, from the evidence of her niece, Ms Taylor, that at 2.30 pm Mrs McGrath had not heard any announcement or warning about the possibility of the fires heading towards the settlement. During her conversation with Ms Taylor, Mrs McGrath made reference to the NSW Rural Fire Service base camp in the settlement, and it can be assumed that she, like some others who gave evidence and made statements, felt a sense of security because there was a firefighting force there. In any event, despite what she had told Ms Taylor, Mrs McGrath appeared to have believed that if there was any danger, someone—presumably the firefighters in the camp—would tell the residents to evacuate. This would not have been an unrealistic expectation. There is evidence from Mr Montagnino that he and another person started to warn residents from about 2.00 pm onwards, although Mr Montagnino did not go to Mrs McGrath's cottage.

It would appear that, after Ms Taylor's telephone call, Mrs McGrath did go outside and might have been preparing to leave. This was the impression gained by Ms Kitson, who saw her at about 3.00 pm chasing her dog and also noticed that Mrs McGrath's car was out on the driveway. On the other hand, Mr Graham said he thought he saw Mrs McGrath hosing her house some time shortly after that, and it would appear to have been then that the embers started to fall, just before the fire front arrived. This is consistent with Mrs McGrath's body being found outside her house. Mr Graham seems to have been the last person to see Mrs McGrath alive. It also seems that the only warning Mrs McGrath received of the approaching fires was at about 2.30 pm, from her niece. What other information she might have heard is not known, but it is probable that she heard none. It is therefore most probable that she had insufficient information about the imminent threat of the fires. And, considering the speed with which the fire situation deteriorated, it is highly probable that Mrs McGrath had insufficient time to make an informed decision about whether to stay or leave. From what she said to Ms Taylor, it appears that Mrs McGrath was open to the recommendation that she should leave. But the fact that she had put her car back into the garage and was outside hosing her house lends strong support to the fact that Mrs McGrath was waiting to be told what was about to happen and to leave if she was not well enough prepared to stay. The information Mrs McGrath was waiting for never came to her.

In relation to the manner and cause of Dorothy McGrath's death, I find as follows:

- Dorothy McGrath, also known as Dolly McGrath, died between 3.00 pm and 6.00 pm on Saturday 18 January 2003, outside her home, that being Cottage No. 5, Stromlo Forestry Settlement, RMB 113, Cotter Road, Duffy, in the Australian Capital Territory.
- The cause of death was thermal injury resulting from the direct effect of flames and heat from a fire, with smoke inhalation being a contributory but lesser factor, and with all factors causing cardiac arrest.
- The fire was a bushfire that had ignited on 8 January 2003 in several locations in the ACT and nearby in NSW and that entered the Stromlo Forestry Settlement at about 3.00 pm on Saturday 18 January 2003 and destroyed most of the buildings in the settlement, including Mrs McGrath's cottage.

8.2 Mrs Alison Mary Tener

Mrs Alison Mary Tener was born on 18 May 1964, and on 18 January 2003 she lived at 9 Burrendong Street, Duffy. Her husband was living at the Richmond RAAF base on a term posting, and their three children were staying with grandparents in Coffs Harbour.³⁰ Fire officer Mr Wayne Stevens found Mrs Tener's badly burnt body on Sunday 19 January at about 1.00 pm, in the bathroom of her home. Her legs were bent to fit inside the bath, and her arms were bent up in front of her face. Three towels were underneath her body, and another was in her hand. The towels were damp, and the bath was plugged and contained a small amount of water. There was a large amount of debris in the bath—glass, gyprock, tiles, and so on. The house was destroyed.³¹ Mrs Tener's car was found in the centre of the carport; it had sustained minor heat damage to the plastic bumper bar at the front and the driver's side mirror. A small fire extinguisher was lying

on the ground a short distance from the driver's side. The boot of the car contained personal items, including photo albums.³²

Investigating police spoke with Mrs Helen Craven, who lived at 5 Burrendong Street, two houses away from Mrs Tener. Mr David Craven had suggested to his wife that she go to see Mrs Tener and ask her if she needed any help. Mr Craven told police this was about 2.00 pm on Saturday 18 January. Mrs Craven visited Mrs Tener and found her getting ready to go to work and sorting through photographs.³³ She invited Mrs Tener to accompany her to the Craven's home, but Mrs Tener refused. Mrs Craven told her husband, 'Alison's OK. She's not panicking or anything. She's concerned like everybody is. But she says she's OK and she's getting some things together—photos and some other things—just in case there's any need to take them out of the house'.³⁴ Mr and Mrs Craven had this conversation just as Mr Craven saw the first signs of the firestorm approaching.

Mrs Amanda Taylor lived at 11 Burrendong Street, Duffy, on 18 January 2003, next door to Mrs Tener. She told police she was at home with her three small children that afternoon and started to feel uneasy; she telephoned her husband, who was at work, to ask if he had heard anything on the radio.³⁵ Mr Taylor told his wife he would come home, but she told him she would be fine. He then told her that if she was worried she should take the children and leave. Mrs Taylor said she told her husband that if there was a problem or if the fires were coming closer someone would let them know. She said this conversation occurred at about 1.30 pm.

A short time later, however, Mrs Taylor decided to leave. She took some clothes for the family and went outside, where her neighbour, Mr Lester Southwell, who lived at 13 Burrendong Street, spoke to her and asked if she had hoses connected.³⁶ Mrs Taylor told Mr Southwell she and the children were leaving. She then saw Mrs Tener standing on her house's side deck, which faced Mrs Taylor's house. Mrs Taylor knew Mrs Tener was alone and said to her, 'Alison, are you okay?' Mrs Tener said she was a little frightened.³⁷ Mrs Taylor told Mrs Tener she and the children were leaving but that Mr Southwell was still there. She recalls closing the boot of her car, walking to the driver's side door, and noticing that Mrs Tener was no longer on the deck.

Mrs Taylor said she did not think Mrs Tener seemed panicked, but she wanted her to know that Mr Southwell was there. Mrs Taylor then drove out of Burrendong Street into Somerset Street, noticing that the wind had picked up and the smoke was thicker. She turned on the headlights and heard a message on the radio saying that no evacuations had begun but centres had been set up at Phillip and Ginninderra Colleges. Mrs Taylor said:

They kept playing this warning message that people should go back to their homes and water down their homes, close all their windows and doors, fill their bathtubs, dampen towels, put them in—along—any crevices, so smoke couldn't get into the house. If you were able to go outside, water down, wet down, the sides of your house.³⁸

On 19 January 2003 police spoke with Mrs Vlasta Dahl, who lived at 103 Warragamba Avenue, Duffy, backing on to Mrs Tener's property so that they had a common rear fence. Mrs Dahl said that at about 2.00 pm on 18 January she was in her back yard watering down her house and gutters, and she saw Mrs Tener at an upstairs window, closing the windows and blinds.³⁹ She

said Mrs Tener did not appear distressed and they did not speak to each other.⁴⁰ Mrs Dhal said she had been alone, and she left at about 3.00 pm when sparks started to fly.

Mrs Tener's husband, Mr David Tener, told police he was at the RAAF base in Richmond on Saturday 18 January 2003 and knew nothing about the fires until he received a telephone call from a friend in Canberra at about 4.00 or 5.00 pm, offering Mrs Tener accommodation if she needed it. Mr Tener then saw television images of the fires in Duffy and became alarmed.⁴¹ He tried several times to contact his wife on the home phone and her mobile phone, without success. He left Richmond to travel to Canberra, arriving at about 1.00 am on Sunday at the home of friends with whom Mrs Tener had dined the previous Friday evening. Mr Tener then tried to find his wife: he visited the evacuation centre in Narrabundah and made telephone calls to the hospitals, the Red Cross, other evacuation centres and the police; he then drove to Duffy but was told by police at a roadblock that his house was no longer standing.⁴² Mr Tener left, continued his search and returned the next morning to the roadblock, which was at the intersection of Hindmarsh and Streeton Drives. Having asked the police, he was allowed to drive to his house to see if his wife's car was there. Mr Tener found what remained of his house and Mrs Tener's damaged car. He spoke to some neighbours, who told him they had seen his wife shortly before the fires arrived. He then spoke with some firefighters, who started to look through the rubble of the house. Mr Tener said that shortly after he knew they had found his wife's body.⁴³ He had last spoken with his wife at about lunch time on Friday 17 January.⁴⁴

Dr Lavinia Hallam performed an autopsy on the body of Mrs Tener on 22 January 2003 and reported as follows:

The blood was analysed and no drugs were detected. Carboxyhaemoglobin was detected at a concentrate of 58% saturation of blood. Carboxyhaemoglobin is produced from inhalation of carbon monoxide produced from the incomplete combustion of organic fuels. Levels that exceed 50% are considered life threatening. This 38 year old woman was a casualty of the Canberra bushfire on January 18th 2003. Her body was found severely burnt in the tub in her house in Duffy. At autopsy the findings were those of a severely burnt body but it was not possible to conclusively determine whether the burns were pre or post mortem. However there was both gross and histological evidence of smoke inhalation with carbon monoxide levels of 58% carboxyhaemoglobin and it is more likely the cause of death was due to smoke inhalation rather than burning in this case.⁴⁵

In her evidence during the inquest Dr Hallam confirmed her opinion that, because of the carboxyhaemoglobin level, it is most probable that Mrs Tener died from smoke inhalation, and she believed Mrs Tener's burns were probably sustained after death.⁴⁶

There is no evidence about what, if any, information Mrs Tener had about the fires before 18 January 2003. None of the neighbours to whom police spoke and who made statements gave Mrs Tener information about what preparations she should make. Mrs Craven told police Mrs Tener was looking through photographs when she visited her at about 2.00 pm, but she (Mrs Tener) did not appear to be panicking. It appears, though, that Mrs Tener was preparing to leave. She told Mrs Craven she was putting things together just in case, and police found personal items and photograph albums in the boot of her car, which was in the carport. On the other hand, Mrs Tener spoke with Mrs Taylor perhaps shortly after Mrs Craven visited and told

her she was a little frightened, although she did not say or indicate that she, like Mrs Taylor, was about to leave. This suggests that, at that time, Mrs Tener had not yet decided whether she should stay or leave her home.

Mrs Dahl saw Mrs Tener closing windows and blinds, however, and there is evidence that at some stage Mrs Tener filled the bath with water. These actions on Mrs Tener's part suggest that some time after Mrs Taylor had left with her children—which was about when the first Standard Emergency Warning Signal was being issued—Mrs Tener had abandoned any plans to leave and had decided to stay. It could appear from the evidence of her actions that Mrs Tener followed the instructions that were issued with the SEWS: she filled the bath, soaked towels and closed windows. The message also was urging residents in suburbs 'on alert' to return to their homes and said 'no evacuations' were taking place. It could also appear that Mrs Tener misunderstood the purpose of the message about filling the bath and soaking the towels and did seek refuge in the bath, covering herself with wet towels when the fire invaded her house. This would be consistent with the fact that, unlike later messages, the SEWS messages on 18 January 2003 did not explain why the bath should be filled with water, and some people might have misunderstood the purpose.

On the evidence before me, I am satisfied on the balance of probabilities that the Canberra community was not adequately warned and was not warned in a timely manner of the danger of the approaching fires. I am also satisfied that the SEWS messages were issued too late, and were inadequate, even misleading, in their content. In order to find, however, that the absence of appropriate and timely warnings and particularly the late issue of the SEWS—with its cryptic message about filling baths and its instruction to return to houses at the height of a firestorm—were each a cause of the death of Mrs Tener, I must consider and apply the relevant law.

Additionally, and at the outset, I must be satisfied that, on the balance of probabilities and on the evidence, Mrs Tener was listening to the radio on the afternoon of Saturday 18 January 2003, that she heard the SEWS messages, that she responded to the directions, that she misunderstood the purpose of the instruction to fill the bath with water and, finally, that as a consequence of all of these things she put herself into the bath, where she died. This might have been the case, but the evidence before me is insufficient to allow me to be satisfied to the requisite legal standard.

In relation to the manner and cause of Alison Mary Tener's death, I find as follows:

- Alison Mary Tener died not long after 3.00 pm on the afternoon of Saturday 18 January 2003, inside the bathroom of her home at 9 Burrendong Street, Duffy, in the Australian Capital Territory.
- The cause of death was smoke inhalation and the effects of a fire that destroyed Mrs Tener's home.
- The fire was a bushfire that had ignited on 8 January 2003 in several locations in the ACT and nearby in NSW and that entered the suburb of Duffy at about 3.15 pm on 18 January 2003.

8.3 Mr Peter Brabazon Brooke

Mr Peter Brabazon Brooke was born on 2 February 1929; on 18 January 2003 he lived at 40 Tullaroop Street, Duffy, with his wife Beverley and their son Garry. Mr Brooke's body was found on the ground outside the north-western corner of his house, which had been destroyed by fire.⁴⁷ Ms Cherrone Ellis, a forensic investigator employed by the Australian Federal Police, examined the scene and reported:

It is my opinion that Mr Peter Brooke was situated on the roof of his premises attempting to protect his house from the approaching bushfire using a garden hose. The deceased has died whilst on the roof, and either before the roof has collapsed or during the roof collapse Mr Brooke's body has fallen onto the pathway adjacent to the western end of the residence.

I came to my opinion based on the following facts:

- a ladder was located in the front yard that appeared to have been used to gain access to the roof of the premise prior to the collapse;
- lines of unburnt vegetation on the front lawn of the residence suggest that someone was possibly moving and using the garden hose whilst the front lawn was already burning;
- a section of garden hose was located underneath the deceased and was heavily charred apart from a small area which would be consistent with being protected by a hand gripping that area of hose ...

Ms Ellis also noted other factors related to the burn injuries sustained to Mr Brooke's body.⁴⁸

Police conducted an interview with Mr Brooke's son Garry, producing a taped record of conversation. Mr Garry Brooke said the last time he can clearly remember seeing his father was in the back yard of the house as he (Mr Garry Brooke) was trying to hose out embers that had fallen into the yard and were burning near a shed. He said he saw his parents packing things into the boot of their car and realised they were planning to evacuate the property. He went to his car and backed it down the driveway. He recalled stopping when he noticed fire in his neighbour's garden bed; he tried, to no avail, to put the fire out with a hose. He returned to his car, reversed it onto the street, and waited for his parents' car but could not see it. He got out of his car to look for his parents and saw their car nearby with his mother in the driver's seat. Mr Garry Brooke asked his mother where his father was, and she replied that he had gone back to the house to look for him. Mrs Brooke had not driven a car for some years but, after some instruction from her son, managed to drive, very slowly, followed by Mr Garry Brooke as flames were crossing the streets. Both Mrs Brooke and Mr Garry Brooke kept looking for Mr Peter Brooke as they drove out of the suburb. At one point Mr Garry Brooke stopped on Hindmarsh Drive and ran to tell police parked there that his father was missing somewhere in Tullaroop Street. He and his mother then proceeded to Cooleman Court in Weston because they did not know where else to go. Later, after ringing 000 emergency, they were told to go to the evacuation centre at Phillip College; they drove there.⁴⁹

Mr Garry Brooke said that earlier on Saturday afternoon he and his father had been preparing the house—checking that the gutters were clear, plugging the downpipes, and filling the gutters with water. He thought they did this at about 3.00 pm, not long before he and his mother evacuated.⁵⁰ Mr Garry Brooke also said that just before this time he and his parents had spoken with their neighbour Ms Trish Fryer, who told them she had spoken to either some police officers or some firefighters who had driven up Eucumbene Drive and asked them what was happening with the fire. He said Ms Fryer was told the fire was 10 kilometres away, so Mr Garry Brooke took that to mean it was reasonably safe. Nevertheless, Mr Brooke and his father decided to start their preparations.⁵¹

Mrs Brooke confirmed that she and her husband had reversed down the driveway of the house after suggesting to their son that he drive his car to a safe place. Mrs Brooke asked her husband where Garry was and her husband told her he was going to look for him and got out of the car. She did not see where he had gone.⁵²

Dr Lavinia Hallam performed an autopsy on the body of Mr Brooke on 22 January 2003. She reported as follows:

This 73 year old man was found deceased outside of his burnt residence in the aftermath of the Canberra bushfire on 18th January 2003. He had a history of hypertension and heart disease. There were no suspicious circumstances arising from the police investigations.

At autopsy the body was badly burnt. There was evidence of smoke inhalation with soot in the mouth and airways and carboxyhaemoglobin level of 15% in the liver sample sent for toxicology. There was also evidence of ischaemic heart disease.

As with her report on the death of Mrs McGrath, Dr Hallam commented that the exact cause of death in fire victims can be difficult to determine with confidence. She noted, however, in her report:

In this case there was also evidence of significant pre mortem disease with significant ischaemic heart disease and the stress of the situation may have induced a cardiac arrhythmia and arrest. There is no evidence of significant pre mortem trauma. In view of these difficulties the cause of death is best recorded as due to the effects of fire.⁵³

During her evidence Dr Hallam elaborated on the opinion she expressed in her report about the cause of Mr Brooke's death:

I found that Mr Brooke had significant pre-mortem natural disease in the form of coronary heart disease and ischaemic heart disease. Certainly you could postulate this could be aggravated by the stress and the smoke inhalation. As a result, he may well have suffered a cardiac arrest, which is a well-known complication of ischaemic heart disease and coronary artery disease. From what I heard this morning [in evidence at the inquest] the investigations suggest that the deceased was on the roof. I think it is conceivable that he had a cardiac arrest—a heart attack on the roof. He may have collapsed there and that perhaps is the reason why the body was burnt on the right side. Maybe he was lying on that side, the fuel was underneath him and therefore the burns would then, therefore, be post-mortem. It would be very difficult to be sure that he

hadn't received some burns pre-mortem. But he is an excellent candidate for suffering heart attack in these circumstances.⁵⁴

On the evidence, it is not possible to conclude that after Mr Peter Brooke got out of his car he did go in search of his son. It does appear, however, that he told his wife to drive away, then returned to the house and tried to defend it against the fire. Constable Reece Strachan, who attended the premises on the afternoon of Sunday 19 January 2003, saw a hose connected to the outside tap at the north-eastern corner of the house and noticed that the tap was in the 'on' position. He also saw a ladder in a standing position at that corner, leaning against some burnt shrubs, and a green-coloured fabric hat on the ground. A pair of safety goggles was found on the ground near Mr Brooke's body.⁵⁵

Ms Ellis reported that a section of the garden hose was found underneath Mr Brooke's body; it was heavily charred except for a small part, which she considered consistent with the hose being held by Mr Brooke. She also concluded from her investigations that Mr Brooke was on the roof of the house and fell to the ground. Headphones from a radio were found around Mr Brooke's neck; Mr Garry Brooke said his father had been wearing headphones that day, listening to the radio.⁵⁶ This would be consistent with Mr Peter Brooke listening to information about how to defend his house. Consequently, it appears that, having decided to evacuate, he changed his mind, remained at the house in an effort to save it from the fire, and lost his life in the attempt.

In relation to the manner and cause of Peter Brabazon Brooke's death I find as follows:

- Peter Brabazon Brooke died not long after 3.00 pm on Saturday 18 January 2003, outside his home at 40 Tullaroop Street, Duffy, in the Australian Capital Territory.
- The cause of death was cardiac arrest suffered as a result of stress caused by the effects of a fire he was attempting to fight from the roof of his home, which was destroyed.
- The fire was a bushfire that had ignited on 8 January 2003 in several locations in the ACT and nearby in NSW and that entered the suburb of Duffy at about 3.15 pm on 18 January 2003.

8.4 Mr Douglas John Fraser

Mr Douglas John Fraser was born on 22 December 1942; on 18 January 2003 he lived at 23 Burrendong Street, Duffy, with his wife, Mrs Ann Fraser. Mr Fraser's body was found lying on the back porch of his home. He had been wearing a polo shirt, shorts and running shoes at the time of his death.⁵⁷ Mr Fraser was lying on his left-hand side, and his body—particularly his face—was covered in soot.

A garden hose was found near Mr Fraser, and a ladder was found leaning up against the house, behind the rear porch. In that position, the ladder would have allowed access to the roof of the premises.⁵⁸

Constable Chris Burgess, who attended the scene at about 7.00 pm on Saturday 18 January, observed that the right and rear perimeter fences of the property had been destroyed by fire, as

had a shed at the rear. He saw evidence of a grass fire in the rear yard, with blackened and charred grass near the clothes line, which was about 10 metres from both the back fence and the house. The house had not been destroyed by fire, but other houses in the immediate vicinity had been destroyed or damaged.⁵⁹

On 24 January 2003 investigating police spoke with Mr Brian Corrigan, who lived at 12 Burrendong Street. He said that, because he was concerned about the fires on Saturday 18 January, he walked to the intersection of Eucumbene Drive and Warragamba Avenue in Duffy at about 2.30 pm. On his way home he stopped and spoke with Mr Fraser. Mr Corrigan recounted their conversation:

Basically, we talked about the fire. I had concerns about the colour of the smoke and the density. Although we couldn't see flames, it was beyond any experience that I had ever had. I was concerned about that. Doug thought that the fire would be stopped at the Cotter Road or at worst Eucumbene Drive so he was quite complacent. He was happy to stay there and watch the fire. But at that stage I don't think that he sensed any major risk or any danger ... he was very complacent. Very calm and relaxed.⁶⁰

Mr Ronald Jungwirth lived next door to Mr Fraser, at 21 Burrendong Street. His family left the house at about 3.00 pm, but he remained behind to dampen around his house and grounds; he saw Mr Fraser between 4.00 pm and 4.30 pm, doing the same on his property.⁶¹ He called out to Mr Fraser at one point but received no reply.⁶² Mr Jungwirth said that after a short time he went to the front of his property and fought fires around his house. While he was there another neighbour, Mr Peter Boehm, called out to him, asking for help because someone needed medical attention. Mr Jungwirth went to Mr Fraser's property and saw him lying on the back steps.

Mr Boehm told police he was mopping up at the front of his house after the fires had passed and clearing trees and debris off the road so that emergency vehicles could pass unimpeded. He decided to check on Mr Fraser; after there was no response to his knock on the front door of Mr Fraser's house, he went to the back yard and found Mr Fraser lying on the patio. He called to Mr Fraser and checked his pulse and for any signs of life but could find none. He then contacted Mr Jungwirth and Dr Peter Manns.⁶³

Dr Manns lived at 16 Burrendong Street, Duffy. He said he last saw Mr Fraser at about 3.30 pm to 4.00 pm on Saturday 18 January, hosing down around the front of his house. Dr Manns said it appeared to him that the fires on Mr Fraser's property were small, under control and not threatening the house. Later, when he was alerted by Mr Boehm and Mr Jungwirth, he went to Mr Fraser's property, where he saw Mr Fraser lying on the back porch.⁶⁴ He confirmed that Mr Fraser was dead and pronounced life extinct at 6.15 pm.

Police spoke with Mrs Fraser, who said she last saw her husband at 6.30 am on Saturday 18 January as she left for work. She said she tried unsuccessfully to contact him by telephone at about 3.00 pm that afternoon and could not reach her home because she was stopped by a police roadblock. She continued trying to contact her husband throughout the afternoon and evening until police informed her of his death.⁶⁵

Dr Lavinia Hallam performed an autopsy on the body of Mr Fraser on 20 January 2003. She noted that he had sustained an injury caused by a blunt object to his forehead and eye but there

was no underlying fracture of the skull or injury to the brain. Dr Hallam concluded that the injury might have been incurred as the result of a fall or a falling object. Although it might have caused Mr Fraser to lose consciousness, the injury was not considered severe enough to be the primary cause of death. Dr Hallam also reported:

The larynx and trachea were reddened possibly related to inhalation of hot gases and grossly there was some soot in the airways. There was no carboxyhaemoglobin on blood analysis. However there was pulmonary congestion, oedema and widespread intra alveolar haemorrhage on histological examination and inhalation of smoke or hot gases would seem the most likely cause of death. In the absence of significant carboxyhaemoglobin levels, and therefore evidence of carbon monoxide toxicity, the possibility of asphyxia, and oxygen starvation or carbon dioxide poisoning, or other toxic or super heated gas inhalation needs to be considered but would be difficult to prove.

She concluded that the death was most probably caused by smoke inhalation but noted in her report that this would be difficult to prove. She reported, 'In my opinion the cause of death was due to the effects of fire'.⁶⁶

In evidence, Dr Hallam confirmed her opinion that Mr Fraser died of an inhalation injury. She said the soot in the mouth and windpipe, the reddened mucosa and the congestion and haemorrhage in the lungs were evidence of inhalation injury, together with the absence of any carbon monoxide in the blood and no significant pre-mortem disease.⁶⁷

Inquiries and the evidence did not reveal how much Mr Fraser knew about the fires before 18 January 2003 or how much he knew about how to prepare his property, and himself, for a fire. He was not dressed appropriately for the situation. It would appear that he was calm, relaxed and complacent and believed, as evidenced by his demeanour and his comments to Mr Corrigan, the fire would be stopped at the Cotter Road or, at worst, Eucumbene Drive. But despite this belief, or perhaps hope, it seems from the evidence of Mr Jungwirth and Dr Manns that Mr Fraser was taking some action, hosing down the grounds of his property and fences, and was therefore preparing and trying to save his home. There was no evidence of significant fire activity at Mr Fraser's property, so it would appear he was successful in putting out the fires that did ignite on his grounds and his fences. It is not clear how he sustained the injury to his forehead or whether it caused him to lose consciousness. It is, however, unlikely that this injury caused his death.

In relation to the manner and cause of Douglas John Fraser's death I find as follows:

- Douglas John Fraser died between 3.30 pm and 6.15 pm on Saturday 18 January 2003, on the rear verandah of his home at 23 Burrendong Street, Duffy, in the Australian Capital Territory.
- The cause of death was the effects of fire and an injury to the lungs caused by inhalation of smoke and hot gases from a fire Mr Fraser was fighting in the grounds of his property.
- The fire was a bushfire that had ignited on 8 January 2003 in several locations in the ACT and nearby in NSW and that entered the suburb of Duffy at about 3.15 pm on 18 January 2003.

Notes

¹ T650, 720.

² T 649.

³ DMC.AFP.0095.0118, Statement of Sergeant Barnicoat, p. 1.

⁴ DMC.AFP.0095.0129, Statement of Ms Trebilco, p. 5.

⁵ DMC.AFP.0095.0003, Statement of Constable Booth, p. 3; T700–701.

⁶ T 701.

⁷ DMC.AFP.0095.0056, TROC with Mr Todkill, Q. 22; AFP.AFP.0051.0447, Statement of Mr Todkill, pp. 5–6; T702–704.

⁸ T6428.

⁹ DMC.AFP.0095.0067, TROC with Mr Graham, Q. 21–22.

¹⁰ *ibid.*, Q. 51–64, 129.

¹¹ *ibid.*, Q. 108.

¹² *ibid.*, Q. 110.

¹³ *ibid.*, Q. 77–78, 122.

¹⁴ *ibid.*, Q. 82, 84.

¹⁵ *ibid.*, Q. 111–113.

¹⁶ DMC.AFP.0095.0147, Statement of Ms Gregory, p. 2.

¹⁷ *ibid.*, p. 3.

¹⁸ *ibid.*, p. 4.

¹⁹ DMC.AFP.0095.0129, Statement of Ms Trebilco, pp. 1–2.

²⁰ *ibid.*, p. 2.

²¹ *ibid.*, p. 3–5.

²² DMC.AFP.0095.0140, Statement of Ms Kitson, p. 6.

²³ DMC.AFP.0095.0082, TROC with Ms Taylor, Q. 17.

²⁴ *ibid.*, Q. 26–28.

²⁵ DMC.AFP.0095.0123, Statement of Mr Montagnino, pp. 2–4.

²⁶ *ibid.*, p. 4.

²⁷ *ibid.*, p. 5–6.

²⁸ DMC.AFP.0095.0047, Autopsy report of Dr Hallam, p. 7.

²⁹ T717–719.

³⁰ Statement of Sergeant Barnicoat, p. 1.

³¹ AMT.AFP.0097.0016, Statement of Senior Constable Bird, pp. 1–4.

³² AMT.AFP.0097.0073, Statement of Ms Clissold, p. 3.

³³ AMT.AFP.0097.0120, TROC with Mrs Craven, Q. 57.

³⁴ AMT.AFP.0097.0128, TROC with Mr Craven, Q. 57.

³⁵ AMT.AFP.0097.0149, TROC with Mrs Taylor, Q. 42–43.

³⁶ *ibid.*, Q. 61–66.

³⁷ *ibid.*, Q. 68–69.

³⁸ *ibid.*, Q. 95–97.

³⁹ AMT.AFP.0097.0166, TROC with Mrs Dahl, Q. 22–23.

⁴⁰ *ibid.*, Q. 26–27.

⁴¹ AMT.AFP.0097.0100, TROC with Mr Tener, Q. 48–51.

⁴² *ibid.*, Q. 58.

⁴³ *ibid.*, Q. 80–82.

⁴⁴ *ibid.*, Q. 86.

⁴⁵ AMT.AFP.0097.0178, Autopsy report of Dr Hallam, p. 6.

⁴⁶ T713.

⁴⁷ T672–673.

⁴⁸ PBB.AFP.0096.0037, Statement of Ms Ellis, pp. 4–5.

⁴⁹ PBB.AFP.0096.0068, TROC with Mr Garry Brooke, Q. 20.

⁵⁰ *ibid.*, Q. 156–158.

⁵¹ *ibid.*, Q. 156.

- ⁵² PBB.AFP.0096.0107, Letter of Mrs Brooke to the Coroner, 3 June 2003.
- ⁵³ PBB.AFP.0096.0128, Autopsy report of Dr Hallam, p. 6.
- ⁵⁴ T715.
- ⁵⁵ T673–676.
- ⁵⁶ TROC with Mr Garry Brooke, Q. 123–127.
- ⁵⁷ DJF.AFP.0098.0011, Statement of Constable Burgess, p. 2.
- ⁵⁸ DJF.AFP.0098.0039, Statement of Ms Young, pp. 1–2.
- ⁵⁹ Statement of Constable Burgess, p. 2.
- ⁶⁰ DJF.AFP.0098.0066, TROC with Mr Corrigan, Q. 36–37.
- ⁶¹ DJF.AFP.0098.0060, TROC with Mr Jungwirth, Q. 23–28.
- ⁶² *ibid.*, Q. 31–32.
- ⁶³ DJF.AFP.0098.0052, TROC with Mr Boehm, Q. 33–38.
- ⁶⁴ DJF.AFP.0098.0045, TROC with Dr Manns, Q. 35–39.
- ⁶⁵ Statement of Sergeant Barnicoat, pp. 1–2.
- ⁶⁶ DJF.AFP.0098.0103, Autopsy report of Dr Hallam, p. 6.
- ⁶⁷ T645–647.

9 Administration of justice

Section 57(3) of the ACT *Coroners Act 1997* provides, ‘A coroner may make recommendations to the Attorney-General on any matter connected with an inquest or inquiry, including matters relating to public health or safety or the administration of justice’.

During the inquest and inquiry there arose a number of matters relating to the administration of justice that I consider warrant the making of recommendations to the Attorney-General. Section 9.1 sets the context.

9.1 Judicial independence and the separation of powers

In October 2004 the ACT Government—in its own right and by funding some of its current and former employees—initiated in the ACT Supreme Court litigation (the ‘second government litigation’) that, if successful, would have had the effect of preventing me from completing the inquest and inquiry. The litigation was unsuccessful.¹

In the 2005 Supreme Court judgment arising from this litigation, their Honours unanimously referred to:

... what appears to be an increasing tendency for the boundaries between the courts and the executive to become blurred. Courts are not, of course, part of the public service. The courts as a group constitute one of the three arms of government, the others being the legislature and the executive. The role of the courts is to see that justice is done according to the law, and that frequently requires them to stand between the citizen and the other arms of government. Public confidence in the ability of courts to dispense justice in a fair and impartial manner is largely dependent upon continuing recognition of their independence. There are obvious indications of such independence, including the fact that jurisdiction must be exercised according to law rather than government policy, and that judges and magistrates generally enjoy guaranteed tenure of office. On the other hand, there are some grounds for concern that, at least at an administrative level, courts in some jurisdictions may be seen as mere sub-branches of a public service department. The treatment of courts in that manner may be administratively convenient but, as the former Chief Justice of Victoria has recently warned, any perception that courts are part of the executive will be inconsistent with due recognition of their fundamental role and underlying independence ... We recognise that some who are more familiar with the culture and ethos of the public service ... may think that, so long as their essential independence is in fact maintained, some risk of confusion is a small price to pay for assumed gains in administrative efficiency. However, such views reflect a failure to understand the fundamental importance of maintaining public confidence in the independence of the judiciary, and hence in their capacity to decide any dispute fairly and impartially, even if that means standing between the individual and the state ... It is for this reason that the administration of courts is in many instances now independent of the Executive Government (see eg *Courts Administration Act 1993* (SA)).²

A few months earlier, in the High Court judgment in *Fingleton v The Queen*, the Chief Justice of Australia had said:

In recent years, the Supreme Court of Canada, and the Constitutional Court of South Africa, have found it necessary to examine the theoretical foundations of judicial independence for the purpose of considering whether arrangements in relation to particular courts satisfied the minimum requirements of that concept. In that context reference was made to ‘matters of administration bearing directly on the exercise of [the] judicial function’. The adjudicative function of a court, considered as an institution, was seen as comprehending matters such as the assignment of judges, sittings of the court and court lists, as well as related matters of allocation of court-rooms and direction of the administrative staff engaged in carrying out that function. Judicial control over such matters was seen as an essential or minimum requirement for institutional independence. The distinction between adjudicative and administrative functions drawn in the context of discussions of judicial independence is not clear cut.³

Among the Canadian cases referred to by the Chief Justice was *Valente v The Queen*⁴, which was concerned with interpretation of s. 11(d) of the Canadian Charter of Rights and Freedoms. The case involved extensive consideration of judicial independence and administrative autonomy and, when dealing with the essentials of institutional independence for the purposes of the Charter, it was said that those essentials ‘may be summed up as judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function’.⁵

The Constitutional Court of South Africa has referred with approval to *Valente* and *Genereux*, describing them as ‘instructive on what constitutes an independent and impartial court’.⁶

The blurring of boundaries between the courts and the executive to which their Honours Higgins CJ, Crispin P and Bennett J referred in the Supreme Court of the ACT⁷ had previously been referred to with concern by a former Judge of Appeal, the Hon. JD Phillips, during a farewell sitting in the Banco Court of the Supreme Court of Victoria on 17 March 2005, on the occasion of his Honour’s pending retirement from the Bench. In reply to speeches made by the Victorian Solicitor-General, the Chairman of the Victorian Bar and the President of the Law Institute of Victoria, his Honour expressed concern about the blurring of essential distinctions between the court and other arms of government. Among other things, he said, ‘within the Department of Justice this Court is now identified and dealt with ... as “Business Unit 19” within a section labelled “Courts and Tribunals”, a section which indiscriminately includes all three tiers of the court structure and VCAT [the Victorian Civil and Administrative Tribunal]’.⁸ He went on to express concern that the judges’ computers are part of the departmental network and potentially accessible by departmental officers.⁹ He later said:

Nobody is suggesting that the Executive would ever seek to influence a judge’s decision directly, otherwise than by argument in open court, but what has been happening is more insidious. What is evolving is a perception of the Court as some sort of unit or functionary within the Department of Justice, a perception which is inconsistent with this Court’s fundamental role and underlying independence.¹⁰

The same situation applies in the ACT with the Courts’ computer system being part of the Department’s network. Further, as recently as November 2006, the Department has notified the

Courts that delivery of Court mail, including mail addressed to judicial officers, will in future be delayed because it will be opened by departmental staff.

With this commentary from the highest levels of the judiciary in Australia, Canada and South Africa on what constitutes a proper separation of powers and the independence of the judiciary—as well as the observation by the ACT Supreme Court, that there is an increasing tendency for the boundaries between the courts and the executive to become blurred¹¹—I move on to matters connected with the inquest and inquiry that, in my opinion, warrant change.

9.2 Coroners' power to appoint investigators

The Legislative Assembly appropriates no moneys to any of the courts of the ACT. All staff employed in the courts are ACT public servants employed by the Department of Justice and Community Safety. In short, all financial and human resources in the ACT courts—including the ACT Courts Administrator and staff employed in the chambers of the judicial officers—are provided by the Department of Justice and Community Safety, which, subject only to compliance with the applicable legislation and ACT government protocols, guidelines and rules, has the discretion to grant resources to or withhold resources from the courts and thereby affect the operations of those courts.¹²

During my first inspection of the fire-damaged areas of Canberra on Sunday 19 January 2003 I formed the preliminary opinion—because of the deaths of a number of people and the extensive damage—that I would be assisted in the investigation of matters relating to the inquest and inquiry if I were to appoint a number of investigators pursuant to s. 59 of the *Coroners Act 1997*. My initial intention was to engage Mr Phil Cheney, Senior Principal Research Scientist at CSIRO, and Mr Trevor Roche, formerly Chief Officer of the Victorian Country Fire Authority.

Shortly afterwards, I orally asked the then Courts Administrator, Mr Bruce Kelly, to take the necessary action to gain the services of Mr Cheney and Mr Roche as investigators to assist me.

Because the court had no appropriated funds on which to draw for this purpose—or, in fact, for any other purpose—Mr Kelly set about engaging Mr Cheney and Mr Roche by following the procedures required by the ACT Government for engaging consultants and other people to provide services to the government. I did not become aware of the detailed administrative processes followed (quite properly) by Mr Kelly and other public servants until the ACT Government, in its own right and by funding some of its current and former employees, initiated litigation (the 'first government litigation') in August and September 2004 in the ACT Supreme Court, seeking access to a range of documents.¹³ The matter arose again when the ACT Government unsuccessfully sought to use this against me as one of the grounds on which it relied when seeking to prevent me from completing the inquest and inquiry.¹⁴

It would appear that in both the first government litigation and the second no counsel made reference to provisions of the ACT's *Legislation Act 2001*.

I refer to this legislation because when I asked Mr Kelly to engage Mr Cheney and Mr Roche I believed it was not necessary for me to personally sign the instruments of appointment (for the

purposes of s. 59(1) of the ACT *Coroners Act 1997*) since the Legislation Act applies to all ACT Acts (by virtue of s. 4). There is nothing in the Coroners Act or the Legislation Act that explicitly or by implication requires the personal signature of a coroner.

Section 14 of the Legislation Act states that an ‘instrument is any writing or other document’—with ‘document’ being separately defined in several ways, one of which is anything on which there is writing. Section 139 provides that the interpretation that would best achieve the purposes of the Act is to be preferred above any other interpretation (see also s. 138), and s. 196 gives additional powers to an ‘entity’—defined as a person occupying a position—to carry out a function under a provision of a law in a convenient way; that is, for the present purpose, a coroner engaging investigators.

These provisions formed the basis of my belief that the method of engaging Mr Cheney and Mr Roche satisfied the requirements of s. 59 of the Coroners Act.

Nevertheless, despite the fact that there was no apparent consideration of the Legislation Act in either the first or the second government litigation, I am obliged to follow Whitlam J’s finding in the first litigation, to the effect that neither Mr Cheney nor Mr Roche was appointed as an investigator.¹⁵

To avoid a recurrence of such a situation in future inquests or inquiries, and in pursuit of improved administration of justice, I later make a number of recommendations pertaining to this situation—and to other situations that arose during the inquest and inquiry, as described in the following sections.

9.3 The ACT Government Solicitor

Another situation that arose during the inquest and inquiry relates to the office of the ACT Government Solicitor. Before the ACT became self-governing¹⁶ it was customary for the Australian Government Solicitor to provide legal and related services to the legislative, executive and judicial arms of government.¹⁷ In due course, following self-government, the ACT’s *Government Solicitor Act 1989* established for the ACT a Government Solicitor as a body corporate.¹⁸ The ACT Government Solicitor then continued the longstanding practice of the Australian Government Solicitor, providing legal services to each of the three arms of government. The Government Solicitor Act makes provision for this to occur.¹⁹

When the ACT Government initiated the second litigation against me in October 2004 the ACT Government Solicitor neither offered nor provided legal services to me, despite the fact that the relevant legislation permits the provision of such services.²⁰ Nor did the ACT Government Solicitor file a submitting appearance for me in the Supreme Court in the first litigation.²¹ The ACT Government Solicitor acted solely for the executive on both occasions. In both instances a representative of the Australian Government Solicitor appeared at the start of proceedings in the Supreme Court to state that I would submit to such orders as the Supreme Court might make.²² I did not contest the matters raised in either case because I felt myself prevented from doing so as a result of the High Court decision in *Hardiman’s* case.²³

I mention this incident as a further illustration of the consequences that flow from the Magistrates Court having no financial or human resources in its own right but instead being dependent on the executive to exercise its discretion to grant (or withhold) any necessary resources to the judicial arm of government.

9.4 Judicial independence: recommendation

1 I recommend that the ACT Attorney-General and the ACT Government—in consultation with the Chief Justice of the ACT and the ACT Chief Magistrate—take legislative action that would have the effect of funds being directly appropriated annually to the courts, preferably along the lines of the Commonwealth model as it applies to the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court. Alternatively, the funds could be appropriated in accordance with the South Australian model, which has a separate Courts Administration Authority.

Adoption of this recommendation would have the following effects:

- It would reinforce the separation of the judicial arm of government from the executive arm of government.
- It would obviate the blurring of resource allocation that at present occurs between the Department of Justice and Community Safety and the courts—and the inbuilt conflicts of interest that can arise with particular resource allocations if the department controls all the financial, human and other resources provided to the courts.
- It would enable improvement of the coronial service in the ACT by facilitating the internal establishment of a specialist Coroners Court–based Office of the Coroner (subject to proper funding), as in most other Australian jurisdictions.
- Most importantly, from the perspective of the community at large and its representative body the Legislative Assembly, the courts’ accountability for the use of resources provided for the judicial function would be greatly improved.

9.5 The ACT Director of Public Prosecutions

Section 6(d) of the ACT’s *Director of Public Prosecutions Act 1990* provides for the Director of Public Prosecutions to assist a coroner in inquests and inquiries. In this inquest and inquiry the DPP gave effect to this function by providing a staff member to perform the solicitor function of instructing counsel assisting the coroner. The DPP appeared as *amicus curiae* in the first government litigation²⁴; in the second litigation²⁵ the DPP acted as solicitor instructing the contradictor.

The DPP’s involvement entailed an allocation of resources in time, staff and money, to the obvious detriment of the Office of the DPP insofar as those resources would otherwise have been available for use in pursuit of the DPP’s primary role of prosecuting criminal offences. To a

lesser or greater degree, this same diversion of resources arises whenever the DPP renders assistance in coronial inquests and inquiries. Additionally, because the Office of the DPP is an agency within the executive arm of government, use of DPP resources adds to the blurring of the essential distinction between the judiciary and the executive—and potentially reinforces the perception that there is no real distinction between these two arms of government.

No DPP in any other Australian jurisdiction is obliged to assist a coroner in inquests and inquiries. Such assistance is also unnecessary: s. 39 of the ACT's *Coroners Act 1997* makes provision for a coroner to appoint a legal practitioner to assist in an inquest in relation to a death (other than a death in custody) or in an inquiry. Further, s. 72 of the *Coroners Act* makes it mandatory for a coroner holding an inquest into a death in custody to appoint a legal practitioner to assist him or her.

9.6 The Director of Public Prosecutions: recommendation

It appears to be an unwarranted imposition on the scarce resources allocated to the Director of Public Prosecutions (for the primary purpose of prosecuting criminal offences) if those resources are diverted to coronial inquests and inquiries when alternative arrangements are already envisaged under the ACT *Coroners Act 1997*.

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| <p>2 I recommend that the ACT's <i>Director of Public Prosecutions Act 1990</i> be amended by repealing s. 6(d) of the Act.</p> |
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9.7 Amendments to the Coroners Act: recommendations

The ACT *Coroners Act 1997* should be amended in three ways so as to eliminate, for the benefit of future inquiries and inquests, a number of difficulties that arose during this inquest and inquiry.

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| <p>3 I recommend that s. 59 of the ACT <i>Coroners Act 1997</i> be amended by deleting the words 'by instrument' in s. 59(1) and by deleting the words 'by his or her instrument of appointment' in s. 59(2)(b).</p> |
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The amended s. 59 would then reflect the longstanding practice in the Coroners Court; the section would be consistent with other provisions of the Act, notably s. 39, where no 'instrument' is required; and the perceived difficulties that were raised by the Government in the second litigation would be overcome.

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| <p>4 I recommend that s. 47 of the ACT <i>Coroners Act 1997</i> be expanded to explicitly state that an inquest and inquiry are not adversarial in nature and are solely inquisitorial, with a view to establishing the truth.</p> |
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Submissions made to the Supreme Court during the course of the second government litigation²⁶ referred to *Musumeci v Attorney-General of New South Wales*, in which Ipp JA said that a coronial inquiry ‘is a hybrid process containing both adversarial and inquisitorial elements’.²⁷ This relatively recent reference to ‘a hybrid process’ differs somewhat from many previous statements on the subject. For example, Underwood J (now CJ) said in *R v Matterson; ex parte Moles*, when quoting Lord Lane CJ:

49. Once again it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedures and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish fact. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use.²⁸

Earlier, Lord Goth said in *R v Attorney-General for Northern Ireland; ex parte Devine*, ‘It is not to be forgotten that a coroner’s inquest is not an adversarial process but an inquisition designed to ascertain the true facts’.²⁹

Similarly, in a review of the history and role of coroners it was said that the inquisition process ‘is fundamentally a commonsense investigation of the facts to find out the truth ...’³⁰ This is consistent with an earlier view expressed by Nathan J: ‘A Coroner’s powers ... are inquisitorial not curial ...’³¹

Finally, in further support of my recommendation that s. 47 of the Act be amended in the way proposed, I note that some counsel conducted themselves throughout the inquiry as if they were engaged in adversarial litigation. I did not find this helpful in seeking the truth.

My third proposed amendment of the Coroners Act relates to the submissions by counsel for the ACT on the subject of jurisdiction (as discussed in Chapter 1). It was submitted to me that I could not make any finding on contribution because the provisions dealing with contribution that were in the *Coroners Act 1956* are not repeated in the *Coroners Act 1997*. The 1956 provisions read as follows:

- 56.(1) A Coroner holding an inquest shall find, if possible— ...
- (d) the identity of any person who contributed to the death ...
- (2) A Coroner holding an inquiry shall find, if possible— ...
- (c) the identify of any person who contributed to the cause of the fire.³²

The explanatory memorandum for the Coroners Bill 1997 (which became the *Coroners Act 1997*) and the Coroners (Consequential Provisions) Bill 1997 (which became the *Coroners (Consequential Provisions) Act 1997* and repealed the *Coroners Act 1956*) said:

Clause 52 provides for the findings of a Coroner at an inquest or inquiry. Section 56 of the Former Act provided for a Coroner’s findings; that provision is rewritten in clause 52 to include findings as to a suspected death and as to a disaster.

Subclause 52(1) provides that a Coroner holding an inquest shall find, if possible, the identity of the deceased, when and where the death occurred, the manner and cause of the death, and, in the case of an inquest into a suspected death, that the person has died.

Subclause 52(2) provides that a Coroner holding an inquiry shall find, if possible, the cause and origin of the fire or disaster and the circumstances in which the fire or disaster occurred ...³³

Earlier in the explanatory memorandum the Coroners Bill 1997 was summarised thus: ‘The Bill, essentially, replicates the provisions of the Former Act [the *Coroners Act 1956*] and, as a result of the review of the Former Act and community consultation, includes a range of new provisions ...’³⁴ In essence, the 1956 Bill was reviewed initially in order to implement those recommendations of the Royal Commission into Aboriginal Deaths in Custody that were relevant to the coronial jurisdiction. After community consultation a range of additional powers were also included.³⁵

The publicly available documents do not make it clear whether the provisions in ss.56.(1)(d) and 56(2)(c) of the 1956 Act were omitted from the 1997 Act deliberately or accidentally. Being anxious to avoid exceeding the limit of my jurisdiction, I reluctantly accepted counsel for the ACT’s submission that I am no longer entitled to deal with ‘contribution’; I therefore refrain from identifying any person who contributed to any of the four deaths and, similarly, I do not identify any person who contributed to the fires.

The provisions in ss. 56(1)(d) and 56(2)(c) of the 1956 Act served a useful purpose for a long time.

5 I recommend that the ACT Government consider amending the *Coroners Act 1997* to include what were ss. 56(1)(d) and 56(2)(c) of the 1956 Coroners Act.

9.8 Coronial jurisdiction: recommendation

6 I recommend that the ACT Government commission a review of coroners’ jurisdiction in order to determine whether that jurisdiction ought to be limited or expanded and, if so, to what extent.

The transcript relating to the second government litigation shows there was considerable discussion about the extent of the jurisdiction being exercised during this inquest and inquiry. Their Honours—Higgins CJ, Crispin P and Bennett J—dealt with this at some length in their judgment³⁶, saying, among other things:

- ‘A coroner is not free to enlarge his or her own jurisdiction by the adoption of terms of reference ...’³⁷
- ‘There seems to have been at least some confusion as to the extent of jurisdiction conferred upon the first respondent [the coroner] ...’³⁸

- ‘It [the legislation] does not provide a general mechanism for an open-ended inquiry into the merits of government policy, the performance of government agencies or private institutions, or the conduct of individuals, even if apparently related in some way to the circumstances in which the death or fire occurred.’³⁹
- ‘Section 18(1) does not authorise the coroner to conduct a wide-ranging inquiry akin to that of a Royal Commission ...’⁴⁰
- ‘We should, perhaps, mention that it was suggested in argument that other coroners had, from time to time, conducted inquests or inquiries that ranged far beyond issues relating to the manner and cause of a death or the cause and origin of a fire. However ... even if the relevant provisions of the Act have previously been overlooked, they nonetheless impose legal constraints on the jurisdiction that may be exercised by coroners in this Territory. The position may be different in other jurisdictions where the comparable provisions confer broader powers.’⁴¹

My recommendation that the question of jurisdiction be reviewed is made in the context of the constraints placed on me as a result of the comments just quoted and others made by their Honours.

Notes

¹ *R v Doogan* [2005] ACTSC 74. *The Queen v Coroner Maria Doogan; ex parte Peter Lucas-Smith & Ors. The Queen v Coroner Maria Doogan & Ors; ex parte Australian Capital Territory* [2005] ACTSC 74.

² *ibid.* at paras 90 and 91 per Higgins CJ, Crispin P and Bennett J.

³ *Fingleton v The Queen* [2005] HCA 34 at para. 53 per Gleeson CJ.

⁴ [1985] 24 DLR (4th) 161.

⁵ *ibid.* at 190. Further Canadian consideration of this topic is to be found in *Regina v Genereux* [1992] 88 DLR (4th) 110, in which it was said in summary at 111, ‘To meet the requirements of independence, a tribunal must meet the three essential conditions of security of tenure, financial security and institutional independence with respect to matters of administration that relate directly to the exercise of the Tribunal’s judicial function. With respect to this latter, it is unacceptable that an external force be in a position to interfere in matters which are directly and immediately relevant to the adjudicative function’. See also *Reference re: Public Sector Pay Reduction Act* [1997] 150 DLR (4th) 577.

⁶ *Van Rooyen v The State* 2002 (5) SA 246 at 268 per Chaskalson CJ.

⁷ *R v Doogan* [2005] ACT SC 74 at para. 90.

⁸ See transcript of proceedings on Thursday 17 March 2005, p. 11.

⁹ *ibid.* The same situation exists in the ACT courts.

¹⁰ *ibid.*, p. 12. For a detailed outline of the concept of the separation of powers between the three arms of government, see de Montesquieu, Charles [1748] 1900, *De l’esprit des lois (The Spirit of Laws)*, trans. Thomas Nugent.

¹¹ *R v Doogan*, *op. cit.*

¹² For a detailed elaboration of the consequences of this structural arrangement, see ACT Auditor-General 2005, *Performance Audit Report—courts administration*, ACT Auditor-General, Canberra, September.

¹³ *R v Doogan; ex parte Lucas-Smith & Ors* [2004] ACTSC 91. *The Queen v Coroner Maria Doogan; ex parte Lucas-Smith and Ors* [2004] ACTSC 91.

¹⁴ See paras 80 to 94 of *R v Doogan* [2005] ACTSC 74.

¹⁵ [2004] ACTSC 91 at para. 16. See also the decision of Higgins CJ, Crispin P and Bennett J on this in [2005] ACTSC 74 at paras 83 to 85.

¹⁶ See the *Australian Capital Territory (Self-Government) Act 1998* (Cth).

¹⁷ This arrangement continued beyond self-government, but in 1999 the Office of the Australian Government Solicitor ceased to be part of the Commonwealth Attorney-General’s Department and was created as a body corporate in its own right, pursuant to Act 7 of 1999, which amended the *Judiciary Act 1903* (Cth) by inserting a new Part VIII B into that Act. The AGS continues to act, as required, for all three arms of government.

¹⁸ Sections 5(1) and 5(2).

¹⁹ Section 5(3).

²⁰ *Government Solicitor Act 1989* (ACT), s. 5(3)(h).

²¹ Supreme Court Matters SC566/2004, SC567/2004 and SC568/2004.

²² Based on the High Court decision in *The Queen v The Australian Broadcasting Tribunal & Ors; ex parte Hardiman & Ors* (1980) 144 CLR 13.

²³ *ibid.*, pp. 35 and 36.

²⁴ Matters SC566/2004, SC567/2004 and SC568/2004.

²⁵ Matters SC697/2004 and SC698/2004.

²⁶ See the transcript of *R v Doogan* [2005] ACTSC 74 and written submissions on behalf of the ACT at para. 16. See also their Honours’ decision in this matter at paras 44 and following.

²⁷ (2003) 57 NSWLR 193 at 199.

²⁸ (1994) 4 Tas R87 at paras 49 and 50.

²⁹ [1992] 1 WLR 262 at 267.

³⁰ JG Fogarty QC 1998, ‘The Task of Coroners’, *New Zealand Law Journal*, p. 162.

³¹ *Harmsworth v State Coroner* (1989) VR 989 at 992.

³² Sections 56(1) and 56(2) of the *Coroners Act 1956* (ACT), repealed by the *Coroners (Consequential Provisions) Act 1997* (Act no. 58 of 1997).

³³ Explanatory memorandum, pp. 15 and 16.

³⁴ *ibid.*, p. 1.

³⁵ *ibid.*

³⁶ *R v Doogan* [2005] ACTSC 74. See especially paras 12 to 43.

³⁷ *ibid.*, para. 13.

³⁸ *ibid.*, para. 14.

³⁹ *ibid.*, para. 15.

⁴⁰ *ibid.*, para. 28.

⁴¹ *ibid.*, para. 32.

10 Findings and recommendations

10.1 Findings

10.1.1 The deaths

Section 52(1) of the ACT *Coroners Act 1997* requires me to find, if possible, the identity of the deceased persons, when and where they died, and the manner and cause of their deaths.

In Chapter 8 these statutory requirements are met in respect of each of the four deceased persons.

10.1.2 The circumstances in which the fires occurred

Section 52(2)(b) of the ACT *Coroners Act 1997* requires me to find, if possible, the circumstances in which the fires occurred.

There were four initial fires—McIntyres Hut, Bendora, Stockyard Spur and Mount Gingera. They all began on 8 January 2003 and ultimately resulted in a catastrophic firestorm that struck rural and urban areas of the Australian Capital Territory on 18 January 2003.

In Chapters 4, 5, 6 and 7 I meet this statutory requirement by describing the circumstances in which the four fires occurred.

10.1.3 The cause and origin of the fires

Section 52 (2)(a) of the ACT *Coroners Act 1997* requires me to find, if possible, the cause and origin of the fires. Additionally, s. 52(4) of the Act permits me to comment on any matter connected with the deaths and the fires, including public health or safety or the administration of justice.

I meet this requirement throughout the report.

The origin of the fires

One of the fires—the McIntyres Hut fire—originated in New South Wales and, as discussed in Chapter 1, is thus outside my jurisdiction until it crossed into the ACT. For the sake of completeness, I note and adopt the finding of NSW Deputy State Coroner Carl Milovanovich that on 8 January 2003 at 3.00 pm a fire began in the vicinity of an area in New South Wales known as McIntyres Hut, in Brindabella National Park at grid reference 587965.

The McIntyres Hut fire burnt for the ensuing 10 days, and on 18 January 2003 it crossed the border into the Australian Capital Territory. For the purpose of my ACT jurisdiction, I find that the origin of this fire, once it reached the border and entered the ACT, was a location in the Uriarra pine plantation, near Doctors Flat Road, and that the fire reached this location between 12 noon and 12.30 pm on 18 January 2003.

I find that the Bendora fire began on 8 January 2003 at about 3.11 pm in the vicinity of grid reference 644785, about 50 metres north of Wombat Road.

I find that the Stockyard Spur fire began on 8 January 2003 at about 3.14 pm in the vicinity of grid reference 633651, near the overgrown Stockyard Spur fire trail.

I find that the Mount Gingera fire began on 8 January 2003 at about 3.35 pm in the vicinity of grid reference 619606, on the south-east ridge of Mount Gingera, close to the ACT–NSW border.

Finally, I find that the firestorm that reached the suburbs of Canberra on 18 January 2003 at about 3.00 pm began on 8 January 2003 at the four locations just described. Each of the four fires developed during the next 10 days in the manner detailed in Chapter 5.

The cause of the fires

I find that the Bendora, Stockyard Spur and Mount Gingera fires were caused by lightning strikes at the locations described in the previous section.

Further, I adopt the finding of NSW Deputy State Coroner Milovanovich that the McIntyres Hut fire was caused by a lightning strike in New South Wales. For the purposes of the ACT *Coroners Act 1997* I find that, once the fire crossed the border into the Australian Capital Territory, its cause was the NSW authorities' inability to prevent the fire entering the ACT.

Against this background, I turn to the firestorm of 18 January 2003, which was a product of the McIntyres Hut fire, the Bendora fire, the Stockyard Spur fire and the Mount Gingera fire, all of which burned from 8 to 18 January 2003. I find that the cause of the firestorm was a combination of the following factors:

- a failure on the part of the Emergency Services Bureau to aggressively attack the Bendora, Stockyard Spur and Mount Gingera fires in the first few days after their ignition on 8 January 2003
- inadequate performance of their respective command and control roles by several senior ESB officers throughout the 10-day period
- in the case of the Bendora fire, the decision to withdraw crews on the night of 8 January 2003
- the difficulties encountered by firefighters, who were confronted with tracks and trails that were overgrown, having not been maintained for easy access by fire crews and firefighting vehicles

- heavy fuel loads in the paths of all the fires, which resulted in greater fire intensity and greater difficulty with containment and suppression
- a failure by the Emergency Services Bureau to follow the Australian Inter-Service Incident Management System Incident Control System, which hampered firefighting activities in the field
- in the face of known drought and fire conditions, as well as expert forecasts of extremely dangerous fire weather, inadequate preparation by the Emergency Services Bureau in relation to ensuring adequate availability of maps, incident action plans, bulldozers and other support for firefighting crews
- inadequate overnight staffing at the Emergency Services Bureau during the 10-day period
- a failure by the Emergency Services Bureau to warn the community of the growing fire danger, which led to a lack of or insufficient preparation by householders. This lack of or poor preparation exacerbated the extent of the property losses and damage
- a failure by the Emergency Services Bureau to inform the Australian Federal Police that there was a serious risk of fire reaching Canberra’s suburbs, which gravely compromised the AFP’s ability to perform its role in the emergency
- the jurisdictional impediment created by the existence of the ACT–NSW border and the inadequate coordination arrangements between the two jurisdictions
- as late as 17 January 2003, the Emergency Services Bureau’s lack of plans or strategies for dealing with the fires in the event that they reached the suburbs—other than leaving the problem to the ACT Fire Brigade
- a failure by the Emergency Services Bureau to properly marshal and use resources that had been voluntarily brought into the ACT from many NSW locations. The existence of these resources was known to senior officers of the bureau
- a failure to control the McIntyres Hut and Bendora fires, which led to a tornado that exacerbated the damage—particularly in the suburbs of Chapman and Kambah
- the ferocity of the four fires that combined to create the firestorm—that ferocity being the product of a combination of extreme weather, high fuel levels, drought, and limited manpower and resources available to fight the firestorm.

10.2 Recommendations

Section 57(3) of the ACT *Coroners Act 1997* permits me to make recommendations to the Attorney-General on any matter connected with the inquests and the inquiry, including matters relating to public health or safety or the administration of justice. The six recommendations I make in Chapter 9 and those that follow here are a response to s. 57(3). In general, they are based on the evidence adduced during the inquests and the inquiry. In some instances they are

made with a view to overcoming several practical difficulties and deficiencies that arose or became apparent during the inquiry.

The most notable and alarming deficiency concerns the management of the Emergency Services Bureau by its senior officers during the entire period of the fires. This deficiency was noted by many ACT people who were directly involved in the firefighting effort and by others, such as Mr Trevor Roche, who reviewed ESB operations, and Mr Kevin Cooper, a NSW volunteer and expert in emergency management who accompanied the NSW taskforces to Canberra and observed the functioning of ESB headquarters during the crucial period. Mr Cooper gave evidence that he found operations to be seriously deficient—with no adequate plans being prepared and no overall strategy for fighting the fires.

In developing my recommendations, I was assisted by the submissions of counsel assisting, counsel for ActewAGL and counsel for Mr Tony Bartlett and by the detailed reports produced by Mr Phil Cheney, Mr Trevor Roche, Mr Justin Leonard and Dr Peter Ellis.

Counsel for Mr Bartlett, Mr John Watts, provided many suggestions, on behalf of Mr Bartlett, for a range of recommendations Mr Bartlett considered would be appropriate for me to make in response to the fires and the circumstances in which they occurred. I carefully examined Mr Bartlett's suggestions and concluded that the vast majority of them have much merit. They are well thought out and are based on Mr Bartlett's extensive knowledge and experience. They are contained in Mr Watt's 25 June 2006 submission and are included on the compact disc accompanying this report. I adopt the suggestions made by Mr Bartlett; they should be considered and implemented as appropriate. They cover a wide spectrum of topics, from the management of public lands to fire suppression strategies and the Incident Control System.

I was also assisted by a large folder of information counsel for the ACT provided to me on 24 November 2005. The folder accompanied a letter from Mr Peter Dunn, who was then the Commissioner of what was called the Emergency Services Authority; it detailed the actions taken by the ACT Government since the fires and as a result of its decision to implement all the recommendations made by Mr Ron McLeod AM in the report of his Inquiry into the Operational Response to the January 2003 Bushfires in the ACT.

Among other things, Mr Dunn, who resigned from what is now called the Emergency Services Agency in June 2006, reported that various changes to the structure and functions of emergency services in the ACT had been made upon the introduction of the *Emergencies Act 2004*, which repealed the *Bushfire Act 1936* and the *Emergency Management Act 1999*. Under the *Emergencies Act*, the Bushfire Service has been renamed the ACT Rural Fire Service and the ACT Emergency Service has been renamed the ACT State Emergency Service. The two services, together with the ACT Ambulance Service and ACT Fire Brigade, now form four separately constituted emergency services, each with its own chief officer. The Commissioner of the Emergency Services Agency is responsible for ensuring that the services operate as part of an integrated, single entity and is accountable for the strategic direction and management of all the emergency services.

Section 72 of the *Emergencies Act 2004* requires the Emergency Services Agency to prepare for the Minister a draft Strategic Bushfire Management Plan, which, after consideration, must be

made by the Minister. The plan must provide a basis for bushfire hazard assessment and risk analysis and bushfire prevention—including hazard reduction and agency and community preparation for and response to bushfires. It must also include a statement of strategic objectives, a risk assessment of factors contributing to bushfires, lists of vulnerable public assets, and strategies for prevention of and preparedness for bushfires. Version 1 of the plan was introduced on 1 January 2005 for the interim period to 1 July 2005, when version 2, a 10-year plan, was to have been introduced. Version 1 lists the following as among the central objectives for bushfire management in the ACT for the future:

- To provide information for decision-making to all functions of fire management and stake holders at all levels—and keep ACT residents informed and consulted.
- To ensure the community is aware, capable and informed so that it can effectively share the fire management responsibility.
- To ensure people, planning, equipment, systems and processes to contain or suppress bushfires are capable of doing so and are ready to respond.
- To ensure rapid and appropriate responses to all bushfires in the ACT with a capability to contain or suppress both small and large fires.

These objectives relate to the deficiencies I found to have existed at the time of the January 2003 fires. The plan appears to be the result of a considerable amount of work, thoughtful analysis of past deficiencies, and consultation with various stakeholders; it does, however, lack detail about how the objectives will be implemented. This information might appear in the bushfire operational plans referred to in Mr Dunn’s letter, but they were not provided to me. Importantly, it is clear that version 1 of the Strategic Bushfire Management Plan was to be effective only until 1 July 2005, when it would be replaced by the more detailed version 2. My understanding at the time of writing this report is that version 2 is yet to be introduced.

My initial response to the information provided by counsel for the ACT was to accept at face value the assertion that all of Mr McLeod’s recommendations had been or were being implemented by the ACT, so there would be no need to repeat any of the recommendations here. Whilst I was preparing this report, however, it became public knowledge that adoption of one of Mr McLeod’s primary recommendations—that the Emergency Services Bureau be replaced by a statutory authority, the ACT Emergency Services Authority—had been reversed by the ACT Government. As an agency originally under the umbrella of the Department of Justice and Community Safety, the Emergency Services Bureau was, following the McLeod inquiry, removed from that department and transformed into a statutory authority. This status has now been reversed and the currently named Emergency Services Agency has been integrated back into the Department of Justice and Community Safety.

This recanting on the adoption of an important change prompts one to ask how many other initially adopted changes have similarly been reversed or had their implementation stalled or abandoned. Using publicly available information (including ACT government websites), I checked the status of the main recommendations previously accepted by the ACT Government. I found that some have been implemented but others appear to have stalled. Short of hearing further evidence on the subject—which I consider would not be appropriate at this very late

stage—I have no way of knowing with certainty that all the initiatives outlined in the information provided to me by counsel for the ACT and identified as having been adopted or in the process of adoption remain in place today. It is therefore possible that some of the initiatives I recommend might already have been introduced. For any initiatives that fall into this category, I applaud the ACT Government.

10.2.1 The Emergency Services Agency

In relation to the Emergency Services Agency I recommend as follows:

- 7 that the Emergency Services Agency be removed from the Department of Justice and Community Safety and transformed into an independent statutory authority reporting directly to the responsible Minister. I note in this regard that Mr McLeod made a similar recommendation, and I endorse it unequivocally. Placing the agency within a government department puts unnecessary layers of bureaucracy between the agency and the responsible Minister, and the bureaucrats concerned usually have no special knowledge of or experience in emergency management, regardless of their seniority in the bureaucracy
- 8 that the Emergency Services Agency be relocated into accommodation that is purpose-built and more suited to the agency's operations than the current facility at Curtin
- 9 that the Emergency Services Agency adopt a more rigorous risk management approach to incident management and prediction—with particular emphasis on the development of improved community information strategies and protocols
- 10 that before each fire season the Emergency Services Agency, in conjunction with the Bush Fire Council—and after consultation with the relevant ACT agencies, the Bureau of Meteorology, relevant NSW agencies and the community—conduct a qualitative risk analysis of the conditions and circumstances prevailing and forecast and develop strategies to ensure heightened preparedness during seasons identified as severe
- 11 that regular periodic reviews be undertaken of changes made to the operational and management arrangements for dealing with wildfires and other emergencies in the ACT, to ensure that those arrangements continue to comply with the Australian Inter-Agency Incident Management System Incident Control System
- 12 that appointments of personnel to functional positions within the incident management team be based solely on competence and experience and be made by the Chief of the ACT Rural Fire Service or, in the absence of that officer, the Deputy Chief of the ACT Rural Fire Service
- 13 that senior officers of the Emergency Services Agency give greater recognition to the skills, knowledge and experience of people from other agencies—particularly the land management agencies—as well as rural residents and private individuals and use these people in roles commensurate with their skills and experience
- 14 that training of all personnel involved with emergency services be under constant review

- 15 that courses and programs be conducted to increase the level of Incident Control System training and augment the expertise of people who are likely to perform functions in an incident management team
- 16 that the Emergency Services Agency review the level of understanding among firefighting personnel of the latest information available nationally and internationally about wildfire behaviour and suppression and provide additional training if warranted
- 17 that the ACT Government allocate sufficient funds to enable full-time and volunteer firefighters to participate in relevant courses and programs
- 18 that the Emergency Services Agency introduce a program with land management agencies in the ACT to ensure that maps of all public and private land in the ACT are subjected to regular review and amendment as required. Maps of a scale sufficient to facilitate fire management operations should be available in printed form and maintained on an electronic database capable of modification to add relevant features during a firefighting operation
- 19 that an appropriate geographic information systems capability be maintained to enable the production of fire-specific maps as the need arises and that personnel from the Emergency Services Agency and other agencies be trained in the operation of map production systems, so that maps can be modified to include fire-specific information as required
- 20 that the Emergency Services Agency review the communications systems used by the four services (the ACT Ambulance Service, the ACT Rural Fire Service, the ACT State Emergency Service and the ACT Fire Brigade), by the Australian Federal Police, by NSW emergency services and by aircraft and ensure the systems are compatible
- 21 that version 2 of the Strategic Bushfire Management Plan be completed and introduced without delay.

10.2.2 Resources and strategies

In relation to resources and strategies I recommend as follows:

- 22 that, because of the small jurisdiction of the ACT (equivalent to one fire district in NSW) the ACT Government consider all possible options for the provision of fire services to the ACT, among them
 - subcontracting the provision of all fire services— or a part, such as bushfire services— to NSW firefighting services
 - including in the memorandum of understanding between the ACT and NSW mutual obligation arrangements

- gradually integrating the ACT Rural Fire Service with the ACT Fire Brigade and establishing a single ACT fire service under a single management and command and control structure—along the lines of the Tasmanian Fire Service and Victoria’s Country Fire Authority

- 23 that priority be given to ensuring that the ACT has an adequate resource of remote area firefighting teams consisting of personnel with high levels of fitness and training in remote fire suppression
- 24 that all firefighting agencies adopt a policy and practice that all fires in remote areas of the ACT be responded to as quickly as possible, with vigorous and sustained efforts made to suppress the fires and not leave them unattended—especially at night—unless there are compelling reasons relating to firefighter safety or lack of resources
- 25 that remote area firefighting resources be deployed to a fire in a remote area as a matter of priority and in preference to the deployment of large tankers
- 26 that helicopters be used wherever possible to facilitate the rapid deployment of remote area firefighting crews
- 27 that the Emergency Services Agency investigate and implement arrangements that will provide the capacity to use fire retardant in remote areas
- 28 that the Emergency Services Agency give priority to ensuring it has guaranteed access to an adequate number and type of bulldozers, as well as experienced operators, during the fire season, for immediate deployment as required
- 29 that land managers ensure their staff are properly trained in the effective use of large bulldozers at wildfires and that staff are available to be assigned to supervise bulldozer operations
- 30 that a review be conducted of the adequacy of training and the numbers of firefighters experienced in performing effective, safe large-scale back-burning operations
- 31 that the Emergency Services Agency reconsider and revise the arrangement that exists between the ACT Fire Brigade and Canberra airport in relation to the provision of assistance.

10.2.3 Fuel management

In relation to fuel management I recommend as follows:

- 32 that a hazard-reduction program be introduced, involving regular and strategic burning in all areas of the ACT—including the catchment areas—with a view to having fuel-reduced areas in a pattern across the landscape, excluding only small areas of particular ecological or conservation importance

- 33 that clarification be provided and information be made public in connection with the hazard reduction proposed under the Strategic Bushfire Management Plan for the area designated 'Land Management Zone', which appears to cover about 70 per cent of the ACT landscape and might be excluded from fuel-reduction burning
- 34 if it is not part of the proposed version 2 of the Strategic Bushfire Management Plan, that the plan be revised to provide for a fuel-reduction burning regime in the 'Land Management Zone' that is equivalent to that contemplated for the corridors designated as the 'Landscape Division Zone' and that the regime involve burning areas in rotation to achieve an appropriately varying fire age spectrum across the entire landscape
- 35 that responsibility for fuel management lie with the land management agency that controls the area and that land managers be given authority to implement prescribed fuel-reduction burns within their area
- 36 that prescribed burning operations be conducted according to agreed standard burning prescriptions
- 37 that the Emergency Services Agency have authority over the land management agencies and other landholders in order to implement preparedness and prevention measures— including fuel-reduction works where there are failures in compliance
- 38 that a program be implemented to ensure that existing fire tracks and trails are cleared and accessible at all times and that a network of additional fire trails be established so as to allow direct fire suppression operations without undue delay in the event of a wildfire
- 39 that it be a matter of policy and practice that the relevant land management agency is responsible for the initial response to any fire or fires on the land under its care or management—within the overall operational response of the ACT Rural Fire Service
- 40 that the policy and practice just recommended be the subject of a memorandum of understanding between the Emergency Services Agency and the Department of Territory and Municipal Services (previously the Department of Urban Services) or other relevant department or agency, so as to ensure that the land management agency on whose land a fire starts has responsibility to respond immediately to that fire in accordance with the applicable standards for weight of response. Further, the land management agency should be responsible for efforts to suppress fire until such time as it becomes clear that the suppression task is beyond the capacity of the agency, at which point the ACT Rural Fire Service should assume direct responsibility for coordinating the ongoing response
- 41 that public land management agencies ensure that their senior personnel have appropriate experience in fire management and are provided with adequate resources and suitably experienced and trained staff to effectively implement fire management programs.

10.2.4 Liaison with the Australian Federal Police

In relation to liaison with the Australian Federal Police I recommend as follows:

- 42 that senior officers in the Australian Federal Police and the Emergency Services Agency maintain regular and meaningful contact during fire emergencies, to ensure full dissemination of information and thus facilitate the making of good operational decisions
- 43 that the Australian Federal Police and the Emergency Services Agency agree on a policy on community safety and evacuation during bushfires, based on the Australasian Fire Authorities Council position outlined in its paper *Community Safety and Evacuation during Bushfires*. Community education programs should incorporate advice on this, including the 'stay or go' policy
- 44 that the Australian Federal Police and the Emergency Services Agency ensure that personnel in their respective organisations are fully briefed on the agreed policy on evacuations.

10.2.5 Cooperation and liaison with NSW authorities

In relation to cooperation and liaison with NSW authorities I recommend as follows:

- 45 that the Emergency Services Agency, with the support of the ACT Government, develop a single, new memorandum of understanding with the NSW Department of Environment and Conservation and the NSW Rural Fire Service, providing for liaison and joint operations as soon as it becomes apparent to whichever jurisdiction is managing a fire that the fire will probably affect the other jurisdiction. Joint operations should not be limited to when an incident occurs on both sides of the border, as is the current arrangement
- 46 that the Emergency Services Agency, with the support of the ACT Government, seek to establish with the NSW Department of Environment and Conservation and the NSW Rural Fire Service a protocol that will provide for the establishment of a joint incident management team as part of unified control arrangements based on adoption of the following principles
 - The authority whose jurisdiction is most affected, or likely to be most affected, by a fire will appoint suitably qualified and experienced personnel to the main functional roles in the incident management team—incident controller, planning officer, operations officer and logistics officer—in accordance with its own operational arrangements but in consultation with the authority of the other affected jurisdiction.

- The authority of the other affected jurisdiction will appoint suitably qualified and experienced personnel to fill the positions of deputy incident controller and deputy to each of the other main functional roles in the incident management team, as the size and complexity of the incident demands and in accordance with its own operational arrangements. This should, however, be done in consultation with the authority whose jurisdiction is most affected.
- The arrangements contemplated by these provisions will be varied only with the consent of the chief officer or equivalent (or, in their absence, their deputy) of each affected authority, who will also be responsible for resolving any disagreement about which jurisdiction is most affected and about the appointment of personnel to incident management team functional roles as required by these provisions.
- The arrangements should be made using a risk-based approach.
- Facilities should be shared.
- There should be a single, integrated planning process and a single incident action plan.
- Planning, logistics and operations functions should be shared.
- There should be a coordinated process for resource acquisition and demobilisation.
- Common media and community information systems and distribution strategies should be used.

I further recommend:

- 47** that the ACT and NSW authorities conduct a comprehensive risk analysis based on the most up to date knowledge relating to fire behaviour and spread in order to establish the degree of risk to each others' jurisdiction from fires igniting in the other jurisdiction and to ensure that both jurisdictions remain fully informed and participate in risk assessments, the development of suppression strategies, and the development and dissemination of community information messages or warnings
- 48** that measures be taken to ensure that ACT and NSW Rural Fire Service radio communications systems are integrated, so that ACT and NSW firefighting units can communicate with each other
- 49** that protocols and arrangements between the ACT and NSW require that each jurisdiction be fully involved in examining and planning for the threat posed by any fire likely to affect one or other jurisdiction and in coordinating the response to that fire
- 50** that formal protocols be developed and agreed with NSW authorities, so that a concerted effort that combines the resources of both NSW and the ACT can be brought to bear in the future—without impediment caused by lines on a map that make the ACT an island within the state of NSW.

10.2.6 Community consultation and awareness

In relation to community consultation and awareness I recommend as follows:

- 51 that the Emergency Services Agency take measures to ensure that the community regularly receives up-to-date information on the risks of bushfires
- 52 that the Emergency Services Agency establish annual targets for the introduction of community education programs and provide resources to conduct regular independent assessments of the level of community preparedness engendered as a result of the programs
- 53 that implementation of the Bushfire Wise Program continue and include a letterbox drop of the updated *Bushfire Information Booklet*
- 54 that consultations and negotiations occur between the Emergency Services Agency and the NSW Rural Fire Service to ensure that fire risk and safety messages to the community are coordinated. Maximum use should be made of television and radio announcements throughout the ACT and southern NSW, consistent with NSW timetables for targeted programs in conjunction with the United Firefighters Union ACT Branch and volunteer fire brigade representatives. The Emergency Services Agency should consider using ACT Fire Brigade staff and ACT Rural Fire Service volunteers to talk to groups in the community on request, thus furthering face-to-face community education in high-risk suburban areas of the ACT.

10.2.7 Warnings

In relation to warnings I recommend as follows:

- 55 that the Emergency Services Agency publicise and demonstrate the use of the Standard Emergency Warning Signal and provide to the community adequate explanation of the application of the signal. This should occur at least annually, in conjunction with any pre-summer fire awareness initiatives
- 56 that the Emergency Services Agency staff the Media Unit within its Planning Section with professional, experienced information officers skilled in dissemination of information and media management and liaison
- 57 that the Emergency Services Agency develop a clear policy for disseminating information to the public and the media in times of emergency and that, as required, that policy incorporate advance door-knocking of homes in the area affected, as well as regular broadcasts by local radio and television stations and regular updates on the relevant website—be that Canberra Connect or a different ACT government website—as well as the Emergency Services Agency's website

58 that the Emergency Services Agency conduct investigations—and liaise with emergency services agencies in other jurisdictions—in order to ascertain what technologies exist and are effective for use in disseminating warnings and associated information to the community of the ACT

59 that a system of public warnings that uses grid references shown on the maps in the Canberra telephone directory be adopted.

10.2.8 Buildings and gardens

Mr Justin Leonard, who studied the effects of building location, design and construction on fire spread, and Dr Peter Ellis, who studied the effects of garden types on fire spread, found that houses in Duffy were not destroyed or damaged by direct flame contact or by radiant heat from the fire front in the adjacent forest; they were destroyed as a result of ember attack. Dr Ellis also found there was a strong link between house destruction and garden type: houses with more unkempt or fuel-heavy gardens were more likely to be destroyed as a result of ember attack.

Both Mr Leonard and Dr Ellis made recommendations and suggestions about measures that would greatly decrease the impact of fire on property. I considered the evidence they gave at the inquiry and found it and their findings valuable.

Accordingly, I recommend as follows:

60 that the Canberra Urban Development Working Group referred to in Mr Peter Dunn's letter consider the report prepared by Mr Leonard and note particularly that the community awareness information currently available to householders in connection with measures they can take to better protect their homes from bushfires does not refer to the potential of wooden fences, conifers and outbuildings to contribute greatly to fire spread, particularly in suburban areas. Also noteworthy is Mr Leonard's evidence that the linear siting of homes on house blocks in Canberra seems to be an important factor contributing to house-to-house fire spread and that this should be avoided in future developments on the urban fringe

61 that the ACT Government consider taking measures to implement the provisions of Australian Standard 3959, Construction of Buildings in Bushfire Prone Areas, for the ACT urban area

62 that community education programs provide information about fire behaviour, urban design principles that contribute to a specific level of risk, and the benefits of fitting basic ember protection materials in areas at risk from bushfire

63 that consideration be given when building to the positioning of outbuildings around residential structures such that their potential impact on the main structure is reduced

64 that the community be made aware of the risk presented by heavy loads of garden fuels and certain types of vegetation around their houses and take active, regular measures to reduce that risk.

10.2.9 ActewAGL protocols

Counsel representing ActewAGL submitted that the fires of January 2003 affected the infrastructure for gas, water, sewerage and electricity in different ways. Counsel also submitted that the evidence before the inquiry disclosed that ActewAGL was able to, and did, respond to the emergency caused by the fires in the days before and immediately after 18 January and in so doing ensured a supply of uncontaminated water and sewerage services to residents.

Counsel also submitted, however, that, in order that the infrastructure is not put at risk, particularly by fires, ActewAGL must be given early warning of impending danger and unambiguous instructions so that protective action can be taken. Counsel submitted that, for example, perhaps contrary to common belief, shutting off the gas supply to a particular house, street or area is a complex and potentially hazardous procedure that cannot be carried out instantaneously. Counsel further submitted that at times of emergency it is essential—and crucial to the efficient administration of the emergency response and the avoidance of chaos—that there be a clear, well-defined channel of communication between the responsible agency and ActewAGL. To this end, counsel submitted that protocols should be established between the Emergency Services Agency and ActewAGL, to clarify lines of communication and to ensure that instructions are given and received efficiently, coherently and promptly. Such protocols would be designed to operate only in a state of emergency and could be activated only by people with authority under the protocol, whenever it was decided that in the interest of public safety or protection of property or the environment such action should be taken.

These submissions by counsel were helpful and are obviously relevant to public health and safety in times of emergency.

I adopt counsel's submissions and recommend as follows:

- 65** that the ACT Government and ActewAGL jointly develop and implement protocols that will create a procedure whereby each of the water and sewerage, electricity and gas distribution networks, or parts thereof, can safely and promptly be manipulated, controlled, shut off, isolated or disconnected under emergency conditions
- 66** that community education programs include unambiguous information that at times of unusually high water demand there might be a drop in or loss of water pressure and it might be appropriate for residents who intend to remain and fight a fire to have auxiliary water pumps or booster pumps.

10.2.10 The 2003 Inquiry by the House of Representatives Select Committee on the Recent Australian Bushfires

In its 2003 report *A Nation Charred* the House of Representatives Select Committee on the Recent Australian Bushfires made 59 recommendations.

- 67** I recommend that, as appropriate, the ACT cooperate with the Commonwealth in the implementation of the committee's recommendations and, in particular, give careful consideration to adoption of the following recommendations:
- recommendation 7—construction and maintenance of and signage for fire trail networks
 - recommendation 12—development of prescribed burning guides for national parks and state forests
 - recommendation 22—participation in a review of occupational health and safety legislation as it affects the proper and effective functioning of bushfire services
 - recommendation 29—a commitment to rapid initial attack on wildfires
 - recommendation 35—compatibility of communications equipment
 - recommendation 44—exemption of volunteer firefighters from paying firefighting levies
 - recommendation 48—regular risk assessments of controlled land to ensure that bushfire-prone areas are accurately identified and suitably managed
 - recommendation 51—creation of a bushfire awareness and preparedness day, similar to Clean Up Australia Day
 - recommendation 52—adoption of the Australasian Fire Authorities Council's suggested evacuation protocol.

10.2.11 The ACT Sustainable Rural Lands Group

During the inquiry I gave Mr John Lowe leave to appear on behalf of the ACT Sustainable Rural Lands Group Inc. On 11 July 2006 Mr Lowe outlined the views of the group and provided to the inquiry a copy of a document explaining the group's views and concerns.

In the light of this I recommend as follows:

- 68** that the views and concerns expressed by the ACT Sustainable Rural Lands Group be taken into account when implementing the recommendations in this report.
- 69** that, if he is willing to participate, Mr John Lowe be made a member of the implementation taskforce to which I refer in recommendation 70.

10.2.12 Administration of justice

Section 57(3) of the ACT *Coroners Act 1997* provides for a coroner to make recommendations to the Attorney-General on any matter connected with an inquest or inquiry, including the administration of justice.

I deal with the administration of justice in Chapter 9 and, as noted, in that chapter I make six recommendations with a view to improving the administration of justice in the ACT.

10.2.13 An implementation taskforce

I recommend as follows:

- 70** that a taskforce be established to give effect to the recommendations in this report
- 71** that the taskforce review the extent to which the recommendations in the McLeod report have been implemented in order to ensure implementation of those not yet implemented
- 72** that the taskforce review the recommendations of the seven reviews of the Emergency Services Bureau carried out before the McLeod inquiry and ensure implementation of any of those recommendations that remain relevant but have not been implemented
- 73** if they are willing and available to participate, that the taskforce's membership include Mr Phil Cheney, Mr Tony Bartlett, Mr Val Jeffery and Mr John Lowe.

Shortened forms

ACTAS	Australian Capital Territory Ambulance Service
ACTFB	Australian Capital Territory Fire Brigade
ACTPLA	Australian Capital Territory Planning and Land Authority
ACTRFS	Australian Capital Territory Rural Fire Service
ACTSES	Australian Capital Territory State Emergency Service
AFAC	Australasian Fire Authorities Council
AIIMS	Australian Inter-Service Incident Management System
AIIMS-ICS	AIIMS Incident Control System
AR	agency representative
BAZ	bushfire abatement zone
BOM	Bureau of Meteorology
BOP	bushfire operations plan
BUA	built-up area
CAD	computer-aided dispatch
CM	Chief Minister
CMD	Chief Minister's Department
ComCen	ESB communications centre
DUS	Department of Urban Services
ECC	Emergency Coordination Centre
EIC	Emergency Information Centre
ESA	Emergency Services Authority; Emergency Services Agency
ESB	Emergency Services Bureau
GIS	geographic information system
GPS	global positioning system

IAP	incident action plan
IC	incident controller
ICS	Incident Control System
IMT	incident management system
IMT	incident management team
JCS	Department of Justice and Community Safety
JOPG	Joint Operations and Planning Group
KBDI	Keech–Byram Drought Index
LMA	land management agency
LMWQCC	Lower Molonglo Water Quality Control Centre
LO	liaison officer
MOU	memorandum of understanding
NSW NPWS	New South Wales National Parks and Wildlife Service
NSW RFS	New South Wales Rural Fire Service
POC	Police Operations Centre
RAF	remote area firefighting
RAFT	remote area firefighting team
RFS	Rural Fire Service
SBMP	strategic bushfire management plan
SES	State Emergency Service
SEWS	Standard Emergency Warning Signal
SMT	service management team
SOP	Standard Operating Procedure
TRN	trunk radio network
TROC	taped record of conversation

Appendix A

Section 55 statements

Statements made pursuant to Section 55 of the ACT *Coroners Act 1997* by:

- Mr Jon Stanhope
- Mr Mike Castle
- Mr Peter Lucas-Smith
- Mr Tony Graham
- Mr Rick McRae

Statement made by Mr Jon Stanhope

RESPONSE TO SECTION 55 NOTICE
ACT CORONIAL INQUESTS & INQUIRY INTO THE JANUARY 2003
BUSHFIRES

STATEMENT OF JONATHAN DONALD STANHOPE

1. On 11 October 2006, I was served with a letter and an attached Notice pursuant to s.55 of the **Coroners Act 1997** from Coroner Doogan. This statement is my response.
2. The Notice sets out four comments which the Coroner proposes to make. Before I deal with each proposed comment in detail I say as follows.

General

3. Each of the proposed comments is unsustainable and should not be included in your report. In each case, there are four main reasons why the proposed comment should not be made.
 - 3.1 The proposed comment is contrary to the facts as disclosed by the evidence, as explained in my statement.
 - 3.2 The evidence does not support the proposed comment. To the extent that parts of the evidence might appear to support the comment, that appearance does not remain when the evidence is considered as a whole. Any aspect of the evidence must be read in context.
 - 3.3 If there is evidence that you believe supports the proposed comment -
 - 3.3.1 it has not been put to me, and it would be contrary to the rules of procedural fairness for you now to rely upon it; and
 - 3.3.2 to put it to me in further correspondence, after the hearing, would be unfair because I would be denied the right to challenge it, through cross-examination, or to adduce contrary evidence.

3.4 The proposed comment would exceed your role and powers under the **Coroners Act 1997**.

4. By reference to these four reasons, I explain below why each of your proposed comments should not be made, but I first make some general remarks that apply to each of your proposed comments.
5. In the period 8 to 18 January 2003 I was the Chief Minister and Attorney General and had Ministerial responsibility for governing the Territory in relation to specified matters (not including Emergency Services) and for the Department of Justice and Community Safety (not including its functions relating to Emergency Services). I was however on leave from 8 to 12 January 2003 and a Cabinet colleague acted as Chief Minister – accordingly in that period, I did not have the responsibilities attaching to my office.
6. To the extent it is relevant, the Ministerial responsibility for Emergency Services (and the *Emergency Management Act*, *Bushfires Act*, *Fire Brigade Act*) lay with the Minister for Police and Emergency Services. This included responsibility for the Emergency Services Bureau. The Minister for Police and Emergency Services carried out his duties during the period 8 to 17 January 2003, when he went on leave. I was not the Minister for Police and Emergency Services at any time during the period 8 to the close of business on 17 January 2003. The Minister does not have control of the administrative units which administer his or her areas of Ministerial responsibility; such control resides with the Chief Executive of the administrative unit.
7. I accept that, in an appropriate context, the question of warnings to the Canberra community by those charged with the duty to issue such warnings may properly be the subject of inquiry and of consequential findings. However, the issuing of warnings and determining the content and timing of them is an operational matter and was for those with operational experience, expertise and responsibility to make. Neither my Cabinet colleagues nor I had the relevant operational experience, expertise and responsibility to make judgments and decide whether warnings should be given or about the content or timing of any warnings.

8. The jurisdiction of the Coroner to inquire into fires and into the deaths of persons is not unlimited. The power to make comments is confined to matters “connected with” the deaths or the fire. In light of the division of functions and expertise referred to in the preceding paragraph, the questions:
- of my knowledge; and
 - that of my Cabinet colleagues on 16 January 2003;
 - and the steps taken by us to warn the Canberra community;
- are beyond the legitimate area of inquiry and comment and outside the jurisdiction of the Coroner.
9. The proposed comments are made at a level of generality which is impermissible for the purposes of s.55. They are also substantially and impermissibly informed by hindsight.
10. The proposed comments misconceive the proper role of a coroner under the **Coroners Act 1997**. The coroner’s powers do not extend to attributing fault or legal liability, yet the proposed comments wrongly proceed by reference to an undefined and undisclosed notion of fault or legal liability.
11. I understand that the Coroner’s power to make comments is to be exercised for the purposes of making findings required by the **Coroners Act 1997** and of assisting in formulating appropriate recommendations in areas such as “public health or safety or the administration of justice”. In particular, I understand that the role of a coronial inquiry is to identify deficiencies and suggest improvements designed to overcome such deficiencies. I understand that it is not the role of such an inquiry to apportion blame. Contrary to this role, the proposed comments appear not to be directed to remedying any deficiencies, but seem to be intended to blame me and my Cabinet colleagues for what occurred.
12. The proposed comments confuse political accountability (Ministerial responsibility) with fault or legal liability. Similarly, the proposed comments apparently and wrongly attribute to me a duty to make operational decisions where I had no such duty and did not make those decisions.

13. The proposed comments appear to stem from a misconception of Ministerial responsibility. This is a matter of my political accountability to the Legislative Assembly and to the electors. It has nothing to do with any issue before the Coroner under the **Coroners Act 1997**. My responsibilities under the Westminster model have no relevant connection with your inquiry into the deaths or the fire.

First Proposed Comment

On the morning of 16 January 2003 Cabinet members, including Mr Stanhope (who was Chief Minister and Attorney-General with responsibility for the Department of Justice and Community Safety which included the Emergency Service Bureau), were told that there was a serious potential that the fires would impact on assets within the ACT which included forest pine plantations, Tidbinbilla Nature Reserve, Tidbinbilla tracking station, rural leases and the Canberra suburbs.

Dunlop and Weston Creek were the areas identified as being at greatest risk.

14. I dispute the accuracy of the proposed comment. It is not referenced to the evidence, and the evidence does not support it:
- 14.1 I did not have responsibility for the Emergency Services Bureau on the morning of 16 January 2003.
- 14.2 I was not “told that there was a serious potential that the fires would impact on assets”.
- 14.3 It is misleading to state, either at all or out of context, that “Dunlop and Weston Creek were the areas identified as being at greatest risk.”

The proposed comment should not be made.

15. My concerns about the lack of accuracy of your proposed comment are borne out by the following details:
- 15.1 None of those present at the briefing gave evidence that supports your proposed comment that I was “told that there was a serious potential that the fires would impact on assets”.
- 15.2 The ‘stand alone’ sentence “Dunlop and Weston Creek were the areas identified as being at greatest risk” seems to have been drawn from the notes of Ms Wall. There is no evidence as to whether the sentence

reflects words said or, if so, the context in which the words were said, or whether the words reflect her own thoughts or a paraphrase of words said by others.¹ The statement is not included in the Cabinet Briefing document or in the notes of the briefing prepared by Mr Kwiatowski. Most witnesses could not recall any reference to those suburbs. I recalled the reference to Weston Creek and Dunlop in the context of the “*the suburbs towards which the fires might travel in the event that they did spread*”.² I repeated this in evidence at T3632/1-8.

- 15.3 My understanding from the briefing was not that Dunlop and Weston Creek were “at greatest risk” in any absolute sense. On 16 January many other assets were at greater and more immediate risk. As “*the suburbs or the urban edge most directly in line of any fire that approached Canberra at any time are the western-most suburbs of Dunlop and Weston Creek*”, they would be the suburbs at greatest risk if fire approached the urban area.³ On 16 January, the risk to the suburbs of Canberra was the lowest risk, relative to the risk to other assets between the fire and the urban edge. The contemporaneous perception of the risk of the fires reaching the suburbs was a “possibility”,⁴ a “theoretical possibility”,⁵ and a “potential serious impact” if stronger north-westerly winds caused the McIntyres Hut fire to spot over its containment lines.⁶
- 15.4 The phrase “serious potential that the fire would impact on assets” is incorrect and misleading. There is no evidence to suggest that anyone at the Cabinet Briefing regarded or described the potential as “serious”. To the contrary, the potential was seen as a “possibility” ONLY.
- 15.5 Contemporaneous evidence of what Cabinet was told about the seriousness of the risk (and therefore the most reliable evidence) is provided by the actions of those who attended the meeting. Two of the Ministers present had made plans to go on leave from close of business

¹ Keady T3503/36-41; Stanhope, T3630/5-12; Tonkin, T4237/5-25; and Castle, T1860/40 – T1861/21

² Stanhope supplementary statement, paragraph 14

³ Stanhope, T3631/39 – T3632/19

⁴ Keady, T3497/28

⁵ Stanhope, T3610/41-3611/31

⁶ DPP.DPP.0003.0078 at 0079

on 17 January and continued with those plans subsequent to the cabinet briefing. It is inconceivable that those Ministers and I would have acted as we did had the advice provided during the briefing raised any reasonable concern that the fires would or could cause the damage that later occurred.

Second Proposed Comment

At all relevant times as Chief Minister and Attorney-General, Mr Stanhope had control of the Department of Justice and Community Safety and the Emergency Services Bureau was a part of that Department. Mr Stanhope was also acting in the supporting junior ministerial role of Minister for Emergency Services at the time of the conflagration.

In accordance with the conventions of the Westminster model of Responsible Government which apply in Australia, Mr Stanhope must accept responsibility for the mistakes of the Emergency Services Bureau which emerged so graphically during the ten days leading up to the firestorm. I note for the record, and to Mr Stanhope's credit, that after the conflagration, Mr Stanhope publicly acknowledged this responsibility when he said "blame me".

16. The proposed comment is inaccurate in many ways:
 - 16.1 I did not have control of the ESB.
 - 16.2 I acted as the Minister for Police and Emergency Services from the close of business on 17 January 2003 until 19 January 2003. I handed over all relevant powers to the Territory Controller at 2.45pm on 18 January 2003.
 - 16.3 I was never an acting junior minister, and indeed the Territory Government does not have any 'junior ministers'.
 - 16.4 The Westminster model does not stand for what is apparently contended, namely civil or legal liability. I did not acknowledge "this responsibility" publicly or otherwise.
17. The proposed comment should not be made.

Control of Emergency Services Bureau

18. I acted in the position of the Minister for Police and Emergency Services from the close of business on 17 January 2003 until 19 January 2003, although the Territory Controller held all relevant powers subsequent to the declaration of the State of Emergency at 2.45pm on 18 January 2003. Whilst I had Ministerial responsibility for Emergency Services for those two days, at no time did I have 'control' of the Emergency Services Bureau. In exercising my Ministerial responsibility, I relied upon the advice, experience and expertise of the officers in the Emergency Services Bureau in what was essentially an operational matter. I maintain that it was proper and appropriate for me to do so. Indeed, it would have been inappropriate for me not to do so where I had no reason to doubt their advice, experience and expertise.

Ministerial Responsibility

19. Ministerial responsibility deals with political accountability. The responsibility of a Minister for governing the Territory in relation to specified matters is owed to the Legislative Assembly. Ministerial responsibility does not provide any basis for attributing fault or legal liability.
20. The proposed comment seeks to apportion blame or to hold me legally responsible for what occurred. Such a course of action is neither appropriate nor within the jurisdiction of the Coroner.

Acknowledging blame

21. The evidence I gave about my public statements relating to blame is to be found at T3641 to 3643. So far as I am aware there was no other evidence before the Inquiry which raised or adverted to my public statements.
22. I acknowledged that I said words to the effect, "If you want to blame somebody, blame me." This was not an acknowledgement of either personal or Governmental shortcomings in response to the fires.
23. The reason that I made the statement was that "*... in the aftermath of the fire, there were significant levels of understandable anger within some sections of the ACT community*". My statement was:
"... a response to what I regarded as completely unjustifiable slurs on the ACT firefighting service and Emergency Services Bureau in the main by journalists and the media - ... journalists and the media external to the ACT."
24. My intention was "*... to express my support for emergency services personnel and for firefighters, and I responded perhaps with some heat and at the time with some frustration and even anger to what I regarded as continuing slurs on my officials and attacks on my town. And I stand up for my town and I stand up for my officials.*"
25. This evidence was not contradicted. I did not concede in that public statement that there had been shortcomings in my personal or the Government's response to the fires. I did not acknowledge political, Ministerial or legal liability for any mistakes. I did not acknowledge or imply any admission of wrongdoing on my part or on the part of any officer of the Emergency Services Bureau or the Government generally. There is no basis in the evidence to conclude that I acknowledged such responsibility.
26. Furthermore, Counsel assisting made no submissions which suggested otherwise. At T3638, Counsel assisting accepted that "*it wasn't your role to be*

warning the public ... It wasn't your responsibility ...” Counsel assisting also said at T3641:

“Mr Stanhope, I understand that you are primarily a politician and that, in a sense, these fires have a political dimension to them as far as debating the issues in public is concerned and things of that kind. I don't want to get involved in a political debate with you about it. That is something that can be done somewhere else.”

27. Finally in their submissions at paragraph 1238, Counsel assisting stated:
- 1238. We do not submit that the Cabinet had a responsibility to arrange to inform the public of the risk. The Cabinet was entitled to rely on the ESB to fulfil that responsibility. ...*
28. These propositions refer specifically to the issue of warnings, however they correctly identify the distinction between Ministerial responsibility and operational decisions of officers in administrative units. The propositions implicitly acknowledge that Ministers are entitled to rely upon the advice of professional officers (and in this case officers employed in the Emergency and Fire Services) and that Ministerial responsibility does not extend to operational decisions of such officers (a position consistent with the evidence I gave about this matter at T3643).

Junior Minister

29. The ACT does not have “junior” ministerial roles. The extent to which I had Ministerial responsibility for Emergency Services is set out above. If “the time of the conflagration” is understood to mean shortly after 3 pm on 18 January 2003, then all relevant responsibilities were with the Territory Controller.

Summary

30. The proposed comment should not be made for the following reasons:
- 30.1 First, it wrongly states that I had control of the Emergency Services Bureau.

- 30.2 Secondly, Ministerial responsibility has nothing to do with the Coroner's statutory task.
- 30.3 Thirdly, the only conceivable purpose for making such a comment is to apportion blame.
- 30.4 Finally, it wrongly states that I held a "junior ministerial role".

Third Proposed Comment

On Thursday 16 January 2003, two days before the firestorm hit the suburbs, the Cabinet generally, and Mr Stanhope in particular, knew that a potential disaster was on Canberra's doorstep but did nothing to ensure that the Canberra community was warned in a timely and effective manner.

31. The proposed comment is incorrect.
32. It does not refer to the evidence, and the evidence does not support it.
33. I had no understanding that "a potential disaster was on Canberra's doorstep", whatever is to be understood by that phrase.
34. I provided you with a supplementary statement dated 12 March 2004 in which, at paragraphs 14 - 16, I explained that "*There was general comment about the possibility of the fires reaching urban Canberra ... The possibility of the fires reaching urban Canberra was not discussed in a manner that conveyed to Cabinet any understanding that the fires were a direct threat or that it was envisaged or anticipated that houses within the urban area were then at risk ... It was apparent from the briefing that the fires presented a serious situation, but I did not gain any sense of anxiety that the fires presented any immediate threat to Canberra or that there was a considered view within the Emergency Services Bureau that the fires would not be contained*".
35. On oath, I agreed that my supplementary statement accurately reflected my state of mind in relation to the briefing.⁷

⁷ Stanhope, T3609/6-12

36. I gave additional oral evidence about my knowledge of the risk that the fire presented to Canberra following the Cabinet briefing. I agreed that my concern about the fires was not heightened as a result of the briefing.⁸ I recognised the fires as “*serious*”, but did not understand the potential for the fire to advance to the urban edge to be more than “*a theoretical possibility*”.⁹ The statement in the briefing paper about a “potential serious impact” was in a context, namely “*if a range of circumstances result*”.¹⁰ The statement in the briefing paper about a “potential serious impact” “*did not cause me any greater alarm on Thursday than the fact that, as of the Monday, I acknowledged that the fire was serious.*”¹¹
37. As I said on oath, “*the nature and tone of the briefing that Cabinet was receiving that this was not at that time a real live possibility, that it was not a possibility of any high expectation. I had not at that stage developed, if I might call it, a mindset or an understanding of the nature of the fire that left me with any serious sense of alarm ... I don’t think that it had occurred to me at that stage there was any possibility that the fire would cause damage within the suburbs of Canberra.*”¹²
38. Further in my oral evidence I stated “*on the basis of all of the advice that I had received, I had no reason to believe or assume or imagine that the fire would burn into the suburbs of Canberra.*”¹³
39. These statements record my state of knowledge. I did not know “that a potential disaster was on Canberra’s doorstep”, and neither that allegation nor anything like it was put to me when I gave evidence.
40. The way you have addressed this matter involves a significant element of hindsight. It assumes that I, having attended the briefing, could or should have

⁸ Stanhope, T3609/16-19

⁹ Stanhope, T3611/20-31

¹⁰ Stanhope, T3612/15-17

¹¹ Stanhope, T3612/7-39

¹² Stanhope, T3618/4-17

¹³ Stanhope, T3620/36-39; see also T3626/34-37; T3643/47 – 3644/4 and T3646/8-27

had a greater appreciation of the risk of the terrible events that later occurred. That is not what happened.

41. The information provided to me did not support me taking of any step to “ensure that the Canberra community was warned in a timely and effective manner” nor cause me to seek further information on that subject.¹⁴ Such decisions should not be made by Cabinet or by any Minister¹⁵. I was satisfied with the briefing we received and I relied upon the officers of ESB who were fighting the fire.¹⁶ It would have been wrong of me to take over operational responsibility for an event that required specialist knowledge and expertise that I did not possess. Indeed, Counsel Assisting accepted that it was not my role to involve myself in warning the public¹⁷ and they maintain that position regarding Cabinet generally.¹⁸ The contemporaneous correctness of that position is made plain by the fact that no one else at the briefing, including the Minister for Police and Emergency Services, the Executive Director of the Emergency Services Bureau and the Chief Fire Control Officer, all of whom had more direct responsibility for such matters than I, acted in the way you now suggest I should have acted.
42. It is one thing for you to think, in hindsight, that I and the numerous other persons at the briefing should have had a greater appreciation of the risk. It is quite another to find that we had that appreciation and did nothing about it. I took all the steps that I was advised to take.
43. It is extraordinary for you to suggest the proposed comment be made regarding the state of mind of three members of Cabinet when such a comment was not even suggested during the lengthy hearing of this matter. Furthermore, the comment does not accord with the evidence before you.
44. The proposed comment should not be made.

¹⁴ Stanhope, T3636/16-39

¹⁵ Stanhope, T3623/17-20

¹⁶ Stanhope, T3643/35-45

¹⁷ Stanhope, T3638/24-27

¹⁸ Submissions of Counsel Assisting at paragraph 1238

Fourth Proposed Comment

In his comments on radio stations ABC 666 and 2CC at about 3.00pm on Saturday 18 January 2003, Mr Stanhope either misunderstood or deliberately downplayed the seriousness of the situation by describing the Declaration of the State of Emergency as “essentially an administrative measure” and telling the community not to be “unduly alarmed” and not to be “unduly anxious” despite the fact that by this time Mount Stromlo Observatory was burning and the spot fires were entering Duffy; and minutes later the first houses were destroyed.

45. I reject this proposed comment. It should not be made for the following reasons:

45.1 I did not misunderstand or deliberately downplay the seriousness of the situation. Such a proposition was never put to me when I gave evidence, but had that occurred I would have responded that I followed the advice of officers in the Emergency Services Bureau about the appropriate comments to make at that time. I had no reason to doubt their advice and accepted their proper concerns about the importance of avoiding panic.

45.2 My comments did not downplay the seriousness of the situation in any event. A fair reading of the transcript of what I said in the interview shows a clear recognition of the seriousness of the situation.

45.3 My statement that the declaration of the State of Emergency was “*essentially an administrative measure*” was factually and legally correct. It was also consistent with the advice I received from officers with operational responsibility about the imperative of avoiding panic at such a critical time.

45.4 It is trite to observe that the fires approached Canberra with such extraordinary and unexpected speed that the circumstances of the fire overtook the information being received about the fire. That was particularly true on the afternoon of 18 January 2003. Your proposed comment seeks to link what I said, when interviewed, and what was occurring at the time. The issue never arose in the course of my giving evidence, but had I been asked I would have explained that at the time I

was interviewed I did not know that the fires were burning on Mt Stromlo or that spot fires had started in Duffy.

- 45.5 It was not my task to give warnings: what I said was entirely reasonable.
- 45.6 There was no reference in the oral evidence to these radio broadcasts.
- 45.7 There was no evidence about my perception of “the seriousness of the situation” at the specified time and the matter was not raised in the submissions of Counsel assisting.
- 45.8 The phrases attributed to me are only a small part of what the transcript records and are taken out of context.
46. The transcripts of the radio broadcasts which included my comments at about 3pm on 18 January 2003 (ABC 666 and 2CC) were part of the documentary evidence before the Inquiry. However those transcripts were never referred to in the course of my giving evidence.
47. Your proposed comment also ignores the time and context in which I made my remarks. My comments were made after Mr Castle, Executive Director of the Emergency Services Bureau, had informed the media that a State of Emergency had been declared. Mr Castle had indicated, on ABC 666 radio just before 3pm, that the fires were not in the suburbs but there was concern “about the possibility of embers spotting into the suburbs”. He further stated that all firefighting resources were being withdrawn towards the urban areas. Mr Castle also stated the spotting “combined with tremendous strong winds” had led to the fires getting out of control.
48. Had I been asked about this issue, I would have responded that before I made my comments on the radio, I received advice that, in all communications with the public, every effort should be made to employ language designed to avoid panic. I was told that the declaration of a state of emergency might engender panic at a time when a calm response was needed. Also, my comments were not scripted; they were responsive to questions asked by the respective interviewers and made in the course of telephone conversations with the radio stations. In any event, I regarded the declaration under section 20 of the then

Emergency Management Act 1999 as essentially an administrative measure. That is an accurate description of it.

49. The phrases attributed to me in your proposed comment are only a small part of what the transcripts record and isolate, devoid of their context, three phrases which I used in the broadcasts.
50. In the broadcast on ABC 666, I stated that the Emergency powers give police *“certain powers in relation to the movement of people ... in relation to the evacuation of certain premises and buildings ...”*. I also stated that there was *“an air of anxiety”* at the ESB. I concluded my comments by stating:
“Well certainly, I, I guess that's the message that we are asking ah people to take on board, is to be alert, eh no don't be unduly anxious, eh don't be unduly alarmed, ah, but certainly be alert. Look out for, for, for embers, look out for floating embers. These fires do skip and can travel enormous distances and that's of course the experience their, their very rapid spread over 24 hours or so to the extent that they're now spread from Brindabella Range right across the ACT and indeed we are now confront the fires on the Cooma Road, on the other side of the ACT”.
51. The clear impression conveyed was that it was a serious situation but that the preferable approach was not to be unduly alarmed or anxious but to be alert for embers and spotting.
52. I also gave an interview on Radio 2CC. In that broadcast, I referred to *“the serious situation we're facing, it is certainly serious”* and stated:
“I'm asking people, acknowledging how anxious people are, particularly those who are living in suburbs facing the most direct threat, to take the range of precautions that you've just read out, to stay in their homes, to stay alert, to look for floating ash and embers, and to be alert and take whatever steps they can, and certainly, to notify authorities whenever they see a fire started by any of the embers that are floating across the suburbs”
 and

“on the basis of advice from Mike Castle, Peter Lucas-Smith, and my officials; I have formally declared a state of emergency for the whole of the ACT. That is essentially an administrative step, it acknowledges the seriousness of the emergency that we are facing, and it allows all of the emergency authorities and in particular the police to take if they need to, to take a whole range of emergency steps, it gives them emergency powers”

and

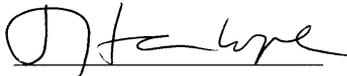
“The advice is very much the advice, Mike, that you and other media have been promulgating, in the context of the emergency we’re facing, that is, to do all of those things that you have been reading out as the standard emergency warning signal that Mike Castle issued, I’m asking people certainly to be very alert, to be alert for fires that may be starting around the suburbs, in the houses, not to panic, not to go out into the streets, not to rush off and seek to find a fire to fight, you know, as much as we understand the desire of everybody to be part of, you know, the effort in stopping the fire, but certainly to stay at home, to stay indoors, to do all the things that you’ve been asking them to do, to remain alert, but not to panic and certainly not to go out to look at the fires and to get onto the roads”.

53. On any fair view, I did not downplay “the seriousness of the situation”, and I certainly did not intend to do so.
54. In summary the proposed comment should not be made.
- 54.1 This serious allegation is incorrect. I did not downplay or deliberately mislead anybody.
- 54.2 My comments were legally and factually correct.
- 54.3 In making comment, I acted upon the advice of officers at the Emergency Services Bureau about the importance of avoiding panic.
- 54.4 The propositions now suggested were not put to me when I gave evidence, or advanced in the submissions of Counsel assisting.
- 54.5 It fails to properly acknowledge the context in which the remarks were made.

54.6 It assumes facts which were not established in evidence. In particular, it assumes I knew the status of the fires at Mt Stromlo Observatory and Duffy when the opposite was the case.

Conclusion

55. Each of the proposed comments should not be included in your report. I wish to be advised of any alternative comment you propose to make, and to be given an opportunity to respond.



Jon Stanhope MLA

21 November 2006

Statement by Mr Mike Castle

STATEMENT IN RESPONSE TO SECTION 55 NOTICES

by
MIKE CASTLE

Preliminary

I would like to take this opportunity once again to express my sincere sadness at the tragic loss of four lives and the devastating impact of the property loss that occurred as a result of the 2003 fires. The personnel at ESB worked tirelessly throughout the fire emergency using their expertise and professionalism in attempting to protect the community. This emergency ran some 26 days from 8 January 2003 to 2 February 2003, even though Your Honour has limited your inquiries to the period ending 18 January 2003.

The nature, ferocity, speed of spread and extent of the impact of the firestorm on the 18th of January 2003 was not predicted by anyone and as such the significant efforts of the ESB emergency agencies and NSWRFs were overwhelmed.

In my view that all of the persons involved in some way in responding to the 2003 emergency, be they volunteer bushfire fighters, departmental bushfire fighters, fire brigade members, ambulance officers, emergency service volunteers, AFP officers, ESB staff, Canberra Connect, media liaison officers, many volunteers from community organisations and some as purely spontaneous volunteers, recovery workers and many other departmental staff – all worked tirelessly, some for the full 26 days straight, over very long hours, in extremely dangerous, difficult and harrowing conditions for the benefit of the Canberra community – both urban and rural.

With the benefit of hindsight there is always an opportunity to analyse decisions and ponder what may have occurred had other decisions had been taken. Undoubtedly, mistakes and errors of judgement were made by people, myself included, in the course of fighting these fires or managing and supporting the operational firefighting effort. Your Honour has been urged on many occasions (and I now do so again) not to be blinded by the wisdom of hindsight and to assess what was done, based on what was known at the time, not on what ultimately occurred.

I believe, that all personnel involved in every facet of the 2003 emergency made decisions at the time in good faith based on their professional assessment of the information that was available to them at the time. For Your Honour to suggest, as it would appear that you are doing in these comments, that I and others were not trying our best, or had deliberately acted in a way that would endanger persons or property is untrue, unwarranted and unfair.

I entered this Inquiry assuming it would be focused on identifying where mistakes may have been made so that lessons might be learnt for the future and findings and recommendations made that may help us respond better to any future fire or other emergency.

It has become clear to me however from the way Counsel Assisting and the Court has approached its task, finding people to blame has been the primary focus of these proceedings rather than trying to identify mistakes that may have been made in order to prevent them from happening again.

Many of the comments that Your Honour proposes at this stage to make against me are made in the face of overwhelming evidence to the contrary. I am repeatedly singled out for criticism and censure for failing to have predicted what ultimately occurred on 18 January 2003 or for believing that we would be able to deal with the fire threat if it approached the city when such views were also held by many other persons, highly experienced in fire behaviour and bushfire fighting.

In particular, the ESB and its officers are seemingly to be held accountable by Your Honour for doing no better and no worse than the NSW authorities in preventing the fires entering the suburbs or predicting that it was going to happen. Your Honour needs to keep firmly in your mind that the McIntyre's Hut fire was the fire that ultimately burnt into Canberra on the afternoon of 18 January 2003. That fire was at all times being managed by the NSW authorities, who, when it commenced its fateful run after 1pm on 18 January 2003 courageously continued their efforts to halt its progress.

It is true that ESB did not fully appreciate the risk that this fire presented to urban Canberra until it was too late – but the evidence clearly establishes – neither did the NSW authorities.

Your Honour's comments that I and others knew what was to happen and deliberately took no action to warn residents of Canberra has no basis in evidence and simply confirms my views that Your Honour has been too focused on finding people to blame at the expense of finding out what happened and how it could be done better next time.

In the course of the comments directed to me Your Honour seemingly pays insufficient regard to the circumstances we were facing at any particular time. Rather than make generalised statements about our efforts, focused in large part on the fact that these were unsuccessful and who is to blame, I urge Your Honour to rigorously examine what was done at every stage so as to be able to offer constructive analysis of our efforts such that Your Honour's findings may be of benefit to people placed in similar circumstances in the future.

In making the adverse comments you propose against me, I urge Your Honour to pay particular regard to the following matters which in my view will help Your Honour to properly understand the circumstances I and others faced during the course of the fire emergency and in particular on 17-18 January 2003:

1. The worst case prediction I was made aware of on the evening of 17th January 2003 as to what might occur the following day did not have any fire reaching the urban edge let alone burning into the suburbs.

2. This prediction hypothetically assumed a completely unattended fire which was not to be the case. If the fire burnt into the eaten out drought ravaged grasslands between the Murrumbidgee River and the urban area, almost every witness attested that they held a view that the fires could be stopped or slowed. As it transpired the fire behaviour up until about 1pm was significantly under the worst case predictions that had been made the previous evening.
3. From 1pm on Saturday 18 January 2003 the fire behaviour was extraordinary and nobody predicted it. The McIntyre's Hut fire travelled as far in the two hours from 1-3pm as it had in the preceding 10 days.
4. The Standard Emergency Warning Signal was signed by me at a time when the McIntyre's Hut fire was over 8 km from the interface. In 2001, fires were within 2km of houses when the SEWS was issued. I (and Your Honour should note, neither did anybody else), never envisaged that the fires would travel that last 8km with such extraordinary speed and ferocity.
5. No one (including very experienced firefighters like Tony Bartlett, Neil Cooper and Your Honour's fire behaviour expert Phil Cheney) predicted the nature or scale of the firestorm that eventuated on the afternoon of 18 January 2003. It is clear that none of these persons anticipated fire entering the suburbs that afternoon. .
6. The ESB was established as an administrative element within the Department of Justice and Community Safety. As the Executive Director of ESB I did not have an operational role and relied on information from others as to the risk the fires presented at any particular time.
7. On the night of the 17 January 2003 NSW RFS actually released ACT resources from the McIntyre's Hut fire. Nobody from NSW RFS then indicated any belief that that fire was going to break its containment line and burn into urban Canberra within the next 24 hours (T4167).
8. NSW RFS lost over \$1 million worth of supplies and equipment when its base camp located adjacent to the Stromlo Settlement on the edge of Duffy was destroyed. Not even the NSW RFS, who had responsibility for the McIntyre's Hut fire, believed the fire posed the threat it ultimately did that day. Similarly, NSW RFS set up a relief –crew camp at Greenhills on the Friday evening only for those crews to be burnt over the following afternoon.
9. There was a border between the McIntyre's Hut fire and the ACT and this jurisdictional element to the situation did affect the way things were done – such as planning, resourcing and media.
10. The layout of the ESB building was totally unsuitable for efficient emergency operations. In particular the efficient receipt, analysis and dispatch of critical fire spread information to the appropriate officers was severely curtailed,

especially during critical times.

I set out below a series of statements responding specifically to each of the proposed adverse comments you have given me notice that you are considering making.

If Your Honour decides to proceed to make a particular proposed adverse comment then I formally request you include in your report this preliminary statement and my specific statement responding to that comment. I have endeavoured to keep each statement brief so that Your Honour will not feel the need to prepare a “fair summary” of each response.

Statements responding specifically to each Proposed Comment Numbered [1]-[22]

Proposed Comment [1]

Comment

Yet, despite this knowledge and awareness, [OF PREVAILING EXTREME FIRE DANGER CONDITIONS] the evidence before this inquiry has revealed that senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003. As well, despite being on notice from the fires some twelve months previously, apart from the preparations made by Mr Bartlett for ACT Forests, neither the ESB nor any of the ACT land management agencies made any additional preparations for the fire season over and above their routine preparations. Even though the necessity for a rapid and aggressive response was recognised, the response which was made to all the ACT fires lacked the sense of urgency which the situation demanded.

I have broken this comment into three separate propositions in order to respond appropriately.

Proposition A

Yet, despite this knowledge and awareness, [OF PREVAILING EXTREME FIRE DANGER CONDITIONS] the evidence before this inquiry has revealed that senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003

Response - Proposition A

1. There was much evidence before the inquiry which revealed the exact opposite – ie that “senior ESB personnel DID appreciate the gravity of the fire situation and the potential for escalation. Without knowing the basis upon which Your Honour makes this comment it is impossible to appropriately respond. Your Honour seems to reach this conclusion on the basis that because there was a failure to predict the ultimate outcome that therefore there was a failure to appreciate the gravity of the situation at the time such judgements were being made. Such

hindsight reasoning is neither appropriate nor a proper basis to reach such views, especially if such reasoning forms the basis of personal adverse comment against me.

2. As has been made clear on a number of occasions, I was neither a firefighter nor a person with operational responsibilities. Notwithstanding this the evidence is clear that I received information and briefings from those with such experience and responsibilities and that I did appreciate the gravity of the fire situation and acted accordingly.
3. This comment is not justified and should not be made.

Proposition B

As well, despite being on notice from the fires some twelve months previously, apart from the preparations made by Mr Bartlett for ACT Forests, neither the ESB nor any of the ACT land management agencies made any additional preparations for the fire season over and above their routine preparations.

Response - Proposition B

4. With respect Your Honour is totally incorrect. Even Counsel Assisting qualified their submission (upon which your proposed comment appears to be based – par 1116) by using the phrase “*essentially no preparations*”. Your Honour’s formulation simply does not reflect the evidence.
5. It would appear that Your Honour has not considered the submissions made by the Territory at paragraphs 172-201 of its final submission where various preparations, including new initiatives for the fire season were outlined. In addition the following are some other examples of information in the brief that indicate that such additional preparations were made:
 - a. ESB.DPP.0018.0236 to ESB.DPP.0018.0286 - an excursion by the Bushfire Council into Namadgi National Park in 2002; development of a Namadgi National Park pre-suppression plan; and the Namadgi “Burn” scenario exercise.
 - b. ESB.DPP.0019.0227 –Remote Area Fire Training undertaken in December 2002.
 - c. ESB.DPP.0019.0355 – a document confirming that the Canberra Connect website included Bushfire Safety Tips on its homepage.
6. Further examples of additional preparations for the 02-03 fires season are outlined in the statement by Mr Graham in relation to a similar comment Your Honour proposes be made against him.
7. Some additional preparations that I personally was involved in were:

- a. The budget requests in about March 2002 seeking funding for a community education officer and increased aerial resources (Exhibit 0117);
 - b. I pursued in each regular meeting of the ACT Emergency Management Committee detailed implementation of the matters from the 2001 fires Strategic Debrief;
 - c. The attempts to overcome the Public Relations deficiencies identified following the 2001 fires by me briefing and having available the network of Media/Public Relations staff across the ACT Government Departments and the arrangements finalised by me on 18 December 2002 for Canberra Connect to be a source of information on ACT emergencies both by online access and through the 132281 telephone number. The process for Canberra Connect was activated by me on Thursday 16 January 2003.
8. As I do not know upon what evidence you have come to form this conclusion I can only presume that you have adopted the views of Mr Roche. If this is the case then in light of how discredited Mr Roche's evidence in this respect was shown to be (see for example Territory submission at par 427- 483), I would submit this comment is not only inaccurate but unjustified.

Proposition C

Even though the necessity for a rapid and aggressive response was recognised, the response which was made to all the ACT fires lacked the sense of urgency which the situation demanded.

Response – Proposition C

9. If Your Honour is to make adverse comments against individuals it needs to be clear against whom such comments are being directed and what the evidence is that demonstrates such comment is warranted against that individual.
10. The adverse comment here is not accepted by me as accurately reflecting the evidence, but even if it did, it is not a matter for which adverse comment can properly be directed against me as I had no responsibility for such operational matters.

Proposed Comment [2]

Comment

By late afternoon of 15 January 2003 senior personnel of the ESB were in receipt of information which either confirmed or was the basis upon which they formed certain views about the risks of the fires.

By late afternoon of 15 January 2003 Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each recognised that the fires, including the McIntyre's Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of the urban area.

Response

1. I am unsure what Your Honour means by these statements. As statements of fact it is true that I was constantly receiving information all of which I considered to the best of my ability and all of which was considered by me in forming views about the risks of the fires.
2. I can only assume (as Your Honour has declined to provide me with the necessary contextual information I requested in order to properly respond) that Your Honour is obliquely referring to the Cabinet Briefing I prepared on the evening of 15 January 2003. If that is the case then it appears that Your Honour has not considered paragraphs 207 – 215 of the submission made on behalf of myself and Mr Lucas-Smith dated 30 June 2006 (“my primary submission”). In particular Your Honour does not appear to have considered the fact that nobody present at that Cabinet meeting who gave evidence before the Inquest attested to being of the view that there was then a realistic risk of the fires impacting on the suburbs of Canberra.
3. If you are suggesting that by late afternoon on 15 January 2003 I was somehow aware that suburban Canberra was at a serious, significant, or imminent risk of impact by these fires or that the chance of any such impact was any more than a remote possibility then I reject that suggestion utterly.

Proposed Comment [3]

Comment

[IN RELATION TO THE CABINET BRIEFING ON 16 JANUARY 2003] Mr Castle also had difficulty recollecting many details of the Cabinet briefing even when it related to the items listed by him in the briefing note he prepared. His evidence on some matters was inconsistent, vague and confusing. I am willing to accept that concern over the impact of the fires on Canberra's power supply may well have been one matter in Mr Castle's mind during the briefing of Cabinet. However, I do not accept that it was the only or even the predominant matter. He made no reference to it in his briefing paper and gave evidence that his recollection such as it was, on the discussion of declaring a state of emergency, centred around the process involved.

Response

1. I was the only witness NOT given the opportunity to refresh my recollection from the video made of parts of the Cabinet Briefing meeting despite the fact Counsel Assisting were in possession of that video when I gave evidence [T1578].
2. I was not given the opportunity to review the video and it was only in re-examination that I was first shown any of the other written notes taken at the Briefing (T1847). No doubt these facts contributed to what may have appeared (compared to others who were given such an opportunity) to be “inconsistent,

vague and confusing evidence". Throughout the six days I gave my evidence I did so honestly and to the best of my recollection, despite the aggressive, accusatory and adversarial way Counsel Assisting conducted his examination. I urge Your Honour to consider these matters before making this comment. To make this comment would be unfair and unwarranted.

3. The briefing paper was a guide but not discussed verbatim in the Cabinet Briefing. Your Honour seems to only grudgingly concede my legitimate concerns over the importance and sensitivity of the Macgregor Power Sub-station. Part C of a sub-plan of the ACT Emergency Plan sets out the extreme importance of the Macgregor Power Station to Canberra.
4. Whatever Your Honour's ultimate views, the fact remains I considered the possibility of impact by the fires on the power lines coming into Canberra and consequently a massive disruption to the urban area as the basis upon which it might be necessary for a State of Emergency to be declared. Evidence from others present confirms this (see my primary submissions at par 218-233). In particular I remind Your Honour of the Chief Minister's evidence on this point: *"The context of a discussion around a state of emergency, as I recall it, was the possibility of the ACT losing all of its power"*
5. Just as the Macgregor Sub-station was not mentioned specifically in the Cabinet Briefing paper, nor was the topic of the State of Emergency.

Proposed Comment [4]

Comment

At a briefing on 16 January 2003 Mr Lucas-Smith and Mr Castle did not inform Chief Police Officer Murray and Commander Newton that a serious risk existed of fire impacting upon the Canberra suburbs on Saturday 18 or Monday 20 January 2003, and this was a serious omission because it exacerbated the confusion and chaos which subsequently occurred during the evacuation of residents fleeing from the fires.

Response

1. Your Honour's comment appears to assume (presumably with the benefit of hindsight as the contemporaneous evidence does not support the proposition) that Mr Lucas-Smith and myself appreciated there to be a serious risk of fire impacting upon the Canberra suburbs on Saturday 18 or Monday 20 January 2003 but decided not to tell anyone. This was not the case and is certainly not the evidence. As at the time of the AFP Briefing it was not my view that *"a serious risk existed of fire impacting upon the Canberra suburbs on Saturday 18 or Monday 20 January 2003."* The briefing to AFP conveyed accurate information on the fires consistent with my understanding of the fires at that time.
2. I refer Your Honour again to my primary submission at par 293-298.

3. Irrespective of the specific information conveyed, there was close liaison between ESB and the AFP in particular:
 - Commander Newton was given a personal briefing on the fires by Mr Lucas-Smith on the 15 January 2003 and taken with him and the Chief Minister for a helicopter inspection of the fires.
 - AFP senior management (Chief Police Officer Murray, Commander Newton and Superintendent Mark Johnsen) were provided email updates on the fires situation on the evening of 16 January 2003 as members of the Emergency Management Committee.
 - the following morning (17 January 2003) and thereafter, a senior AFP officer attended the planning meetings.
4. The link Your Honour seeks to draw between the AFP Briefing and the chaos of Saturday afternoon 2003 is illogical and is simply not open to be made on the evidence. I cannot understand how a briefing to the AFP which undoubtedly resulted in close and ongoing liaison between ESB and the AFP – to the extent that the AFP heard everything I heard in planning meetings - somehow could have exacerbated the situation at the height of the extraordinary and totally unexpected impact on the urban area on 18 January 2003.

Proposed Comment [5]

Comment

[IN THE CONTEXT OF THE MEDIA BRIEFING BY MR CASTLE AND MR LUCAS-SMITH AT NOON ON 17 JANUARY 2003]

At the media conference at noon on 17 January 2003, Mr Castle and Mr Lucas-Smith did not provide information of which they were aware and concerns which they held about the true situation of the fires and the real threat they posed to the rural and urban areas of the ACT.

The most obvious and most serious omissions from the media briefing include:

A failure to express the concerns held by ESB personnel about the real potential of all the fires to break the containment lines which were known to be vulnerable;

A failure to say (at the media conference) that the Bendora fire had already breached lines to the north and south;

A failure to provide information about the concerns held over the 'erratic fire behaviour', the 'significant risks of fire runs', and the potential for ten kilometre spot overs;

The failure to say that back-burning operations had stopped on the Bendora and Stockyard fires;

The failure to inform the media and the public about the proposed and imminent plan by the NSWRFSS to use aerial incendiary devices on a large sector of unburnt area of the McIntyre's Hut fire and the concerns ESB personnel held over the potential ramifications for the ACT from this operation;

The failure to share, express, reiterate and strengthen statements of concerns made by Mr Wade about the real threat to the pine plantation; and, finally

The failure to say that Saturday, the very next day, was shaping up to be a very bad fire day.

In my view, what was said by Mr Lucas-Smith in Mr Castle's presence did, instead, serve to downgrade what clearly was a serious and highly volatile and dangerous situation.

By not providing the information mentioned above and making such statements as:

The ACT fires are within containment lines;

No need to evacuate property;

No concern for Tidbinbilla Tracking Station or historic sites;

Pretty slim chance of fire meeting urban edge;

His (Mr Lucas-Smith's) level of anxiety had not changed since the previous week; and

The rural people knew what to do and probably had already done it,

Mr Lucas-Smith and Mr Castle, did not, in my view convey to the media at noon on 17 January 2003 the true situation regarding the real danger which they and others at the ESB recognised existed to the ACT community from the fires. However, the reasons why they did not do so are not clear. Mr Castle said that there was no conscious reason why a warning even worded as a potential threat was not publicised at noon on 17 January. I have no doubt that one of those reasons was that Mr Lucas-Smith held a hope that the fires could still be stopped, somehow. I do not accept his evidence nor the submission from counsel for the ACT that Mr Lucas-Smith was speaking only of the ACT fires and did not have the McIntyre's Hut fire in mind during the media briefing. However, even if he did, he still did not provide the true situation and potential threat from the ACT fires and there was no impediment on him, as he admitted to supplementing and commenting on the information being provided by Mr Wade. It is beyond credible belief that Mr Lucas-Smith did not think of the McIntyre's Hut fire in terms of its threat to the ACT on 17 January when he had regarded it as a potential threat as soon as it ignited on 8 January when he travelled to Queanbeyan to meet with NSW fire officials. Mr Lucas-

Smith did not provide a full and frank disclosure of what he knew and what he regarded as being the worst case scenario.

Response

1. Your Honour relies on hindsight to analyse what was done and said and then compare and contrast that with what could and should have been done and said. This is valid for analysing actions in order to learn lessons for the future. Your Honour however, despite the exhortations of the Supreme Court that an inquest is not about laying blame, appears to have deemed it necessary to make pejorative, insulting and grossly unfair statements about my state of mind in order to imply some deliberate malfeasance on my part.
2. I agree that I was present when the statements were made by Mr Lucas-Smith and Mr Wade. As far as I was aware (and still believe) all statements made were factually correct. Your Honour seems to imply that they were not true or deliberately slanted to give a false impression as to the 'true' fire situation. This is incorrect and contrary to the evidence given both by myself and Mr Lucas-Smith.
3. I refer Your Honour once again to my primary submissions on this issue [at 344-349] which Your Honour appears to have overlooked. Your Honour must be mindful that neither myself nor Mr Lucas-Smith were given an opportunity to answer such serious allegations as "we deliberately downplayed, understated the risk or deliberately withheld information from the community."
4. Unless Your Honour's focus is only directed towards the actions of senior ESB personnel, it is not obvious why Mr Wade was not required to give evidence explaining the statements he gave during that press conference about the McIntyre's Hut fire – the fire that his employer had responsibility for fighting, which posed the most serious risk to the ACT and which ultimately burnt into Canberra the next day. A comprehensive analysis of Mr Wade's interview reveals (see my primary submission at pars 337, 394-405) that in reality he said nothing materially different to Mr Lucas-Smith in that media conference.
5. In my primary submission counsel set out at length the NSWRFs fire expectations and predictions [from par 387- 419] which Your Honour will see are not inconsistent with the predictions, expectations and public statements made by myself and Mr Lucas-Smith.
6. In particular it is pertinent to note that the Fire Sit Rep reports, prepared by the NSWRFs fire analysts contain no suggestion that suburban Canberra was under potential threat as at 11am on 17 January 2003.
7. To the extent your proposed comment is directed at myself, I note again that I was not a fire prediction expert or firefighter. I reject any suggestion that I somehow

connived with Mr Lucas-Smith to downplay the true fire situation. Mr Lucas-Smith did no such thing.

8. Your Honour appears to have considered this media conference in total isolation from the information that had been provided in the days leading up to it in which it could not be suggested there had been any indication of a deliberate understating of the seriousness of the fires. For example:
 - The media release on the evening of 16 January 2003 declaring for the first time ever, a 5 day total fire ban.
 - The front page report of the Canberra Times indicating that the next five days were critical and that changing winds would “put pressure on containment lines to the south and east of the massive McIntyre’s Hut fire burning in NSW, lines which are protecting the Uriarra pine plantations in the ACT.
 - The written Media release that was provided as part of the media briefing did indicate that some breakouts occurred to the north and the south of the Bendora fire.
 - The Sydney Morning Herald news on line (ESB.AFP.0110.0962), the Herald Sun (ESB.AFP.0110.0961), the Australian (ESB.AFP.0110.0968), the Daily Telegraph (ESB.AFP.0110.0964) and ninemsm (ESB.AFP.0110.0959) in the evening of 17 January 2003 all including a report “Mr Lucas-Smith said there was no immediate threat to ACT properties but that could change tomorrow as the temperature soars.”
9. Whilst Your Honour seemingly does not accept the submission that Mr Lucas-Smith was speaking of the ACT fires – the fact remains such a course was consistent with the Guidelines for Interstate Assistance that were tendered before Your Honour and that all his comments were entirely accurate when viewed as relating to the ACT Fires for which Mr Lucas-Smith had responsibility for fighting.

Proposed Comment [6]

Comment

The media release issued by the ESB at 3.45 pm on 17 January 2003 was wrong in that it did not report the true conditions regarding the fires and therefore seriously misrepresented the grave situation which existed.

The press release issued by the ESB at 3.45 pm comprised six sentences, three of which were details on how to access further information. What was contained in the other three sentences was, in my view, misleading and was misinformation. It did not report the true situation which existed at the time of its release, namely that all the fires, including the smoking McIntyre's Hut fire had breached containment lines and were spotting and making runs. This information was known to the senior personnel at the

ESB from 1.00 pm onwards. It should have been known to Mr Castle and if it was not, he should not have been a party to a media release being issued (where he is quoted making comments) until he had verified the truth and accuracy of those comments. Simply to say that it mirrored the NSWRFSS release hours earlier is irresponsible and displays a total lack of professionalism. The only message which on any sensible reading of it comes from that media release is "Don't worry about the smoke and bits of flying ash, everything is under control with the fires".

Response

1. Your Honour's criticism is predicated upon a factual error.
2. According to the NSW Section 44 report the McIntyre's Hut fire "*remained within containment lines throughout the day*" and the spotovers from McIntyre's Hut fire did not occur until "*approximately 1600 hr*" (see MLI.DPP.0005.0191). Your Honour's statement that "*the smoking McIntyre's Hut fire had breached containment lines and [was] spotting and making runs*" is not the evidence. Not only is it not the case that I was aware that the McIntyre's Hut fire had broken containment lines it was not even the actual situation. The truth and accuracy of my comments are criticised on the basis of an inaccurate view of the facts and I respectfully request Your Honour to not make this inaccurate and unjustified comment.
3. Further, my evidence was that I did not see the earlier NSWRFSS media release and the content of this ESB media release was the subject of preparation by a number of people. I fail to see how I acted irresponsibly or unprofessionally in providing information that I believed on reasonable grounds (ie having come from the Media Cell within the Planning Unit), was correct at the time.
4. It is only by minutely examining that press release and comparing it with the NSWRFSS media release with the benefit of hindsight that any comment can be made about differences. To the extent that in hindsight and with full information this media release may have been better worded, I accept that may have been the case but reiterate that at all times I was acting in good faith and to the best of my ability relying on the information being provided to me.
5. I can find no reference in my evidence where I suggested, when being questioned about the 1545hrs media release "*that it mirrored the NSWRFSS release hours earlier*" and so this criticism of being "*irresponsible and displaying a total lack of professionalism*" is totally unfounded, unfair and should not be made

Proposed Comment [7]

Comment

[IN THE CONTEXT OF 17 JANUARY 2003] The submission by Counsel, that there were many people at the planning meeting and no one expressed concern about warning the urban area residents, cannot be an answer to why those persons who were the

professionals charged with the responsibility to do so failed to issue warnings. The senior personnel of the ESB were the people who had the accumulated knowledge of the situation with the fires since their ignition on 8 January and were in the best position to appreciate the ever growing risk they posed.

Response

1. At the outset I remind Your Honour of my non-operational role and reliance on the expertise of others in relation to the risk the fires posed at any particular time.
2. This comment assumes as an established fact that the position of and risk posed by the fires as discussed at this meeting was in fact something different to what was being conveyed to the public. This is not so. I refer Your Honour to my primary submissions at par 323 and following.
3. Your Honour seems not to have appreciated the relevance of the submissions that "no one expressed concern about warning the urban residents." The point of these submissions is that it corroborates the assertions by myself and many others, that it was not the view of those present that the fires would burn into Canberra the next day. A prime example of this is Mr Tony Bartlett taking no steps to protect his HQ in Duffy. Its destruction the following day was something he did not anticipate, even on Saturday the 18th when he was flying over the fires in a helicopter monitoring the situation minute by minute.
4. In fact the evidence is that there was discussion as to the type of warnings that should be given. Mr Kevin Cooper – a vehement critic of ESB and nearly everyone within it - stated in relation to the planning meeting on the evening of 17 January 2003 "people [were] talking about what information would be provided to the community and in particular through Canberra Connect... it was certainly in a positive sense of what information would be given to the community. It wasn't what we won't give to the community; it was matter of what will be provided to the community."(T6140) Your Honour cannot properly make this comment without first rejecting this evidence.
5. The fire spread prediction presented at that meeting was a worst-case scenario. By definition (at least to my mind) this meant the most extreme case envisaged. This most extreme case had an unattended fire front reaching Mount Stromlo and potentially Narrabundah Hill at 8pm – not the urban edge, a time that would have coincided with a drop in fire danger index and a forecast wind direction change. One of the men who prepared this prediction (Nick Lhuede) specifically stated in evidence that in doing that prediction he did not identify the fire as reaching the urban edge (T4946).
6. Whilst any fire in the pine forests was going to be left unattended, it was the genuinely held belief of every person who gave evidence on the point that the fire could be stopped or contained in the eaten out grasslands. Your Honour seems to have completely overlooked the vast body of evidence on this point. A summary

of this material is set out at paragraphs 330-335 and 356-377 of my primary submission and I urge Your Honour to consider that material.

7. I fully acknowledge that with the benefit of hindsight it would have been desirable for a warning to have been communicated to the residents of Canberra to the effect that the following day would be one of extreme fire danger and that residents on the interface should begin taking all necessary precautions to safeguard their homes in the event of fire activity approaching them over the weekend.
8. I had never experienced anything like what occurred on 18 January and, as of 17 January 2003, like many others, did not have any appreciation of the potential danger suburban Canberra actually was in on that evening. Your Honour should keep firmly in your mind the fact that I of course could not make predictions as to risk and fire spread but relied on those with the specific expertise to advise me when appropriate warnings were warranted. As Mr McRae himself said, he did not “*pull the trigger.*”
9. In summary, the reason why the warnings Your Honour feels should have been given on the evening of 17 January 2003 were not given is that the “*senior personnel of the ESB*” did not believe that the risk was as significant as it turned out to be. In retrospect, of course such warnings should have gone out, but the fact that they did not is no reflection upon the integrity and professionalism of myself or other senior ESB personnel.

Proposed Comment [8]

Comment

By the evening of 17 January 2003 the senior personnel of the ESB (Messrs Castle, Lucas-Smith, McRae and Graham) were in possession of information which confirmed what they had already believed namely that the fires were a serious risk to the urban edge of Canberra and that the impact was likely within the following twenty-four hours.

The same senior personnel of the ESB did not consider that it was necessary to issue warnings to those people in the urban area who were in the direct path of the fires and consequently, none were issued.

Response

1. See response to [7]
2. Further I note that specific measures were implemented to warn rural lessees when it was assessed there was a serious risk to them. In my statement (par 115) I refer to my personal actions in providing advice to Ms Kelly Chamberlain at Birraigai. After the fires Ms Chamberlain wrote to me and expressed her thanks for the advice – “*that virtually saved mine, my pets, and my neighbours lives.*” (A

copy of this correspondence is attached). Whenever I became aware of a significant risk to people or property I did not hesitate in taking positive steps to issue warnings.

Proposed Comment [9]

Comment

No warnings were given on 17 January 2003 to the people living in the forestry settlements of Stromlo, Uriarra and Pierces Creek.

Response

1. Stromlo was at the urban edge, and even the unattended rate of spread predictions did not suggest impact on the urban area. In the case of Uriarra settlement the NSWRFSS still had its logistics air operations base adjacent to that area and there were no suggestions at that time that that area was under threat. Why they were not contacted by the team assembled during the evening of 17 January 2003 like the rural lessees is not known, but there was certainly no conscious decision taken by myself nor do I believe by anyone involved to exclude Uriarra, Pierces Creek or Stromlo.

Proposed Comment [10]

Comment

The media update issued at 8.50 pm on 17 January 2003 was inadequate and misleading and did not reflect the true situation which existed and was known to the senior personnel at the ESB at the time.

Response

1. As Your Honour has declined to provide me with any additional information explaining in what way it is suggested the update was "*inadequate and misleading and did not reflect the true situation*" I consider myself unable to provide any proper response to this proposed criticism.
2. The content of the update was all factually correct. Its prime purpose was to indicate the current threat to the rural areas at that time and to indicate the use of ovals for logistics operations with the possible impact this may have had on sporting events.
3. As I have set out both above and below (and in my evidence and primary submissions) I did not have any expectation at the time that update was released that the fires would impact on the urban edge. The predictions I had heard that evening were for a worst case of unattended rate of spread that even then did not suggest impact on the urban area.

Proposed Comment [11]

Comment

By the evening of 17 January 2003 the ESB had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge.

It is clear from the evidence that the senior personnel at ESB, being Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham knew - and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended the planning meetings knew - that a very real risk existed.

If any of these people were to claim that they had doubts before 17 January about the realistic potential of the fires reaching the suburbs - and it is difficult to envisage how they could legitimately claim this - then there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting on 17 January. They all knew the fires would burn into Canberra. They may not have been exactly sure of the precise place or the precise time or even envisaged the precise nature of the fire. But they all knew that impact was inevitable. Those people who said in their evidence that they still hoped the fires could be stopped were living with false hope, not reality, choosing to consciously ignore the information and the evidence presented to them. It is totally inexplicable why there was no reaction to Mr Taylor's revised prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm. Mr Graham saw the message but appears to have simply ignored it.

Response

1. There are a number of propositions contained within this comment that require individual response. Again I formally note the difficulty in properly responding to the general and sweeping nature of the statements you make in the absence of any understanding of the basis upon which Your Honour has reached these conclusions. Your Honour seems to propose these comments not in the light of any competing evidence but in spite of the evidence, which is all to the contrary.

Proposition A

By the evening of 17 January 2003 the ESB had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge.

Response A

2. This statement is simply wrong. It ignores the fact that Incident and Sector Controllers were appointed and firefighters were deployed and continued to fight the fires. For the following day the ACT was sectorised and command and control arrangements implemented. Whilst the plans and strategies that were made and implemented may have proved totally inadequate, that is a separate matter. As a non operational person I do not propose to say any more in response to this proposition.

Proposition B

It is clear from the evidence that the senior personnel at ESB, being Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham knew - and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended the planning meetings knew - that a very real risk existed.

Response B

3. A very real risk of what? If it is suggested that the “*very real risk*” was to the urban area then I again point to my responses above that the predictions were for a worst case of unattended rate of spread with no suggestion of impact on the urban area. Throughout the Inquiry the concept of risk has been a matter of some ambiguity and debate. I cannot fully respond to this proposition without further information providing the necessary context.

Proposition C

If any of these people were to claim that they had doubts before 17 January about the realistic potential of the fires reaching the suburbs – and it is difficult to envisage how they could legitimately claim this – then there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting on 17 January.

Response C

4. I, Mr Lucas-Smith, Mr Graham and Mr McRae all gave evidence over many days during which we stated our beliefs about certain matters including the potential for fires to reach the suburbs at various times.
5. Your Honour’s use of the pejorative “*if any of these people were to claim*” is offensive and suggests that Your Honour has not considered what my evidence has been on these matters. Alternatively, Your Honour may be expressing acknowledgement that I was not given a proper opportunity to answer this specific criticism but that if I were at some stage to deny Your Honour’s proposition, I should not be believed.
6. Again I cannot properly address this criticism in the absence of knowing the basis upon which it is made. I maintain the position set out in response to comments [7]-[10] that I did not form the view on the evening of 17 January 2003 that there was a realistic potential for any of the fires to reach the suburbs the following day. I was told of a worst case prediction using unattended rates of spread that had the potential for fire reaching Mt Stromlo and potentially Narrabundah Hill, (not the suburbs), at 8pm when fire danger would be dropping rapidly and a wind change was expected
7. I am unaware precisely (or even vaguely) what information Your Honour is referring to that came into my possession and apparently dispelled any doubts (illegitimate as they may seem to Your Honour) that I maintained as to the potential risk of fire reaching the suburbs.

Proposition D

They all knew the fires would burn into Canberra. They may not have been exactly sure of the precise place or the precise time or even envisaged the precise nature of the fire. But they all knew that impact was inevitable. Those people who said in their evidence that they still hoped the fires could be stopped were living with false hope, not reality, choosing to consciously ignore the information and the evidence presented to them. It is totally inexplicable why there was no reaction to Mr Taylor's revised prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm. Mr Graham saw the message but appears to have simply ignored it.

Response D

8. This comment is contrary to the evidence. It would appear that in this comment Your Honour is specifically seeking to apportion blame which I understood not to be the role of a Coronial Inquiry.
9. Your Honour has not set out when I am supposed to have formed this conclusion. I cannot understand the basis upon which Your Honour asserts that I knew – be it on the evening of 17 January or even before early afternoon on the 18th that impact on the suburbs was inevitable – ie 100% certain. I certainly did not give evidence to that effect.
10. In relation to Friday night, to the best of my recollection nobody gave evidence to that effect. Even Mr Cheney failed to see this “*inevitable*” impact, choosing to proceed to the southern borders the following day rather than witness the most extreme fire behaviour of his career.
11. The “*false hope*” that Your Honour suggests I was living with seems to have been shared to varying degrees by such persons as Julie Crawford, Bruce Arthur, Neil Cooper, Tony Bartlett, the NSWRFs in general (given where it placed personnel and equipment on 17 January), Rick McRae, Peter Lucas-Smith, Tony Graham, Vivien Rafaelle, Hilton Taylor, Nick Lhuede, Phil Cheney, Ian Bennett and Dave Prince. For Your Honour to even consider making a comment that so questions my integrity and damages my reputation, the *Briginshaw* principles require “exact proofs”. Unless Your Honour proceeds to deal with the evidence of each of the above persons (that is consistent in many respects with my expressed beliefs), you will not properly be able to make the seriously damaging comments you here propose to make.
12. Finally, Your Honour seems to justify your conclusion that I knew impact was inevitable by referring to the revised prediction prepared sometime late on the morning of 18 January by Mr Hilton Taylor. I respectfully remind Your Honour that this prediction was never brought to my attention and it cannot form a basis upon which Your Honour comes to consider what my genuinely held beliefs were. Further, if Your Honour is to rely on the revised prediction of Mr Taylor (that only hindsight proved to be accurate), Your Honour should also consider the

following statement by Mr Taylor about the events of 18 January 2003 (at par 41 of [ESB.DPP.0001.0236])

I don't think anybody comprehended, or could have comprehended the rate at which the McIntyre's Hut fire jumped the Murrumbidgee River and came across the open ground between the Murrumbidgee Corridor and Stromlo Forest. This happened during the early afternoon. The fire just seemed to burn across bare ground defying all the models.

Proposed Comment [12]

Comment

Up until the issue of the first SEWS at 2.40 pm [ON 18 JANUARY 2003] the people in the suburbs of Canberra were not given any information which would serve as a warning to them that they and their property were at risk that day from the coming fire.

Response

1. Up until about 1:00-1:30pm when reports of significant fire activity and the fire crossing the Murrumbidgee were being received, I had not formed a view that people in the suburbs of Canberra were at risk from the coming fire.
2. Information about the risk to the urban edge was conveyed by Mr Lucas-Smith in the midday media briefing and this fact was broadcast on the 666 ABC radio 1pm news. The transcript of what was broadcast is set out at par 447 and 449 of our primary submissions. Your Honour may have overlooked this as there is no reference to this broadcast in the submissions of Counsel Assisting.
3. There was delay in issuing the SEWS as Your Honour is aware. Due to the inadequate nature of the ESB Headquarters and fax problems, the SEWS signed at 2:05pm was not broadcast until 2:40pm. This half hour delay was of course in all the circumstances significant but was not something over which I had any control nor was I aware of it at the time.

Proposed Comment [13]

Comment

The management of information within the ESB was extremely poor. It would appear that there was no system to co-ordinate the flow of information nor effective collection and dissemination of vital information. No one appeared to know what, if anything, was being said and ESB personnel were not sure who was responsible. Mr Lucas-Smith thought information was being put out through a number of press releases about what people should do to prepare when in fact the first such release was midday on 18 January. Mr McRae said he was not familiar with the content of media releases because it was not his responsibility (but in fact – despite his assertion to the contrary – his position was responsible for public information dissemination). He thought that work

was being done behind the scenes by the media people. As well, Mr McRae thought that information about a general threat had been publicised by Saturday 18 January. If Mr Castle was ultimately responsible for authorising the publication of information, then he did not ensure that it was disseminated in a timely fashion in keeping with the urgency of the situation. The midday press release was issued hours after the evacuation planning and 9.30 am planning meetings. The SEWS notice was signed by him at 2.05 pm yet was not disseminated till about thirty minutes later. As well, the information contained in some of the press releases was out-of-date or wrong and generally the content was inadequate and misleading. One glaring mistake was the release which underestimated the sizes of the McIntyre's Hut and Stockyard fires.

Mr Castle appeared to be out of touch with the situation as it was developing. He provided inadequate information in his media interviews and the press releases did not contain important facts which could have served to raise the level of awareness and alert within the community about the worsening conditions of the fires. Mr Castle had, and should have taken, the opportunity immediately after the 9.30 am Planning Meeting, in consultation with Mr McRae, to issue a press release containing all the information which had been presented and discussed at the meeting about the predicted fire spread. He said nothing about the prediction at the midday press conference nor was that information contained in the 1.00 pm media update release. Even after the declaration of the State of Emergency, at that late hour, by his comments, Mr Castle still appeared to be denying the dangerous situation which was then facing the community.

Response

1. Your Honour here makes a number of generalised statements criticising me such as "*appeared to be out of touch, providing inadequate information, information was out of date or wrong, appeared to be denying the dangerous situation*" without providing any particulars as to how Your Honour has reached these conclusions. Your last sentence in particular seems to be nothing more than a personal attack on me which has no connection to any of your powers as Coroner, including the power to comment and as such Your Honour should not make it as any such comment would be *ultra vires*.
2. I note that Your Honour declined, when asked to do so, to provide me with any information that might assist me to understand the basis for these comments.
3. I do not know what information in what interviews you suggest was inadequate or what information you feel I should have provided during these interviews. I am therefore denied any opportunity to, for example, submit that certain information had not been provided to me at the time of a particular interview.
4. I do not know what information in what press release is said to be out of date or wrong. The reference to the sizes of McIntyre's Hut and Stockyard fires being incorrect was only apparent with the benefit of Mr Cheney's detailed analysis – ie with hindsight.

5. I was not operational and not part of the Incident Control System (ICS). I assisted the ICS team to ease the burden of media access on the operations section. I received briefings from operations prior to media interviews in the mornings and at other times. In the early morning interview on 666 ABC radio on the 18 January 2003, I passed on to the public all the information that I had received from the Operations Officer, Tony Graham.
6. In the extended interview at 7.30am on 666 ABC on Saturday 18 January 2003 I publicised the Canberra Connect website and the 132 281 information number. I warned the public at that time that *"the exact locations of the fires are particularly difficult to assess, and therefore my advice is for people to stay out of the Murrumbidgee River and stay out of the treed area"*.
7. The *"evacuation planning"* meeting Your Honour refers to was something that I was not aware of at all and only became aware of during the course of the Inquiry. It took place at a time I was absent of ESB. I was not invited to this meeting. I was not informed it was proposed and I was not informed it had taken place.
8. I had no reason to believe at that time that the suburbs were going to be impacted that day. The worst case scenario from the previous evening and a reference to *'put fire out in the grasslands'* is what I believed was the outcome from the 9:30am planning meeting. Your Honour should also keep in mind that the typed minutes that have been pored over at length during this Inquiry were not available to me or anybody else until many hours or days after the particular meeting, especially that one.
9. At the midday media briefings the Chief Fire Control Officer gave the detailed briefing and provided the expert information.
10. There was a system for media and it was part of the ICS arrangements. I had boosted the normal media capacity, which was only one staff member, by having a network of media staff from other departments led by Ms Harvey from Chief Minister's Department to assist in this function.
11. I had arranged for Canberra Connect to takeover the website and also provide a telephone hotline that became operational from Friday 17 January 2003.
12. In evidence I said that I believed there was an earlier press release prepared about the SEWS that was signed by Mr Lucas-Smith but when it came to issue he was not available so I signed another version at 2.05pm. It was released at 2.05pm but was not broadcast by the ABC until thirty minutes later – this was explained in McLeod Report to have been caused by fax problems.
13. Your Honour needs to consider the extraordinary speed of the fire storm on the afternoon of 18 January 2003 before criticising the speed in which information was disseminated. Your Honour also needs to have proper regard to the poor facilities and layout of the ESB Headquarters which severely hampered the timely

analysis and provision of information. The advice provided to the public was based on the best available operational information at the time. Given the extraordinary dynamics of the day, such information may have been significantly out of date by the time it was received, analysed and disseminated. If this is the basis upon which you suggest I appeared “*out of touch with the situation as it developed*” I submit that such criticism would be totally unfair in the circumstances.

14. Advice to the community was based on information coming from the Planning Unit. In evidence Mr McRae said that he had not activated “the trigger” thereby advising the (non-operational) media unit that it was time to issue a warning at least to people in the urban area between Weston Creek and Greenway that the fires posed a threat to them.
15. There is no evidence that after the declaration of the state of emergency that I was, as the Coroner suggests, “*denying the dangerous situation which was then facing the community.*” The transcript of the ABC broadcast that went live to air indicated that I announced that the State of Emergency had been declared and then, amongst other information, advised people in all the suburbs mentioned and not just on the perimeter to “*...prepare around their houses anything they can do to take the flammability from around their house and stay with their house with garden hoses ready on the taps and that can reach to all corners...*” I was followed on air by the Chief Minister and then a press conference was held where the Chief Minister and the Chief Fire Control Officer provided further information.

Proposed Comment [14]

Comment

Mr Lucas-Smith and Mr Castle also heard the predictions [FIRE SPREAD PREDICTIONS BY MESSRS LHUEDE, TAYLOR AND GELLIE] and could have and should have disseminated that information immediately by holding a press conference – not waiting till midday – and putting out a media release. Both accepted that it was their responsibility to keep the community informed.

Response

1. I refer to my comments above as to this prediction, in particular that it was a worst case prediction of unattended spread without amelioration of fire spread in the grasslands.
2. I also remind Your Honour of my lack of experience in fire prediction and reliance on others in this respect.
3. I am not aware what Your Honour is suggesting the community should or could have been told at the time. I did not have the benefit of the hindsight Your

Honour now has, and in order to properly address this comment would need to know what it is you suggest I should have or could have said.

4. The revised fire predictions were only completed after the 9:30 am planning meeting and were never communicated to me at any stage on 18 January 2003.
5. I readily accept that better warnings should have been issued, if not on Friday evening then on Saturday morning and that in future, emergency authorities should keep in mind the difficulties in accurately predicting the worst case scenario for a bushfire.

Proposed Comment [15]

Comment

The senior personnel of the ESB recognised the worst case scenario but did not prepare for it. They hoped for the best. They were influenced in their thinking and their planning and by their experiences with the fires in December 2001 and the success they had in controlling those fires. This was a mistake because it led to the perception, certainly on the parts of Messrs Lucas-Smith, Castle, McRae and Graham, that the fires could be controlled once they reached the grasslands on the urban fringe. This perception existed despite the views expressed publicly by Messrs Lucas-Smith and McRae, at least, that conditions in January 2003 were significantly worse than those of December 2001, and despite the expert opinions previously expressed by Commissioner Koperberg and CSIRO expert Mr Cheney – to say nothing of the dire opinions expressed by Mr McRae in his earlier emails which are on the public record.

and [16]

The decision to issue the SEWS was taken far too late and there is a very real issue about whether, in the circumstances, it contained appropriate advice. There was nothing in the announcement which told people the fire was advancing and that impact was highly likely if not an absolute certainty. The announcement still downplayed the real risk which was known to all senior ESB personnel and was phrased in the imprecise and meaningless terms of 'there is increasing risk due to fire spotting'. There was no mention of a fire front. To announce that 'there has been a major deterioration in the ACT fire situation' could only have been meaningful if the people already knew the true fire situation in the ACT which they did not because they had not been told. The message listed suburbs which should be "on alert" instead of saying that these suburbs were at very high risk of impact, which should have been the focus of the announcement. The message urged residents in these suburbs to return to their homes. This was an inappropriate and dangerous message to announce to people at 2.40 pm, minutes before the fire arrived in Duffy and the forestry settlements because people who were away from their homes were being urged to drive towards the fires without any information about what to expect. The continuing broadcast of this message every 15 minutes after houses had been destroyed, roads blocked and access into certain areas was denied, was totally inappropriate and sent a dangerous message. It caused confusion and further danger in an already

turbulent and dangerous situation. It would appear that there was no monitoring by the ESB of what was being broadcast. This is not a criticism of the broadcasters because they were following ESB instructions.

Response

1. I am unsure as to what Your Honour means when you say I recognised the worst case scenario but did not prepare for it. In what way? The worst case scenario that I was aware of did not have the fire entering the suburbs on 18 January 2003. I did not make preparations for fire entering the suburbs because until about 1:30pm on Saturday afternoon I did not foresee that as a real possibility. Preparations were made for the following day and indeed the evening of 17 January 2003 where threats to the southern rural lessees were recognised and specific warnings given.
2. I was influenced by my experiences of 2001. Your Honour seems to imply that this was improper or foolish. Experience does influence behaviour. Even Mr Koperberg said in evidence that we all rely on experiences. If for example the lessons of 2001 had not been taken on board, no doubt Your Honour would criticise ESB (rightly in this case) for not having learnt the lessons of 2001. However, Your Honour will be aware of the detailed debriefings of the 2001 fires and how I ensured that at the strategic level the Emergency Management Committee systematically worked through each of the areas for improvement at the regular 6 weekly meetings throughout 2002.
3. The mistake of believing the fires might be controlled in the grasslands is only a mistake when viewed with the benefit of hindsight. It is unfair of Your Honour to criticise me for holding such a belief when that same view was also held by persons with extensive bushfire fighting experience or fire behaviour knowledge such as Julie Crawford, Bruce Arthur, Neil Cooper, Tony Bartlett, Rick McRae, Peter Lucas-Smith, Vivien Rafaele, Hilton Taylor, Nick Lhuede, and Phil Cheney.
4. The emails of Mr McRae some months earlier were of no relevance to anyone's views that the fires may be controlled in the grasslands. Indeed Mr Cheney's view relied on the severity of the fire season.
5. The decision to issue the SEWS was taken when the risk to urban Canberra had become apparent. The fact this was only about 60 minutes before impact only has the sinister connotations Your Honour seeks to place on it once the issue is examined with the benefit of hindsight.
6. A fairer way to examine the issuing of the SEWS would be to compare it with the issuing of the SEWS in December 2001. In the 2001 fires, the SEWS was issued at 1753hrs on the 24 December 2001 when the Stromlo fire was 2km from Duffy and the Huntley fire was 4.5km from Duffy. In 2003 the first SEWS was broadcast (noting the 30 minute delay) at 2.35pm on 18 January 2003 when the

fire was over 5km from Duffy. At 2pm when the SEWS was signed the fires were over 8km from Duffy. Your Honour seems to ignore the fact that between 1pm and 3pm the McIntyre's Hut fire travelled as far in two hours as it had in the previous 10 days.

7. Even as the 2003 SEWS was being prepared I did not believe impact was a certainty. There was no fire front – it was spotting that was progressing the fire. Then an extraordinary fire event developed, including a tornado. Three years later meteorologists are still attempting to understand and describe the extraordinarily unusual and unpredictable fire behaviour that occurred that afternoon.
8. Your Honour's criticisms seem to be based on a subsequent understanding of what occurred that only could be properly achieved after many months of expert analysis of all the information. Your Honour seems to forget that this was a dynamic fire event that developed quickly and changed minute by minute. There was no opportunity for quiet analysis of data. The situation called for immediate responses. In such circumstances and with the benefit of hindsight it might be said that different decisions might have been taken at the time. It would be unfair to suggest that decisions made during times of crisis were unprofessional or not made in good faith, simply because with the benefit of hindsight they might be said to have been wrong.
9. For example, your criticism of (presumably) me for not having media broadcasts monitored unfortunately bespeaks a lack of understanding of what was happening at ESB on that afternoon. Who in this crisis was to be taken off other duties to listen to the radio and monitor broadcasts? A radio that would not work within ESB in any event due to interference from all the communications equipment. What were they to listen for? Soon after 3pm ESB Headquarters itself lost power and came under direct threat of impact. To observe that things during this period were chaotic is understandable. To criticise ESB for having failed to amend change or update the SEWS during this hour is to put it mildly, unfair.
10. Your Honour again suggests that impact was "*known to all senior ESB personnel*". This too is unfair when one considers that the Incident Controller on the day, a man whose fire experience has been lauded by Counsel Assisting and who was in effect ESB's 'eye in the sky' flying over the fires, himself failed to appreciate and call in the gravity of the fast developing situation.
11. If Your Honour were to peruse the radio logs in evidence you will see that it was not until a few minutes before impact that Mr Bartlett called in the fact that there was going to be an impact. His realization that his Depot was about to burn is something that on the logs clearly only arises a few moments before it happens. Similar observations might be made about Mr Neil Cooper's experiences and expectations.

12. Before Your Honour makes this or a number of the other proposed criticisms relating to my supposed knowledge of what was to occur or downplaying of the 'true' situation, Your Honour must have regard to the evidence of Julie Crawford on the question of what warnings she would have issued to the Canberra community on the 18th of January. Ms Crawford said: "*It would be a really difficult decision because you have got big roads, you have got rivers, you have got open paddocks. I don't think anyone expected the fire to get to the urban area in such a short time. When it did get there, I think we all had the same confidence that we have had for a long time, which is the ACT Fire Services have such a fantastic ability to hold it on the edge*".(T4521)
13. I do not understand how Your Honour proposes to criticise me for not predicting or warning what was going to happen when no such criticism is directed to others in a much better operational position to have predicted, such as Mr Bartlett or Ms Crawford?
14. I am not suggesting that Mr Bartlett, Ms Crawford or any other person should be criticised but merely point out the unjustness of the comments directed towards me. The point is nobody foresaw what was to occur yet I am and other senior ESB personnel are singled out for not having done so.
15. The criticism about advising people to return to their homes minutes before impact again is predicated on hindsight and assumes that somehow I knew that impact was going to occur within the hour. I did not. Nor obviously did Mr Bartlett, Mr Cooper or the NSWRFSS. Mr Leonard of CSIRO said that the actions of residents tended to mitigate the spread of structural fires deep into urban areas. But for the phenomenal rate of spread that occurred from 2pm, the information in the SEWS could not have been criticised as it was similar to that which was issued in 2001.
16. Your Honour should not make these comments as they are predicated on hindsight reasoning and inconsistent in the way I (and the *senior ESB personnel*) have been singled out for criticism.

Proposed Comment [17]

Comment

The information about precautions residents should take was not adequate and did not explain why people should take certain actions and in what order of priority. It said nothing about wearing appropriate clothing, nor warning about the dangers of smoke inhalation, nor radiant heat nor other essential instructions which are necessary for people to take to improve their chances of surviving a fire. The instructions were inadequate, incomplete and misleading. It is highly likely that the announcement of the precautions at 2.40 pm as part of the SEWS was the first time many people had heard that information, if of course, they were listening to the radio or watching television that afternoon. Even if people heard this and were at home in the forestry settlements and

Duffy, Rivett and Chapman and the other affected areas, it gave them precious little time to act and robbed them of their choices. Should they pack or should they prepare their houses? Should they leave or should they stay? These decisions were made all the more difficult because the people at no time were given any information as to what they could expect from a fire which was about to impact.

In different circumstances the messages contained in the SEWS authorised by Mr Castle and aired on Saturday 18 January may have been appropriate. However, for the Canberra community, in the face of what they were about to confront, and in circumstances where no prior meaningful information had been provided to them beforehand, the content and form of the warning was totally inadequate and in fact, was a recipe for disaster..

Response

1. I have largely addressed the matters Your Honour has raised here in my response to Comments [15] and [16], however Your Honour raises a number of further issues that need to be addressed.
2. The use of the phrase “*robbed them of their choices*” implies that I deliberately intended to limit the options residents had. It also implies that somehow I knew at the time I signed the SEWS, firstly that it would not be broadcast until 2:40pm and secondly that the fire would impact within another half an hour. I reject both imputations and say they are unfair and contrary to the evidence. The phrase itself is couched in the terms of ‘blame’ a concept the Supreme Court has stated has no part in an inquiry of this nature.
3. Your Honour then suggests that *the people at no time were given any information as to what they could expect from a fire which was about to impact*. To suggest that I or anyone else at any stage had an appreciation of the *fire which was about to impact* is contrary to all the evidence.
4. Meaningful information had been provided by public radio from at least 1pm. The Canberra Connect call centre received 7,984 calls and there were over 5,000 visits to the ACT Bushfire Status website on Saturday 18 January 2003. (AFP.GSO.0037.0063).
5. Once the phenomenal fire speed and behaviour is considered, Your Honour’s comments cannot in my respectful view be fairly made.

Proposed Comment [18]

Comment

I have been left with the overall impression that the ESB, at the senior levels, lacked competence and professionalism, was disorganised and was functioning in a chaotic

uncoordinated fashion particularly in the most critical period of the fires. The impression I have is that the left hand did not know what the right hand was doing and neither hand was actually doing very much to deal with the crisis which was growing day by day and hour by hour.

Response

1. Your Honour has declined my request for information as to what factors or evidence has led Your Honour to have formed these "*impressions*." I am therefore significantly disadvantaged in availing myself of my right to respond.
2. Findings of incompetence and unprofessionalism are serious matters that Your Honour should not make lightly without having properly considered all of the evidence and all the relevant circumstances.
3. At the height of any emergency there will be degrees of disorganisation and chaos due to events overwhelming the ability of authorities to be in all locations at once and able to provide instantaneous informed analysis of field information that may be out of date seconds after it has been received. It would appear that in making these comments Your Honour has not given any or any proper consideration to the extreme nature of what ESB faced during "*the most critical period of the fires.*"
4. Nor does it appear Your Honour has fully considered the impact the inadequacies of the ESB HQ building had on ESB's ability to operate in a fully coordinated and professional manner. To suggest that no one was "*was actually doing very much*" is a comment Your Honour seems to be making in spite of the evidence. It is a gross inaccuracy, biased with hindsight and undervalues the tireless efforts of all involved. Your Honour may feel not enough was done or that matters should have been handled differently, but to suggest that persons (including myself) who had been working 18 hour days for 10 days straight were not *actually doing very much*" displays a complete lack of insight into what ESB and its personnel were faced with and actually did do. That Your Honour is even considering such a comment has caused me great unease and I respectfully ask Your Honour to act judicially and not cast such a grossly unfair and inaccurate slur upon all those who worked so tirelessly for so long.
5. Everyone involved, myself included, gave total effort in a professional manner to the best of their capacity in difficult circumstances and with poor resources and substandard facilities. Your Honour obviously takes the view that it wasn't enough or we "*stuffed it up*". Be that as it may, we did all try and we did all try to the best of our abilities.
6. The decision-makers you suggest were incompetent and unprofessional were the same personnel specifically praised in a Legislative Assembly motion and given community recognition for their efforts in protecting the community during the

2001 fires.

7. On 19 February 2002 the ACT Legislative Assembly moved the following motion:

“That the ACT Legislative Assembly places on record its appreciation of the dedication, professionalism and commitment of all those men and women, particularly the volunteers, who successfully protected the community from the Christmas 2001 bushfires, and records its thanks for the outstanding contribution they have made to the Canberra community and the territory.”

8. During the debate on this motion the following comments were made by the Minister for Police and Emergency Services:

“The bushfires of Christmas 2001 were the most dangerous and threatening to the Canberra community for many decades, and the courage, commitment and outstanding effort by all involved are a major credit to the professionalism, skill and community spirit of our bushfire fighters, be they professional or amateur.”

9. Comments by other MLA’s included:

“I thank the staff of the Emergency Services Bureau – people like Mike Castle and Peter Lucas-Smith, who are always on the ground and show consummate professionalism – the Ambulance Service, the police service and particularly the volunteers. It might be romantic and it might be adventurous, but spare a thought for the people who allow their family members to go out and put their life on the line and who just sit and wait at home.”

10. Your Honour’s severe criticism is also at odds with the views expressed in the McLeod Report, which incidentally related to the 2003 fire effort, not the 2001 effort:

“ The individual officials, employees and volunteers spared nothing in terms of their personal commitment during a long and difficult crisis, then as soon as the crisis had passed they had to cope with the demands and the complexities of the recovery phase.”

11. I do not know how Your Honour has arrived at these conclusions but they seem to be based on the fact that “we didn’t stop the fire” ie outcome driven rather than on a rigorous assessment of the individual and collective actions of ESB personnel at each stage of the fire fight. I urge Your Honour to not make these unwarranted, unfair and inaccurate comments.

Proposed Comment [19]

Comment

By the early morning of 18 January and before, senior personnel of the ESB being Messrs Castle, Lucas-Smith, McRae and Graham all recognised the serious potential for fires to impact upon the urban edge at some time during the afternoon or evening of Saturday 18 January and failed to take action within their respective areas of responsibility to ensure public warnings were widely broadcast and disseminated to the community.

These same senior ESB personnel lulled themselves into a false sense of security because they had managed to prevent the December 2001 fires from destroying any urban structures; and as a result of this self-delusion, they deliberately withheld information from the community in the belief that they would – as they had done in 2001 – stop the fires in the grasslands; and they did not wish to alarm the community

Response

1. Your Honour here makes further comments suggesting that early on Saturday morning I recognised a serious potential for an impact at the urban edge. I refer Your Honour to my responses above where I set out at some length the fact that I did not have any such belief and the reasons why.
2. However Your Honour now suggests that I was 'deluded' and "deliberately withheld information from the community." These comments are so grossly unfair and couched in such a general way that it is impossible for me to try and defend myself. It was never put to me that I was deluded. As to a suggestion that I had deliberately withheld information I remind Your Honour of my evidence in this respect at T1846:

Did you at any stage deliberately understate the risk to the Canberra urban community?

A. No.

Q. Was there any advantage to you in taking the course of deliberately understating to the Canberra urban community the level of threat?

A. No. None whatsoever.

At no other stage was this proposition put, pursued or suggested to me. I again ask (Your Honour having rejected my application earlier) on what basis does Your Honour come to the conclusion that I deliberately withheld information from the community?

3. If Your Honour were to make these comments in these circumstances I understand they would amount to a denial of procedural fairness, at least, and I therefore ask Your Honour to refrain from making them.

4. There was no deliberate action by myself or to my knowledge any other person to withhold any information from the public. If we were lulled into a false sense of security then as I have set out previously, so were many other persons ranging from Mr Cheney to the NSWRFs to Mr Bartlett and Mr Taylor.

Proposed Comment [20]

Comment

The ESB failed to inform the AFP in a timely manner of the true situation and this resulted in a lost opportunity for better coordination on 18 January of the police role in evacuations.

Response

1. Your Honour does not explain in this comment what is meant by “*the true situation*” but I assume Your Honour is suggesting that ESB deliberately or negligently withheld accurate information from the AFP. This is incorrect. I do not accept that at any time the AFP was ever told inaccurate information about the “*true situation*” as we understood it to be and without the benefit of the hindsight analysis which has subsequently occurred.
2. The “true situation” of the fires at any time is a wholly objective concept which could only be definitively determined many months later after significant analysis of all the data. Your Honour seems to be forgetting that from the perspective of ESB at any particular time, the true fire situation is something that is assessed based on the data being received and on the analysis being conducted of that data over a period of minutes, not months.
3. Again Your Honour seems to have a view that the AFP was ‘left out of the loop.’ I have addressed this criticism at [4] above, but reiterate the following matters Your Honour seems to have overlooked:
 - ESB maintained contact with senior AFP command structure throughout the fire emergency.
 - The AFP Commander Operations (Ms Newton) was given a personal briefing on the fires by Mr Lucas-Smith on the 15 January 2003
 - She was then taken with him and the Chief Minister for a helicopter inspection of the fires.
 - Following the briefing of AFP Senior officers on 16 January 2003 an AFP liaison officer attended briefings at ESB and was providing the total information back to the AFP senior officers.

Proposed Comment [21]

Comment

There was no official warning to the community by the ESB until about 2.40 pm on 18 January 2003 and that warning was far too late to enable people to take effective precautions for their safety and to enable them to make informed decisions to stay with their homes or leave in the face of oncoming fire; and this late notification caused people to be placed in increased danger in their homes and in vehicles attempting to flee in the face of the fire which arrived approximately 20 to 30 minutes later.

The Declaration of the State of Emergency was delivered far too late and was made just as fires were entering Duffy and that the Declaration should have been, at the latest, immediately after the planning meeting at 9.30 am on the morning of Saturday 18 January 2003.

Response

1. Information warning of the risk to the western side of the ACT urban area was given in the midday media briefing by the Chief Fire Control Officer and broadcast by the ABC radio just after 1pm. Your Honour's criticisms must be tempered with the fact that nobody had any appreciation for what was going to occur at that afternoon or how soon it would happen.
2. Whilst it may be factually the position that the warnings that were provided did not allow sufficient time for residents to make preparations or informed decisions, this was a direct consequence of the unexpected speed and ferocity of the fire that afternoon. At no stage did anyone deliberately withhold information from the public that was believed to be information that should have been provided.
3. It is worth noting the McLeod Report discussion about a State of Emergency:
"...the handing across of political control and authority to a public official to manage an emergency, with substantial coercive powers and few checks and balances, should normally be contemplated only in the most extreme of situations. This is probably why in the state government arena the extant powers to declare a state of emergency have rarely been exercised. They have never been exercised in New South Wales, for example, despite the occurrence of numerous large-scale emergencies such as severe floods, earthquakes, major bush fires and railway disasters."
4. Your Honour needs to keep in mind that following the planning meeting at 9.30 am on the morning of Saturday 18 January 2003 there is no evidence that anybody present at that meeting held the view that a State of Emergency should be declared.
5. Undoubtedly with the benefit of hindsight, a State of Emergency should have been declared on Friday night or Saturday morning. The difficulty is that nobody

at those times appreciated what was going to occur at 3pm the following afternoon.

6. Your Honour's comments also appear to ignore the fact that when there were high level discussions about making the declaration, even at that point, the arguments were varied and it was not a clear-cut decision. In any event, the person designated under the relevant legislation to be the Territory Controller (the Chief Police Officer) was absent from the ACT until approximately 1.30 pm on the afternoon of 18 January 2003.

Proposed Comment [22]

Comment

Messrs Castle, Lucas-Smith, McRae and Graham were completely out of their depth at the time of the conflagration and the days leading up to it.

Response

1. Your Honour does not explain what is meant by this statement. Taking into account the serious lack of resources available to the ACT and the fact that what developed was one of the worst fire events South Eastern Australia has ever witnessed, it might accurately be said in an objective sense that we were out of our depth.
2. I understand however Your Honour to be making a personal adverse criticism of me, based presumably on your previously expressed views of a lack of competence and professionalism. I have already attempted to address these unfair, unjustified and *ultra vires* comments earlier in my response.
3. This statement is so general and so lacking in particularity that I cannot possibly respond in a meaningful way to it. I have asked Your Honour to provide me with some further particulars to allow me to understand the basis upon which Your Honour has formed this view but you have declined to do so.
4. I ask Your Honour, in light of my inability to make a proper response, to reconsider making this comment, which seems only directed at attacking my integrity and in no way related to any of Your Honour's powers or functions as Coroner.
5. These comments also appear to be focussed on "blame" which is not the role of a Coronerial Inquiry. Finally I remind Your Honour of the words of Ron McLeod who said in his report into these fires:

"Experience is the basis of most of the progression of human knowledge, and there is much we can learn from our mistakes. It is inevitable therefore that inquiries of this kind concentrate on weaknesses, errors and shortcomings. They do not dwell to the same extent on those aspects where systems and people performed satisfactorily or in the way intended. ... Any criticism directed at

individuals because of the role they were required to perform is in no way intended to question their integrity or their honesty in doing what they felt in the circumstances was the right thing to do at the time"

6. I urge Your Honour to consider these words. Having read all of Your Honour's proposed comments I am left with the impression that Your Honour unfortunately appears to be focused on questioning the integrity or honesty of people who were doing what they felt in the circumstances was the right thing to do at the time.



Mike Castle
22 November 2006

Dear Mike

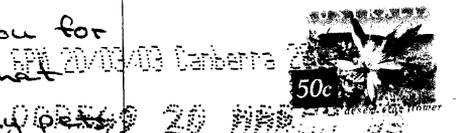
19.03.03

I'm writing to thank you for your time and advice that virtually saved mine, my pet's, and my neighbours lives!

You probably don't remember after all that has happened since, but I phoned you on Friday the 17th of Jan 2003 & you explained the situation & then phoned me back when spot fires started at Tobbinbilla, & instructed the residents @ Birrigai to evacuate. Unfortunately our houses didn't survive, but

Beloved home of Kellie, Dudley and Hugo

the support from family, friends



Mike Castle
PO Box 104
Canberra ACT 2605
Ph: 0207 5786
RECORDED
Record Services

Colleagues & the community will make picking up the pieces easy. Anyway thanks again
Kellie Chamber

Statement by Mr Peter Lucas-Smith

SECTION 55 NOTICE

STATEMENT OF PETER LUCAS-SMITH

OPENING STATEMENT FROM PETER LUCAS-SMITH

I deeply regret and I am very sorry for the hardship that many ACT residents and families suffered as a result of the January 2003 bushfires and the tragic deaths of four members of the community. With the benefit of hindsight and the exhaustive review (over a number of years now) of the events surrounding the bushfires it is obvious that there are some things that I may have been able to do differently.

Nevertheless at that moment in time with the information and resources available, I know I did the very best I could and to this day I still genuinely wish I could have done more. In reality however, I don't think that any additional bushfire fighting actions would have made much difference considering the unpredictable speed and the ferocity of the bushfires that so unexpectedly overwhelmed us on the 18 January 2003.

STATEMENT IN RESPONSE TO CORONER'S PROPOSED COMMENTS

[1] Yet, despite this knowledge and awareness, [OF PREVAILING EXTREME FIRE DANGER CONDITIONS] the evidence before this inquiry has revealed that senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003. As well, despite being on notice from the fires some twelve months previously, apart from the preparations made by Mr Bartlett for ACT Forests, neither the ESB nor any of the ACT land management agencies made any additional preparations for the fire season over and above their routine preparations. Even though the necessity for a rapid and aggressive response was recognised, the response which was made to all the ACT fires lacked the sense of urgency which the situation demanded.

1. The suggestion that "neither ESB nor any of the ACT land management agencies made *any* additional preparations for the fire season over and above their routine preparations" (italics added) conveys a completely false impression of what was done and is completely at odds with the evidence.
2. My solicitor wrote to the Coroner to request some indication of the basis for the claim that there were not "any" additional preparations so that this comment could be addressed specifically. The request for elucidation of this comment was refused.
3. A comprehensive list of preparations which were in fact made is contained in the response by Mr Graham pages 2-11. I rely upon those matters as if they had been

reproduced in full in this statement, however a summary of what was done includes:

- documents relating to following activities such as: an excursion by the Bush Fire Council and others into Namadgi National Park (“NNP”) in 2002; correspondence between Environment ACT and ACTEW re NNP, fuel issues; development of a NNP pre-suppression plan; the 2002 NNP Burn Scenario tabletop exercise designed specifically for remote bushfire issues (see ESB.DPP.0018.0236 to ESB.DPP.0018.0286);
 - review of ICS training and implementation of a new training program, attaching the Sept/Oct 2002 training program (ESB.DPP.0019.0170 and ESB.DPP.0019.0172);
 - document regarding Remote Area Fire Training undertaken in December 2002 (ESB.DPP.0019.0227);
 - documents regarding extra fire hazard reduction activities undertaken at the urban interface during 2002 (ESB.DPP.0019.0229-0254);
 - Emergency Management Committee documents, indicating: traffic management planning provided to volunteer firefighters in mid-2002; Media Liaison review in August 2002; Evacuation Management course in December 2002; Horsefarms ACT put in place evacuation and emergency plans; electricity supply management disaster exercise undertaken on 17.12.02; exercise regarding defence forces working with civilian organizations during emergencies undertaken) (ESB.DPP.0019.0255);
 - letter from me to emergency management managers in the ACT re evacuation issues (ESB.DPP.0019.0303);
 - documents relating to media opportunities being sought to inform the public of the problem season ahead and measures the public could take to protect themselves (ESB.DPP.0019.0319-0323);
 - email confirming readiness of Canberra Connect, which had been set up in 2002 for emergency communications (ESB.DPP.0019.0335);
 - document confirming that by 20.12.02 the Canberra Connect website included Bushfire Safety Tips on its homepage (ESB.DPP.0019.0335).
4. For the past 25 years the ACT has used a sliding scale of bushfire fighting resource preparedness and as such the bushfire readiness in the greater fire danger of the 2002/03 period is in part incorporated in the fire danger ratings which are given each day. There is a sliding scale from a “nil” fire danger day when no crews are stood up, to an “extreme” or red fire danger day, all crews are stood up and there is an automatic fire ban. In a season such as 2002/03 there are more days which are rated as extreme and automatically there are more crews stood up more often. The automatic effect of this system has been constantly misunderstood during the course of the Inquiry when it has been claimed that “no additional steps” were taken for 2002/03.

5. Insofar as the comment suggests that there should have been more resources to be called upon (a comment which anyone could make at any time) following the December 2001 bushfire event, a number of shortfalls were recognised in the organisational support. ESB requested in March 2002 for 2002/03:

- a Community Support Officer to focus on community awareness;
- a Research and Development Officer to focus on bushfire operational planning; and
- additional funding for an additional and extended helicopter hire period.

Funding was refused for all three requests. Funding for ESB overall was reduced by \$630,000.¹

6. From page 6572 of the transcript, Mr Walker on my behalf endeavoured to put a list of recommendations arising out of the 2001 fires to Mr Bartlett with a view to ascertaining what changes and improvements were made in advance of the 2002/03 fire season.

7. Mr Walker asked Mr Bartlett a series of questions about recommendations arising out of the 2001 fires and whether they were implemented in the 13 months which elapsed before the 2003 fires. Mr Walker was ultimately stopped from asking further questions on relation to these matters however, before this occurred, Mr Bartlett stated:

THE WITNESS: Your Worship, if it assists, I would be more than happy to state that I believe, just listening to some of the discussion, that my recommendations were taken seriously and that through a wide range of mechanisms a variety of actions were taken to try to improve the systems, if you like, that go to the heart of some of the things that I wrote about. So I certainly wouldn't want anyone to imply that nothing was done. But I would also indicate, at least in the case of some of them, that the systemic problem still persisted into the 2003 fire.²

[2] The failure by Mr Lucas-Smith to recognise Mr Graham's limitations in terms of his experience was a serious error of judgment on his part – especially when he had two very experienced officers available, namely Mr Bartlett and Mr Sayer. This error of judgment resulted in an inadequate initial response in the first few days and was a factor in all the ACT fires expanding and ultimately becoming beyond control and thereby causing the devastation which occurred on 18 January 2003.

1. This comment could only be made with the benefit of hindsight. It is wise after the event.

¹ Submission par. 505

² TR6584

2. The comment would appear to take no account that until the morning of 9 January 2003, ACT Bushfire Service had been informed by aerial observation that the largest fire in the ACT was the Bendora fire and that it was 500 square metres or one 20th of a hectare – less than half the size of an Olympic swimming pool. Stockyard Spur fire was reported to be 70 square metres or just a little over the size of a squash court. The Gingera fire was reported to be 20 square metres or about the size of a lounge room.
3. By contrast, the McIntyre's Hut fire which was just over the border and close to ACT pine forests was reported at 2,000,000 square metres or 200 hectares – which is about the size of Fyshwick.
4. Mr Bartlett was the head of ACT Forests. I went with him and his deputy, Neil Cooper, to NSW Rural Fire Service on the first night of the fires to ensure that NSWRFs was taking adequate steps in view of the threat to ACT assets and to offer ACT resources to that Service if they were required. As officer in charge of the pine forests, Mr Bartlett clearly should have been there. It would have been an absurd misallocation of Mr Bartlett's time to have him direct his attention to three fires, none of which were understood to be more than 500 square metres.
5. Mr Sayer was not rostered on at the time. Mr Graham had been the operations officer for hundreds of fires including during the 2001 fires. There was no reason to call Mr Sayer in for what were reported to be very small fires. The suggestion that he should have been called in for this fire would mean that he would have had to attend for duty on virtually every fire and that is not a practical proposition.
6. ESB had managed 92 fires in the 2002-03 season³ before the 8 January fire, many of which may have developed into serious fires. Was Mr Sayer or Mr Bartlett required on duty for each of these because it was a bad fire season? The only basis for saying that fires of the size reported to ESB on 8 January 2003 required Mr Sayer or Mr Bartlett (the superiority of whom is not conceded in the operations role in any event) is because we know the outcome and this is not a valid approach to the question.

[3] The fact that the ESB adopted a system of incident management for the fires which was not in accordance with the recognised AIIMS ICS model did serve to cause confusion among incident controllers in the field and inhibited the flow of important information to incident controllers.

1. Before any criticism is made of the implementation of the AIMS ICS in the ACT based upon any alleged variation to the way it is used elsewhere, the Court must make specific findings of how it is implemented in the ACT, how it is implemented elsewhere and what constitutes the difference. In reality there is little difference.

³ TR802

2. The minor adaptations to the Incident Control System from the system used in other states are to take account of the ACT's smaller geographic and numerical size.
3. Other states have numerous fire control authorities. NSW for example has NSW Parks and Wildlife Service, NSW State Forests, the Catchment Protection Authority, local governments and the NSW Rural Fire Service (NSWRFS) as fire authorities. It is only when a section 44 declaration is made under the *Rural Fires Act 1997* that the NSWRFS assumes exclusive control of a fire. The resources of the several fire authorities must then be used together under NSWRFS control towards a common objective.
4. An Incident Management Team is then formed from these bodies in the area concerned. In that sense it is formed "at the scene". It is not formed at head office in Sydney.
5. The ACT does not have multiple rural fire authorities. It has one. The Incident Management Team meets at ESB head office in Curtin however, ESB head office at Curtin is often no further away from a fire being managed than an equivalent IMT in the states is from a fire if the state IMT meets in a local town hall for example.
6. These variations are appropriate for the ACT. One layer of organisation can be removed because of the smaller size.
7. Mr Bartlett noted that in other states there were typically three tiers of management: head office; regional and management close to the fire.⁴ In relation to the ACT he said:

*Now in the ACT because we don't have such a large land area, we don't have a need for three tiers of management. So that's one modification in particular that would spring to mind.*⁵

8. At question 38 of Mr Bartlett's TROC on 17 December 2003, he described the ACT variation to AIMS ICS as being a "slight variation" which made "enormous sense in terms of the size of the ACT". He did go on to say in his evidence to suggest that the local management should be closer to the fire than Curtin.
9. However, in the ACT, the ICS system is prescribed by disallowable instrument in the *Rural Fire Control Manual*⁶ it states:

** Incident Controller
the Chief Fire Control Officer or the Deputy Chief Fire Control Officer will almost always be the Incident Controller and will have overall management of the incident*

10. As a result and in particular during a multiple fire situation with major commitment of resources, control is most likely going to have to be run from Curtin.

⁴ TR 6553

⁵ TR 6554

⁶ ESB.AFP.0028.0112 at 0201

[4] By late afternoon of 15 January 2003 senior personnel of the ESB were in receipt of information which either confirmed or was the basis upon which they formed certain views about the risks of the fires.

By late afternoon of 15 January 2003 Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each recognised that the fires, including the McIntyre's Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of the urban area.

1. I did recognise that the fires represented a risk to the rural areas of the ACT. Not every fire to the west of Canberra is by virtue of that fact alone sensibly to be regarded as a threat to the Canberra suburbs. A threat is only identified as the risk increases and the fire draws closer.
2. It is not correct to say that it was recognised that there was a risk to the urban area on 15 January. I did not recognise it as a risk to the urban area at that time. To quote Commissioner Koperberg, from 15 January, "there would be serious implications for Canberra were the fires not contained before the onset of the predicted weather."⁷
3. The Bendora fire was contained to the east by 16 January. McIntyre's Hut fire was contained to the south and east by 16 January. On 16 January 2003, emergency service officers were briefed about the threat to the rural areas of the ACT.
4. On Friday staff of ESB worked until around midnight personally telephoning rural property holders about the threat from the fires.

[ON 16 JANUARY 2003]

[5] Mr Lucas-Smith did brief members of the ACT Fire Brigade and the ACT Ambulance Service about the real and serious possibility that the fires would break containment lines and impact upon the urban areas of Canberra sometime on Saturday 18 January or Monday 20 January 2003.

Mr Lucas-Smith did inform those persons who attended the briefing on 16 January 2003 that the information he was providing to them about the serious risk of the fires impacting upon the suburbs was not to leave the room, and that this remark was not said in jest.

Mr Lucas-Smith did say that the reason for keeping the information from the media was so as not to alarm the public and the media.

⁷ Koperberg statement par, 9

1. While I did mention the possibility of fires reaching the urban/rural interface in the meeting with the ACT Fire Brigade and the ACT Ambulance, the suggestion that it was a “real and serious possibility” of breaking containment lines and reaching the urban area is contrary to the evidence of those attending the meeting. The evidence of Messrs Newham, Collins, Canham, O’Connor, Prince and Cartwright (all ACTFB) and Mr Dutton (ACT Ambulance Service) does not suggest that the risk to the urban area was either stated or viewed by me in this way.
2. The reference to not alarming the media and the public omits the essential context. People who attend emergency service incident briefings are not at liberty to each speak to the media. There is one person with responsibility to speak to the media so that confusion does not ensue. Although I do not recall stating it in the manner some witnesses alleged, it was nonetheless appropriate for me to inform participants at the meeting not to speak to the media so that press briefings could be conducted in a co-ordinated fashion. David Prince, Acting Commissioner when he gave evidence; District Officer Canham and Mr Cartwright said that this was the proper approach to dealing with the media.
3. There was no attempt by me to conceal information from the media.⁸ In my interview on 16 January, I outlined the historic risk to the urban area and in the *Canberra Times* I was reported as saying that previous fires had reached as far as Woden. I was reported as saying that at that time I did not think that there was any threat to the urban edge. This was my opinion at the time. The evidence shows that I said this to the meeting with the ACT Fire Brigade and the Ambulance Service. There cannot be any suggestion that I was disclosing certain information to the meeting but keeping it from the media.
4. The comments also do not record that emergency services personnel set about making preparations for the fire and that not one of them said that they were prevented from taking any action or speaking to any person they considered necessary to make preparations.

[6] At a briefing on 16 January 2003 Mr Lucas-Smith and Mr Castle did not inform Chief Police Officer Murray and Commander Newton that a serious risk existed of fire impacting upon the Canberra suburbs on Saturday or Monday 18 or Monday 20 January 2003.

This was a serious omission because it exacerbated the confusion and chaos which subsequently occurred during the evacuation of residents fleeing from the fires.

1. I did not inform anyone else of the risk in the terms stated either because at the time, I did not believe it to be an accurate reflection of the situation.
2. However, I gave Commander Newton a personal briefing on 15 January and I took her and the Chief Minister on a helicopter flight inspection of the fires.

⁸ Submission par. 287

3. The comment that this “serious omission” caused the AFP confusion is not sustained by the evidence. When Sergeant Kirby was informed on the possibility that the fires would reach the urban edge, he said he did not consider it necessary to increase police resources and he said that he had “plenty of time” to do so if necessary.⁹
4. Commander Newton did not indicate any specific step which the AFP would have undertaken which would have reduced any alleged confusion. She appeared to be at pains to say that the AFP would work closely with the ESB as it was the lead agency.
5. There was an AFP liaison officer who was in attendance at ESB and attended the Incident Management Team planning meetings at 1600 hrs 16 January 2003 and onwards.
6. The Australian Federal Police received email updates from 16 January 2003.

[IN THE CONTEXT OF MR LUCAS-SMITH'S CONVERSATION WITH MR VAL JEFFERY ON 15 OR 16 JANUARY 2003]

[7] Whatever he may or may not have recalled saying and in whatever terms, I am persuaded that Mr Lucas-Smith did express his opinion that the fires would escape from the mountains if the bad weather did eventuate.

I contend that I did not express this opinion in these terms to Mr Jeffery.

[IN THE CONTEXT OF MR LUCAS-SMITH'S INTERVIEW ON ABC RADIO 666 ON 16 JANUARY 2003 AT 5.00 PM]

[8] It is inconceivable that a person in Mr Lucas-Smith's position charged with his responsibility would ignore and choose not to publicly comment on the activity of the largest fire in the region and the one which, only hours before, was being cited at various briefings as posing a serious risk to the ACT. If he did not have the most up-to-date information on this fire, the question begs to be asked – why not? Simply because he may not have been asked a question about the McIntyre's Hut fire by the interviewer did not prevent Mr Lucas-Smith from commenting on it because, to not do so provided incomplete and misleading information about the true situation of the fires and the potential threat.

1. I did not choose to ignore the McIntyre's Hut fire. There is an established guideline for interstate assistance that a state bushfire authority talks about its own fires and leaves comments about another state's fires to that state. In this way there is one clear message about what is happening with a particular fire, not two.
2. I sent Mr Cooper as a liaison officer to NSWRFs to monitor the McIntyre's Hut fire.

⁹ TR 4350

3. I left comment about the McIntyre's Hut fire to NSW. It was their fire. It was not for me to contradict or second guess the NSW operation on the NSW fire and I did not receive any information from NSW which was inconsistent with the message NSWRFWS was conveying to the public. There was not basis for me to add or vary what he said.
4. NSWRFWS did inform the public of the state of the McIntyre's Hut fire. The NSWRFWS press release stated:
 - *"Firefighters are concerned that wind changes predicted Saturday will increase pressure on lines and force fires back towards the ACT"* and
 - *"West northwest winds expected Saturday and Sunday will pressure lines to the east and southeast and force the fire to the ACT border."*
 - *Containment strategies are progressing well;*
 - *Control lines are complete on this fire, which is being fought by about 120 NSW firefighters*
 - *Containment was achieved with the completion of backburning yesterday and aggressive mop up and patrol of these lines today.*
5. It is a paradox that in the Court's proposed comments concerning the first night of the fires, when I went to speak to NSW about the McIntyre's Hut fire I am criticised for taking Mr Bartlett with me in order to concentrate attention on the McIntyre's Hut fire rather than leaving Mr Bartlett to attend to ACT fires. In this comment, I am criticised for commenting only on ACT fires and not commenting on the McIntyre's Hut fire in NSW.

[9] [IN THE CONTEXT OF THE MEDIA BRIEFING BY MR CASTLE AND MR LUCAS-SMITH AT NOON ON 17 JANUARY 2003]

At the media conference at noon on 17 January 2003, Mr Castle and Mr Lucas-Smith did not provide information of which they were aware and concerns which they held about the true situation of the fires and the real threat they posed to the rural and urban areas of the ACT.

The most obvious and most serious omissions from the media briefing include:

A failure to express the concerns held by ESB personnel about the real potential of all the fires to break the containment lines which were known to be vulnerable;

A failure to say (at the media conference) that the Bendora fire had already breached lines to the north and south;

A failure to provide information about the concerns held over the 'erratic fire behaviour', the 'significant risks of fire runs', and the potential for ten kilometre spot overs;

The failure to say that back-burning operations had stopped on the Bendora and Stockyard fires;

The failure to inform the media and the public about the proposed and imminent plan by the NSWRFs to use aerial incendiary devices on a large sector of unburnt area of the McIntyre's Hut fire and the concerns ESB personnel held over the potential ramifications for the ACT from this operation;

The failure to share, express, reiterate and strengthen statements of concerns made by Mr Wade about the real threat to the pine plantation; and, finally

The failure to say that Saturday, the very next day, was shaping up to be a very bad fire day.

In my view, what was said by Mr Lucas-Smith in Mr Castle's presence did, instead, serve to downgrade what clearly was a serious and highly volatile and dangerous situation.

By not providing the information mentioned above and making such statements as:

The ACT fires are within containment lines;

No need to evacuate property;

No concern for Tidbinbilla Tracking Station or historic sites;

Pretty slim chance of fire meeting urban edge;

His (Mr Lucas-Smith's) level of anxiety had not changed since the previous week; and

The rural people knew what to do and probably had already done it,

Mr Lucas-Smith and Mr Castle, did not, in my view convey to the media at noon on 17 January 2003 the true situation regarding the real danger which they and others at the ESB recognised existed to the ACT community from the fires. However, the reasons why they did not do so are not clear. Mr Castle said that there was no conscious reason why a warning even worded as a potential threat was not publicised at noon on 17 January. I have no doubt that one of those reasons was that Mr Lucas-Smith held a hope that the fires could still be stopped, somehow. I do not accept his evidence nor the submission from counsel for the ACT that Mr Lucas-Smith was speaking only of the ACT fires and did not have the McIntyre's Hut fire in mind during the media briefing. However, even if he did, he still did not provide the true situation and potential threat from the ACT fires and there was no impediment on him, as he admitted to supplementing and commenting on the information being provided by Mr Wade. It is beyond credible belief that Mr Lucas-Smith did not think of the McIntyre's Hut fire in terms of its threat to the ACT on 17 January when he had regarded it as a potential threat as soon as it ignited on 8 January when he travelled to Queanbeyan to meet with NSW fire officials.

Mr Lucas-Smith did not provide a full and frank disclosure of what he knew and what he regarded as being the worst case scenario.

The comments in pars 9-12 are best dealt with together as they all relate in one form or another to absence of warnings.

[10] [IN THE CONTEXT OF EVENTS ON 17 JANUARY 2003] The submission by Counsel, that there were many people at the planning meeting and no one expressed concern about warning the urban area residents, cannot be an answer to why those persons who were the professionals charged with the responsibility to do so failed to issue warnings. The senior personnel of the ESB were the people who had the accumulated knowledge of the situation with the fires since their ignition on 8 January and were in the best position to appreciate the ever growing risk they posed.

[11] By the evening of 17 January 2003 the senior personnel of the ESB (Messrs Castle, Lucas-Smith, McRae and Graham) were in possession of information which confirmed what they had already believed namely that the fires were a serious risk to the urban edge of Canberra and that the impact was likely within the following twenty-four hours.

The same senior personnel of the ESB did not consider that it was necessary to issue warnings to those people in the urban area who were in the direct path of the fires and consequently, none were issued.

No contact was made and no warnings were given on 17 January 2003 to the people living in the forestry settlements of Stromlo, Uriarra and Pierce's Creek.

By the evening of 17 January 2003 the ESB had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge.

[12] It is clear from the evidence that the senior personnel at ESB, being Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham knew - and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended the planning meetings knew - that a very real risk existed. [BEFORE 18 JANUARY 2003]

If any of these people were to claim that they had doubts before 17 January about the realistic potential of the fires reaching the suburbs - and it is difficult to envisage how they could legitimately claim this - then there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting on 17 January. They all knew the fires would burn into Canberra. They may not have been exactly sure of the precise place or the precise time or even envisaged the precise nature of the fire. But they all knew that impact was inevitable. Those people who said in their evidence that they still hoped the fires could be stopped were living with false hope, not reality, choosing to consciously ignore the information and the evidence presented to them. It is totally inexplicable why there was no reaction to Mr Taylor's revised prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm. Mr Graham saw the message but appears to have simply ignored it.

1. As the Court proposes to rely upon the comments of Mr Taylor, it is appropriate to cite again the comment Mr Taylor made in his statement.

I don't think anybody comprehended, or could have comprehended the rate at which the McIntyre's Hut fire jumped the Murrumbidgee River and came across the open ground between the Murrumbidgee Corridor and Stromlo Forest. This happened during the early afternoon. The fire just seemed to burn across bare ground defying all the models.

2. The Court's comment does not provide a fair context to what I did. The impression created by the comments is that Mr Castle and I (and perhaps Mr Graham and Mr McRae) alone held the views they did. Such a comment and

such an impression are created in spite of the evidence. The following witnesses gave evidence all of which acknowledged by their words or their actions that they did not have any idea that what eventuated on 18 January 2003 would occur as it did.

- Mr Bartlett – Deputy Chief Fire Control Officer (ACT) and head of ACT Forests – spent most of 18/1 in a helicopter in the south of the ACT. He flew to the Uriarra area around 1pm. The fire was still west of Uriarra at this stage. Despite these observations, he made no plans to evacuate the Forestry Headquarters or protect his own car as he had no expectation that the fire would arrive as and when it did. Mr Bartlett acknowledged that up until midday on Saturday 18/1 the fires had been more benign than worst case predictions.¹⁰
- Mr Cheney – CSIRO fire behaviour expert – did not alert anyone to his alleged view that the suburbs were at risk; sent his son and Mr Hutchins (a CSIRO employee) up to Mt Stromlo without telling them it was going to be burnt over that afternoon;¹¹ spent the most significant fire activity day of his lifetime down the southern end of the Territory in anticipation of fire crossing the Monaro Highway; did not even commence to travel back towards Canberra until 4pm on 18 January;¹² took no steps whatsoever to tell CSIRO management that they were in danger although CSIRO facilities at Black Mountain were significantly threatened on his views¹³ and conceded that the extreme fire spread in the grasslands from 2pm was, without hindsight unable to be predicted.
- Paragraph [9] suggests that I thought that the fires could be stopped “somehow” as if I was looking for some gift from heaven. I was one of many experienced firefighters who believed that the fires would be fought in eaten out pasturelands which existed between them and the urban area along the Murrumbidgee corridor. Those same firefighters expressed their incredulity at the fire burning over ground where there appeared to be no fuel to feed it. This evidence has been ignored.
- Paragraph [12] starts by talking in terms of “a real risk” and “realistic potential” for the fires to reach the suburbs and concludes “they all knew that impact was inevitable”. Leaving to one side the internal inconsistency in the paragraph, it is a comment based on some fire *forecast* evidence by planners. The forecast did not actually show the fires making contact with the suburbs but to Narrabundah Hill by 8pm Saturday night. The forecast was made upon the assumption that the fire would be *unattended* by firefighters when, as pointed out in this response below and clearly stated in the evidence that was never the intention. These comments also depend upon accepting this forecast over the evidence of many, many experienced firefighters who did not expect the fire to do as it did and who believed that it could be held in the eaten out pasturelands.

¹⁰ Submission par. 443

¹¹ Cheney TR 20.09.04 pp7157-8, 7173,

¹² Cheney TR 20.09.04 p7155

¹³ Cheney TR 20.09.04 pp7172-3

- To make the comment “they all knew it was inevitable” must assume that a wide variety of senior officers ACT and NSW, urban and rural firefighters, gave false evidence. They did not.
 - Firefighters who gave clear evidence that the fires were either faster and more intense than anything anyone had experienced and that there was at least, initially, a belief that they would be held in eaten out pasture land were: me, Chief Fire Control Officer; Rick McRae, Planning Officer ACTBFS; Phil Koperberg, NSW Rural Fire Service Commissioner; Neil Cooper senior ACT bush firefighter and forester; Mr Ian Bennett, ACT Fire Commissioner; David Prince Acting Superintendent, ACT Fire Brigade; Bruce Athur Incident Controller NSWRFSS; Julie Crawford Deputy Incident Controller NSWRFSS.
3. It creates an erroneous impression to comment that ESB had no plans and no strategies for dealing with the fires on 18/1. ACTBS firefighters were entirely occupied fighting fires that were burning and threatening property in the south of the ACT.
 4. Taking the comment at face value an uninformed reader would assume that no-one was to fight the fire as it came into the ACT. Commissioner Koperberg said that if there was a break-out from NSW containment lines, NSW firefighters would fight the fire as it progressed in the ACT. Julie Crawford, Deputy Incident Controller at Queanbeyan said that when the fire crossed into the ACT, NSWRFSS stayed with the fire and undertook property protection.¹⁴
 5. It is a further paradox that there appears to be criticism of the ACTBFS on the first night of the fires for holding back some resources in case further fires were called in. “Fight the fire you have and not the one you may have” was the criticism. On 18 January when all available ACT firefighters were engaged fighting the fire which was burning in the south of the ACT, they are criticised for not being ready to fight a possible fire in the north and then, when NSW were available to do so and in fact did so.
 6. Mr Bartlett estimated that ten helicopters were working the fire. Most of these were on McIntyre’s Hut fire.
 7. The reason that the fire struck was not that there were no plans or strategies and not because there was no-one fighting it. It was because it behaved in an unpredictable fashion and got away. That is why it burnt over two NSWRFSS base camps and destroyed \$1.5 million of NSW firefighting equipment before the equipment could be moved.
 8. There were warnings given to the public. In the light of the events that occurred, those warnings were inadequate but I did not attempt to mislead anyone at any time. The details of these warnings which were in the *Canberra Times* on Saturday 18/1 and in radio broadcasts throughout the day are set out from paragraph 430 in submissions filed on my behalf.
 9. In light of the evidence from the firefighters in the final dot point of par. 3 that the fire behaved in an unpredictable fashion which appears not to be accepted, the tenor of the proposed comments suggest that the only people who really understood the fire on Saturday 18 January 2003 is the Court and Counsel

¹⁴ Details par. 330-5 of Final Submission

Assisting – with the benefit of 90+ days of evidence and about 9000 pages of transcript.

[13] Up until the issue of the first SEWS at 2.40 pm [ON 18 JANUARY 2003] the people in the suburbs of Canberra were not given any information which would serve as a warning to them that they and their property were at risk that day from the coming fire.

1. This comment is not in accordance with the evidence. There were warnings given to the public. In the light of the events that occurred, those warnings were inadequate but I did not attempt to mislead anyone. The details of these warnings which were in the *Canberra Times* on Saturday 18/1 and in radio broadcasts throughout the day are set out from paragraph 430 in submissions filed on my behalf. One example is given in response to comment [14] below.
 2. It must be remembered that the fire travelled 2.5kms between 8am and 1pm and then 12 kms between 1pm and 3pm.
-

[14] [IN CONTEXT OF MIDDAY PRESS CONFERENCE 18 JANUARY 2003] Mr Lucas-Smith also did not provide adequate and important information during the midday press conference. The people who were in the path of the fires had a right to know and Mr Lucas-Smith had an obligation to disclose.

Mr Lucas-Smith and Mr Castle also heard the predictions [FIRE SPREAD PREDICTIONS BY MESSRS LHUEDE, TAYLOR AND GELLIE] and could have and should have disseminated that information immediately by holding a press conference – not waiting till midday – and putting out a media release. Both accepted that it was their responsibility to keep the community informed.

1. I did not receive Messrs Lhuede, Taylor and Gellie's prediction about fire spread on Saturday 18 January or any revised prediction of fire spread.
2. I did warn people about their homes and property at the midday press conference. I said the following:

There is no doubt whatsoever that people need to be taking precautions that may live adjacent to the grassland area on the western side of the suburbs of Canberra and they need to be making sure they have nothing combustible near their homes. They need to make sure that their gutters are clear, their hoses are connected and they can reach all corners of their houses and to be vigilant for any flying embers that might come as the day progresses... I think it is prudent under the current conditions that certainly anybody that lives on the western side of the ACT urban area needs to be taking these sort of precautions... certainly Weston Creek and they're south. Belconnen is a little out of the frame and bit too far north but I think it is prudent that anybody that lives on that sort of interface area should be taking precautions... make sure you clear around, make sure its clear, make sure your

*hoses can fit, make sure you're comfortable and you've got all the things you need to protect your property.*¹⁵

3. At the time that this comment was made, the fire had travelled less than 2.5kms in the preceding four hours and was more than 12kms from the urban edge.

[15] The senior personnel of the ESB recognised the worst case scenario but did not prepare for it. They hoped for the best. They were influenced in their thinking and their planning and by their experiences with the fires in December 2001 and the success they had in controlling those fires. This was a mistake because it led to the perception, certainly on the parts of Messrs Lucas-Smith, Castle, McRae and Graham, that the fires could be controlled once they reached the grasslands on the urban fringe. This perception existed despite the views expressed publicly by Messrs Lucas-Smith and McRae, at least, that conditions in January 2003 were significantly worse than those of December 2001, and despite the expert opinions previously expressed by Commissioner Koperberg and CSIRO expert Mr Cheney – to say nothing of the dire opinions expressed by Mr McRae in his earlier emails which are on the public record.

1. The expectations about the fire and the steps taken have been mentioned earlier.
2. It is true that ESB was influenced by its experience in the seven major fires in December 2001.
3. The comment is grossly unfair because it would leave the reader with the impression that only Messrs Castle, McRae and Graham and I believed that the fire could be stopped in the grassland when there were many others who hold the same view and this has not been mentioned.
4. The comment in relation to Mr Koperberg is also completely one-sided. Mr Koperberg had not even planned to contact the ACT. I went to see him when I heard that he was in Queanbeyan.
5. Mr Koperberg gave at least three different versions of his predictions about these fires. He started out by saying that there would be serious implications for the western suburbs of Canberra if the fires were not “contained” (they were contained on their eastern side), he then said that he expressed concern if the fires were not “controlled” (a different concept in bushfire fighting) and finally he said that impact was “inevitable” that the fires would end up in Canberra. Mr Koperberg did not alert any NSW authority that the ACT may call for their assistance on Saturday 18 January. Each time Mr Koperberg retold his predictions, they became bigger and better.
6. Julie Crawford the NSWRFs Deputy Incident Controller attended the meeting with Mr Koperberg and I did not recall Mr Koperberg saying anything about a threat to the Canberra suburbs and did not recall him using the words “inevitable”.
7. NSWRFs situation reports are completely inconsistent with Mr Koperberg’s predictions. Even at 11am Saturday 18 January, they do not mention any threat to the Canberra suburbs.¹⁶ The NSWRFs situation threat at 11 am said:

¹⁵ See par. 444 submission

THREAT ANALYSIS

Current Threat: There is an immediate threat to private property and major pine plantations in the ACT and to the ACT water catchments. Specifically in Uriarra Pine Plantations in the ACT and a small commercial pine plantation in NSW in the area of Two Sticks Rd.

Potential Threat: Rural Holdings in the ACT between the pine plantations and Canberra urban areas.

8. Mr Cheney is another expert who was wise after the event. Does anyone in Canberra remember Mr Cheney ever warning anyone that the Canberra suburbs or any ACT property was at risk? Mr Cheney attended the Incident Management Team's planning meeting on the Friday morning 17 January. There is no evidence from him or from anyone else that at that meeting, Mr Cheney told anyone that the suburbs were in peril and that people must be warned. Why not? If he was not to make a contribution and bring his expertise to bear, why did he go to the IMT planning meeting at all? The truth is that he did not know what was going to happen either and if any confirmation is needed it lies in the fact that on Saturday 18 January he went down to the south of the ACT – to the wrong fire!

[16] I have been left with the overall impression that the ESB, at the senior levels, lacked competence and professionalism, was disorganised and was functioning in a chaotic uncoordinated fashion particularly in the most critical period of the fires. The impression I have is that the left hand did not know what the right hand was doing and neither hand was actually doing very much to deal with the crisis which was growing day by day and hour by hour.

1. This comment is so general, so vague, covering so many people, so many events and over such a period of time it is not possible to respond to it in its present form. My solicitor wrote to the court requesting some insight into the particular factual events upon which this comment is based and that request was refused.
2. The breadth of the comment is an insult to all who worked to combat the fires. It does not acknowledge the difficulties faced whether in terms of resources, time or terrain. It does not acknowledge what was achieved and from the gently ordered course of events in court, it offers no concession to an environment where decisions have to be made between a range of competing priorities with limited information in limited time.

¹⁶ Submission par. 413

[17] By the early morning of 18 January and before, senior personnel of the ESB being Messrs Castle, Lucas-Smith, McRae and Graham all recognised the serious potential for fires to impact upon the urban edge at some time during the afternoon or evening of Saturday 18 January and failed to take action within their respective areas of responsibility to ensure public warnings were widely broadcast and disseminated to the community.

1. See responses to [13] and [14].

[18] These same senior ESB personnel lulled themselves into a false sense of security because they had managed to prevent the December 2001 fires from destroying any urban structures; and as a result of this self-delusion, they deliberately withheld information from the community in the belief that they would – as they had done in 2001 – stop the fires in the grasslands; and they did not wish to alarm the community.

1. See responses to [9]-[12] and [15].
2. I have not criticised the NSWRFSS and I do not do so here. I recognise that its members operated under the same limitations and difficulties and had to make the same kind of decisions as the ACTBFS. The proposed comment is however symptomatic of the one-sided version of the evidence which has attended a number of the proposed comments. Despite the NSWRFSS being no better predictor of what was going to happen with the McIntyre's Hut fire than the ACTBFS, the ACT is criticised for failing to deal with the fire and failing to provide adequate warnings and no such criticism is made of NSWRFSS.¹⁷

19] The ESB failed to inform the AFP in a timely manner of the true situation and this resulted in a lost opportunity for better coordination on 18 January of the police role in evacuations.

1. This statement is easily made but there is no specific evidence about what the AFP would have done to support the comment. There is no clear evidence that if at time X the AFP had been given a warning about the fires, it would have done Y with the better outcome Z.
2. See response in relation to [6].

¹⁷ Submissions under Heading *NSW Expectations and Predictions* par. 387 and on

[20] There was no official warning to the community by the ESB until about 2.40 pm on 18 January 2003 and that warning was far too late to enable people to take effective precautions for their safety and to enable them to make informed decisions to stay with their homes or leave in the face of oncoming fire; and this late notification caused people to be placed in increased danger in their homes and in vehicles attempting to flee in the face of the fire which arrived approximately 20 to 30 minutes later.

1. See response to [13] and [14] and par. 420 of submissions and onwards.

[21] Messrs Castle, Lucas-Smith, McRae and Graham were completely out of their depth at the time of the conflagration and the days leading up to it.

1. Despite my request in writing, Your Honour refused to provide me with the specific facts upon which you rely to make this statement. It is therefore impossible to provide a factual response.
2. Taking into account the serious lack of resources available to the ACT and the fact that what developed was one of the worst fire events South Eastern Australia has ever witnessed, it might accurately be said in an objective sense that Mr Castle and I were out of our depth.
3. I ask Your Honour, in light of my inability to make a proper response, to reconsider making this comment, which seems only directed at attacking my integrity and in no way related to any of Your Honour powers or functions as Coroner.
4. These comments also appear to be focussed on “blame” which is not the role of a Coronial Inquiry as the Supreme Court has clearly stated.
5. Finally I remind Your Honour of the words of Ron McLeod who said in his report into these fires:

“Experience is the basis of most of the progression of human knowledge, and there is much we can learn from our mistakes. It is inevitable therefore that inquiries of this kind concentrate on weaknesses, errors and shortcomings. They do not dwell to the same extent on those aspects where systems and people performed satisfactorily or in the way intended. ... Any criticism directed at individuals because of the role they were required to perform is in no way intended to question their integrity or their honesty in doing what they felt in the circumstances was the right thing to do at the time”

GENERAL STATEMENT IN RESPONSE

1. The inquiry appears to have attributed blame to officers in the ACT and none to NSW when the evidence reveals that NSWRFs was no better predictor of the

course of the fires than the ACT ESB and in circumstances where the principal fire that impacted on Canberra was in fact a NSW fire fought by NSW at all times

2. No consideration appears to have been given to the resources available to the principal ACT officers charged with fighting the fires. In this respect the ACT and its officers has been treated differently to NSW. Counsel Assisting withdrew proposed criticisms of NSWRFSS on the ground that it was not possible to criticise the manner in which the NSWRFSS fought the McIntyre's Hut fire without evidence that that Service had the necessary resources to do so. No equivalent concession has been made to the ACTBFS.
3. It is not apparent from the comments or the submissions of Counsel Assisting that Mr Castle and I made submissions to government to enhance the readiness and capability of the ESB to confront bushfires and those submissions were rejected. Of key importance included: community education officer – rejected (2002), increased funding for aerial fire fighting capability – rejected and bushfire planning officer – rejected.
4. Counsel Assisting submissions and the critical comments proposed by the Coroner appear to owe much of their origin to the evidence of Mr Trevor Roche. This “expert” was briefed to provide critical comment on the ACT response to the bushfires. Despite the magnitude and importance of this task he was specifically instructed not to speak to any of the principal ACT officers who were involved in that fight. He had no appreciation of the limitations of the ACT Bushfire Services budget and made no inquiries to find out. His experience appears to have been drawn from his service in the Victorian CFA, an organisation approximately 100 times larger than the ACT BFS. He acknowledged that he led certain evidence before the inquiry to ensure the inquiry would make findings consistent with his own personal views.
5. The inquiry has been conducted with a view to holding people accountable and apportioning blame in direct contravention of the decision of the Full Court of the Supreme Court.
6. The unfortunate consequence of this approach it that can only damage the ACT Bushfire Fighting capability and the capabilities of equivalent services in the other states and territories. The ACT and other services depend on the willing participation of volunteers. Those volunteers and the officers who lead them will always be required to make operational “calls” with limited information and with limited time. Inevitably some of those calls will in hindsight be wrong. To criticise the people making these decisions as a result of a court proceeding involving mountains of evidence and months of consideration is rank injustice. Oh, that such luxury was available when fighting fires! Such an approach will only serve to dissuade persons who might otherwise volunteer to serve or take up officer positions, from stepping up to the crease and doing so.



Peter Lucas-Smith
22 November 2006

Statement by Mr Tony Graham

TONY GRAHAM

SECTION 55 STATEMENT

Introduction:

I refer to your Honour's letter addressed to me dated 11 October 2006. I will refer to it subsequently as "the Notice". This is my statement in response to the Notice.

This statement is to be read in the light of my counsels' letter to your Honour dated 19 October 2006. I stand by the contents of that letter – indeed, as shall become clear in this statement, the difficulties which were foreshadowed in that letter about my responding to the proposed comments in the Notice have been borne out in formulating this statement in response to it.

As in that letter, my statement refers to paragraph numbers, which, given the absence of numbered paragraphs in the Notice, have been allocated by me for the purposes of convenient reference to each paragraph of the Notice following the heading, "Proposed Comments" on the first page of the Attachment to the Notice. For the sake of clarity, I have also set out the text of each paragraph.

Necessity to deal with the submissions

A number of the comments that your Honour has foreshadowed making have already been the specific subject of submissions by counsel on my behalf, and by the ACT which were also adopted on my behalf. In many respects, Counsel Assisting failed to challenge those submissions. As will be seen below, I observe that, in a number of instances, Your Honour will need to address and deal with those submissions directly if the foreshadowed comments are ever to be properly made.

Whether your Honour has attempted to do so already in the body of your decision I do not know, because I have not been provided with a draft or extracts from your decision which set out factual findings you have made, or references to the evidence, if any, upon which any such findings, and the proposed comments, may be based .

Statement only addresses my position

This statement only addresses my position. However, I wish to make it clear that I am not critical of other members of the ESB, and none of the comments which appear here are intended to be in any way a criticism of other members of the ESB. I believe that all of the individuals involved committed themselves selflessly and tirelessly to the truly

monumental task of fighting what was probably the worst fire event that would ever occur in their lives, an event on a scale scarcely imaginable in the ACT.

Each member of the ESB brought to the team his own strengths and assumed his own responsibilities. Each should be judged with fairness, reason and balance, not simply in hindsight. No walk of life is free from decisions which are incapable of criticism with the benefit of hindsight, even those of judicial officers like your Honour – such errors only cease once life is extinct. Any fair and reasonable assessment of the events of January 2003 should conclude that the individuals, not only on the firegrounds, but also all those involved in the firefighting effort, acquitted themselves diligently, professionally, and honourably, even if, with the great benefit of hindsight, not always correctly.

Paragraph 1 – no additional preparations taken

Proposed comment:

“Yet, despite this knowledge and awareness, [OF THE PREVAILING EXTREME FIRE DANGER CONDITIONS] the evidence before this inquiry has revealed that senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003. As well, despite being on notice from the fires some twelve months previously, apart from the preparations made by Mr Bartlett for ACT Forests, neither the ESB nor any of the ACT land management agencies made any additional preparations for the fire season over and above their routine preparations. Even though the necessity for a rapid and aggressive response was recognized, the response which was made to all the ACT fires lacked the sense of urgency which the situation demanded.”

This comment, when assessed from my standpoint, can be broken down into the following propositions:

Proposition 1: The evidence before the inquiry has revealed that I lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003;

Proposition 2: I made no additional preparations for the fire season over and above routine preparations; and

Proposition 3: The response by me which was made to all the ACT fires lacked the sense of urgency which the situation demanded.

What is the evidence for each of these propositions? I would like to hope that your Honour is cognizant of the evidence you intend to rely upon to support such propositions. However, as a result of your decision not to provide me with the factual information underlying your proposed comments, I am not.

Proposition 1:

For this proposition to be made out, your Honour would need evidence to establish that following the outbreak of fires on 8 January 2003, I “lacked a proper appreciation of the gravity of the fire situation and the potential for escalation”.

Three points need to be made in relation to this proposition. Firstly, the proposed comment is not a statement of fact – it is a conclusion said to have been reached upon consideration and interpretation of certain unstated facts. I am unaware of the facts which you have found to base this conclusion, or the evidence said to support it.

Secondly, the comment fails to take into account the fact that prior to the Bendora fire the ESB had successfully managed 92 fires that fire season (Lucas-Smith T802). I was the Operations Officer of the Service Management Team with respect to each of those fires. I was well aware of the nature of the season the ESB and I were facing, aware that any fire could escalate, but also aware that many more fires could arise and the need to harbour resources. The error made by me, and frankly acknowledged by me, was that I did not discuss Ms Arman’s reasons for her decision with greater scrutiny. That one fact cannot, with respect, form the basis for a conclusion that I “lacked a proper appreciation of the gravity of the fire situation and the potential for escalation”.

Thirdly, alluded to above and elsewhere, is that without being apprised of the facts you have found as the basis for your proposed comment, I am deprived of the opportunity of further exploring and responding to the factual basis underlying the proposed comment, and the process of reasoning which led to the proposed comment being made.

Most importantly, I cannot address the use of the word “proper” (which I assume is meant to be understood in the sense of “adequate”) in the proposed comment, without being apprised of the matters referred to above.

I believe, as indicated in Counsels’ letter dated 19 October 2006, that the consequence of this will be that I will be denied procedural fairness if the proposed comment is made.

Proposition 2:

With respect, this proposition, again a paraphrase of a submission by Counsel Assisting, is incorrect. It is wrong, both in suggesting that no additional preparations were undertaken, and in suggesting that in practical terms the level of preparedness was unreasonable. In this regard, I refer to two matters: the fact that additional measures were, in fact, undertaken, and the submissions of the ACT as to the evidence upon this issue.

Additional measures undertaken:

The following documents relate to additional measures undertaken prior to the 2002-2003 bushfire season:

- ESB.DPP.0018.0236 to ESB.DPP.0018.0286: these documents relate to the following activities: an excursion by the Bush Fire Council and others into Namadgi National Park (“NNP”) in 2002; correspondence between Environment ACT and ACTEW re NNP, water catchment, fuel issues; development of a NNP pre-suppression plan (marked with water holes, helicopter landing places, roads, etc.); the 2002 NNP Burn Scenario tabletop exercise designed specifically for remote bushfire issues, and the setting up of a group of experts for developing the NNP Fire Management Plan;
- ESB.DPP.0019.0170: letter from me outlining review of ICS training and implementation of a new training program, attaching the Sept/Oct 2002 training program (ESB.DPP.0019.0172);
- ESB.DPP.0019.0174-0177: documents regarding the new ICS training taking place;
- ESB.DPP.0019.0227: document regarding Remote Area Fire Training undertaken in December 2002;
- ESB.DPP.0019.0229-0254: documents regarding extra fire hazard reduction activities undertaken at the urban interface during 2002;
- ESB.DPP.0019.0255: Emergency Management Committee documents, indicating: issue of a new Road Closure SOP; traffic management planning provided to volunteer firefighters in mid-2002; Media Liaison review in August 2002; agreements between ACT and various support agencies put in place; Evacuation Management course in December 2002; Horsefarms ACT put in place evacuation and emergency plans; improvement of emergency management arrangements and emergency management catering improved; ACT Fire Brigade SOP’s reviewed in conjunction with the AFP; electricity supply management disaster exercise undertaken on 17.12.02; exercise regarding defence forces working with civilian organizations during emergencies undertaken);
- ESB.DPP.0019.0303: letter from Mr Lucas-Smith to emergency management managers in ACT re evacuation issues;
- ESB.DPP.0019.0307 and 0313: documents relating to the formulation of an SOP regarding access to lands managed by different Territory agencies;
- ESB.DPP.0019.0319-0323: documents relating to media opportunities being sought to inform the public of the problem season ahead and measures the public could take to protect themselves;
- ESB.DPP.0019.0335: email confirming readiness of Canberra Connect, which had been set up in 2002 for emergency communications;

- ESB.DPP.0019.0335: document confirming that by 20.12.02 the Canberra Connect website included Bushfire Safety Tips on its homepage.

Submissions of the ACT:

I draw your Honour's attention to the following passage in the submissions of the ACT:

"277. Counsel assisting assert, in paragraph 1116, that, with the exception of some measures taken by ACT Forests, *"ESB and ACT land management agencies made essentially no preparations for this particular fire season over and above any preparation made in any normal year"*. If this assertion is taken to mean that ESB did nothing in preparation for the 2002/3 fire season, then the ACT submits that the submission should be rejected. We refer to the "Operational Preparedness" and "Preplanning of Aircraft & Heavy Plant" sections above, and to the supplementary statement of Ingram referred to within those paragraphs.

278. If on the other hand, the criticism is directed at the omission to engage aircraft and heavy plant, any such criticism is unwarranted without a consideration of what financial and other constraints existed for ESB personnel to do so."

The first passage in the submissions referred to above is that relating to operational preparedness. That passage, found at paragraphs 172-178, relates to what could reasonably have been expected of the ESB (and hence the ACT) in respect of additional pre-season preparations. The passage is as follows:

"172. Following the December 2001 fires, ESB gave consideration to areas of improvement in operational fire fighting. Evidence of this was given to Chief Coroner Cahill in January 2004 during the Inquiry into the December 2001 fires. Mr Lucas-Smith gave evidence in the present Inquiry on this point (T776-778).

173. A number of improvements had been made by January 2003. In general terms, the ACT authorities had a good record in fighting bushfires within their jurisdiction and in working cooperatively with NSW authorities.

174. At this point, it is pertinent to contrast the size of the NSW and ACT Bushfire Services. The NSW Rural Fire Service is comprised of the Commissioner, some 120 Fire Control Officers, some 2,200 Rural Fire Brigades and approximately 69,000 volunteer fire fighters (RFS.AFP.0093.0006). In January 2003, the ACT Bush Fire Service comprised 4 full-time persons –Lucas-Smith, Graham, Ingram and McRae. There were only 3 departmental brigades and 9 volunteer brigades (ESB.AFP.0111.0236 at 0259). In effect, the ACT bush fire brigade was comparable to the bush fire personnel in a district or shire within NSW.

175. Counsel assisting have explored with a number of witnesses the question of increased operational preparedness leading into the 2002-2003 bushfire season. It is clear that there were finite resources in the form of appliances and facilities available to the ACT authorities. Likewise, there was a finite number of permanent and volunteer fire fighters available. It could not reasonably be suggested that a significant increase in numbers of experienced fire fighters could have been achieved in the 13 month period between December 2001 and January 2003.

176. Counsel assisting have referred to a document prepared by McRae in early 2002 entitled "*The Phoenix Imperative*". In that document, McRae proposed fuel management and hazard reduction activities. In his evidence, McRae made clear that these were not actions which were capable of achievement within a matter of months. Rather, he was speaking of longer term actions which needed to be taken.

177. Counsel assisting have raised with witnesses the possible pre-deployment of bulldozers and other heavy equipment within national parks and in remote areas. Although this concept has a theoretical appeal, a critical issue is identification of the location where such heavy appliances would be placed. There would be a significant element of chance in placement of equipment – how would you determine where to place it? Whether it was close to or remote from a fire would depend upon the location of the fire. Practical and financial considerations also militate against such pre-deployment. As Crawford observed, "*we don't pay to have dozers on standby ... if you pay to have a dozer on standby, I could have a dozer on standby in Queanbeyan, but the fire could be in Young or Crookwell Shire*" (T4434.33). Lucas-Smith said that he had access to ACT Forests heavy plant under a memorandum of understanding (T789).

178. Lucas-Smith was aware that the 2002-2003 fire season may be a bad one. The evidence indicates that he had been informing the ACT community of this concern. **Realistically, no further steps could have been taken to better prepare the ACT authorities to deal with the January 2003 fires.**" (emphasis added)

The second passage in the submissions referred to above is that relating to preplanning of aircraft and heavy plant. That passage, found at paragraphs 179-201, is as follows:

"179. At Section 2.5.3 of their submissions, counsel assisting adopt the comments of Roche, and implicitly the latter's criticisms regarding lack of pre-planning by the ESB in specified respects – see paragraph 247. Roche's criticisms appear at pp.38-9 of his report and are prefaced with the comments that:

Despite this recognition of the expected severity of the 2002/3 fire season, the evidence suggests that little if anything, was done in the lead-up to the

season by either ESB or the DUS over and above normal pre-season preparations.

180. Thereafter, Roche listed “*the actions that should have occurred*”, which list comprised 11 items.

181. Counsel assisting purport to summarise Roche’s evidence about these matters at paragraphs 211 to 216. The ACT submits that this evidence may be relevant to the making of recommendations for the future, but has marginal if any relevance to the cause and origin of the fires. The latter issue encompasses what did or did not occur from the point that the fires were ignited to their ultimate extinguishment; but does not include what might have happened if things had been done differently before the fires commenced.

182. It is significant to note that of the 11 actions which the Roche report asserted should have been done, only three matters were deserving of mention in the submissions of counsel assisting. No doubt this was so because Roche was extensively cross-examined about the manner in which he came to these conclusions; in particular the evidence upon which he relied to do so. It appears that he assumed there had been inactivity by reason of the absence of evidence in the brief, rather than a reliance upon any evidence that things had not been done.

183. At T7573, Roche was asked whether he was asserting that none of the matters at p.39 of his report were attended to and he said:

“From the evidence available to me there was no indication that they were.”

184. This was an approach that Roche adopted in respect of other matters in his report. There are a number of examples in his evidence. At T7557/8, he was questioned about criticisms he made at p.53 of his report asserting inadequate training, situational analysis and poor command, involving the burn over of Fire Brigade pumpers. He stated that it was not his place to have arranged for anybody in authority with intimate knowledge of the issue to be spoken to. Accordingly, his opinions were “*based on the evidence that was put before the Court*” or “*evidence that formed part of the brief*”.

185. In the context of pre-preparation for the impending fire season, Roche gave evidence that arrangements should have been made for an increased access to aircraft – however, until the receipt of Ingram’s second statement, he did not know “*the number and the specifics ...*” of available aircraft (T8014).

186. The weight of Roche’s opinion is reduced by reason of the fact that whilst he asserted the negative proposition, he would not be drawn on the specifics of

what arrangements could and should have been made. So much is demonstrated at T8015, where he said:

“in my view, arrangements should have been made to secure or to ascertain ... the availability of additional aircraft. Now what number to me is irrelevant at the time.”

187. Similarly when Roche made the same criticism about the unavailability of heavy plant, he did not know whether the nine pieces of heavy equipment listed in Annexure DI3 of Ingram’s second statement were available or not (T8016-18).

188. Rather than concede that the reliability of his opinions might be affected by these omissions (as a truly objective expert witness would have done), Roche rejected the proposition that it was impossible to criticise the ACT and to suggest they should have had increased access to aircraft when he did not know what they had (T8016).

189. Having regard to these matters, Roche’s reliability as an expert witness is called into question. Not only did he not qualify his report by stating that he was forming opinions on the assumption that what was contained in the brief represented the true facts, but he also did not take any steps to satisfy himself of the true position. Nevertheless Roche was prepared to proffer critical comments adverse to senior ESB personnel.

190. At paragraph 7 of the submissions, counsel assisting make the claim that chapters 2 and 3 “*contain an accurate summary of all the evidence*” which is relevant. The cross-examination of Roche is referred to in paragraphs 212 to 215 in chapter 2. Passing reference is made to Roche’s lack of knowledge of these facts; but no mention is made as to any impact this might have on Roche’s reliability as an expert witness yet counsel assisting did not show such reluctance in commenting on the credibility of the evidence of other witnesses e.g. Keady’s evidence at paragraph 556. Furthermore, nowhere in the submissions is there reference to the extensive attack on Roche’s credibility or what effect that attack should have on the evidence given by him.

191. The ACT submits that this approach of counsel assisting lacks detachment and objectivity – it treats Roche as a favoured witness. The ACT submits that the Coroner should reject such an approach and consider Roche’s evidence in the same way as other witnesses. The reliability of his evidence and the weight to be attached to it should be measured by the well accepted rules relating to the evidence of expert witnesses.

192. At paragraph 247, counsel assisting submit that nothing was done “*over and above ESB’s usual pre-season preparations*” in the lead up to the subject fire season in relation to weight of response; pre-planning or pre-positioning of resources or arrangements in respect of aircraft.

193. It is accepted that nothing extra was done in relation to the specified matters. It might be thought that a significant degree of hindsight is implicit in the proposition – the line of thinking being that it should have been foreseen that any fire or fires which ignited would (without the preparations suggested) result in uncontrollable fires.

194. The ACT submits that in a jurisdiction of the size of the Territory, it is not unreasonable to deploy resources in accordance with a standard operating procedure which seeks to take into account the potential seriousness of the fire situation. Furthermore in the context of the ACT, it is not reasonable to expect that resources should be deployed in greater numbers than the weight of response requires, to remote fires which have not been assessed. Personnel and resources are not limitless; and deployment of resources can only be responsibly done by having regard to the ability to have sufficiently rested crews available in the event that the fire continues past a number of working shifts.

195. It is also incorrect to say that nothing was done at all. Ingram in his statement of 15 October 2005 (ESB.DPP.0013.0196) at paragraph 5, summarises the actions he took in preparation for the fire season as follows:

- i. the 2002 Pre-season Workshop was conducted. This included an exercise involving fires in Namadgi National Park and required complex fire management considerations;
- ii. the preparation and circulation of phone lists;
- iii. the preparation and circulation of Call Sign lists;
- iv. the development and distribution of Duty Coordinator and DCFCO and Group Officer Rosters for 2002/3;
- v. helicopter arrangements with regular contractor HeliAust were in place; but radio and buckets arrangements for the season were finalized and air observer kits were available and checked; as was the helicopter support trailer;
- vi. the fire tower contracts were in place and operative;
- vii. the reviews of primary personal protective equipment and other stores were conducted in July and August 2002 and were regularly reviewed;
- viii. a new initiative in COMCEN training which enhanced communication capabilities and protocols specifically for bush fire related duties was undertaken in 2002;
- ix. liaison with Bureau of Meteorology regarding fire matters was completed in 2002;
- x. there was regular liaison between ACT Bushfire Service staff and Yarrowlunla RFS staff; and
- x. a review of stock of maps and ICS forms for the up-coming season, was conducted.

196. Ingram confirmed the steps he took in preparation for the 2002/3 fire season at T3522; he indicated they went through the normal checklist and it was no different to any other fire season (T3523). Further at T3523, Ingram referred to the Memorandum of Understanding between the ACT Bushfire Service and the land management agencies, which was signed on 9 January 2003 (AUS.AFP.0036.0001, albeit the MOU was informally in place earlier in the season). Section 5 of the MOU made provision for the supply of heavy plant by ACT Forests to the Bushfire Service and associated matters.

197. Ingram confirmed that the ESB did not own or lease bulldozers; at the start of the season, suppliers were contacted to see what machinery was available; there was an MOU with ACT Forests that any machinery they had was available on request (T3527– T3528). Ingram confirmed that ESB had lists available to source additional aircraft apart from what was on contract to them (T3528).

At T789/790, Lucas-Smith referred to the MOU that ESB had with the land management agencies *“as we went up the readiness scales, ... heavy plant would become on standby and are available to us ... it moved the floats in close proximity to where the machines were working so they could be readily accessed and transported.”* He stated that such occurred on every orange and red readiness day in ACT.

198. Lucas-Smith was asked about preparedness of heavy equipment and said that he did not have the equipment available and to do so would involve a *“logistics exercise for four or five months ..., which is quite extensive and very expensive”* (T791). It is noteworthy that neither counsel assisting, nor Roche in his report, pursued the issue of what practical and financial limitations existed if attempts were made to try and implement Roche’s suggestions.

199. The allocation of funds was not a matter under the control of the ESB; nor is it an issue which is a legitimate area of concern for this Inquiry. If criticism is to be levelled at individuals for asserted failures in this area, it would be quite wrong to do so when a significant reason for such failure as might be inferred from Lucas-Smith’s evidence, namely a lack of funds, was outside his control. It is one thing to say by recommendation that it is desirable in extreme fire seasons to have available aircraft and heavy plant – it is quite another to be critical of persons for not having that availability, when it may not have been in their capabilities.

200. In summary, the ACT submits that your Honour should reject Roche’s criticisms in this regard. This is because Roche conceded that his opinions concerning some of the asserted omissions were based on an absence of evidence in the brief rather than information that things had not been done. Secondly, Roche gave no consideration to whether the things he suggested were achievable in the available time frame (August 2002 to January 2003); and finally he gave no

consideration to issues such as how many aircraft or heavy appliances were required or the cost of them – see Roche T8015.

201. Having regard to these matters, any criticisms based on his views must be compromised and further any recommendations based upon them, are of limited utility if the Court is unable to conclude that they could have been achieved or afforded.”

The following further submission was made:

“532. Extensive material had been given to the Canberra community beforehand, particularly during 2002, about how to prepare for bushfires (ESB.GSO.0005.0812).”

Counsel Assisting did not deal with these submissions in their reply. The unavoidable inference is that they could not do so. Your Honour will have to address the matters raised in those submissions with specificity, and demonstrate that they can be overcome, before the proposed comment can properly be made.

Even if those submissions could be overcome, the proposed comment, with respect, is wrong in any event, because the suggestion that there were no additional measures undertaken simply cannot be made in light of the evidence referred to above.

Paragraph 2 - Suggestion that Tony Graham was not the appropriate person to be the Operations Officer

Proposed comment:

“The role [OF OPERATIONS OFFICER] should have been performed by the person second only to Mr Lucas-Smith in experience and someone with the most expertise in fighting and managing fires in remote wilderness areas. With all due respect to him, Mr Graham was not this person. Mr Graham was, by all accounts, a dedicated and competent administrator in his day-to-day role but the role required of him on 8 January was beyond his normal functions and responsibilities.”

The entirety of your Honour’s foreshadowed comment is a paraphrase of the submissions of Counsel Assisting as to this issue at paragraphs 1120-1121 of their submissions:

“1120. ... In our submission, as we discuss further below, it should have been evident at least to Mr Lucas-Smith, and probably also to Mr Graham himself, that:

- a. the person fulfilling that role and supervising the initial response under the conditions then prevailing, needed to be the next available officer after Mr Lucas-Smith with the most expertise and experience in fighting and managing fires remote area wildfires; and

b. that person was not Mr Graham.

1121. Mr Graham had very little experience in managing remote area wildfires and no relevant experience in fighting them. We would not dispute that he was an effective *controller of resources*, as he was described by Mr Lucas-Smith, and a competent and dedicated administrator in his day to day role at ESB. But the role he was fulfilling on the evening of 8 January went significantly beyond Mr Graham's day to day role. It required at least a strong working knowledge of fire behaviour and firefighting suppression and tactics, the stronger the better. Mr Graham had neither of these things, as he effectively conceded in evidence."

The ACT and my counsel responded to the submissions of Counsel Assisting as to this issue by way of written submissions on 30 June 2006. The submissions of the ACT as to this issue were as follows:

"293. At paragraph 1120, counsel assisting state that the choice of officer responsible for decisions about strategies and resource deployment at initial response is most -important and submit that it should have been evident to Lucas-Smith and Graham that:

- the person with that role should be the next available officer to Lucas-Smith with expertise in fighting and managing remote area wildfires and
- that person was not Graham.

294. The premise upon which this submission is made is that the person entrusted with the task should have foreseen the potential of the fires to escape and ultimately become campaign fires – in other words a hindsight view of what occurred. It may be true that a more cautious or pessimistic person may have acted differently; however the ACT submits that what was required in that task of operations officer, was a competent and experienced officer and that Graham was such an officer. He had been performing the role of Operations Officer for many years and in response to 92 previous fires that bushfire season without mishap.

295. It was always likely that the operations officer at ESB would rely upon the incident controller in the field to provide accurate information about the location and circumstances of the fire and connected safety issues. Furthermore, the incident controller would have been singularly well placed to give an opinion about the matters as to which professional judgment might be required e.g. the size, spread and intensity of the fire; the terrain; the fuel loads; the experience and fitness of the crew; an assessment of what might be achieved if the crews remained and issues connected with safety of the crews.

296. Accordingly, of equal significance was the expertise of the incident controller at the site of the fires, because the responsibility lay with that person to assess the fire and determine what could be done and whether it could be done within the constraints of Occupational Health and Safety requirements.

297. At paragraphs 1121-1125, a comparison is made between the more limited experience of Graham in managing and fighting remote area wildfires and that of Bartlett, Cooper and Sayer. Graham accepted that he did not recognise the same level of concern as the others but did not accept that he was not sufficiently experienced. It is submitted that it is one thing to say that a more experienced officer may have acted differently; it is quite another to assert that the less experienced officer failed to act reasonably. There is no basis for the latter submission.

298. Graham acted as Operations Officer throughout the rest of this event and did so in a manner that receives no criticism. He was constantly making operational decisions concerning these same fires over that period. The fact that someone else may have made the initial decision differently to Graham is insufficient cause to say that he was not a suitable person for the Duty Officer role. He had performed the role with success for 5 ¹/₂ years. It is unreasonable to say that a person who has successfully filled the role for that period ought to have recognised at the time this event began that it was a particular event in which he ought not play his regular role."

In order to remind your Honour of the submissions made on my behalf as to this matter, I repeat what my counsel put to you:

"3. SHOULD MR GRAHAM HAVE BEEN REPLACED AS ESB INCIDENT CONTROLLER?"

Counsel Assisting suggest that Mr Graham should not have been permitted to act in the role of the Incident Controller at ESB during the January 2003 fires. That role, it is suggested, should have gone to someone of greater fire-fighting experience (Submissions of Counsel Assisting, paragraphs 1120-1121).

4. WHY AND WHEN SHOULD MR GRAHAM HAVE BEEN REPLACED?"

By all accounts, prior to January 2003, Mr Graham had performed his role with skill and dedication. As a member of a team, he brought organisational and management ability to his role, relying, as members of a team do, on others for their respective strengths. The manner in which the ESB was designed to function, and did in fact function, was for the ESB as a whole to act synergistically, each member bringing to the team his own particular skills.

During the January 2003 bushfires, Mr Graham acted tirelessly. His few absences from Curtin to get sleep were brief. He made tens of thousands of decisions over the duration of the fires, all of which, save a handful, are without criticism. It has not been suggested that he was anything less than a very competent, committed, and dedicated officer who performed his task well, exhibiting grace under pressure, and serving the ACT in a most commendable fashion.

All of this, however, is beside the point – Counsel Assisting say that he should not have been there at all from 8 January 2003 onwards, that when Mr Bartlett offered his services that afternoon, he (or someone similarly-skilled in fire fighting) should have replaced Mr Graham. What is the basis of that suggestion?

It cannot be, and is not said to be, something which happened before 8 January 2003. It cannot be, and is not said to be, something which happened after the opportunity to appoint Mr Bartlett in Mr Graham's stead went by.

For the suggestion to make any sense at all, it must be based on some recognition which, it is said, Mr Lucas-Smith and (possibly) Mr Graham should have had in the minutes after the lightning strikes in the afternoon of 8 January 2003 which ignited the fires.

That is patently absurd. When analysed logically, the suggestion as to Mr Graham's replacement is nonsense.

The approach of Counsel Assisting is summarised in paragraph 1121 of their submissions as follows:

“We would not dispute that [Mr Graham] was an effective *controller of resources*, as he was described by Mr Lucas-Smith, and a competent and dedicated administrator in his day to day role at ESB. But the role he was fulfilling on the evening of 8 January went significantly beyond Mr Graham's day to day role. It required at least a strong working knowledge of fire behaviour and fire fighting suppression and tactics, the stronger the better.”

Where is the evidence for this assertion? It flies in the face of the evidence (and common-sense). At a fire, an experienced firefighter is appointed as Incident Controller (“IC”); the larger and more hazardous the fire, the greater the experience the IC should possess. It is that person who is the eyes and ears of ESB at the fire ground, and that person's judgment upon which ESB must rely. An Operations Officer's experience as a fire fighter, while most desirable, only approaches the quality of essential in circumstances where a judgment made by an IC on the fire ground needs to be overruled.

What is essential is that the Operations Officer possesses significant management skill and judgment. Those are the characteristics Mr Graham demonstrated in the innumerable decisions made by him in January 2003.

Counsel Assisting have a problem: they want to criticise Mr Graham's failure to overrule Ms Arman's decision, but have to accept that it would be wrong for an officer who has less fire fighting experience than the IC, and is not on the fire ground, to overrule a decision, based on safety issues, made by that IC. In those

circumstances, the only way they can achieve their desire to criticize, where possible, is to suggest that Mr Graham should not have been the ESB Incident Controller in the first place.

That suggestion is irretrievably tainted, however, by hindsight. In the final analysis, the submission of Counsel Assisting is that the one decision of any causative relevance was that to withdraw from Bendora on 8 January 2003. Mr Graham should, it is said, have interacted with Ms Arman in such a way so as to reverse her decision to withdraw.

In our submission, this fact is the only real reason why it has been suggested that Mr Graham should have been replaced. Does Counsel Assisting suggest that Mr Lucas-Smith should have predicted this situation, and Mr Graham's failure to act in the way they suggest he should have acted? If not, what is said to be the trigger for replacing Mr Graham?"

Counsel Assisting did not make further submissions to your Honour as to this matter. There is a very good reason why this is so – the above submissions, with respect, dealt conclusively with the issue. Counsel Assisting could have said nothing in response – the submissions were and remain unanswerable. For that same reason, your Honour would be falling into error of a judicially reviewable nature were you to make the comment that you have proposed.

Before your Honour can make the comment that you have foreshadowed, these submissions must be overcome. If Your Honour simply fails to deal with them in your Honour's decision, the unavoidable inference will be that your Honour could not identify any basis to reject those submissions.

Paragraph 3 - Mr Graham did not possess sufficient experience and training

Proposed comment:

"While Mr Graham may have believed that he had sufficient training in the concepts and practices of incident management he did not, in my view, possess the required level of experience and knowledge of fire behaviour and firefighting suppression tactics and strategies which were needed to effectively fulfill the position of Operations Officer from the start of the fires. Mr Graham did not accept this but it is a fact, nevertheless. Mr Graham took up the position of Manager Operations with the ESB in mid 1997. Prior to that time he worked in the ACT Department of Urban Services involved with management systems and the Department of Defence in staff development. Before that Mr Graham has a career which was predominantly in the Royal Australian Navy for twenty one years most of which was spent in the field of catering. During his career in the RAN his firefighting experience was limited to an occasional grass fire near a Naval shore establishment. Mr Graham had some limited experience as a volunteer firefighter, a little bushfire training and had acted as an incident

controller on two or three occasions. He has never actually fought a fire by holding a hose or using a rake hoe and has no training in fire behaviour. All of these factors combined to make him unqualified, inexperienced and unsuitable for the position he held as Operations Officer of the SMT from 8 January 2003 onwards."

I repeat my comments above relating to my suitability to hold the position of Operations Officer. I have a number of additional comments to make in relation to this proposed comment.

Firstly, it is incorrect to state that I had no training in fire behaviour – my evidence (T 2597) was I received such training as part of the ACT Bushfire Service Firefighting Modules which I completed in 1989 (see curriculum vitae attached to my statement, ESB.AFP.0001.1307).

Secondly, the proposed comment is simply wrong in asserting as a fact that I lacked sufficient knowledge and experience.

Thirdly, the real vice, however, in the proposed comment is the conclusion that "All of these factors combined to make him unqualified, inexperienced and unsuitable for the position he held as Operations Officer of the SMT from 8 January 2003 onwards." What is the evidence to support this conclusion? Where are the examples of my decision-making so unreasonably wrong that such a conclusion may be reached?

Only this, it seems in the absence of anything else: that I failed to overrule the decision of Ms Arman on the night of 8 January 2003.

It cannot be said that the failure to deploy bulldozers at Bendora on 8 or 9 January was an error made by me: there were no bulldozers available at those times (see the statement of Beutel (ESB.AFP.0108.1215)).

It cannot be said that the failure to comply with the SOP in terms of weight of response at Bendora on the evening of 8 January was an error made by me: while the configuration of vehicles sent to the fire was not exactly in accordance with the SOP, the number of crew and vehicles was as required by the SOP.

It cannot be said that I did not appreciate the need for an aggressive attack at the first opportunity – if that were so, then what explanation could there possibly be for my having sent fully equipped crews out to the firegrounds on the evening of 8 January in the first place? The only conclusion reasonably open is that they were sent out to fight the fire, and firefighting would have occurred but for the decision of Ms Arman to withdraw on safety grounds.

Without being apprised precisely as to what decisions of mine, if any, are being criticized in your Honour's proposed comment, I have no other way of addressing the comment.

Once again, I am at risk of being denied procedural fairness in that respect if the proposed comment is made based upon something else.

It need not be so. The approach that ought, with respect, be adopted by your Honour is exemplified in the following passage from the submissions of the ACT (adopted, as I remind your Honour, by counsel on my behalf), which I commend to your Honour in this respect:

“426. It is accepted that a more careful examination of the decision to withdraw from the fire at Bendora should have occurred. Counsel Assisting have urged upon your Honour numerous conclusions and findings which relate to the experience and state of mind of specified individuals antecedent to the decisions made. Putting aside the utility of such an exercise, it ignores the reality that decisions are often made in circumstances of competing priorities and at times on incomplete information. It is one thing to conclude that a better decision might have been made or the decision-making process might have been better carried out. It is quite another to blame those who took the decisions at the time they did. Such a course is unwarranted and counter productive. A very real consequence of dissecting the decision or process in the kind of detail that the submissions of counsel assisting do, and urging findings of an adverse nature about the persons involved, might be to discourage persons from taking up positions which require such decisions to be made or to discourage effective and timely decision-making.”

Not only would you be denying me procedural fairness if the proposed comment were made upon some other basis – even if that not be the case, the proposed comment is not reasonably open on the evidence.

Paragraph 4 - Mr Graham did not recognize the urgency of the situation or the significance of the typical summer weather pattern

Proposed comment:

“This approach [EVIDENCE OF MR BARTLETT AS TO HIS RESPONSE TO FIRES] is very different to that adopted by Mr Graham who did not appear to recognize the urgency of the situation and the need for a maximum and sustained response which involved the use of appropriate personnel and heavy machinery. He did not understand the significance of the typical 5 to 7 day summer weather pattern referred to by many other witnesses and he was wrong to assert in his statement that night-time operations are usually conducted once strategies changed from direct to indirect attack.”

This comment, when analyzed, can be broken down into the following propositions:

Proposition 1: I did not appear to recognize the urgency of the situation and the need for a maximum and sustained response which involved the use of appropriate personnel and heavy machinery.

Your Honour has chosen to use the word “maximum”: there is no evidence to support the conclusion that the circumstances on the night of 8 January 2003 called for “need for a maximum ... response”. This, with respect, is incorrect: the highest the evidence reached was that the situation that night required a *greater* response, not the *greatest possible* response. Indeed, such a response would be the very height of folly: to exhaust all of one’s firefighting resources at the start of what was expected to be a horror fire season would be completely contrary to accepted firefighting principles and to common-sense.

What the evidence does support is the conclusion, which I frankly conceded, that Mr Bartlett recognised a degree of urgency of the situation that I did not, and he did so because of the additional experience Mr Bartlett possessed over mine.

Proposition 2: I did not understand the significance of the typical 5 to 7 day summer weather pattern referred to by many other witnesses.

This, with respect, is not the evidence. The proposition implies that I was *aware of, but did not understand (and did not seek guidance to enable me to understand)* the typical 5 to 7 day summer weather pattern. That is not the case - the evidence is that I was *not aware* of that pattern (T 2665.15).

Whether, as part of my training and education for my position, I should have been thus aware is a different point. The “many other witnesses” referred to by Your Honour are all, without exception, extremely experienced firefighters. This again harks back to the issue: while it is possible to argue that I was insufficiently experienced to have been left in the position of SMT Operations Officer when the fires struck on 8 January (a conclusion I say is irretrievably tainted by hindsight), responsibility for that decision can hardly be laid at my door. As the ACT observed in its submissions, “The ACT experience had involved, for two decades, relatively small fires which were capable of being controlled and extinguished, usually by early and direct attack” – in light of that context, I again ask: at what point was it supposed to have been recognized that I was not the right man for the job?

Proposition 3: I was wrong to assert in my statement that night-time operations are usually conducted once strategies changed from direct to indirect attack.

I assume that what your Honour means by this proposition is that my assertion in my statement that night-time operations are usually conducted once strategies changed from direct to indirect attack was wrong, in the sense of being in error. If that is so, then I agree with the proposition.

However, if your Honour meant to convey the notion that I did something wrong in making that assertion in my statement, I disagree, as that formulation of the comment carries with it the implication that in making the assertion, I knew that I was doing something that was wrong.

Paragraph 5: I failed to respect the rule of fighting the fire on the first night

Proposed comment:

“The evidence was that the best opportunity generally to control a fire is on the first night because that is when it is at its most benign and the control almost invariably involves direct attack. Mr Graham, on his evidence and by his actions appeared not to have respected this principle which is probably one of the most fundamental in bushfire fighting. It was not a question of being short of resources. It was a question of not appreciating the need to deploy those resources in the first twenty-four to forty-eight hours and the consequences of not controlling the fires quickly, given the extreme drought conditions and the dire weather forecasts.”

The central proposition here is that I appeared not to have respected the principle that the best opportunity generally to control a fire is on the first night, because that is when it is at its most benign and the control almost invariably involves direct attack.

The criticism is unfounded. There is no evidence to suggest that I lacked respect for this principle. Rather, the evidence is directly to the contrary effect:

Mr Graham: “I hold the view that, if possible, overnight firefighting is a good thing to be doing if the conditions allow that to happen.” (T 2666)

Rather, the evidence shows that Ms Arman, a more experienced firefighter than myself, made a decision on safety grounds, and that my approach did not have the effect of the important principle of fighting the fire on the first night outweighing the important principle of ensuring firefighter safety.

What the proposed comment embodies is an underlying proposition (as suggested by Mr Roche) that “respect” for the goal of operational success must result in an obligation to dismiss the paramount duty of ensuring the safety of those fighting the fires. Mr Roche is a completely discredited witness. His argument on this issue represented the type of “safety-averse” attitude he adopted during his tenure at the Country Fire Association in Victoria. His argument takes no account of, and displays a deliberate rejection of, occupational health and safety obligations (see T 7537).

That proposition, inherent in the comment, and hence the comment itself, is fundamentally wrong, and is not reasonably open on the evidence.

Paragraph 6: Mr Graham’s lack of experience contributed to poor decisions

Proposed comment:

“I am satisfied on the evidence before this inquiry that Mr Graham’s lack of experience in fire behaviour and fire suppression was a significant contribution to

the poor decisions which were made on the first night of the fires and the following morning.”

Response: What “poor decisions” are here being referred to? From the context of your Honour’s other comments, I understand that one such decision was the fact that I did not overrule Ms Arman’s decision to withdraw from the Bendora fireground on the evening of 8 January, and I have dealt with that. What other decisions are being categorized as “poor”?

If I have to guess what decisions are being referred to (and with respect I should not be placed in this position), I would repeat, as above:

- Is it suggested that the failure to deploy bulldozers at Bendora on 8 or 9 January was an error made by me? That cannot be: there were no bulldozers available at those times.
- Is it suggested that that the failure to comply with the SOP in terms of weight of response at Bendora was an error made by me? That cannot be: while the configuration of vehicles sent to the fire was not exactly in accordance with the SOP, the number of crew and vehicles was as required by the SOP.
- Is it suggested that the failure to allocate more resources to Bendora for the morning of 9 January was an error made by me? That cannot be: those resources were allocated based on the information provided to me as to the size of the fire, which proved to be incorrect.

I cannot address the proposed comment without being apprised of the factual findings behind, or their basis in evidence for, this comment. Accordingly, I am of the view, as my counsel indicated in their letter dated 19 October 2006, that the consequence of this is that I will be denied procedural fairness if the proposed comment is made on some different basis to the above. Otherwise, the proposed comment, as I have understood it, is not reasonably open on the evidence.

Paragraph 7: Mr Lucas-Smith’s error of judgment in not recognizing Mr Graham’s inexperience

Proposed comment:

“The failure by Mr Lucas-Smith to recognise Mr Graham’s limitations in terms of his experience was a serious error of judgment on his part – especially when he had two very experienced officers available, namely Mr Bartlett and Mr Sayer. This error of judgment resulted in an inadequate initial response in the first few days and was a factor in all the ACT fires expanding and ultimately becoming beyond control and thereby causing the devastation which occurred on 18 January 2000.”

Response: This proposed comment clearly has its origin in the following passage from the submissions of Counsel Assisting:

“1128. In our submission, Your Honour should find in the circumstances, that the failure to identify the importance of the role that Mr Graham would be fulfilling that night in the absence of Mr Lucas-Smith and to replace him with an officer with the necessary experience, was a serious error of judgment that was a cause of all the ACT fires in the sense in which that concept was defined in the judgment of the Court of Appeal. That error of judgment was made, in the first instance, by Mr Lucas-Smith, who was in the best position at the time, with his experience and expertise, to understand the seriousness of the situation under the prevailing drought conditions and the consequent importance of Mr Graham’s role. His error was compounded by the fact that Mr Bartlett attended at the ESB in the afternoon of 8 January 2003 and spoke to both Mr Lucas-Smith and Mr Graham offering his assistance, but Mr Lucas-Smith declined the offer. Mr Lucas-Smith can be taken to have known that Mr Bartlett was an officer with vastly greater relevant expertise and experience than Mr Graham.”

The submissions of the ACT as to this issue were as follows:

“309. At paragraph 1128, counsel assisting submit that the Coroner should find *“that the failure to identify the importance of the role that Mr Graham would be fulfilling that night in the absence of Mr Lucas-Smith and to replace him with an officer with the necessary experience was a serious error of judgment that was a cause of all the ACT fires ...”*. The error was made (so it is said) in the first instance by Lucas-Smith who was in the best position to understand the seriousness of the situation and the importance of Graham’s role. His error was compounded by his declining Bartlett’s offer of assistance.

310. The ACT submits that the Coroner should not make this finding for the following reasons.

311. First, the serious assertion that Lucas-Smith was guilty of a serious error of judgment in this regard was not put to him – and as a matter of procedural fairness, it ought to have been.

312. Secondly, the ACT repeats the submission that the link between the asserted failure by Lucas-Smith and the fires on 18 January is so remote and tenuous that it would be outside the Coroner’s jurisdiction to make such a finding. The proposition may be demonstrated by outlining some of the steps in the proposed chain of causation: firstly that Graham lacked experience in such circumstances; next that Lucas-Smith should have but failed to realise this fact; thirdly, that had he done so, he would have replaced Graham; fourthly, that the replacement would have been a person of greater experience than Graham; fifthly, that the person would have had available to him crews and heavy equipment; sixthly, that the crews and heavy equipment would have been deployed that night

to all the fires; and finally that those crews and equipment, assuming they had even reached the fires, would have achieved containment. We submit that the finding is fundamentally speculative.

313. In any event, there is no evidence that Lucas-Smith had proper grounds or even the power to replace Graham. It may be inferred that Graham went through a routine employment process i.e. that he submitted an application, underwent a selection process and was selected based on his suitability for the job. Furthermore, Graham had successfully discharged his job since July 1997 and there was no cause to think that Graham was lacking in competence and would fail to discharge his duties competently.

314. As already noted, the proposed finding involves a number of steps as to how the alleged error of judgment occurred. The term "*error of judgment*" implies an exercise of judgment being a conscious choice between a number of options. There is no evidence of Lucas-Smith thinking on 8 January in regard to whether the Incident Controllers at Bendora and Stockyard Spur may have lacked sufficient experience to determine whether fire fighting should have continued at night; or whether Graham also lacked that experience. Indeed, his knowledge of what was occurring and who had been deployed, but not taking any steps to challenge or counter that course, suggests quite the opposite.

315. Counsel assisting submit at paragraph 1129 that Graham made an error of judgment in declining Bartlett's offer and that his lack of perception about his inexperience was part of his overall error, but secondary to the error of Lucas-Smith.

316. According to Bartlett, he attended at ESB "*to inquire as to what I could do*". The offer by Bartlett was made very early in the piece at a time when Lucas-Smith and Graham "*were still trying to confirm the number of fires and their specific locations*"(ESB.AFP.0001.1140 at paragraph 29). In the light of these matters, it is submitted that it was not unreasonable for Lucas-Smith and Graham to attempt to assess the dimensions of the tasks before taking up Bartlett's offer of assistance and that neither Graham nor Lucas-Smith made any error of judgment. They had in place, both at headquarters in Curtin and on their way to the known ACT fires, competent and reasonably experienced personnel."

Response: Again, before your Honour can make the comment that you have foreshadowed, the ACT's submissions must be dealt with head on and overcome. If this is not done, the unavoidable inference will be that your Honour could not identify any reasonable basis to reject the submissions in this respect. Again, the proposed comment is not reasonably open on the evidence

Paragraph 8: Mr Graham's error of judgment in not recognizing his own inexperience

Proposed comment:

“Mr Graham displayed a lack of judgment by failing to recognise the limitation of his level of skills and experience to deal with major fire events, and as a consequence of this he failed to call on and deploy all of the resources which were available to him. Nor did he seek appropriate advice.”

Response: This proposed comment clearly has its origin in the following passage from the submissions of Counsel Assisting:

“1129. Mr Graham also made an error of judgment in declining Mr Bartlett’s offer, although his position is more problematic. His expertise and experience was such that, despite his denials on this subject, he may not have fully understood what was likely to be required of him under the conditions and in the circumstances confronted that night. Further, we would accept that, for a person who is clearly conscientious and dedicated, it is difficult to admit in the heat of the moment, that you are not up to the job you are given. This difficulty was demonstrated during Mr Graham’s evidence, when he essentially agreed that a certain level of understanding of fire behaviour was required in his role that he did not have and that Messrs Bartlett, Sayer and Cooper were immediately recognising issues on the night that had not occurred to him, but would not go the next step and accept that he was not adequately equipped for the role he was given. However, Mr Graham could have at least identified the gaps in his expertise and experience sufficiently to consult others with more relevant experience about important decisions affecting tactics and resources. Thus, in our submission, his lack of perception about his own position was a part of the overall error on this issue that night, but secondary to that of Mr Lucas-Smith.”

Your Honour seems to have accepted holus-bolus the criticism urged upon you in the above passage, again without dealing, so far as I can tell, and as you must, with the submission made on my behalf upon this issue and those of the ACT reproduced above.

A serious misstatement of the evidence by Counsel Assisting

It is necessary at this point to draw attention to a passage from the submissions of Counsel Assisting referred to above, namely the suggestion that I:

“essentially agreed that a certain level of understanding of fire behaviour was required in his role that he did not have”

This submission was wrong. There was no evidence that I agreed with that proposition, and my evidence cannot be construed to infer such an agreement.

This is a serious misstatement of the evidence and warrants careful analysis. Paragraph 1129 of the submissions appears in that portion of Section 5.1 of Counsel Assisting’s

submissions (entitled “Initial Response to the ACT Fires Generally”) dealing with the findings urged upon your Honour, and purports to accurately summarise the evidence upon this issue. The passage from paragraph 1129 referred to above purports to be based on paragraph 1121 of the submissions, which relevantly reads as follows:

“Mr Graham had very little experience in managing remote area wildfires and no relevant experience in fighting them. We would not dispute that he was an effective *controller of resources*, as he was described by Mr Lucas-Smith, and a competent and dedicated administrator in his day to day role at ESB. But the role he was fulfilling on the evening of 8 January went significantly beyond Mr Graham’s day to day role. It required at least a strong working knowledge of fire behaviour and firefighting suppression and tactics, the stronger the better. Mr Graham had neither of these things, as he effectively conceded in evidence.”

The footnote reference at the conclusion of the above passage is to section 3.2.2.9 of Counsel Assisting’s submissions, described as “Mr Graham’s Role in the Decision” (being the decision to withdraw from Bendora on 8 January).

Section 3.2.2.9 of Counsel Assisting’s submissions is, in turn, their summary of my evidence as to this topic, specifically the evidence I gave between T 2664 and T 2729. A careful reading of that evidence demonstrates that I never agreed that I lacked a necessary attribute for my job – rather, I denied that. What I admitted was that others had considerably more experience in bushfire fighting than I did (T 2726), not that I lacked sufficient understanding of fire behaviour to perform my job.

The submission was wrong, and seriously so.

It is pertinent at this point to remind your Honour of your very own words, uttered when Mr Lakatos (now of Senior Counsel) rose to object to a question put in cross-examination of me by Mr Woodward, at T 2724:

“I am here to protect the interests of Mr Graham.”

I would like to believe, although this proposed comment, with respect, suggests otherwise, that Your Honour remains anxious to protect me from misstatements of the evidence by Counsel Assisting.

Paragraph 9: ESB’s incident management system was not in accordance with AIIMS

Proposed comment:

“The fact that the ESB adopted a system of incident management for the fires which was not in accordance with the recognised AIIMS ICS model did serve to cause confusion among incident controllers in the field and inhibited the flow of important information to incident controllers.”

Response: As my counsel observed in their letter to your Honour dated 19 October 2006, the proposed comment is a comment which, on its face, does not make, either directly or, as far as can be ascertained from the terms of the Notice, inferentially, any adverse comment directed towards me. If your Honour intends the proposed comment to convey or suggest some inference or conclusion adverse to me, it is incumbent upon you to make clear what the inference or conclusion is, and the basis for making it. You have not done so.

Paragraphs 10-12: the decision to withdraw from Bendora was seriously wrong

Proposed comment:

“The decision to withdraw crews from the fire was a seriously wrong decision because it resulted in the Bendora fire growing. The way the decision to withdraw from the fires was made was flawed. Ms Arman relied on Mr Graham and took his words to the effect of ‘we were hoping you would do that [i.e. withdraw]’ as meaning the decision was supported by the SMT. The decision to withdraw should have been subjected to greater scrutiny by Mr Graham in the first instance and, by the time Mr Lucas-Smith knew of the decision it was too late to reverse it.

Ms Arman was looking for guidance from headquarters but received none.

Mr Graham failed to make proper enquiry of Ms Arman before acceding to her suggestion that she withdraw her crews overnight.”

Your Honour’s proposed comment, as it relates to me, can be broken down as follows:

Proposition 1: The decision to withdraw crews from the fire was a seriously wrong decision because it resulted in the Bendora fire growing;

Response: The fact is that Ms Arman’s decision to withdraw was based on her perception of risk to her crews. Her decision, based on the reason of safety, successfully achieved her goal of ensuring that her crews were safe. The logical consequence of your Honour’s proposed comment is that fighting the fire then and there that night should have been put ahead of the safety of firefighters. Mr Lucas-Smith, whose views Counsel Assisting have wrongly attempted to use to demonstrate error in Ms Arman’s decision, was rightfully most concerned about this issue. As he said (in a passage at T 814, interestingly not referred to by Counsel Assisting:

“I certainly had some concerns in relation to the night-time firefighting exercise there. The potential existed, I suppose, for a number of safety issues to arise. However, it is the advice of the people in the field that make that determination, not us sitting in our bunker in Curtin, so to speak.”

The decision to stay at Bendora on the night of 8 January 2003 was always one of balancing risks. Ms Arman's decision not to stay cannot fairly or reasonably be criticized. As Mr Lucas-Smith's evidence makes clear, assessment of safety issues could only be properly made on the fireground. The conclusion that the decision was wrong (let alone "seriously wrong") cannot be reached simply because one of the risks weighed up in making the decision came to pass. How much more wrong would the decision have been if the crews had stayed and a firefighter had been killed?

Proposition 2: The way the decision to withdraw from the fires was made by Ms Arman was flawed.

Response: In relation to Propositions 1 and 2, it is clear from the evidence and from the terms of the remainder of the proposed comment (and is conceded to be so by Counsel Assisting: para. 327) that the decision to withdraw was that of Ms Arman, as the Incident Controller (see Arman TROC q236 [DPP.DPP.0004.0021]; Lucas-Smith T 835) – the issue for me was merely whether I should override her decision.

I have commented elsewhere on the foolishness of the suggestion that decisions based on safety considerations should be overruled by persons of lesser firefighting experience not present on the fireground. Counsel Assisting were completely wrong to assert that fighting the fire on the first night was "an absolute necessity" (para. 1159). That submission, and the evidence of Mr Cheney in this respect, to the effect that safety for the public must in this situation prevail over the safety of firefighters (T 7069) – must be firmly rejected by the Court. Quite apart from common-sense considerations, it is not a conclusion which is reasonably open, given that the law imposes obligations with respect to occupational health and safety. As I emphasised in my evidence, the safety of firefighters is paramount (T 3019). Not merely "important" – paramount (or, as Roche was forced to concede, "pre-eminent": T 7538). The Court must not forget that fact.

Proposition 3: Ms Arman relied on Mr Graham and took his words to the effect of 'we were hoping you would do that [i.e. withdraw]' as meaning the decision was supported by the SMT;

Response: That is correct – I considered that it was important to support the decision of the Incident Controller. While I did not interrogate her further, the unchallenged evidence establishes that had I done so, in the interests of firefighter safety, I would have acted no differently.

Proposition 4: Ms Arman's decision to withdraw should have been subjected to greater scrutiny by Mr Graham in the first instance;

Response: This is a proposition with which I agreed – however, the evidence is that had I pressed Ms Arman further in this regard, and had Ms Arman, in response, communicated all of the reasons for her decision, I would not have acted in a manner other than I did (T 3018).

Proposition 5: By the time Mr Lucas-Smith knew of the decision it was too late to reverse it.

Response: This proposition is correct, although in my telephone conversation with Mr Lucas-Smith at 1942 I adverted to the likelihood that suppression activity might not take place that night, a suggestion with which he expressed no disagreement. This is the reason I was of the view, as I indicated in my evidence (T 2683-2684) that Mr Lucas-Smith would not have been opposed to having crews withdraw if that was the view of the Incident Controller.

Proposition 6: Ms Arman was looking for guidance from headquarters but received none;

Response: This comment – derived from the (incorrect) interpretation placed on the evidence by Mr Roche in his report at p.71 - is incorrect. Ms Arman did receive guidance – the guidance she received was support for her decision to withdraw. That may not be the guidance Mr Roche considers she should have been given, but it was guidance nonetheless. Mr Roche's conclusion, based as it is on his evident disrespect for obligations arising under the law relating to occupational health and safety, is incorrect.

Proposition 7: Ms Arman made a suggestion that she withdraw her crews overnight;

Response: This proposition is correct.

Proposition 8: Mr Graham acceded to Ms Arman's suggestion.

Response: This proposition is correct.

Conclusion re paragraph 12:

For the reasons advanced above, I consider that the proposed comment is wrong, and not reasonably open on the evidence.

Paragraphs 13-14: Mr Graham's evidence concerning his conversation with Mr Byrnes rejected

Proposed comment:

"Constable Jason Byrnes of the AFP telephoned the ESB and spoke with Mr Graham at about 5.30 pm about whether the police needed to be involved in traffic operations because of a back-burn which was planned on the Brindabella Road. In that conversation Mr Byrnes said to Mr Graham: "Obviously our bosses are a little bit concerned now. They're sort of worried that Canberra is gonna burn". Mr Graham replied: "Yeah, well it's not beyond possibility on Saturday or Monday".

When questioned about his remarks Mr Graham said he was not referring to the fires burning in the city but the areas towards and up to the city. This does not make any sense. If Mr Graham did think of Canberra in terms of the wider area outside the city, then, it was already burning and had been for the past eight days." He was present at the planning meeting which had probably just concluded and heard Mr McRae's predictions. He heard Mr Mason report earlier in the day on the weather forecast up until Monday 20 January which included high temperatures and north and north-west winds. He may well have thought, as he said, and hoped that the fires would be contained in the grasslands but I do not accept that Mr Graham was not referring to the urban area in his conversation with Mr Byrnes."

What your Honour must remember is that the conversation in question was initiated by Mr Byrnes, in order to raise the issue of whether *the area around Canberra* (not the urban area of Canberra), might come under threat. There can be no doubt that this is what Mr Byrnes was talking about – that is his sworn testimony, and was completely unchallenged, both at the time and subsequently in the course of submissions.

For your Honour to contemplate making the comment you propose, it must, by necessary implication, follow that you believe a fundamental misunderstanding has occurred between Mr Byrnes on the one hand, and myself on the other. There is not a skerrick of evidence to support such a conclusion.

Your Honour needs to be reminded of the tenor of the cross-examination of myself upon this issue by Counsel Assisting. Mr Woodward was attempting to discredit my assertion that I did not understand the discussion with Mr Byrnes to be about possible impact upon Canberra City. Such was his zeal in this endeavour that he mis-stated the evidence, and had to be corrected by my counsel (T 2889.37-43). Mr Woodward's insistence in pushing me to admit that I was referring to Canberra City was unsuccessful. Given that Mr Byrnes' account simply reinforced my evidence, Counsel Assisting made no submission to you which urged upon you the suggestion that I thought the conversation with Mr Byrnes was about the urban area of Canberra burning.

Counsel Assisting's submission upon this issue, which, on this occasion, accurately summarises the evidence on the point (if not the manner in which the evidence came to be before you), is illuminating. Your Honour's proposed comment, so far as I can tell, does not deal in any way with the passages that are in bold below:

"3.5.1.9 Telephone Call Graham to Byrnes.

640. At 17:34 hours on 15 January 2003, Mr Graham received a telephone call from Mr Jason Byrnes of the AFP¹¹⁰. The purpose of the telephone call appears to have been for Mr Byrnes to ascertain whether the ESB needed the AFP to be involved in any traffic operations because of a back-burn being planned on the Brindabella Road. Late in the discussion, Mr Byrnes said to Mr Graham: *Obviously our bosses are a little bit concerned now. They're sort of worried that*

Canberra is gonna burn. Mr Graham responded: Yeah, well it's not beyond possibility on Saturday or Monday.

641. Mr Graham was asked in evidence whether, in his answer to Mr Byrnes, he was referring to the possibility of Canberra City burning. His response was: *No, I don't believe I was... I think I was referring to the fact that the fire is expected to have a run towards Canberra City and that areas up to Canberra City may well be under some threat. But as I described earlier, my feeling at that time was once the fires had reached the river and had crossed into the grasslands that they would contain it all.* It was again put to Mr Graham [**“again”, because when it was first put the question mis-stated the evidence and could not be pressed**] that he understood Mr Byrnes to be referring to Canberra City. He said: *No, I don't believe so. I believe, as I earlier described, that I was talking to the east certainly of where the fires were, but not Canberra City. Mr Byrnes, he didn't question me any further on it. He just let the issue go. So I don't think that he took it either to be a reference to Canberra City.*

642. It was pointed out to Mr Graham there were two substantial fires burning in the ACT and that the fire he had earlier been talking about with Mr Byrnes was the Bendora fire, which was burning in the ACT. It was suggested to Mr Graham that he could not have been referring to the ACT in responding to Mr Byrnes' reference to *Canberra*, because the ACT was already burning. He repeated that he was not identifying or recognising the possibility of Canberra City burning on the following Saturday or Monday. Mr Graham was asked: *What do you say you are responding to by the reference to “Canberra”.* He responded: *That the fires will change their course and that they will start burning towards Canberra city.*¹¹¹¹

643. Later in his evidence, Mr Graham indicated that if Mr Byrnes' view had been that the Canberra suburbs were under threat as at 15 January, he would have expected that there would have been an immediate AFP presence at Curtin for the ensuing days until they got over that threat and the Emergency Management Committee would have been called together to do some planning on that potential impact¹¹¹². Later still, Mr Graham gave evidence that, had he had in his mind as his understanding of that conversation the possibility of Canberra City burning, he would have immediately raised that to the attention of the other members of the SMT, in particular Mr Lucas-Smith and Mr McRae and brought to the attention the views of the AFP. Mr Graham didn't believe that Mr Byrnes was talking about Canberra City burning¹¹¹³.

644. Mr Byrnes gave evidence that the telephone conversation he had with Mr Graham was preceded by a discussion he had with a New South Wales Inspector of Police from Tumut or Cooma to the effect that a series of bushfires to the west of the ACT may pose a threat in coming days. At the time, Mr Byrnes was the acting officer in charge of Tuggeranong patrol. The officer seemed to indicate to Mr Byrnes that the fires were serious fires and there was a strong potential they would impact in the ACT. As a result of that information, Mr Byrnes briefed

Detective Superintendent Quade who instructed him to *continue to run with it and... then get back to me*. He then contacted the NSW Rural Fire Service at Queanbeyan and then Mr Graham from ESB. The person he spoke to at the NSW Rural Fire Service was somebody who played a relatively senior coordinating role. He sought some advice about the fires and was told that he should contact the ACT Bushfire Brigade and they were large and serious fires. He then contacted Mr Graham.¹¹¹⁴

645. Taken to the transcript of his telephone conversation with Mr Graham, Mr Byrnes gave evidence that when referring to *our bosses*, he was referring to the Woden officer in charge who was Sergeant Budworth. He explained that the concerns arose from the telephone conversation he had received from the New South Wales police officer. Mr Byrnes accepted that he referred to a possibility that *Canberra was going to burn on Saturday or Monday and obviously I considered that as an issue. Again, I can only say I came away from that and the other conversation satisfied that the situation was in hand and that if it was going to be a critical incident the fire brigade would come back to the AFP and seek – formally advise and then seek our involvement.*¹¹¹⁵

646. Later in his evidence Mr Byrnes was asked what he meant by the expression *Canberra is going to burn*. He responded: *Your Worship, as I stated, that's one of the statements I don't recall exactly saying but obviously I did say it. All I can say is that if I thought it was going to mean the actual City of Canberra in the statement, I would have stated so and continued to push on that issue. The difference is Canberra means the areas around Canberra City as well. According to Mr Byrnes, if it had been his intention to convey that the urban area was under threat and that was his operating assumption as at that time on 15 January, he would have briefed straight up the line through his chain of command up to Winchester Centre.*"

Although it is not apparent from the submissions of Counsel Assisting, the very important qualification made by Mr Byrnes that "if I thought it was going to mean the actual City of Canberra in the statement, I would have stated so and continued to push on that issue. The difference is Canberra means the areas around Canberra City as well" was not elicited by Counsel Assisting.

With respect, what seems to me to be apparent is an intention to sheet home to individuals in the ESB a belief at an early stage that the fires were going to impact upon the urban area of Canberra. My apprehension is that such an approach is to be adopted by your Honour in order, impermissibly, to attach blame to those individuals for having failed to warn the people of Canberra of the risk of the fires.

The telephone conversation between Mr Byrnes and myself cannot, by any stretch of the evidence, be construed in the manner your Honour has indicated in the foreshadowed comment. My evidence was that at no time on 15 January did I consider the Canberra urban area to be at risk, and at the time I was not privy to any information or opinion suggestive of such a risk. On what basis could I, a man your Honour has categorised as a

person inexperienced and lacking in knowledge of fire behaviour, have formed a view that the urban area of Canberra might be under threat? Why, had that been my view, would I not have **“immediately raised that to the attention of the other members of the SMT, in particular Mr Lucas-Smith and Mr McRae and brought to the attention the views of the AFP”**? What other substantial reason, based on the evidence, could be advanced as the basis for your proposed comment? The Notice does not inform me.

For you to make such a critical comment as you have proposed requires you to deal with these questions. I believe that these questions cannot reasonably be answered adversely to me, and that, accordingly, the proposed comment is wrong, and not reasonably open on the evidence.

Paragraph 15: on 15 January Mr Graham recognised that the fires were a serious risk to the urban edge

Proposed comment:

“By late afternoon of 15 January 2003 senior personnel of the ESB were in receipt of information which either confirmed or was the basis upon which they formed certain views about the risks of the fires. By late afternoon of 15 January 2003 Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each recognised that the fires, including the McIntyre’s Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of the urban area.”

This comment, when assessed from my position, can be broken down into the following propositions:

Proposition 1: By late afternoon of 15 January 2003 I was in receipt of information which either confirmed or was the basis upon which I formed certain views about the risks of the fires.

Response: This proposition is correct.

Proposition 2: By late afternoon of 15 January 2003 I recognized that the fires, including the McIntyre’s Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of the urban area.

Response: The highest the evidence reached in relation to this issue was that, on the afternoon of 15 January, there was a discussion between Mr Koperberg and Mr Lucas-Smith in which, if Mr Koperberg’s evidence is preferred over that of Mr Lucas-Smith, Mr Koperberg made reference to a risk he perceived to Canberra. Four points need be made in this regard:

- Mr Koperberg considered that it was a “*possibility that ought not to have been precluded*” (T 2092-2093), evidence which does not tend to lend support for the proposition that it was a “serious risk”;
- I was not at that meeting;
- My evidence was that at no time did I consider the Canberra urban area to be at risk – in this regard I was extensively cross-examined (T 2906-2920), and the evidence demonstrates that, on 15 January, I was not privy to any information or opinion suggestive of such a risk; and
- My unchallenged evidence was that my understanding on 15 January was that the threat from the fires had moved away from the ACT somewhat (T 2913).

Conclusion re paragraph 15: the proposed comment, to the extent to which it is directed against me, is wrong, and not reasonably open on the evidence.

Paragraphs 16-19: by 17 January Mr Graham, believing that the fires were likely to impact on the urban area the following day, failed to warn the public

Proposed comment:

“By the evening of 17 January 2003 the senior personnel of the ESB (Messrs Castle, Lucas-Smith, McRae and Graham) were in possession of information which confirmed what they had already believed namely that the fires were a serious risk to the urban edge of Canberra and that the impact was likely within the following twenty-four hours.

The same senior personnel of the ESB did not consider that it was necessary to issue warnings to those people in the urban area who were in the direct path of the fires and consequently, none were issued.

No contact was made and no warnings were given on 17 January 2003 to the people living in the forestry settlements of Stromlo, Uriarra and Pierce’s Creek.

By the evening of 17 January 2003 the ESB had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge.”

I repeat the observation in my counsels’ letter to your Honour dated 19 October 2006, that the proposed comment is one:

“which, having been directed at members of the Emergency Services Bureau generally, makes it impossible for Mr Graham to gain any understanding as to the extent to which the comment is directed towards him.”

I cannot discern, from the material in the Notice or elsewhere, any basis to suggest that this proposed comment is fairly or reasonably directed at me, given my position within the ESB.

However, to address the proposed comment from my position requires that the comment be broken down into propositions referable to me, which I have done as follows:

Proposition 1: By the evening of 17 January 2003 I believed that the fires were a serious risk to the urban edge of Canberra;

Response: The use of the words “serious risk” is debatable in terms of my thinking at the time. The evidence was rather that I first identified that there was a *possibility* that there may be a threat to the urban edge of Canberra on the night of 17 January (T 2892).

Proposition 2: By the evening of 17 January 2003 I believed that the impact of the fires on the urban edge of Canberra was likely within the following twenty-four hours;

Response: This is incorrect: while the projections available on the evening of 17 January suggested that the worst case scenario was that the fire, if unattended, might impact near the urban edge on the following day, as indicated above, my (unchallenged) evidence was that I identified a *possibility* of a threat to the urban edge of Canberra on the night of 17 January, as opposed to such an impact being “likely” (T 2892).

Proposition 3: By the evening of 17 January 2003 I was in possession of information which confirmed that belief;

Response: This is incorrect: I did not hold such a “belief”, and did not possess information which would have confirmed any such belief had I had one. The evidence does not establish the contrary.

Proposition 4: I did not consider that it was necessary to issue warnings to those people in the urban area who were in the direct path of the fires;

Response: This is incorrect: I specifically stated in my evidence that, in my view, it would have been appropriate for the public to have been warned: (T 2955);

Proposition 5: By the evening of 17 January 2003 I had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge.

Response: This proposition, while correct on a strictly literal interpretation (in the sense that I did not myself have any such plans and strategies), is incorrect in the sense that the unspoken premise is that I, myself, should have had such plans and strategies. The role of formulating plans and strategies was a task for the ESB and, as in all teams, the particular

role rested with some members of the team and not others. Formulating plans and strategies was not my job.

Conclusion re paragraphs 16-19: the proposed comments, to the extent to which they are directed against me, are wrong, and not reasonably open on the evidence.

Paragraphs 20-21: by the afternoon of 17 January Mr Graham knew that the fires would impact on the urban area

Proposed comment:

"It is clear from the evidence that the senior personnel at ESB, being Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham knew - and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended the planning meetings knew - that a very real risk existed. [BEFORE 18 JANUARY 2003]

If any of these people were to claim that they had doubts before 17 January about the realistic potential of the fires reaching the suburbs - and it is difficult to envisage how they could legitimately claim this - then there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting on 17 January. They all knew the fires would burn into Canberra. They may not have been exactly sure of the precise place or the precise time or even envisaged the precise nature of the fire. But they all knew that impact was inevitable. Those people who said in their evidence that they still hoped the fires could be stopped were living with false hope, not reality, choosing to consciously ignore the information and the evidence presented to them. It is totally inexplicable why there was no reaction to Mr Taylor's revised prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm. Mr Graham saw the message but appears to have simply ignored it."

Your Honour's proposed comment, as it relates to me, can be broken down as follows:

Proposition 1: I knew that a very real risk existed before 18 January 2003;

Response: Similarly to my observation above concerning the phrase "serious risk", the use of the words "very real risk" is debatable. The evidence is that I first identified that there was a *possibility* that there may be a threat to the urban edge of Canberra on the night of 17 January (T 2892).

Proposition 2: Any doubts I could have had about the realistic potential of the fires reaching the suburbs would have been dispelled by the information provided at the afternoon planning meeting on 17 January;

Response: I make the same comment in relation to the phrase “the realistic potential” as I made with regard to Proposition 1 above. It is correct to say that I identified a threat to the urban edge of Canberra as a *possibility* on the night of 17 January.

With respect to the reference to there being an “afternoon planning meeting”, I note that the meeting, in fact, took place at 1800 hours.

Proposition 3: I knew, by the afternoon planning meeting on 17 January, that the fires would burn into the urban areas of Canberra;

Response: This is incorrect: I had no such state of knowledge. I repeat: my (unchallenged) evidence was that I identified a *possibility* of a threat to the urban edge of Canberra on the night of 17 January, not that such an impact *would* occur (T 2892, 2951).

Proposition 4: I chose to consciously ignore the information and the evidence presented to me in continuing to hope that the fires could be stopped;

Response: This is a very serious allegation indeed to make in a comment. To suggest that I made a conscious and deliberate choice to ignore the inevitability of the fires impacting upon Canberra is completely without basis in fact. It is not reasonably open on the evidence.

Proposition 5: There was no reaction to Mr Taylor’s revised prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm;

Proposition 6: The fact of there being no reaction to Mr Taylor’s revised prediction is a fact incapable of being explained (definition of “inexplicable”, Macquarie Dictionary (second revised edition));

Proposition 7: I saw the message from Mr Taylor but it appears that I simply ignored it.

Response to Propositions 5-7: As an introductory comment, what your Honour needs to remember in this context is that the document Mr Taylor handed to me stated “This fire [i.e., the fire in the Uriarra Two Sticks area] needs to be resourced as a priority.” Mr Taylor gave the document to me, the Operations Officer, as it was *information for the operations section* (T 5000).

This is most important, as had Mr Taylor considered that it was information for the media unit, or for those responsible for issuing public warnings, he would have said so, and would have provided the information to those persons accordingly. His evidence was not that he expected me to pass that information on to the Media Unit or to any other party. Rather, his evidence was that his document contained information (i.e., that the fire in the Uriarra Two Sticks area needed to be resourced as a priority) which I needed to know, as the Operations Officer. He was entirely correct.

In answer to Proposition 5, it is wrong to say that there was no reaction to Mr Taylor's revised prediction. Not only did no-one give such evidence or submit that – it is contrary to the evidence.

The evidence as to what my reaction was to Mr Taylor's message is that as Mr Taylor had told me that the fire in the Uriarra Two Sticks area needed to be resourced as a priority, I dispatched a volunteer officer and two units (T 5001). Proposition 5 is false, and not reasonably open on the evidence.

What is not known (because there is a lack of evidence about it) is what was happening at around this time, save that it was very busy (Taylor: T 5000). There is an absence of evidence as to what was happening at the time the document containing the prediction was passed to me, what Mr Taylor said to me, who I might have discussed it with, and so on. This is hardly surprising in all the circumstances at that time.

So, it is entirely possible that:

- Mr Taylor expressed to me the belief that he held at the time, that “the fire progress would be checked in the grasslands” (T 5003); and/or that
- I told Mr McRae about the Taylor prediction, and that Mr McRae told me that he disagreed with Mr Taylor (Mr McRae's evidence was that he did disagree with the Taylor prediction: T 3413); and/or that
- I discussed it with Mr Bartlett, the Incident Controller of the fires that day; and/or that
- Mr Taylor, who had a discussion with Mr Bartlett following the morning planning meeting (T 5006), told me that he had already discussed his predictions with Mr Bartlett.

Given these possibilities (and leaving aside the suggestion of my having made no response as being simply wrong), the suggestion that the lack of response is incapable of being explained is also wrong. Proposition 6 is false, and not reasonably open on the evidence.

Apart from sending the resources referred to above, I do not know what other reaction the Taylor prediction received, and there is no other evidence about it. That does not however mean that there was no other response. It also begs the question, what other response is it suggested should have occurred? The experts have not suggested that any particular response to the Taylor revised prediction should have occurred but did not. Nor has counsel assisting.

The proposed comment that “*Mr Graham saw the message but appears to have simply ignored it*” is, given the evidence of Mr Taylor as to the dispatch of the volunteer

resources, simply incorrect. Even if were restricted to a suggestion that, save for the dispatch of those resources, I ignored the message, it would still lack an adequate foundation in the evidence. Before a conclusion can be reached as to what “appears” to have been the case, there must be evidence to establish that that appearance is correct. The more serious the adverse implications of the appearance, my counsel advise me, the greater, in law under the *Briginshaw* rule, the probative value required of the evidence said to give rise to the appearance.

“Ignore” is defined in the Macquarie Dictionary (second revised edition) as “*to refrain from noticing or recognizing*”. There is no evidence which suggests that I “ignored” the message. Rather, in light of the surrounding circumstances, the possibility alluded to above that I discussed it with Mr Bartlett or Mr McRae (or someone else) is clearly open, and, on its face, more likely than not, if not most likely. Other possibilities are also open, which do not involve an adverse conclusion that the message was “ignored”. There is no reason to prefer over these possibilities the suggestion that I “ignored” the message. Proposition 7 is false, and not reasonably open on the evidence.

What is clear is that there were numerous predictions as to possible outcomes for the fires being made, of which Mr Taylor’s was but one (and one with which the head of the planning unit differed). Only hindsight has established its accuracy.

The greatest defect of the proposed comment, however, is its inherent point that, given the Taylor prediction, the community should have been warned. As to that, I observe that the risk to the urban area was known at the time of, and discussed during, the morning planning meeting on 18 January, at which Mr Taylor, Mr Lucas-Smith and Mr McRae were all present. Mr McRae’s assessment was that the risk at that time was not such that the community ought to have been warned. Although he was not aware of it at the time, he did not share Mr Taylor’s view, which was a worst case scenario in any event (T 5006-5007).

Further, as stated above, the information was given to me because of its relevance to operations. Had Mr Taylor felt the information needed to go to those whose responsibilities including warning the public, he would have notified them accordingly.

Your Honour may, with the benefit of hindsight, disagree with Mr McRae’s assessment. However, as demonstrated above, you cannot fairly or reasonably sheet home to me responsibility for a failure to warn. Nor can you, without some probative evidence, conclude that I “ignored” anything.

Conclusion re paragraphs 20-21: the proposed comments, to the extent to which they are directed against me, are wrong, and not reasonably open on the evidence.

Paragraph 22: Mr Graham failed to warn the public

Proposed comment:

“Up until the issue of the first SEWS at 2.40 pm [ON 18 JANUARY 2003] the people in the suburbs of Canberra were not given any information which would serve as a warning to them that they and their property were at risk that day from the coming fire.”

Response: I again repeat the observation in my counsels’ letter to Your Honour dated 19 October 2006, that the proposed comment is one:

“which, having been directed at members of the Emergency Services Bureau generally, makes it impossible for Mr Graham to gain any understanding as to the extent to which the comment is directed towards him.”

I cannot understand, from the material in the Notice or elsewhere, that there is any basis to suggest that this proposed comment could fairly or reasonably be directed at me, given my position and responsibilities within the ESB. While I believed that it would have been appropriate for the public to have been warned (T 2955), giving that warning to the public was not my job (T 2953).

Paragraph 23: the ESB (including Mr Graham) recognised but failed to prepare for the worst case scenario

Proposed comment:

“The senior personnel of the ESB recognized the worst case scenario but did not prepare for it. They hoped for the best. They were influenced in their thinking and their planning and by their experiences with the fires in December 2001 and the success they had in controlling those fires. This was a mistake because it led to the perception, certainly on the parts of Messrs Lucas-Smith, Castle, McRae and Graham, that the fires could be controlled once they reached the grasslands on the urban fringe. This perception existed despite the views expressed publicly by Messrs Lucas-Smith and McRae, at least, and despite the expert opinions previously expressed by Commissioner Koperberg and CSIRO expert Mr Cheney – to say nothing of the dire opinions expressed by Mr McRae in his earlier emails which are on the public record.”

Your Honour’s proposed comment, as it relates to me, can be broken down as follows:

Proposition 1: I recognized the worst case scenario but did not prepare for it.

Response: There is no evidence to establish that there were things to be done within my area of responsibility, upon a worst case scenario, but which were not done.

Proposition 2: I hoped for the best. I was influenced in my thinking and my planning and by the experiences with the fires in December 2001 and the success the ESB had in controlling those fires.

Response: As to this point, I take it that your Honour does not advance the second sentence of Proposition 2 in a critical sense; I take it, in other words, that your Honour is not suggesting that I should **not** have taken our experience with the fires in December 2001 and the success in controlling those fires into account. I say this because I would be surprised if your Honour was suggesting that experience of this nature should be disregarded – rather, I take the entirety of the proposed comment to be indicating that, to the extent to which I may have been influenced by that experience and success, that influence was excessive, and led to the perception to which reference is made.

Proposition 3: I made a mistake in being influenced in my thinking and my planning by the experiences with the fires in December 2001 and the success the ESB had in controlling those fires, because it led to the perception that the fires could be controlled once they reached the grasslands on the urban fringe.

Response: There is no doubt that I was influenced by our experiences in the 2001 bushfires, and by all of the fire events I was involved in that followed them. I am still influenced by that experience. I am also profoundly influenced by our experience in the January 2003 bushfires. In my view, it would have been remiss of me not to have been influenced by that experience, and, accordingly, I reject the suggestion that being influenced by that was a mistake.

While it is correct to say that I was influenced by our experience in the 2001 bushfires, I readily acknowledged in my evidence that I was not as experienced in bushfire fighting and behaviour as a number of others. In terms of what the fires would do once they reached the grasslands, I was far more influenced by the expert opinions of others than I was by the 2001 experience. I do not understand how I can fairly or reasonably be criticized for not having sought advice from those with such expert knowledge on the one hand, and then criticized for having relied on advice from those same persons on the other hand. To my mind, this, with respect, is suggestive of a lack of impartiality.

Proposition 4: I should not have held the perception that the fires could be controlled once they reached the grasslands on the urban fringe in light of the views expressed publicly by Messrs Lucas-Smith and McRae, the expert opinions previously expressed by Commissioner Koperberg and Mr Cheney, and the dire opinions expressed by Mr McRae in his earlier emails which are on the public record.

Response: As I state above, I based my belief in large part on the expert opinions of others, whose judgment I trusted. I had no reasonable basis to do otherwise.

This proposed comment refers to my “perception”. As my evidence makes clear, my perception of the risk being presented by the fires was changing day by day. What I did not consider to be a risk on, say 15 January, I did by 18 January. By that date, with Mr Bartlett as the Incident Controller, I had an appreciation of that risk, but even as of that morning, I did not appreciate, and could not reasonably be expected to have appreciated,

how the fire would behave later that day. Nor, I stress, did either Mr Koperberg or Mr Cheney for that matter.

While even on the morning of 18 January I did continue to have some hope that there would be a chance of containment, the phrase used by your Honour that “the fires **could** be controlled once they reached the grasslands” (emphasis added) suggests that I believed that to be a likelihood. It was a possibility – it did not stop us from continuing to plan for the prospect that it would not happen.

Conclusion re paragraph 23: the proposed comment, to the extent to which it is directed against me, is wrong, and not reasonably open on the evidence.

Paragraph 24: the suggestion that the ESB (including Mr Graham) lacked competence and professionalism, were disorganized, etc.

Proposed comment:

“I have been left with the overall impression that the ESB, at the senior levels, lacked competence and professionalism, was disorganized and was functioning in a chaotic uncoordinated fashion particularly in the most critical period of the fires. The impression I have is that the left hand did not know what the right hand was doing and neither hand was actually doing very much to deal with the crisis which was growing day by day and hour by hour.”

As my counsel observed in their letter to you dated 19 October 2006, by virtue of its generality in direction, this proposed comment could be taken as being directed towards all members of the ESB, of whom I was but one. In those circumstances, unless there is the clearest of indications that the comment is not directed towards me, I must assume that it is your Honour’s intention to refer to me in this way.

I have already clearly communicated to your Honour the fact that without being advised precisely of the factual basis for such an extraordinarily general comment, I cannot possibly defend myself against such an assertion. Had, for example, a question been put to me in cross-examination, that I lacked competence and professionalism, without making clear the basis of the suggestion, the question would quite properly have been disallowed. More precise questions might well have been properly asked and answered. They were not.

Even the wording of the proposed finding is revealing – there is no place, in any inquiry (let alone one of this length and detail), for any finding (let alone one of a level of seriousness as this) to be based on something as flimsy as an “impression”. Such comments, if they are to be properly made, must be firmly based in the evidence, not on “impressions”.

I wish to make it abundantly clear to your Honour that this proposed comment, if made, will, on my advice, and along with a number of others, provide a strong basis for an

approach to the Supreme Court to have the comment or comments quashed, as being not reasonably open on the evidence.

Your Honour's proposed comment, as it relates to me, can be broken down as follows:

Proposition 1: I lacked competence and professionalism;

Proposition 2: I was disorganized, particularly in the most critical period of the fires;

Proposition 3: I was functioning in a chaotic uncoordinated fashion particularly in the most critical period of the fires;

Proposition 4: In my capacity within the ESB, I did not know what others in ESB were doing, and vice versa;

Proposition 5: I was not actually doing very much to deal with the crisis which was growing day by day and hour by hour.

I shall deal with the propositions sequentially.

Proposition 1: I lacked competence and professionalism

Response: All that I can do to defend myself against an extraordinary attack of this nature is to draw your Honour's attention to the fact that no-one has said or inferred in evidence, and your Honour has received no submission indicating, that I lacked competence or professionalism. Counsel Assisting urged no such conclusion upon your Honour: indeed their words in relation to me were as follows:

"he was an effective *controller of resources*, as he was described by Mr Lucas-Smith, and a competent and dedicated administrator" (para. 1121)

Further, that he was

"clearly a conscientious and dedicated officer" (para 1125; see also para 1129).

I repeat what my counsel submitted concerning myself:

"During the January 2003 bushfires, Mr Graham acted tirelessly. His few absences from Curtin to get sleep were brief. He made tens of thousands of decisions over the duration of the fires, all of which, save a handful, are without criticism."

Even the most cursory review of the evidence before your Honour demonstrates the truth of this proposition. In the face of this evidence, and in the absence of any evidence

capable of furnishing an evidentiary foundation for your proposed comment, the task of justifying the comment is formidable, if not impossible.

With respect, the comment is not reasonably open on the evidence with respect to me. I should not be taken, by making that submission, to be indicating that the comment is open to be made against any other individuals in the ESB.

Proposition 2: I was disorganized, particularly in the most critical period of the fires;

Proposition 3: I was functioning in a chaotic uncoordinated fashion particularly in the most critical period of the fires;

Response: I reject absolutely these propositions. They are simply, and completely, wrong. There is no evidence capable of establishing either Proposition 2 or 3. Similarly, given their non-specificity, it is impossible for me to respond to them in any fashion other than to reject them on the basis of lack of any suggested evidentiary basis. They are not reasonably open on the evidence.

Proposition 4: In my capacity within the ESB I did not know what others in ESB were doing, and vice versa.

In order for this proposition to amount to an adverse comment, the intended meaning must be that, at some point or points in time (which are not revealed in the proposed comment), there were (non-particularised) things being done by (unspecified) others in ESB which I should have been aware of, but was not, and vice versa.

As with Propositions 2 and 3, there is no evidence capable of establishing this proposition, and none suggested. Similarly, given its non-specificity, it is impossible to respond to it, save to reject it on the basis of lack of an evidentiary basis. It is not reasonably open on the evidence.

Proposition 5: I was not actually doing very much to deal with the crisis which was growing day by day and hour by hour.

Response: With respect, so far as I can tell, only willful blindness to the evidence, or lack of impartiality, could explain the making of such a comment. The suggestion that I was “not doing very much” is staggeringly incorrect. As just one piece of evidence, I would simply invite your Honour to read, or to re-read, the radio transcripts – they demonstrate exactly the opposite conclusion; and there is much other evidence which proves that such a conclusion is not reasonably open. The proposed comment has absolutely no basis in fact. It receives no support from any of the evidence given by Mr Cheney or Mr Roche, nor even from the submissions of Counsel Assisting. It is a grossly insulting and offensive comment, without any foundation whatsoever, and contrary to the actual evidence. It cannot fairly or reasonably be made, and I reject it.

Conclusion re paragraph 24: The proposed comment, to the extent to which it is directed against me, is wrong, and not reasonably open on the evidence.

Paragraph 25:

Proposed comment:

“By the early morning of 18 January and before, senior personnel of the ESB being Messrs Castle, Lucas-Smith, McRae and Graham all recognised the serious potential for fires to impact upon the urban edge at some time during the afternoon or evening of Saturday 18 January and failed to take action within their respective areas of responsibility to ensure public warnings were widely broadcast and disseminated to the community.”

I again draw attention to my counsels’ concern, in their letter to you dated 19 October 2006, about the generality of proposed comment. Your Honour’s proposed comment, as it relates to me, comes down to this: that there was action open to me within my area of responsibility to ensure public warnings were given, which action I failed to take.

This comment is, once again, completely without basis. There is no evidence whatsoever to demonstrate that issuing warnings to the public was within my responsibility – indeed, my (unchallenged) evidence was to the contrary (T 2953). That responsibility, if it existed in the particular circumstances and at a particular time, as was acknowledged by those concerned, lay with others, not myself.

Paragraph 26: Mr Graham deliberately withheld information from the community

Proposed comment:

“The same senior ESB personnel lulled themselves into a false sense of security because they managed to prevent the December 2001 fires destroying any urban structures; and as a result of this self-delusion, they deliberately withheld information from the community in the belief that they would – as they had done in 2001 – stop the fires in the grasslands; and they did not wish to alarm the community.”

It is one thing to suggest, with the benefit of hindsight, that based upon previous experience, ESB personnel may have underestimated the risk posed by fires, and may have overestimated the efficacy of the response which could be made to them, and therefore got things wrong in those respects; it is quite another, however, to attribute this to “self-delusion”. Further, I repeat my earlier comments above, but add this: to accuse me of having *deliberately* withheld information from the community, when all the evidence indicates that providing warnings was in no way my responsibility, is just plain wrong, and also suggests a lack of impartiality. I reject the comment completely. It warrants no further or other response.

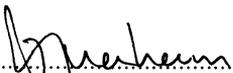
Paragraph 27: Mr Graham was completely out of his depth

Proposed comment:

“Messrs Castle, Lucas-Smith, McRae and Graham were completely out of their depth at the time of the conflagration and the days leading up to it.”

With respect, this statement amounts to nothing more than a gratuitous insult, having, as far as I can see, no basis in fact or the evidence. It is neither fair nor reasonable. On its face, it suggests that the entire firefighting effort, everything done, during the whole period of the fires, was completely lacking in competence. Such a jaundiced view of the evidence suggests a disturbing lack of objectivity and proportionality, and, once again, a lack of impartiality. While I have drawn your Honour’s attention before to the impossibility of addressing a comment such as this without being apprised of the factual findings or the evidence said to be the basis for the comment, this goes further: it is just plain wrong. With respect, had your Honour been as familiar with the evidence as you should be, it ought be overwhelmingly apparent to your Honour that this comment, whether taken literally or figuratively, is not reasonably open on the evidence.

Dated: 22 November 2006


.....
TONY GRAHAM

Statement by Mr Rick McRae

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IN THE CORONER'S COURT OF THE ACT

INQUEST AND INQUIRY INTO THE 2003

ACT BUSHFIRES

Statement by Richard McRae in Response to a s.55 Notice

0.1. Preliminary

0.1.1. Your Honour, by letter dated 11 October 2006 and served at my office during my absence on school holidays, indicated that it was your intention to make certain comments adverse to me in the report of the inquests/inquiry. There were twenty eight such comments. The notice required a response within fourteen days of its date.

0.1.2. I was advised that the notice was invalid, because it failed to comply with the time provisions of the Coroners Act 1997 (ACT), failed to give adequate time for a meaningful response, and failed to give an adequate context in findings of fact or evidence for the proposed comments. I instructed my counsel to put those matters to you. That occurred by way of letter dated 16 October 2006. Your Honour replied by letter dated 19 October 2006, rejecting each contention, but granting an extension of time within which to respond to the notice.

0.1.3. It remains my contention that many of the proposed comments are vague and so lacking in specificity as to deny me a proper opportunity to respond to them. The making of this statement represents my genuine attempt to respond fully to the notice. It does not represent a concession that the notice is valid.

0.2. The structure of this response.

0.2.1. The comments were not numbered. I have assigned to them numbers 1 through to 28, and I have also identified the comments by setting them out in this response, in order to assist in providing intelligible responses.

1. Proposed Comment: "Yet, despite this knowledge and awareness, [OF PREVAILING EXTREME FIRE DANGER CONDITIONS] the evidence before this inquiry has revealed that- senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation from the time the fires ignited on 8 January 2003. As well, despite being on notice from the fires some twelve months previously, apart from the preparations made by Mr Bartlett for ACT Forests, neither the ESB nor any of the ACT land management agencies made any additional preparations for the fire season over and above their routine preparations. Even though the necessity for a rapid and aggressive response was recognised, the response which was made to all the ACT fires lacked the sense of urgency which the situation demanded."

1.1. The first comment alleges that "senior ESB personnel lacked a proper appreciation of the gravity of the fire situation and the potential for escalation" from the time of ignition, despite knowledge and awareness of prevailing extreme fire danger conditions.

1.2. I had a proper appreciation of the gravity of the potential fire situation facing the ACT prior to the ignition of the fires. The emails that I wrote

to personnel in relevant positions throughout the preceding year demonstrate that appreciation. The emails demonstrate that I not only appreciated the heightened risk of forest fire, but that I continually updated my knowledge with respect to each of the relevant indicia and ensured that others knew. In the course of so doing, I was urging that action be taken commensurate with the risk.

- 1.3. The comment that the "ESB" did not make "any additional preparations...over and above their routine preparations" appears to be directed towards me, because it is in a s.55 notice directed to me. However, since your Honour has declined to provide further particulars, it is impossible to do more than to point to the detail in the emails that I sent.
- 1.4. The term "routine" has not been defined, and I was not asked about it by Counsel Assisting. Accordingly, I do not know the basis upon which your Honour asserts that that which was done was no more than routine. The fact is that, so far as my position is concerned, there is no such thing as "routine" in the sense of a set of actions regularly undertaken in the lead up to a fire season. It is a case of doing all that the conditions demand. In the case of the year preceding the 2002–2003 fire season, I kept abreast of the state of fuels in the ACT, and studied weather predictions around the globe, calculating the likely state of affairs as the fire season approached; and I continued to do so right up until 8 January 2003. I passed on that information in readily digestible form to those who needed it. It was not put to me by Counsel Assisting that there was something that I could, and should, have done, but did not do. Your Honour, with respect, proposes to make a sweeping statement which you regard as an adverse comment, but you offer no detail of the preparation that you say I could, and should, have undertaken, but did not undertake.

1.5. In addition to the field and research/calculation work lying behind the emails, itself a substantial undertaking, I was involved in the following other aspects of pre-season preparation, that is, I:

1.5.1. developed a rigorous bushfire risk assessment process; this process was, and still is, the foundation of the ACT Government's Strategic Bushfire Management Plan;

1.5.2. ran an Incident Control System training program, in collaboration with Messrs Lucas-Smith, Graham and Ingram; this involved introductory courses and longer specialist courses; I developed and ran a 5-day course on ICS Planning Officer for local conditions, our small jurisdiction and our limited resources; this was the key to having enough people to run the SMT Planning Section at all;

1.5.3. collaborately developed and conducted exercises during pre-season workshops for the Bushfire Service, designed to test skills likely to be needed during the ensuing fire season;

1.5.4. acquired the capability to print large maps and posters in-house; this involved the purchase of an A0 plotter, using a Federal Government grant acquired with the assistance of Ms Keane and Mr Milne; as this was installed a few weeks before the fires, I had not yet developed ways to use it effectively;

1.5.5. developed an inventory of all rural residences in the ACT; this was designed to allow effective emergency response and was based on standard rural addressing; I was assisted in doing this by Mr Jeff Dau from the ACT Fire Brigade; the inventory won a "Safer Communities Award" from Emergency Management Australia in 2001; this material was widely distributed on 17 January, and was seen in

the WIN TV News footage from District Officer Thornthwaite's vehicle;

1.5.6. developed links to facilitate access to data for use in mapping; this was done within the ACT Government to ensure access to the latest data covering urban development; it was also done with the NSW Government to facilitate making maps that seamlessly crossed the border; moreover, it was also done with the private sector for access to remote sensing data; as part of this, I was involved in developing and delivering a multi-award winning national awareness package called GeoInsight, made possible by a large Federal Government grant;

1.5.7. involved with Mr Lucas-Smith and Dr Gill in early testing of Sentinel, the Federal Government's national web-based fire detection system that uses satellite data; and

1.5.8. developed improved fire behaviour prediction systems; the system, which won a National Safer Communities Award from Emergency Management Australia in 2002, was ultimately not used during the January 2003 fires, as I was fully committed doing other tasks.

1.6. Any fair or reasonable assessment of that which was done needs to take account of issues of scale. I also had other tasks to attend to. I had little or no assistance to carry out the tasks specific to my role where I have not indicated the involvement of others, and I was not even part of the Bushfire Service.

2. Proposed Comment: "The fact that the ESB adopted a system of incident management for the fires which was not in accordance with the recognised AIIMS ICS model did serve to cause confusion among incident controllers in the field and inhibited the flow of important information to incident controllers."

2.1. It is fundamental, in responding to your Honour's proposed comment, to understand AIIMS ICS. Our industry long ago recognised the need for a standard system for managing incidents, and created the Incident Control System (ICS), based on a US model.

2.2. ICS works well and is flexible. It is based on management by objective, and places key authority with an Incident Management Team (IMT), headed by an Incident Controller (IC).

2.3. The ICS standard explicitly defines the way in which command, control and coordination are handled.

2.4. It was also recognised by the ESB that we had potential problems with coordination, based on being within a small jurisdiction, and being poorly resourced.

2.5. Therefore, the only way to achieve our goals was to centralise certain key coordination functions, run by a Service Management Team (SMT) according to ICS principles. As an example, and relevant to me, it was necessary to have a single point of contact with the Bureau of Meteorology (BoM). The document in evidence, "The Role of the SMT", clearly states this. The taped phone calls with the BoM played in Court clearly show how this was being done. This step did not detract from the obligation of the IC to listen to the regular BoM fire weather forecasts received by radio in each ESB vehicle.

2.6. It was unavoidable that an SMT arrangement was required. All of the personnel who would be used to fill the IC role were made familiar with the reasons for an SMT, how an SMT would function, and how the SMT would link with the IMT. Opportunities were made available for issues to be raised and discussed. It is clear from material made available that there was a strong culture of debate on such issues – the Fire Control Officers Group, the

Land Managers Fire Liaison Group and the Bush Fire Council often debated them. Submissions to the 2001 Fires Coronial Inquiry show this.

2.7. The proposed comment gives the impression of a system that was imposed by Curtin. It was quite the opposite. It was imposed on Curtin. It has been raised in the testimony of various witnesses that problems were caused by the SMT.

2.8. Ms Raphael, Mr Sayer and others in testimony showed that they did, indeed, understand the SMT arrangements. This indicates that the preparations made were, in principle, sufficient to inform field staff.

2.9. The evidence of Mr Bartlett and his colleague, Mr Cooper was that these arrangements were not in accord with the operating procedures under which they were expected to act. Mr Cooper felt that he was acting in the role of a Divisional Commander, as in the NSW Rural Fire Service. While both of them may have genuinely held those views at the time, their evidence shows that there was a variety of views among those concerned about how well matters were being managed. It is manifestly unfair and unreasonable to suggest, as, it appears, your Honour suggests, that four people within the ESB were solely responsible for any problems perceived by some people to have existed.

2.10. There was evidence about planning done for urban impact by the ACT Fire Brigade through its IMT. The evidence was that this was done on the basis that the ACT Fire Brigade was the primary response agency for the event once the fires spotted or breached control lines, and fires had made runs towards the city or "some properties east of the mountains close to Canberra". Rather than passing this on to the SMT, the ACT Fire Brigade assumed that the SMT would expect the ACT Fire Brigade to be dealing with this. Clearly, if there is to be criticism of personnel for failures to pass on information, it should not be seen as only the fault of SMT staff.

2.11. Of fundamental importance for present purposes is that I did not devise, recommend nor decide upon the model of incident management to be used during the fire event. Whilst my role involved training other ESB staff in the AIIMS ICS management model, I did not personally design nor modify it. So, I am unable to comprehend how, if at all, your Honour sees a variation of the AIIMS ICS model as a matter for adverse comment upon my conduct.

3. Proposed Comment: "By late afternoon of 15 January 2003 senior personnel of the ESB were in receipt of information which either confirmed or was the basis upon which they formed certain views about the risks of the fires."

3.1. Your Honour notifies me that this is intended to be a comment adverse to me, yet you have declined to identify the information of which you speak, or the person or persons to whom it was directed, or any other means of receipt, nor the views that it is asserted were either confirmed or provoked by its receipt. In those circumstances, it is not possible to respond to the comment without guessing. The key aspect of the comment is the "views" formed or confirmed. Since you have declined to tell me what those views are alleged to be, I cannot confirm nor deny that I held them, and I should not have to speculate as to what your Honour has in mind.

3.2. It may be, for example, that your Honour has in mind the "view" that Counsel Assisting submitted that your Honour ought to find that I held as of the afternoon of 15 January, that is, that an impact upon the Canberra urban area was likely by 20 January: see par 1227 of Counsel Assisting's submissions. If that is what your Honour has in mind, then such a conclusion would be wrong, or, at least, too simplistic to be warrant such a finding. The forward weather forecasting for the days following 15 January was such that the only reasonable conclusion was that the worst fire weather would most likely be experienced on 20 January. That did not mean for a moment that there was a likelihood of an impact on the urban area on 20 January. The fact is that the BOM forecasting was all there was to go on, so far as future

fire weather was concerned, but everyone in the community knows that weather predictions may fail to eventuate. Nor, as at 15 January, was I in a position to predict the occurrence of any of the fires breaching containment and making runs over that period of time, much less the likely success of fire suppression activities.

3.3. I said in my statement that, after warning all present at the planning meeting, I referred to the possibility of fire runs to the south-east, but also to the difficulty in knowing when the forewarned severe fire weather would arrive. There is a reference to my statement and the evidence concerning these matters in paragraphs 622 and 623 of the submissions of Counsel Assisting. I did not say that I expected any particular impact on 20 January, and if that had been put to me, I would have rejected it. I simply could not make any such prediction. I felt, as I said in cross-examination, that an impact of some kind could occur by 20 January, but that was not a prediction that I could offer to the suppression agencies as one they could act on. The fact was that the BoM prediction, which was the major ingredient in my analysis, even though the forecast might have been wrong, suggested that the worst conditions would occur on that day. I could not, by any rational analysis, predict, based merely upon that data, any place or kind of fire impact 2, 3, 4 or 5 days into the future. Nobody could have. For example, I had no way of assessing the kind of impact, whether it would be a discrete fire run towards a suburb or suburbs, much less where, or a fire front sufficiently proximate to cause impact from smoke, this depending upon the then prevailing wind conditions.

3.4. Thus, to suggest, as Counsel Assisting did in their submission as to findings, that I formed the view on 15 January that an impact upon the urban area was likely on 20 January is completely wrong. At the very least, it is too simplistic a view to be worthy of serious consideration. It presumes that I could take the weather forecast for five days, as at 15 January, and make

some calculation of what would happen as to both weather and fire suppression efforts, and then predict some kind of urban impact. No expert has asserted to this inquiry that such an analysis is possible. Such a prediction would be mainly guesswork, and it would be wrong for someone in my position to make such a prediction which others might (wrongly) assume to have some scientific validity.

4. Proposed Comment: "By late afternoon of 15 January 2003 Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham each recognised that the fires, including the McIntyre's Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of the urban area."

4.1. As I endeavoured to say when cross-examined by Counsel Assisting, risk is assessed in emergency management in accordance with the applicable Australian Standard AS 4360. Assessment of risk is multifactorial, with factors pulling in opposite directions, but with a result achieved which may then, by reference to some convention or decision, be used to guide further action or decision-making.

4.2. Applying AS 4360 to the factors known as of late afternoon on 15 January, I did not arrive at a conclusion that there was a "serious risk to the Canberra urban area and rural settlements." No emergency manager, basing an assessment upon the same factors, would have done so. No evidence was called from any expert, who applied at the time, or since, the information known at the time to the process required by AS 4360, and produced a result in conformity with that suggested by your Honour.

4.3. Such an assessment would necessarily produce different results for the Canberra urban area to the results for rural settlements. Also, different results would be achieved for different rural settlements.

4.4. Your Honour has not made clear what you mean by a "serious risk". Do you mean a "very strong chance", "more than likely", "cannot be ruled out",

or some such characterization, in conjunction with "of a major impact", or "of some property damage", by reference to a time factor of something like "immediately", "within a week", with or without the addition of any contingency such as "without abatement of high temperatures", or "with a wind change", and so forth?

4.5. It is not being evasive to insist, as I did under cross-examination, that the issue of risk be assessed upon a commonly understood basis. That is, after all, what a standard is.

5. Proposed Comment: "The question must be asked. How could Mr McRae claim to know what the community was being told [ABOUT WARNINGS] if he had no input, did not see the final product and, seriously, did not monitor what was being put out? All of this activity was a part of his role and his responsibility."

5.1. Contrary to your Honour's proposed comment, I did not testify that I knew what the community was being told about warnings. I did not have an input into the material that was being issued, whether by way of press release, press statement or press conference. Nor was I monitoring that material. However, as I did say in evidence, I was assuming, and I assert that I was entitled to assume, that material was being issued that, in so far as it was relevant, was commensurate with advice that I had given at the planning meetings with respect to my areas of responsibility.

5.2. Contrary also to the proposed comment, "(a)ll of this activity", apparently meaning community announcements, was not part of my responsibility. I said in evidence that the media section was formally part of the planning unit in ICS, but that during the fire event, it was being managed directly by Mr Castle under the ACT Disaster Plan. That was a true statement. As Counsel Assisting stated in their submissions, that is

supported by the other evidence concerning the management of the unit: see par 1217. There is no evidence to the contrary, and it is simply wrong, with respect, for your Honour to assert that it was my responsibility.

5.3. I also told your Honour, correctly, that I had, and have, no training in formulating community announcements, whether they be warnings, or useful information in terms of preparations, or however they be characterised. I assumed, correctly I think, that those charged with those responsibilities were obliged to gather information from a range of sources, and decide what aspects should be disseminated, and how that was best to be achieved. For my part, I had certain responsibilities to provide advice as to fire weather and anticipated fire behaviour. I did that to the best of my ability using the resources that were supplied, by way of ESB staffing and resource allocation, together with the additional personnel and resources that I gathered during the early part of the fire event. I continue in the belief that it was proper for me to assume that those charged with the responsibility for dissemination of community information would take that which I had to say during the planning meetings and use it, together with other information, in formulating the material that was issued publicly in one form or another.

6. Proposed Comment: "It must be said that, based on his actions, Mr McRae displayed extremely poor judgment. Whilst he recognised that it was most important to forewarn the Fire Brigade and Ambulance Service to prepare for fire damage to houses and injuries to people in the suburbs, he did not consider that it was the right time also to activate his final "trigger" to warn the community of the impending danger."

6.1. The actions that I carried out, including with regard to the Fire Brigade and the Ambulance Service, were in accord with my duties, as I was instructed and trained to carry them out. I said this in my testimony.

My actions also reflected the way that the ESB, and, in fact, emergency management in the ACT, operated.

6.2. There are many facets to emergency management, and there are various tasks carried out by the various agencies, including public servants of the ACT Government and members of the Australian Federal Police. It is both sound judgment and necessary for those agencies, including the Fire Brigade and the Ambulance Service, to be prepared first, as risks may escalate.

6.3. There were in place at the time a number of Acts that detailed how emergency management was to be implemented in the Territory. Indeed, that legislation clearly spelt-out that certain key tasks were the responsibility of "lead combat agencies", as they are known.

6.4. It was rational and professional for a group of people, of whom I was but one, who were focused on a demanding task, and who had largely been working prolonged shifts for ten days, to assist professional emergency management agencies to carry out the tasks which would be expected of those agencies by the community and government in the event of an emergency.

6.5. I do not feel that I failed in any way to convey the gravity of the situation facing the ACT. I had been warning of this for twelve months, and continued to assess the situation based upon the tools available to me, right up to the last moment. As part of my response to the complexity of the event, involving multiple fires and bad fire weather, I recognized my own limitations and sought and obtained independent analysts, who I gave free reign to use their own tools and learning to provide independent analysis. Up until 18 January, those persons were conducting their own analyses. There was no evidence called to the effect that I was failing to recognize the gravity of the situation, or that my analyses, compared to

theirs, were overly optimistic. The situation was that, until 18 January, all those charged with attempting to predict fire behaviour were coming up with similar views. However, on that day, as was recognized by all who worked in planning, the fires stopped behaving the way that they were expected to, and confounded the efforts of every planner. For this, I deserve no blame.

6.6. Rather, your Honour should, before blaming me for what occurred on 18 January, undertake a serious analysis of the scientific knowledge about the extraordinary events of that day. The science that has been developed in recent years sheds new light on those events, and confirms the belief I held, from late that day and following, that the fire behaviour on that day was unprecedented and unpredictable. The analysis of up-to-date scientific knowledge is, I say, a better approach than the overly simplistic, blame-attributing approach of concluding that the fires were simply large, but nonetheless quite manageable, if only certain individuals at the ESB, and only those four, had not failed their community. I have already addressed the warning issue generally in my response to earlier proposed comments.

7. Proposed Comment: "The media unit within the Planning Section did not operate effectively and no procedures existed for collection and dissemination of information which was relevant and important to senior personnel of the ESB and the media."

7.1. Your Honour appears to regard this as a comment adverse to me. You should not think it so since, as noted above, I was not managing the media unit, nor otherwise involved with or in it. As noted above, it was being managed directly by Mr Castle under the ACT Disaster Plan.

7.2. As was stated in testimony, the media section was administratively attached to the planning unit that I headed for most days of concern. It was not attached to the IMTs running the fires. Mr Castle, however,

elected to run the media section personally, feeling that the ACT Disaster Plan, as it then was, was an effective way to manage media affairs. A representative of that media unit, primarily Ms Harvey, accompanied Mr Castle to all of the Planning Meetings and actively participated in discussion. Minutes of the Planning Meetings show this.

8. Proposed Comment: "[IN THE CONTEXT OF EVENTS ON 17 JANUARY 2003] The submission by Counsel, that there were many people at the planning meeting and no one expressed concern about warning the urban area residents, cannot be an answer to why those persons who were the professionals charged with the responsibility to do so failed to issue warnings. The senior personnel of the ESB were the people who had the accumulated knowledge of the situation with the fires since their ignition on 8 January and were in the best position to appreciate the ever growing risk they posed. The criticism of Mr McRae by Counsel Assisting [IN THEIR SUBMISSIONS, A COPY OF WHICH WAS PROVIDED TO MR McRAE' S Counsel] is warranted. He was the person responsible for providing the information predicting fire behaviour. The fact that he enlisted the help of professionals to assist him is commendable but then he did not accept the information which was provided because, it would appear, it did not accord with his own views. He had made many and early dire predictions of what the fire season would hold and still he failed to heed his own predictions. He was telling those at the planning meetings that Monday 20 January was a likely day to be impacted by fire but, as at Friday night he still had not activated his "trigger" as he described it to cause warnings to be issued because he had not identified the appropriate subset of the community and did not want to alert the entire community. He never reached the position of activating his final "trigger" because events overran him. The "trigger" he did activate to warn the rural lessees was very late in the day, or very late at night to be precise, and this too was very late in view of the information he had before Friday evening 17 January. Mr McRae's philosophy regarding warnings appears to be: it is better to

wait and tell no one about a potential serious risk which could have serious consequences to life and property than to tell some, or even all, the people and be wrong. This cannot be an acceptable approach for a person involved in an emergency management position charged with responsibility for recognising and acting to alert people to dangerous situations. By the evening on 17 January, if not well before, Mr McRae should have activated his final "trigger". The sub-set of the population had been identified as had the serious potential risk. Even the timing had been predicted. The media unit was located in his Section. He agreed that the people in that unit, and others, were waiting on him to tell them that it was time. He should have adopted a far more proactive role in keeping with his responsibilities rather than presuming, but not checking or monitoring, and not knowing whether the messages he thought he was providing were being understood and actioned."

8.1. The comment does not represent correctly what I stated in evidence about the role that I was carrying out.

8.2. I was a member of a team. This team comprised not just the SMT, but all of the representatives who attended the planning meetings. These meetings were where that broader team was coordinated. Your Honour acknowledges this in proposed comment 14.

8.3. My role was to provide decision-making support that accurately reflected analyses of forecast fire weather and of fire behaviour predictions. It is clear that there was unresolved confusion on this in the questions asked of me by Counsel Assisting. This confusion was addressed in a submission made by my Counsel earlier in these proceedings, and its apparent continuance in your Honour's mind is a cause of serious concern with respect to these comments. The "trigger" that I spoke of in my evidence was not concerned with giving generalized advice about the need to prepare by eliminating flammable materials in backyards and so forth. No-one on the western side of Canberra needed a trigger from me in January 2003 to do so. I was concerned with

the point at which, upon an analysis of the evidence of weather and fire behaviour and suppression or containment, one could identify a subset of the community which needed to take more advanced decisions – whether to stay or go etc. I was not capable of making that identification, nor did I see the need for it up to and including 17 January. On 18 January, in the early part of the day, there was no dramatic change. Your Honour will recall Mr Cheney's evidence to that effect, and further that, despite starting his post-event analysis at 10.00am, the fires only started to accelerate after 11.00am.

8.4. Your Honour should recall that Mr Taylor only came to reassess the fire spread prediction that he had joined in with Mr Gellie and Mr Lhuede on the afternoon of 17 January, after speaking with Mr Bartlett after the latter overflew the fires on the morning of 18 January. Mr Taylor, recognizing the significance of his new analysis, fed it straight to the operational arm.

8.5. I was not there to make decisions. This was not in the tasking given to me by Mr Lucas-Smith, nor was it contained in the material that described the role of the SMT. My inputs to decision-making were not the only ones, nor were they necessarily the most significant.

8.6. The decision-makers were those controlling the resources of the operational agencies and of the various support services. This is why they attended the various planning meetings.

8.7. In my testimony, I described my own decision-making processes in relation to the "triggers", and how to best address current levels of assessed risk. These decisions were only related to carrying out my assigned task, not to coordinating any Territory resources or assets. This distinction has been repeatedly misunderstood throughout the inquiry, and apparently your Honour, with respect, continues to misunderstand it.

8.8. Another perspective can be gained through examining the ACT Emergency Plan. It contains "Annex P – Evacuation Process". This contains 6

dot points, but starts with:

"1) Decision to evacuate – The Territory Controller and Management Executive will determine whether to persons will be evacuated and the scale of evacuation, in consultation with the Field Controller(s) and TEOC Liaison Officers.

2) Warning – the Territory Controller will determine, and authorise the dissemination of, the most appropriate method of warning for the evacuation. This is likely to involve the SEWS dissemination system."

It is obvious from this that emergency management had been taking a "reactive" approach in its planning for evacuation, and that it was the responsibility of the most senior officers to decide on evacuation. The Emergency Plan also states that "(t)he ACT Chief Police Officer is the nominated Territory Controller" (TC). It turned out that when an emergency was declared, the Chief Fire Control Officer was made the TC. However, in the absence of that specific decision, it was reasonable to expect that when emergency conditions did eventuate, the Chief Police Officer would be in charge of an evacuation and warning plan. With a steadily escalating fire situation, with the warnings that I issued in the days leading up to 18 January, and with AFP officers attending the planning meetings, it may appear to your Honour as if I was the only "responsible officer" for this purpose. I was not. I played a role, conducting or facilitating the conducting of analyses and passing those on to decision-makers in a variety of fields. A lot of others had access to the same information, and others were the actual decision-makers. It must be stated that I am not, and never was, a senior officer of the ACT Government, or of the ESB.

8.9. The middle part of this proposed comment is, in fact, a fair overview of events. The remainder of it, however, and with respect, seems to be the product of your Honour's misunderstanding of my role, my seniority and the way that the fire suppression effort was being managed.

8.10. The fact is that things were done the right way. Ultimately, however, the fires became far worse than had been envisaged, with serious consequences.

8.11. A simplistic way to explain these consequences, and not have to bother with a careful analysis of the evidence, is to start from an assumption that someone must have made gross mistakes that they should not have been made. This appears to have been the submission of Counsel Assisting, and, it would appear, now also the view of your Honour. That is a view which is not reasonably open.

8.12. There is another way to explain those consequences. This is that the fires did, in fact, do something unforeseeable. During the enquiry scientists across the globe have been studying the events, and have concluded that extraordinary events did in fact occur here on 18 January.

8.13. This scientific view is one that eliminates hindsight from its analysis. It tells us that no-one could have then foreseen the terrible tragedy that unfolded. That is not to say nobody made any mistakes. I would have done many things differently, and better, with the benefit of hindsight. But there were no gross mistakes that should not have been made by people if they were attending to their tasks diligently, the contrary of which appears to have been the operating assumption during this inquiry. It would be regrettable indeed if your Honour has been lead to believe merely that if it is hot, dry and windy, then the fire consequences can readily be predicted.

8.14. This has a strong bearing on the events of 17 January and relevance to the proposed comment. The only basis for adverse comment is a view arrived at with the benefit of hindsight. This view says, basically, that we should have known what the future held in store for us, and recognizing this, our choices at the time should have been different.

8.15. In order to respond fully to this proposed comment, I need to do more than discuss principles, there are a very large number of factual errors in the comment:

8.15.1. I did not simply assume that I would have the answers to whatever nature threw up after the lightning strikes. That is why I brought in a team of technical specialists and gave them free reign to conduct analyses and offer independent views.

8.15.2. Similarly, I did not make my own predictions. Indeed, at the afternoon planning meeting on 17 January, I presented as the planning unit's view the fire spread prediction formulated by Messrs Gellie, Lhuede and Taylor. That prediction, by those three independent people, based as it was on a worst-case analysis, and without factoring in any suppression effort outcome, did not involve an urban impact on the 18 January, before amelioration of fire behaviour as part of the diurnal cycle. It did, however, involve rural impacts, and, accordingly, those responsible set about engaging with those rural citizens at risk.

8.15.3. My philosophy was nothing like the parody which, with respect, your Honour appears to make of it. It was more like: 1) Understand the situation; (2) Predict its evolution; (3) Assess the ensuing risks; (4) Pass that assessment on to the appropriate decision-makers, either directly or at a planning meeting.

8.15.4. It was simply not my task to alert the community, and such a conclusion is not reasonably open on the evidence.

8.15.5. The "sub-set of the population" who might suffer direct impact on 18 January had not been adequately identified, and using then available tools, it could not have been.

8.15.6. It is quite wrong and unfair for your Honour to suggest that I rejected the views of any other fire behaviour analyst. I did not. I put

forward the joint Gellie/Lhuede/Taylor fires pread prediction as the agreed view of the planning unit. That is the evidence. That is what happened. After the event, indeed during the hearing, I was asked about Mr Taylor's prediction made on 18 January itself. I was not privy to that view on 18 January. As noted above, Mr Taylor made his further analysis after Mr Bartlett's report of his direct observations from the air. Mr Taylor gave his new analysis directly to the operations people. Assessed in hindsight, I said that I would not have agreed with it, because I did not think it was supported by the then known data. I said that, knowing that it came closest, in hindsight, to the actual outcome. Of course, my view in hindsight was merely academic, as your Honour should well know. I did not hear Mr Taylor's prediction on the morning of 18 January. I did not reject it. I was not even asked precisely what I might have done or said if, contrary to that which actually occurred, I had been given that prediction on the morning of 18 January.

9. Proposed Comment: "By the evening of 17 January 2003 the senior personnel of the ESB (Messrs Castle, Lucas-Smith, McRae and Graham) were in possession of information which confirmed what they had already believed namely that the fires were a serious risk to the urban edge of Canberra and that the impact was likely within the following twenty-four hours."

9.1. This proposed comment is, with respect, written in imprecise language. It is difficult to respond to claims that gain credibility only through their generality.

9.2. The error in understanding the structure persists. Your Honour refers to "senior personnel of ESB". But, during the emergency, ESB effectively ceased to exist. The emergency management structure that was created comprised the SMT, the IMTs in the field, the representatives of the operational agencies, and a range of other players.

9.3. No-one denies that there was a risk from fires to some parts of the urban edge. What was not known with clarity was where impacts might occur, when they might occur, which fire or fires might be responsible for them, and what the nature of those impacts might be.

9.4. With respect, your Honour misuses the concept of risk, which has a clear and well-known meaning in emergency management. There is no contradiction involved in knowing that there is a "potential serious risk", and not knowing or being sure of its nature. As I said earlier, risk is defined as a combination of likelihood and consequences, and these can come together in different ways to produce equivalent risk levels.

9.5. When your Honour uses phrases like "confirmed what they already believed" and "the impact was likely", your Honour is not using the concepts with which I was obliged to deal, nor in their proper context. What I accepted as "likely" to be the case, as in might, upon the basis of some assumptions, occur, was the subject of analysis by Mr Gellie, Mr Lhuede and Mr Taylor. That analysis was developed by three professionals, applying their independent thought processes and models to the then known evidence and predicted data. I did not influence their thinking, and I accepted and acted on the outcome they predicted. That outcome was based upon the assumption that all suppression efforts on 18 January would be futile, even though, at the time, all reasonable firefighters believed they would have some success, an assumption which, on past experience, was not unreasonable. Even so, the fact remains that the prediction based upon the assumption of an absence of successful suppression did not involve an urban impact on 18 January.

10. Proposed Comment: "The same senior personnel of the ESB did not consider that it was necessary to issue warnings to those people in the urban area who were in the direct path of the fires and consequently, none were issued."

10.1. Once again, with respect, it is difficult to respond to imprecise language.

10.2. The technical analyses of which I was in charge on 17 January did not indicate that the urban area was directly in the path of any fires. Some potential fire runs overnight, and the next day, clearly had the potential to approach the urban edge, but direct impacts were more likely on subsequent days. This was based on a rational method of forecasting fire behaviour.

10.3. These analyses ultimately became the basis for development of warnings and other risk approaches.

10.4. Instead of what your Honour proposes to say in the comment, the truth is that the SMT assessed the situation and developed risk approaches that reflected the most likely circumstances under which urban areas could be impacted upon. These approaches involved operational preparedness, strategic actions in rural areas, and ensuring that information passed to the community reflected monitoring of likely threats to the city.

10.5. It is also necessary to address your Honour's use of the word "warning". As I said in my testimony, these have, at least, two forms: the first is a general indication of the need to prepare, and the second is an indication of a specific need to act.

10.6. The former was appropriate, given the assessments at the time, and without the benefit of hindsight, and, to my knowledge, were being correctly issued. The latter could not have been issued until the future evolution of the event became clearer.

10.7. What I did was correct within the scope of my tasking. Others may have been in a position to take the clear assessments given at the planning meetings, and use the powers of their agencies to alert the entire community. They did not. With respect, reflecting a failure to consider this aspect, your Honour's use of the phrase "senior personnel of ESB" is both indiscriminating and also far too narrow.

11. Proposed Comment: "No contact was made and no warnings were given on 17 January 2003 to the people living in the forestry settlements of Stromlo, Uriarra and Pierces Creek."

11.1. This is incorrect. The staff of CanberraConnect and field fire crews were contacting rural residents on the night of 17 January. The forestry settlements were on the lists.

11.2. The McLeod Report, in its section on events on the 17 and 18 January, states:

"The ACT Fire Brigade focused on preparedness. Among its specific activities were: (1) staff recall and standby; (2) familiarisation with the urban—rural interface; (3) vehicle and radio readiness; (4) additional communication centre and command staffing; (5) additional mapping; (6) **warnings to rural lessees, forest settlements, ActewAGL, and institutions on the urban fringe.**" [My emphasis]

11.3. This is reflected in the evidence of Mr Bennett, who mentioned liaison with ACT Housing on this matter.

11.4. Since your Honour places this proposed comment in a notice addressed to me, I must take it that it is regarded as a comment adverse to me personally. The fact is that the fire spread prediction formulated by Messrs Gellie, Lhuede and Taylor and presented to the planning meeting by me was undoubtedly a cause for direct warnings to the rural residents. I believe that message was, in fact, conveyed. It was not, however, my job, or that of my section, to carry out the work of delivering the warning to the rural residents.

12. Proposed Comment: "By the evening of 17 January 2003 the ESB had no plans and no strategies for dealing with the fires the following day when it was predicted they would enter the pine plantation and advance towards the urban edge."

12.1. I have to make some assumptions about what your Honour has in mind if I am to respond to this proposed comment, since you have declined to tell me by whom, or when, it was predicted that the fires would enter the plantation and advance toward the urban edge.

12.2. Your Honour implies that the ESB should have had plans and strategies. The reference to "the ESB", however, has no relevant meaning. It is clear from the evidence that the field IMTs were responsible for strategies, and that incident action plans were in the ambit of field IMTs as well. It is also clear that the ACT Fire Brigade had established an IMT to develop its own plans and strategies. The ACT Fire Brigade was part of the ESB. The same was true of the ACT Ambulance Service. One might reasonably have expected the Australian Federal Police to have done the same, although they were not part of the ESB, and this seem to escape entirely any adverse comment on your Honour's part.

12.3. As for the role of the SMT, the objectives for the next days were presented at the evening planning meeting, as reported in the minutes of that meeting.

12.4. Your Honour's proposed comment appears to be focused entirely on the Uriarra outbreak of the McIntyres Hut Fire in NSW. If that is correct, then, with respect, your Honour's comment is irretrievably tainted with hindsight, and ignores the effort which went into the fires for which the ACT suppression forces were responsible. Your Honour overlooks the rural part of our community, and the effort which was underway there – for example, the backburning around the township of Tharwa that night.

13. Proposed Comment: "Mr McRae failed to heed the evidence presented to him about the predicted fire spread and as a consequence did not activate his so-called "trigger" to cause warnings to be issued to the residents of urban Canberra."

13.1. The generality of this comment makes it another one to which it is difficult for me to respond. There are a number of aspects of it which I have addressed with regard to other, clearer proposed comments.

13.2. I cannot deduce from it what "the evidence" referred to is, and I am left at a significant disadvantage in otherwise responding to it.

13.3. I have explained above, and I did so in my evidence, and my counsel drew it to your Honour's attention in submissions, that the "trigger" was to be activated when the requisite knowledge was to hand. I will not repeat it here, at least in the absence of having any real understanding of the evidence, if any, underlying the proposed comment.

14. Proposed Comment: "It is clear from the evidence that the senior personnel at ESB, being Mr Castle, Mr Lucas-Smith, Mr McRae and Mr Graham knew - and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended the planning meetings knew - that a very real risk existed [BEFORE 18 JANUARY 2003]."

14.1. Your Honour's proposed comment appears to be an expansion of your proposed comment 9.

14.2. However, here, your Honour adds to the four oft repeated names "and many others who were working at the ESB headquarters in Curtin as well as the senior bureaucrats who attended he planning meeting".

14.3. Your Honour often refers, in proposed comments, to "Messrs Castle, Lucas-Smith, Graham and McRae" as a group who should be regarded separated from the others here referred to.

14.4. Your Honour clearly opts not to name these employees – despite the material in the transcript that shows that they were as much involved in decision-making as the named four.

14.5. Present at planning meetings were people such as:

14.5.1. Fire Brigade officers Bennett, Prince, Newham, Cartwright, Collins and others

14.5.2. Ambulance Service officers Dutton, Foot and others

14.5.3. Australian Federal Police officers Murray, Newton, Kirby, Byrnes and others

14.5.4. Land Management officers, Bartlett, Neil Cooper and others

14.5.5. Senior ACT Government officers, Tomkin, Keady and others

14.6. The collective ability of these people to assess a situation and make important decisions was significant, yet they do not seem to rate a mention in your Honour's search for blame attribution targets. It is clear from this that, rather than attempting to blame a small number of individuals only, there is a real need for findings that show how to improve the systems with which we all worked.

14.7. As has been explained elsewhere, the assessed risk, as analysed by Messrs Gellie, Lhuede and Taylor, was specific, as were the actions taken as a result of that assessment. However, the timing, location and nature of fire impacts on the urban edge remained very uncertain.

14.8. Maps, prepared by staff working at Curtin, and presented in evidence, clearly demonstrate the uncertainty in the risk outlook. There was a focus on the Bendora and Stockyard Fires as the likely sources of runs into the lowlands. The maps show planning on how to contain these and mitigate the threats that arose from them.

14.9. The operational plan handed to Mr Bartlett on the morning of 18 January was based on a sectorising of the rural areas under threat, with options for expansion from west of the Murrumbidgee River to its east if the fire or fires faced expanded through the day.

14.10. All of the planning, briefings and actions show a consistent approach to responding to the assessed risk. The proposed comment is not reasonable open on the evidence.

15. Proposed Comment: "If any of these people were to claim that they had doubts before 17 January about the realistic potential of the fires reaching the suburbs - and it is difficult to envisage how they could legitimately claim this - then there can be no doubt that any such uncertainties would have been dispelled by the information provided at the afternoon planning meeting on 17 January. They all knew the fires would burn into Canberra. They may not have been exactly sure of the precise place or the precise time or even envisaged the precise nature of the fire. But they all knew that impact was inevitable."

15.1. Your Honour's proposed comment that "they", (which I take to include myself), "knew the fires would burn into Canberra" is a dramatic phrase, but not one that, in fact, represented my thinking, and certainly not my thinking in common with the unidentified others. There is no evidence to support the making of such a comment.

15.2. I was of the view that in a worst case scenario, a fire could impact upon the urban edge, and that impact could encompass several rows of houses. That is what I said at the time, and I repeated it in my evidence. However, I did not say that it was inevitable, and nor did I think that it was inevitable.

15.3. Had I thought that it was inevitable, I would have said so. Having spent a year issuing warnings as to the state of fuels, the developing weather, the risk of a major fire and so forth, it is an insulting suggestion to read that, according to this comment, I had suddenly decided, contrary to all that, that an unrealistic, overly optimistic approach should be taken, and that people should be kept in the dark.

15.4. The fact is that I accepted the prediction formulated by Messrs Gellie, Taylor and Lhuede. That prediction was developed on a worst-case basis, yet

did not involve an urban impact on 18 January. The fact is that I did not predict an urban impact on 18 January. I foresaw a risk of that during the period of bad fire weather, but I never thought and never said that it was inevitable. I did not decide to keep anybody in the dark.

15.5. Whether I should have predicted, on 17 January, the impact on 18 January may be a matter for debate, but let that debate be conducted on a proper basis. Any such debate requires a genuine analysis of the state of scientific learning at that time, and not mere hindsight-based revision of history. I say that, using the available tools and knowledge, the events of 18 January were unpredictable. I say that the developments in scientific knowledge since 18 January, including Mills' "dry slot" phenomena support my position. It is far wiser to look at the developing science, and learn lessons for the future, rather than ignore it, so that a small number of individuals can be blamed for a bad outcome.

15.6. If, upon a proper assessment of the state of scientific knowledge to date, that is, at the end of 2006, it is proper to conclude that the events of the afternoon of 18 January were predictable upon the science then known, and upon the basis of the facts then known, then, and only then, would it be possible to hold me responsible for failing to predict that which I should have predicted. And, of course, that same comment could then equally well be applied to Messrs Gellie, Lhuede and Taylor. Of course, no such criticism can, in fact, be properly sheeted home to those three. They brought independent views and approaches to bear upon the problem presented to them on the afternoon of 17 January, and nobody has, nor could, suggest that they took a wrong approach.

16. Proposed Comment: "Those people who said in their evidence that they still hoped the fires could be stopped were living with false hope, not reality, choosing to consciously ignore the information and the evidence presented to them. It is totally inexplicable why there was no reaction to Mr Taylor's revised

prediction that morning that the fire had the potential to impact upon the urban interface at 3.00 pm. Mr Graham saw the message but appears to have simply ignored it.”

16.1. This comment, in so far as I must assume that it is directed at me personally, is entirely misconceived. It is also insulting. I did not “consciously ignore” information presented to me in the course of my official duties. Nor do I know any person in any capacity during the fire event who did “consciously ignore” evidence of a risk to the property and health of members of their community.

16.2. As I have said on a number of occasions above, the revised prediction formulated by Mr Taylor on 18 January was not provided to me. The evidence is unequivocal. Mr Taylor delivered it directly to operations. One would expect that the operational people would then use it in formulating operational responses, and that those charged with community engagement would likewise use it in their decision-making processes. However, with respect, inconvenient as it may be for the manner in which your Honour has erroneously conceived the decision-making structure in those two areas to have been, neither operations nor community engagement were my areas of responsibility.

16.3. Your Honour refers to the “false hope, not reality” of stopping the fires before they reached the urban edge, yet a number of very well qualified witnesses referred to an ability to achieve control of fires in grassland.

16.4. For example, Mr Neil Cooper expressed some confidence in controlling the fires once they left the forested area and entered the open grazing area. Paddocks were quite bare due to the drought and to grazing pressure. Also, Julie Crawford, another extremely experienced firefighter from NSW, was of a similar view. Neither Mr Cooper nor Ms Crawford were living in “false hope”. They were simply expressing views based upon a wealth of directly relevant bushfire fighting experience. That the fires proved uncontrollable, and

behaved in extraordinary ways, despite the scarcity of fuel on the afternoon of 18 January, simply means that the fires behaved in extraordinary ways beyond the imagining of even the most experienced firefighters. It is unfair and unreasonable to use the benefit of hindsight to damn those views as "false hopes".

16.5. Mr Tony Bartlett was tasked with, among other things, managing the deployment of a large number of fire appliances within the rural area.

16.6. These officers were not tasked with "stopping" the fires, as your Honour apparently infers.

16.7. Your Honour has said here, and elsewhere in the notice, that I was in receipt of a revised fire spread prediction that should have immediately caused a rethink, and a decision that warning to the public were required.

16.8. Mr Taylor's evidence was that he and Mr Gellie prepared a revised spread estimate after a briefing from Mr Bartlett, who had flown the fires. They felt it was fairly urgent, and passed it to Operations in the SMT. However, as I was busy elsewhere the message was signed off by Mr Wilcox, who was described as "a senior [NSW] RFS Planning Officer". So, at this critical moment, not only was I not involved, but those who were are apparently not the subject of any criticism by your Honour. As with many of your Honour's proposed comments, I am, with respect, left to wonder whether your Honour brings to the task at hand the spirit of impartiality and proportion that one might reasonably expect of your Honour. Here, I seek not to deflect blame, but merely to demonstrate the error involved in seeking to place blame upon a small number of individuals within the ESB.

16.9. Finally, it seems extraordinary that your Honour places a direct and substantial criticism of Mr Graham within the notice addressed to me, as if this is a matter to which I should somehow respond.

17. Proposed Comment: "Up until the issue of the first SEWS at 2.40 pm [ON 18 JANUARY 2003] the people in the suburbs of Canberra were not given any information which would serve as a warning to them that they and their property were at risk that day from the coming fire."

17.1. Your Honour's proposed comment is presumably intended to be a criticism of me. If so, I have already responded to this kind of material by reference to matters concerned with structure and duties. I have also reiterated my view of the assessed risks. I have explained how subsequent and recent scientific studies have shown how extraordinary the events of 18 January were. While it is very unfortunate that events escalated faster than we could cope with, the science strongly suggests that it was also unavoidable.

17.2. In evidence, Mr Simon Katz said that he was the Sector Leader between Kambah Pool and the Cotter Road area. He described how he and his crews were burnt over unexpectedly not long before the fire raced to the urban edge.

17.3. At 14:00, Mr Cheney's staff were taking video footage of the fire developing on Mt MacDonald. They felt it prudent to drive back down to Duffy for their own safety, arriving not long before the fires did.

17.4. It is clear from a wide range of sources that things were then escalating at a very rapid rate. Getting intelligence from the field was becoming extremely difficult. That is not because those in the field were lackadaisical about keeping Curtin informed of developments, but simply because matters were developing at a speed that defeated the best will of all to keep up. Mr Gellie gave evidence of the perspective from Curtin in the face of large volumes of conflicting material, and the impacts which this had upon planning capacity.

17.5. I decided to task two of my staff to drive towards Weston Creek and assess the situation – i.e. to clarify what was happening and how quickly. When they reported back it was too late. I made that decision on the basis that the information coming in from the field was insufficient to assess the situation. This was in large part due to the congested radio system, often mentioned by witnesses as a significant flaw in our capabilities..

17.6. Up to 14:00, not even those in the operational sectors had recognized that things were significantly worse than would be expected. Without the benefit of hindsight, it is difficult to see how we could have altered the assessment of risks that afternoon in time to issue warnings to those ultimately impacted on by the large number of fires that occurred.

18. Proposed Comment: "The management of information within the ESB was extremely poor. It would appear that there was no system to co-ordinate the flow of information nor effective collection and dissemination of vital information. No one appeared to know what, if anything, was being said and ESB personnel were not sure who was responsible. Mr Lucas-Smith thought information was being put out through a number of press releases about what people should do to prepare when in fact the first such release was midday on 18 January. Mr McRae said he was not familiar with the content of media releases because it was not his responsibility (but in fact - despite his assertion to the contrary - his position was responsible for public information dissemination). He thought that work was being done behind the scenes by the media people. As well, Mr McRae thought that information about a general threat had been publicised by Saturday 18 January. If Mr Castle was ultimately responsible for authorising the publication of information, then he did not ensure that it was disseminated in a timely fashion in keeping with the urgency of the situation. The midday press release was issued hours after the evacuation planning and 9.30 am planning meetings. The SEWS notice was signed by him at 2.05 pm yet was not disseminated till about thirty minutes

later. As well, the information contained in some of the press releases was out-of-date or wrong and generally the content was inadequate and misleading. One glaring mistake was the release which underestimated the sizes of the McIntyre's Hut and Stockyard fires."

18.1. It is readily accepted that there were problems with the way that information was handled at Curtin. This is due to the poor facilities provided to the ESB to handle what are, in reality, some of the most difficult and demanding tasks in the ACT Government.

18.2. However, it is difficult to respond to this comment adequately when the comment is written in such general terms.

18.3. In the first few sentences, your Honour makes some sweeping claims that are, even superficially, contradicted by the evidence. As an example, the planning meetings were held to coordinate activities, and records were kept from 14 January. While not perfect in any way, records were kept.

18.4. Your Honour appears to assume that the SMT was, in fact, an IMT. While an IMT has a well defined need for record keeping under the national standard for incident management, the SMT's role is defined by the operating procedure titled "The SMT Role in ICS". It provides that:

18.3.1. The SMT established policy, gives direction and allocates authority and resources to the Incident Controller

18.3.2. The following are only available through the SMT:

Additional resources

Specialised resources

Fire weather forecasts

Detection system [fire towers]

Transceiver channel allocations...

18.4. It has not been demonstrated in evidence that the information management in place was insufficient for these explicit roles.

18.5. Your Honour correctly refers to my evidence where I stated that I did not manage the media unit, but then asserts that my evidence was wrong. Your Honour has no basis at all for the assertion that, contrary to my sworn evidence, I was responsible for public information dissemination. The evidence was that Mr Castle ran the unit, but that it was attached to my unit for purely administrative purposes. I gave the example of the need to provide for a meal or something of that sort as the only level of responsibility exercised by the planning unit for the media unit during the course of the fire event. That was so because of a decision by my superiors as to how the media unit was to be run during the event. It was not for me to second-guess that decision. Mr Castle, in evidence, described how the media unit worked closely with him. Ms Harvey said in evidence that she had not received any directions from me. The evidence is overwhelming that I did not manage, nor involve myself in, the media unit. The contrary is also inconsistent with, and contradictory of, the last two sentences of proposed comment 20.

18.6. If I had made a mistake in the course of making some decision that I actually made as to, for example, the tasking of the media unit, such as by assigning someone else to be responsible for it, then that would be one thing; it is quite another entirely to be blamed for something that was not my function or responsibility, and clearly within the exclusive control of others.

18.7. The evidence was that the media unit sourced information from across the SMT, and elsewhere, including from me as required. This was established by attendance of a representative at the planning meetings, and at times information provided being a major agenda item of interest to the media unit.

18.8. If problems occurred with communication within the SMT, then I was not aware of them at the time.

19. Proposed Comment: "[ON 18 JANUARY 2003]

Mr Castle appeared to be out of touch with the situation as it was developing. He provided inadequate information in his media interviews and the press releases did not contain important facts which could have served to raise the level of awareness and alert within the community about the worsening conditions of the fires. Mr Castle had, and should have taken, the opportunity immediately after the 9.30 am Planning Meeting, in consultation with Mr McRae, to issue a press release containing all the information which had been presented and discussed at the meeting about the predicted fire spread. He said nothing about the prediction at the midday press conference nor was that information contained in the 1.00 pm media update release. Even after the declaration of the State of Emergency, at that late hour, by his comments, Mr Castle still appeared to be denying the dangerous situation which was then facing the community."

19.1. Your Honour's proposed comment follows on from the previous one, contains similar content, and, with respect, embodies similar misconceptions.

19.2. The proposed comment appears in a notice directed to me, but contains adverse comment about Mr Castle for failing to take certain steps, not me.

19.3. At the risk of labouring the point, I was not, and the evidence is not, that I was responsible for media releases. Those who were had the opportunity to make full use of such information as was available in relation to fire spread and predictions of fire behaviour. There were a number of potential sources. The relevant persons who could provide that information attended at planning meetings and made such information as they had available to all those present. Those in charge deemed, for good reason it seemed to me, that this was an appropriate forum for the dissemination of such information. It had the plain advantage that it gathered together all those involved in decision-making. It allowed for (minuted) oral presentations, reducing the paperwork that many officers in different areas

would otherwise be required to read; it allowed discussion; and it allowed those who would make decisions to do so then and there, or to break into smaller groups and seek additional opinion, and so forth.

19.4. I was but one source of information in relation to fire spread prediction. Taking the example of the afternoon of 17 January, I presented to all the prediction formulated by Messrs Gellie, Lhuede and Taylor. All those in other positions were able to take that prediction, together with news from the fire grounds, and make decisions as to engagement with rural residents, tasking for the following day, and so forth.

19.5. On the morning of 18 January, I was involved in providing briefings to a number of people, and attending upon the evacuation committee. Mr Taylor did precisely what he should have done. He took on board what Mr Bartlett had to say after his aerial view of the fires, and no doubt other information disseminated at the planning meeting, and re-formulated his prediction and fed it straight to the operations people. It was open to those actually responsible for community engagement, who did not include myself, to take that information and formulate some message for the community. Nobody had to await my say-so to do so. Even at a practical level, there was no need for anybody with that responsibility to await my becoming available, free of other briefing duties, to speak about it. Mr Taylor had gathered the evidence; he had a keen eye for it, since he took part in the development of the 17 January prediction, and had formulated the 18 January prediction. Mr Taylor, and indeed other planners, were perfectly well qualified to provide such technical advice, if any, as might have been requested.

20. Proposed Comment: "On the evidence, it is difficult to reconcile the important role which should have been played by Mr McRae in his capacity as Planning Officer, and what he actually did, particularly in the few days leading up to 18 January. Several submissions were made by his Counsel on his behalf, which, in short, said, that it was not Mr McRae's responsibility to issue

warnings, but he did provide the necessary information which enabled others to do so, even though he believed that it was not necessary because he was missing information which was precise as to time and exact location of impact. All of this is rather contradictory and difficult to understand and reconcile because, in the mix also, is Mr McRae's belief that the ACT Fire Brigade and Ambulance Service should be informed and fully prepared for the impact upon the urban areas yet he also believed that it was not yet time to tell the residents. He did not appear to voice his disagreement at the 9.30 am planning meeting on Saturday 18 January with the fire spread predictions yet, in his evidence before the inquiry said, both that he believed the fire would reach Narrabundah Hill at 8.00 pm on Saturday and he also believed that the fire would most likely evolve and impact on or by the end of the following Monday and therefore, there was no need to activate 'the trigger' and cause warnings to be issued on Saturday. Mr McRae enlisted the assistance of experts Messrs Gellie, Lhuede and Taylor to work with him and then he effectively ignored their predictions. Mr McRae was not told of Mr Taylor's revised prediction of impact on the suburbs at 3.00 pm instead of 6.00 pm but his evidence was that even if he had he would not have agreed with it. He believed that general warnings had been issued to the community and thought that these were adequate. The problem is that there were no general warnings issued by the ESB and this should have been something of which Mr McRae was aware. Mr McRae accepted that his failure to activate 'the trigger' on Saturday 18 January was the reason why the midday press release did not contain information about the predicted impact upon the suburbs of Weston Creek to Greenway. However, Mr Lucas-Smith and Mr Castle also heard the prediction and could have and should have disseminated that information immediately by holding a press conference - not waiting till midday - and putting out a media release. Both accepted that it was their responsibility to keep the community informed."

20.1. The ACT Emergency Plan dated September 2000 provided the list of "key agencies" for "Fire – Rural": ACT Bushfire Service, ACT Fire Brigade, Australian Federal Police, Parks & Conservation Service, ACT Forests, ACT Emergency Service, Bureau of Meteorology, and NSW services. It also lists agencies for "Fire – Urban": ACT Fire Brigade, Australian Federal Police, ACT Ambulance Service, ACT Emergency Service, ACT Bushfire Service, Department of Urban Services, Telstra and ACTEW Corporation.

20.2. Under this Plan, it was appropriate that the ACT Fire Brigade prepare for the prospect of becoming the lead agency when and if the fires entered the urban area. The ACT Fire Brigade established an IMT to coordinate the preparedness. Other agencies are alerted to the risks and undertook appropriate actions.

20.3. It misrepresents my view, and was not my testimony, that I had to await evidence as to the "precise" time, and "exact" location of an anticipated impact, before indicating to those up the chain of command that a warning of the fact of an approaching fire should be given. However, I took the view, genuinely believing it to be the proper approach, that I could not tell my superiors to issue such a warning, unless and until the evidence informed me that it was likely that fire would impact upon residents, whether they be urban or rural. So far as the urban edge was concerned, it did not need to be a single suburb, but could be, as was ultimately the case, a number of suburbs, with others being added to the list as an impact there could reasonably be foreseen.

20.4. I did not indicate that a warning should be given, because I did not see the need for it. In large measure, that was because the fire behaviour on 18 January was unprecedented and unpredictable. In your Honour's comments, despite to overwhelming body of evidence, including from experienced and respected firefighters on the ground, as to fire behaviour that day, there seems to be a reticence or reluctance on your part to

accept the proposition that fire behaviour on 18 January was unpredictable. Such a view would, if held, also be contrary to the current state of scientific knowledge concerning the events of that day.

20.5. To some extent, with the benefit of hindsight, perhaps it can be concluded that there is now a need, demonstrated by the unpredictable fire behaviour on 18 January, for emergency managers to re-think the subject of warnings, and perhaps to err to a considerable extent upon the side of earlier, and therefore necessarily less specific, warnings. Remembering that we are not here dealing with general preparatory warnings, there is a tension between warning too early, and being too general, and therefore less helpful, that is to say, giving a message less likely to be acted upon, on the one hand, and warning too late and allowing inadequate time for action, on the other. These involve policy matters properly and appropriately discussed within government and in emergency management forums. I am not saying that they are no business of the Coroner, but they should not be addressed on the evidence of one event only, and in the absence of dispassionate and truly expert opinion. No such experts gave evidence in this inquiry.

20.6. I would, of course, be more than prepared to accept the view reached by a process that received and properly considered all of the evidence as to past incidents, and from qualified experts, on the question whether a warning should have issued on the afternoon of 17 January. As I have noted above in earlier responses, however, I was not involved in the formulation of Mr Taylor's prediction on 18 January, or in the response to it.

20.7. I reiterate that I did not ignore the predictions of those who I brought into the unit to provide independent views. I regard such a comment as insulting and offensive. Why would I go to the trouble of seeking outsiders who could offer different views if I could not care less

what they said? I put the jointly formulated prediction to the planning meeting as having the endorsement of the planning unit. That prediction did not assert that any of the fires would, in fact, necessarily reach Narrabundah Hill by 8.00pm the following day. Even on the assumption, inherent in the prediction, that one or more might, in the genuine application of the principles that I believed were applicable, that did not give me proper cause to "trigger" a directed warning to those in the suburbs further to the south west of Narrabundah Hill. If, as I have said above, the verdict of experts in the field would now be that such circumstances did require a targeted warning, then so be it. I would accept that view. But your Honour has not been provided with any credible evidence from any properly qualified experts to that effect in this inquiry.

20.8. I have also dealt above with the notion that I disagreed with Mr Taylor's revised opinion. To restate the position in case it may still be misunderstood. I did not know of Mr Taylor's revised opinion on the morning of 18.1.03. Assessed in retrospect, and knowing that it came closest to predicting what, in fact, came to pass, I expressed the view that I could not agree with it. That was simply because, assessed on the basis of the variables then known, it did not seem to me, and based upon the models in use then, to be the correct outcome. I am unable to comprehend why your Honour could fairly or reasonably criticize me for having an ex-post facto disagreement with a professional colleague about a professional matter. The record remains that, whatever my technical disagreement with the Taylor revised prediction, it came closest, viewed in hindsight, to the actual outcome.

20.9. It appears that, with respect, your Honour has taken somewhat out of context my evidence that I expected that those whose job it was to decide to issue a targeted warning were awaiting my indication of the need for same. In a formal sense, it is correct. I was the officer in charge

of the planning unit. Ordinarily, predictions produced by the planning unit would be formally issued by me. That was so on the afternoon of 17 January, even though the prediction was the work of the Gellie/Lhuede/Taylor triumvirate. On 18 January, in the ordinary course, had a planner devised a revised prediction, it would come to me, and I would pass it on.

20.10. What happened, in fact, was that Mr Taylor revised his prediction, realized that it needed to go to those who might act upon it, and quite appropriately "cut out the middle man", ie myself, as I was engaged on other duties. In those circumstances nobody could possibly have thought that Mr Taylor's prediction ought to be ignored until I had re-surfaced from other tasks and given it my imprimatur. Nobody said so, and nobody acted on that basis.

21. Proposed Comment: "Whatever his own calculations were telling him, he did not see the need to warn at all on Saturday 18 January. Further, in Mr McRae's evidence he said that 'today' he would rely on the same method he used in January 2003 (which failed him and, ultimately, the whole community)."

21.1. At no point in evidence did I testify that I did my own calculations. I held no view as to the future spread of the fires beyond what my team of technical experts told me.

21.2. What I did was to gather a team of technical experts, have them conduct independent predictive analyses, produce a consensus report, and present that to the evening planning meeting to ensure that all actions were coordinated and based on sound decision-making support.

21.3. Your Honour refers to my evidence that I would adopt the same approach today. That is what I honestly thought when I gave my evidence, which was in about April 2004. At that time, there was no better

model in use that could be substituted for the approach that was taken by Messrs Gellie, Lhuede and Taylor. Even at the close of evidence in this inquiry, the Project Vesta experiments had not yielded a publication that Mr Cheney was prepared to submit to a refereed journal. That is not, in this regard, to criticize Mr Cheney. On the contrary, it demonstrates that fire behaviour prediction is not a science that is straightforward. The stakes are far too high to simply skip to some untried method in the most trying of circumstances. Moreover, Messrs Gellie, Lhuede and Taylor did not adopt a simplistic approach in any case. They did, as they said in evidence, use models, add in factors to take account of their own actual knowledge of the variables, and then discuss and agree upon a worst-case scenario. When I gave evidence in 2004, that was still the best approach. Since then, there has been a wealth of further study and learning. Some of this has come from places as remote as the United States and the United Kingdom, which only serves to demonstrate the impact that the events of 18 January have had upon the relevant scientific community worldwide. I would now have additional knowledge about channeling effects and the dry slot phenomena that I would put to use. I have, through my counsel, supplied a good deal of this new learning to your Honour and urged you to take it into account, because this is, after all, an inquiry, and your report should take account of relevant scientific material which can be of benefit of the community in the future.

21.4. Your Honour may be relying upon evidence received which challenged the approach that I, as well as members of the planning team, took. Mr Cheney, in one of his reports to you, described a methodology based on setting the fire danger index to 100 (or maybe 80) at 10:00, and leaving it constant to predict the maximum spread potential of a fire. He said that if the break-out near the Uriarra property was used as a starting point, then a predicted arrival time at Weston Creek, close to that

observed, would be obtained. This also relied on applying the Project Vesta corrections.

21.5. If so, some issues must be raised with this, especially if hindsight is to be avoided. Most notably, this technique is contrary to all industry training material.

21.6. Also, there was considerable fluctuations in the forecast weather received from BoM. These were not investigated by the inquiry. But examining the "error bars" on weather inputs to fire behaviour prediction is an area publicly championed and applied by Mr Cheney.

21.7. While the range of forecast weather values was enough to yield considerable uncertainty in predictions, the difference between forecast and observed was far larger. This is discussed in the scientific paper written by Dr Graham Mills, on the dry upper air slots, submitted by my Counsel and appended to a written submissions on my behalf.

21.8. If uncertainties about the starting point of a fire run are added, then it must be accepted that there has to be professional judgement involved in doing this work. This is what was done at the time. It is then difficult to find fault fairly or reasonably without benefit of hindsight.

21.9. The other factor not investigated in depth during the inquiry was the goal of predictions. If the tasking is to make a reasonable prediction of the fire's evolution, then we did that. As I stated in my testimony, if too much "worst case" thinking is applied, then opportunities for field operations to successfully mitigate the fire impacts may be lost. If I had been tasked to get my team to find the worst possible scenario, then not only would it have been easier to do that, but it would have been quite a different scenario. A true worst case scenario, without the team adding in their own knowledge and "reality checks", as they say they did, would have involved

a larger number of fire runs and long-range spotting, and it would not have reflected what happened on the day.

21.10. I was tasked to make a realistic prediction of the situation that would occur on 18 January.

21.11. It is my belief that what did occur was, in fact, not forecast in any manner; nor could it have been forecast, at that time, in any manner.

22. Proposed Comment: "The senior personnel of the ESB recognised the worst case scenario but did not prepare for it. They hoped for the best. They were influenced in their thinking and their planning and by their experiences with the fires in December 2001 and the success they had in controlling those fires. This was a mistake because it led to the perception, certainly on the parts of Messrs Lucas-Smith, Castle, McRae and Graham, that the fires could be controlled once they reached the grasslands on the urban fringe. This perception existed despite the views expressed publicly by Messrs Lucas-Smith and McRae, at least, that conditions in January 2003 were significantly worse than those of December 2001, and despite the expert opinions previously expressed by Commissioner Koperberg and CSIRO expert Mr Cheney - to say nothing of the dire opinions expressed by Mr McRae in his earlier emails which are on the public record. "

22.1. The claim that we recognised the worst case is contradicted by both the evidence of firefighters on the ground, and also recent scientific evidence. The published scientific findings show that the worst case was rather worse than anything suggested during the inquiry. No-one recognised it.

22.2. The report of the Coroner who handled the 2001 fires and his findings were made available to this inquiry. In it, there is a lot of material relating to suppression efforts undertaken in the field by IMTs. Perhaps the best instance of this is a report titled "Stromlo Plantation Fire – December 2001 –

A Report Prepared by Tony Bartlett". In it, 14 key recommendations are made.

22.3. When the ESB conducted a thorough series of debriefs in the months after the fires, scores of recommendations for improvements were made. Mr Brian Parry was engaged as a consultant to report on some key issues. For my own part, I conducted an investigation into the cause and origin of the fires, and my findings were a serious concern.

22.4. In those fires, few structures were threatened, and none lost. However significant silvicultural and agricultural losses did occur.

22.5. These facts do not suggest that a feeling of overconfidence emerged from suppression efforts in respect of those fires.

22.6. A rigorous process of internal review to enable continual improvement has long been the policy of the ACT Bushfire Service.

22.7. I am surprised that your Honour has referred to the testimony of Mr Koperberg as expert opinion. Who is an expert on what has always been an issue for me during this inquiry, and many of the areas that I have needed to raise in response to this notice have had little, or no, coverage with evidence from qualified experts during the inquiry.

22.8. Looking at this comment from my standpoint, it suggests that I knew the worst, that I told people that I knew the worst, and had done so for some time; therefore, I am criticized for hoping or perceiving that things were not so bad. Such claims are difficult to respond to, because hopes and perceptions were not part of my testimony.

23. Proposed Comment: "I have been left with the overall impression that the ESB, at the senior levels, lacked competence and professionalism, was disorganised and was functioning in a chaotic uncoordinated fashion particularly in the most critical period of the fires. The impression I have is that the left hand did not know what the right hand was doing and neither hand

was actually doing very much to deal with the crisis which was growing day by day and hour by hour.”

23.1. There is no way that I can respond to this proposed comment. It contains no reference to facts or evidence, if any, upon which it may be based, and is gratuitously abusive and offensive. It is a comment that is not reasonably open.

24. Proposed Comment: “By the early morning of 18 January and before, senior personnel of the ESB being Messrs Castle, Lucas-Smith, McRae and Graham all recognised the serious potential for fires to impact upon the urban edge at some time during the afternoon or evening of Saturday 18 January and failed to take action within their respective areas of responsibility to ensure public warnings were widely broadcast and disseminated to the community.”

24.1. Again, your Honour repeats assertions made earlier about the four people, recognition of potential for impact, areas of responsibility and failure to take action. Similar comments have been addressed earlier, and my responses to those claims do not bear repeating here.

24.2. To summarise, I stood by the prediction made by the Gellie, Lhuede and Taylor team on 17 January. It was the subject of discussion among the decision-makers, and decisions were made accordingly. I was not engaged in making fire spread predictions on the morning of 18 January. Mr Taylor made a prediction and gave it to the appropriate people for further consideration and action.

25. Proposed Comment: “These same senior ESB personnel lulled themselves into a false sense of security because they had managed to prevent the December 2001 fires from destroying any urban structures; and that as a result of this self-delusion, they deliberately withheld information from the community in the belief that they would - as they had done in

2001- stop the fires in the grasslands; and they did not wish to alarm the community.”

25.1. Your Honour’s proposed comment raises some serious concerns for me.

It is suggested that I, as one of “these same senior [sic] ESB employees” had a sense of security arising from the outcomes of the 2001 fires. Further, this sense of security is said to be false, forming the basis of a criticism.

25.2. The reports to the Coroner who handled the 2001 fires and his findings were made available to this Inquiry, and I have discussed them already under comment 22. The aftermath of that process does not justify the comment.

25.3. Your Honour goes on to suggest a perception that the fires could be controlled once they entered “the grasslands on the urban fringe” and that this perception arose as a result of the 2001 fires.

25.4. It is hardly surprising that most firefighters anticipate that they can extinguish fires. If grasslands are fully eaten out and drought stricken, there may be even more reason to entertain a real expectation of success. As forecast fire danger increases, this expectation may decrease, but bare paddocks would also persist. However, this has nothing to do with the 2001 fires, in which grassland with much greater fuel loads challenged fire crews.

25.5. Another consideration arises from your Honour’s apparent and, with respect, erroneous belief that the SMT was, in fact, the IMT. Stopping fires is a strategic and tactical process, using those terms in their well-defined sense under the IMS. It is clearly stated in the “role of the SMT” document that strategies are the responsibility of the IC in the SMT, and that tactics are the responsibility of the Operations Officer in the IMT.

25.6. If there was actually an expectation of controlling fires, not necessarily “stopping” the fires, then its place was in the IMT. My role in the SMT was to monitor the situation that resulted from the combination of fire behaviour and the actions of fire crews. It is in evidence that I tasked my staff to monitor

reports to allow a continuing assessment of the situation. This was never claimed to be a monitoring of the success of fire crews – it was simply a process of monitoring: (1) Where are the fires? (2) What is under threat?

25.7. The final part of this proposed comment asserts a deliberate decision to withhold information and a desire “not...to alarm the community”. The comment is offensive, suggesting as it does some desire to keep information from the community to their detriment, without, I might add, the slightest suggestion of any motive. This comment has no supporting context and is not supported by the evidence. The context is presumably making risk assessments. That, in turn, is based on knowledge of where the fires were, how they were spreading, and where and when they might impact on the urban part of our community.

25.8. Nevertheless, warnings about the fires – from CanberraConnect, from fire crews, and from individuals such as Mr Jeffery - had already been received by the rural part of our community without causing alarm.

26. Proposed Comment: “There was no official warning to the community by the ESB until about 2.40 pm on 18 January 2003 and that warning was far too late to enable people to take effective precautions for their safety and to enable them to make informed decisions to stay with their homes or leave in the face of oncoming fire; and this late notification caused people to be placed in increased danger in their homes and in vehicles attempting to flee in the face of the fire which arrived approximately 20 to 30 minutes later.”

26.1. It is the fact that the warning issued at 14:40 was too late to assist those facing the initial onslaught of the firestorms. It is also the fact that the severity of events unfolding escalated rapidly after 14:00. I refer your Honour to the material set out in relation to earlier proposed comments as to the dramatic unpredictable escalation in the fire behaviour.

26.2. Your Honour has no demonstrable bases for the claims concerning this having lead to "people in increased danger in their homes" or "vehicles attempting to flee in the face of the fire". Historically, in catastrophic bushfires, people are commonly killed whilst driving away from the fire. This did not happen, and was not suggested by the evidence.

26.3. Additionally, your Honour does not address anyone in particular in this proposed comment, so, once again, I am impeded in my ability to effectively respond to it.

27. Proposed Comment: "The system employed by Mr McRae, ie, his "trigger" system, which resulted in him waiting for a precise subset of circumstances to be identified before taking any action to warn a specific subset of the community was seriously flawed and a dangerous way to operate in an emergency management environment."

27.1. This proposed comment is a summation of a number of previous comments, and my previous replies apply to it as well. Without repeating that detail, I add the following:

27.2. I was tasked to do specific actions as part of the SMT. I was continually providing updates on the situation and the ensuing risks. These updates were received by most of the Territory's senior emergency managers. The way that I assessed the risks was a reflection of the then current ACT Emergency Plan. The events for 18 January unfolded in a manner that was unforeseeable. The only ways in which my approach has been, or can be, criticized is by means of a heavy reliance on hindsight. While concerns and alternate views were raised at the time, none of these anticipated the true nature of the events that came to pass.

27.3. If I erred because I followed the ACT Emergency Plan, then I cannot fairly or reasonably be criticized for that – rather, your Honour should make recommendations for improving this vital instrument of public policy.

28. Proposed Comment: "Messrs Castle, Lucas-Smith, McRae and Graham were completely out of their depth at the time of the conflagration and the days leading up to it."

28.1. With respect, without factual findings in detail or reference to evidence, this proposed comment is little more than a gratuitous insult and is personally offensive. Moreover, it seems that in your Honour's mind, only we four were "out of our depth".

28.2. If this is not simply an exercise in finding someone to blame for the damage wrought by the fires, one must endeavour to find some meaning in the phrase used by your Honour to characterise our positions. The New Shorter Oxford Dictionary defines the phrase "out of one's depth" to mean "in water too deep to stand in" or, figuratively, "beyond one's capacities or understanding."

28.3. By reference to that meaning, I must concede that on 18 January 2003, I was out of my depth in the sense that the nature of the fire behaviour on that day was beyond that which I had personally experienced, and beyond the scope of any of the predictive capacities of any model then available. With respect, your Honour's impartiality is called into question when you single me, and the other three, out for this criticism, since all operational officers and all managers in agencies supporting the suppression services were "out of their depth" in the face of the unprecedented fire behaviour on 18 January.

28.4. I have already adverted to the circumstances that coincided on the 18 January to confound all models, defy any predictive capacity, overwhelm suppression efforts and render all agencies and all agents "out of their depth"; matters which your Honour seems unwilling to acknowledge, preferring to blame four individuals only for the disastrous outcome.

28.5. Your Honour's comment appears to ignore a considerable body of evidence and testimony that goes to demonstrating the professional actions of myself and my colleagues – not just those in the SMT – under working conditions not even approached in the Territory in recent decades.

28.6. Beyond saying that, and the detailed responses to the previous 27 proposed comments, I am unable to further address the phrase "completely out of their depth" without knowing what, if anything, your Honour has in mind. If we were out of our depth, it has never been demonstrated that there was any capacity for better to be done for the Territory. For us, our actions are on record. For others, only their words are.

Dated: 22 November 2006



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RICK McRAE

Appendix B

Maps and photographs



This section shows photographs and digital mapping of the four fires—McIntyres Hut, Bendora, Stockyard Spur and Gingera.

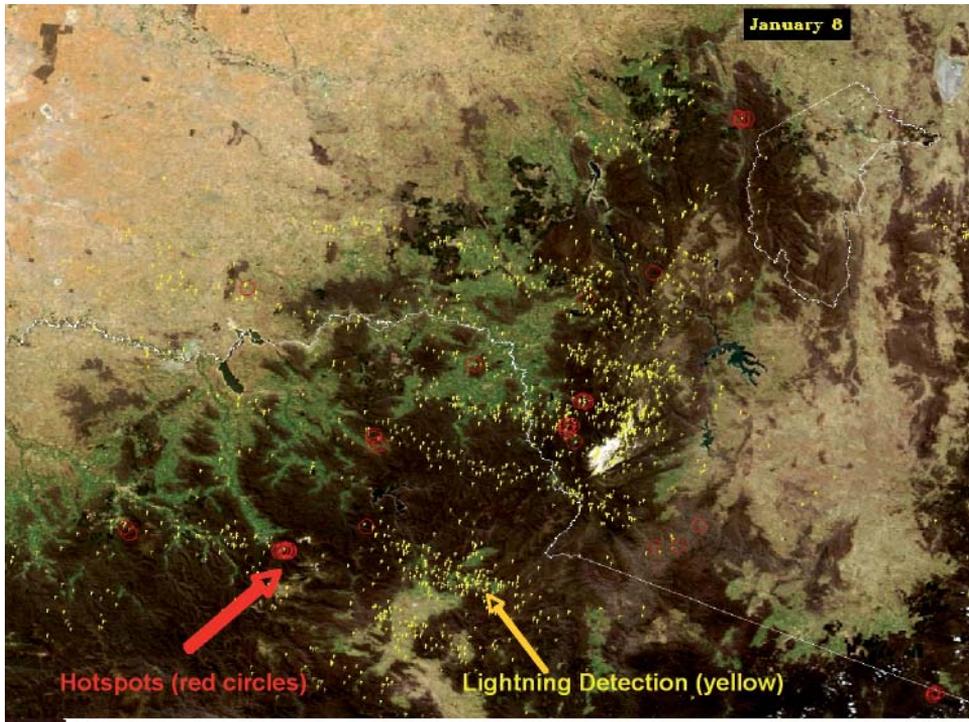


Plate 1 The lightning strikes on 8 January 2003

Images courtesy of the Cheney report

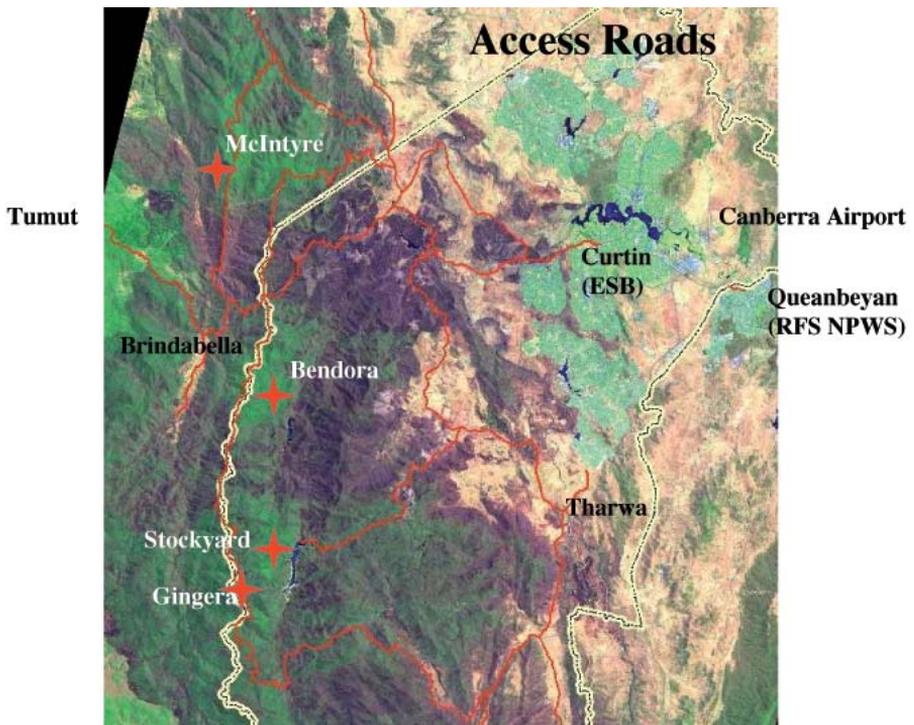


Plate 2 The location of the four fires

The McIntyres Hut fire

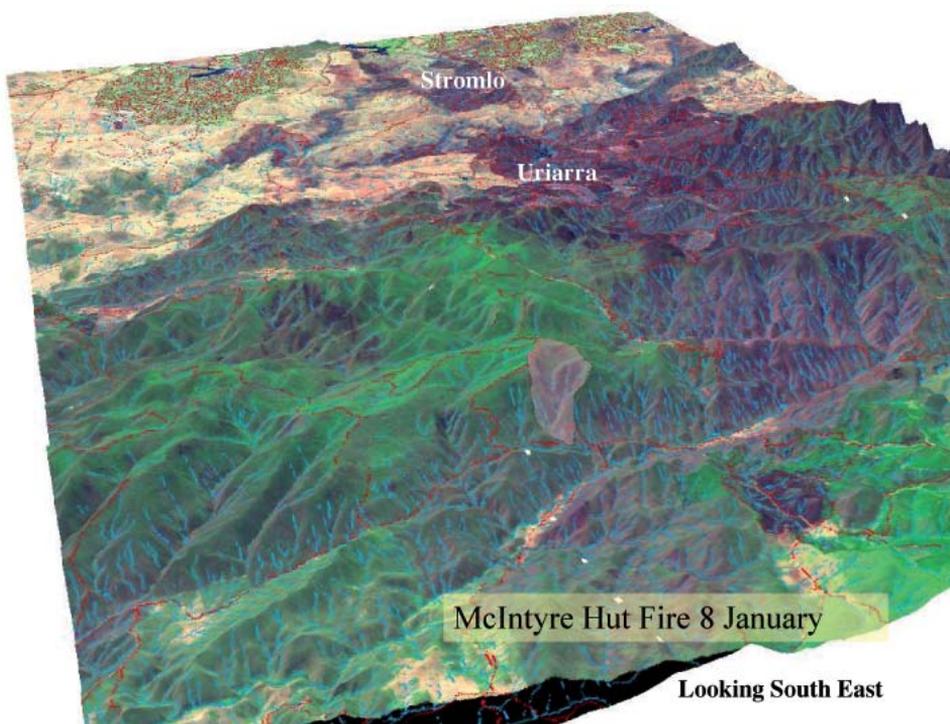


Plate 3

Images courtesy of the Cheney report

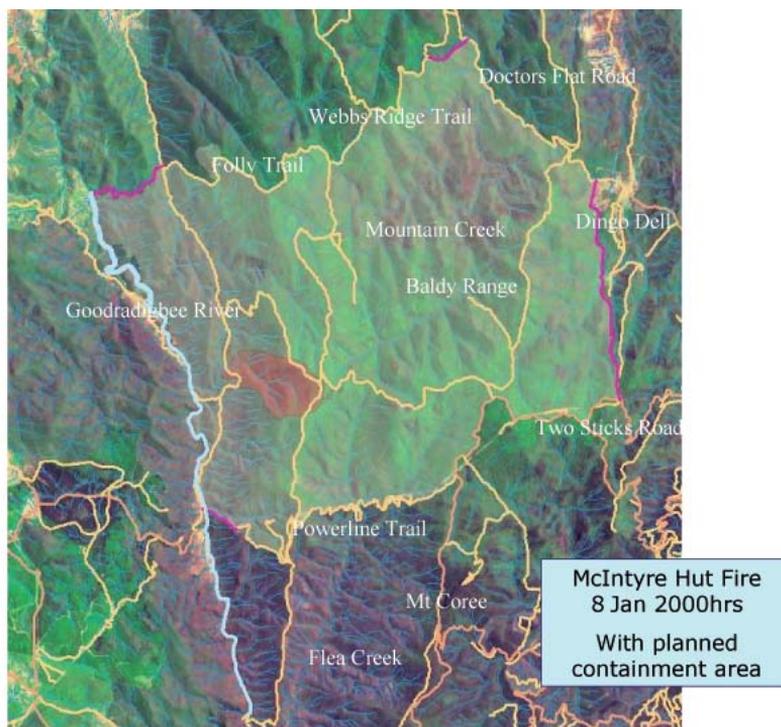


Plate 4

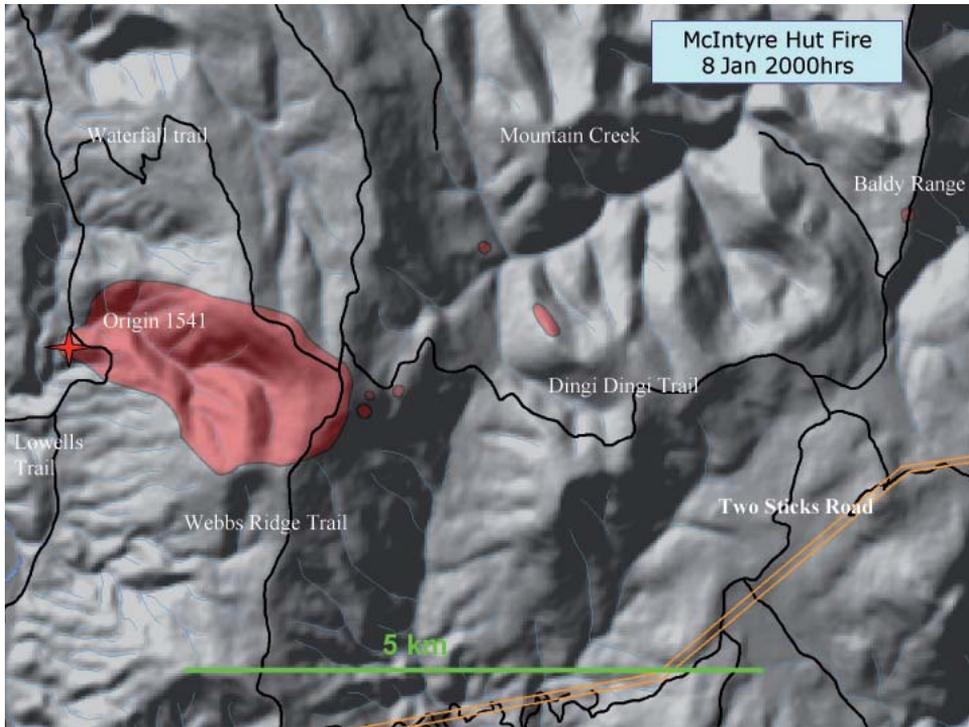


Plate 5

Images courtesy of the Cheney report

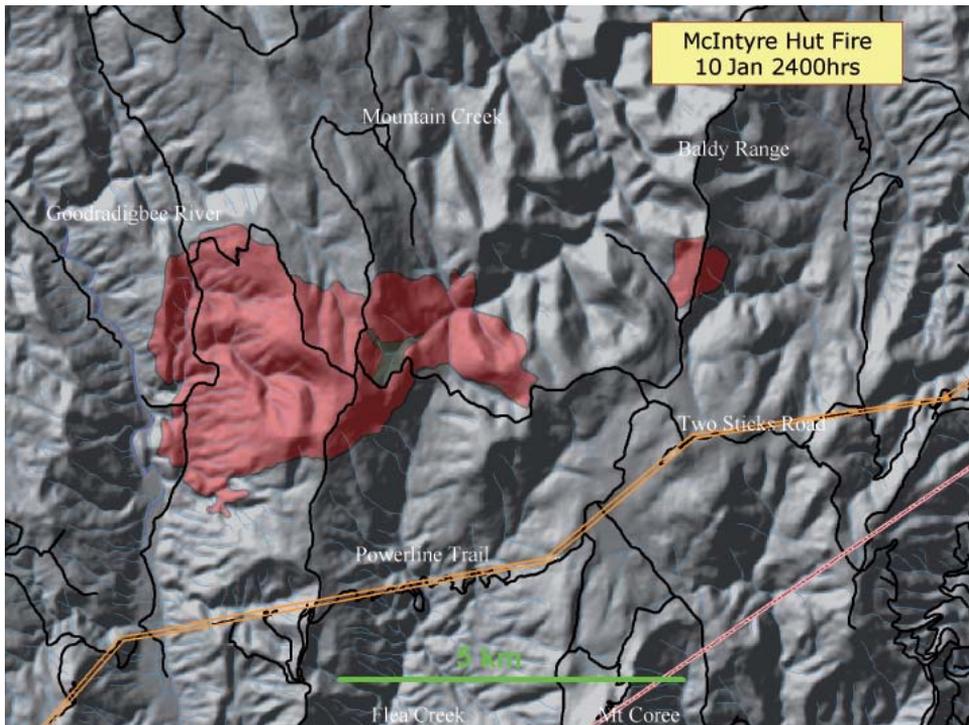


Plate 6

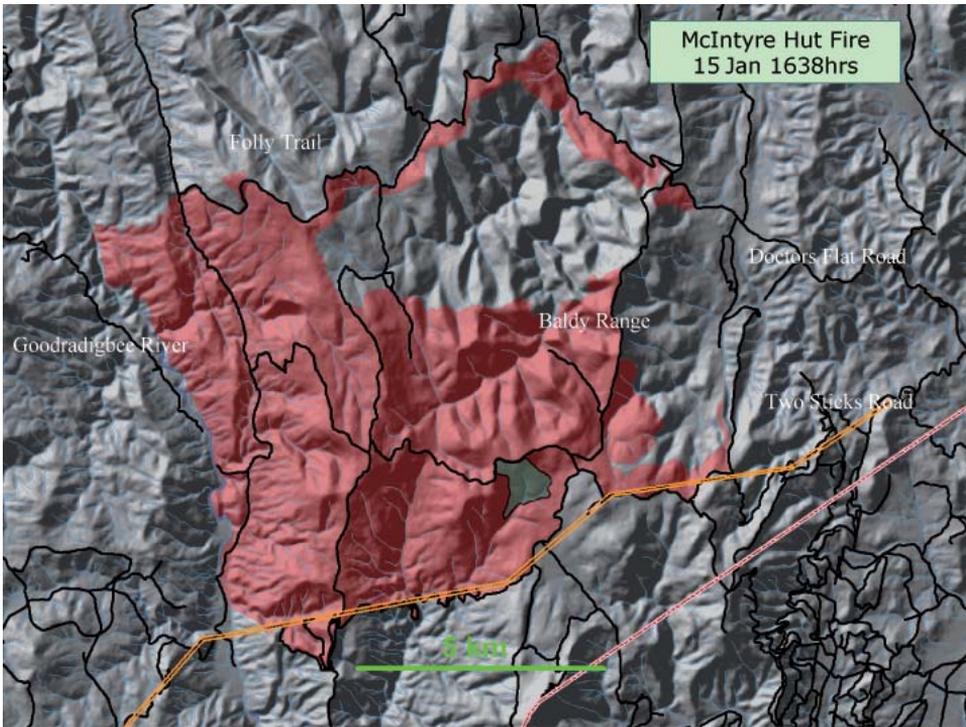


Plate 7

Images courtesy of the Cheney report

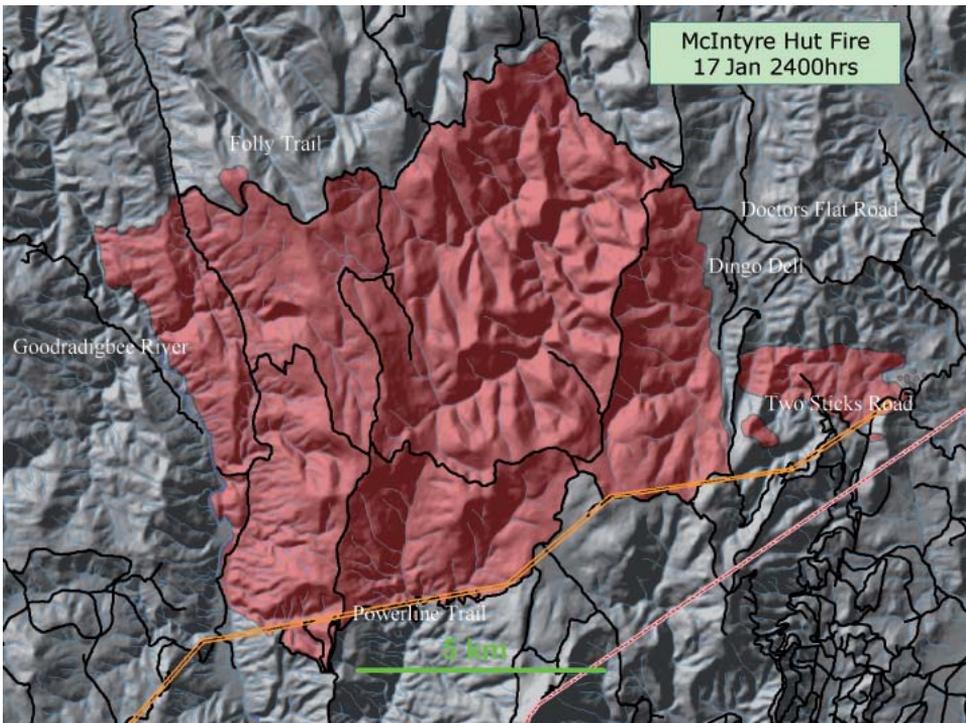


Plate 8

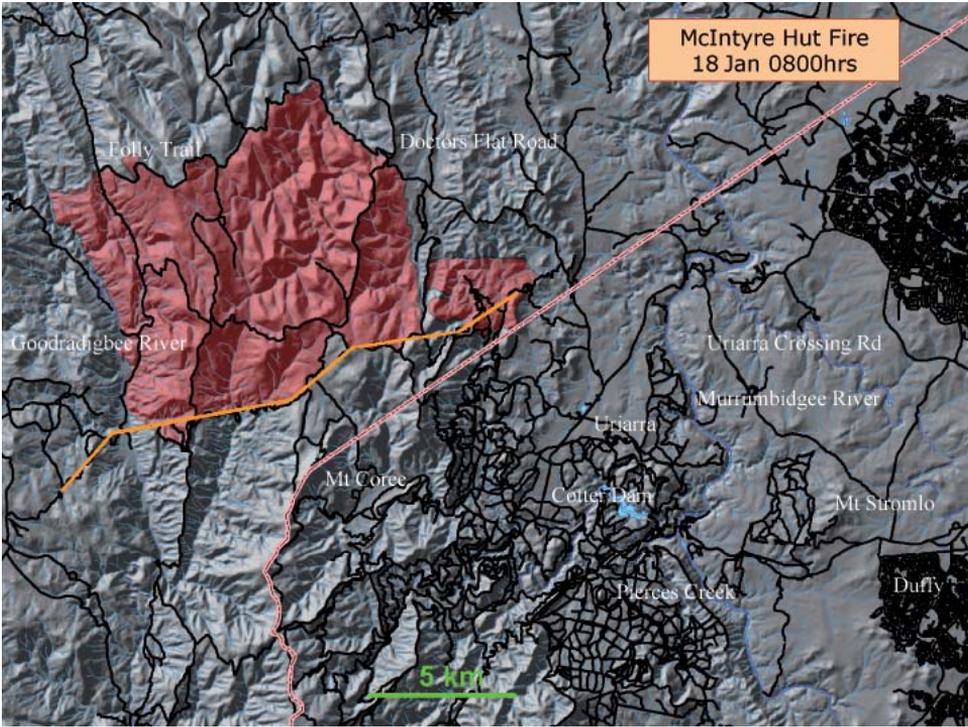


Plate 9

Images courtesy of the Cheney report

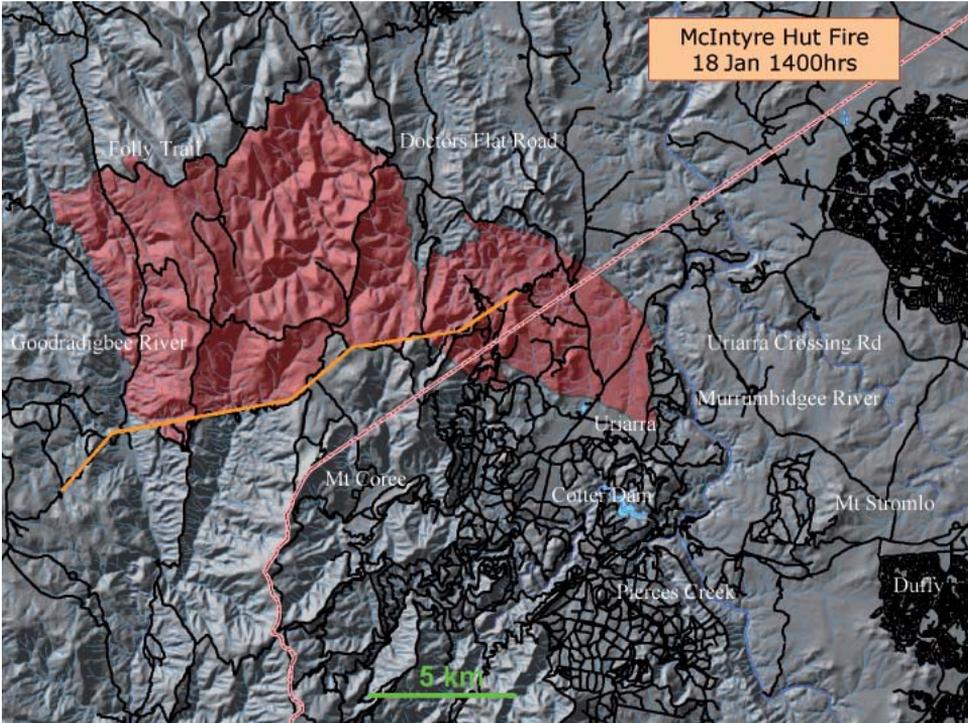


Plate 10

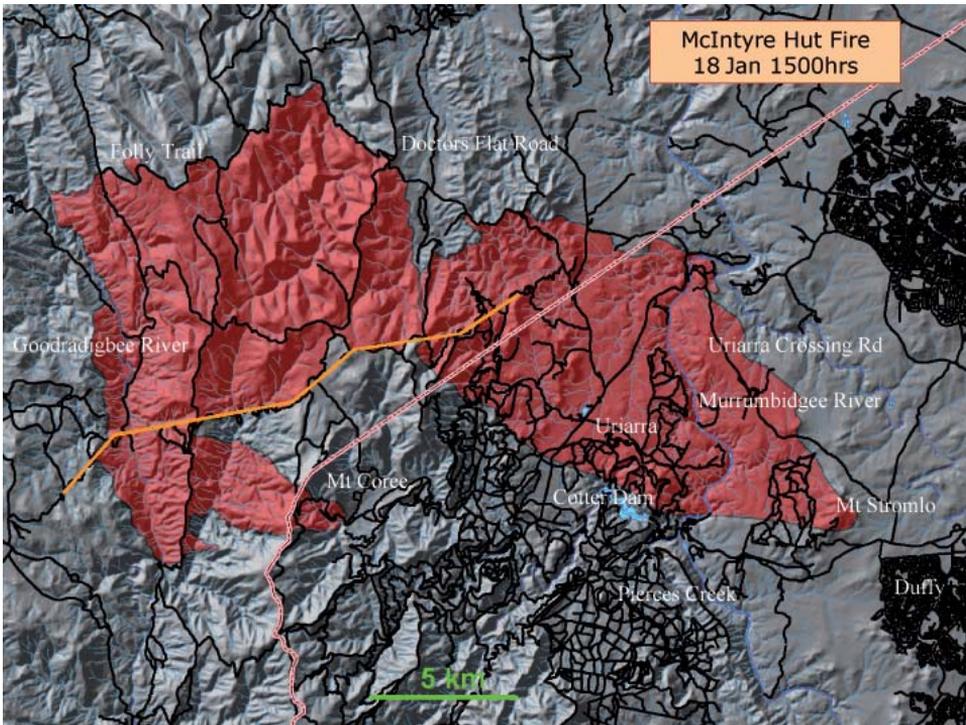


Plate 11

Images courtesy of the Cheney report

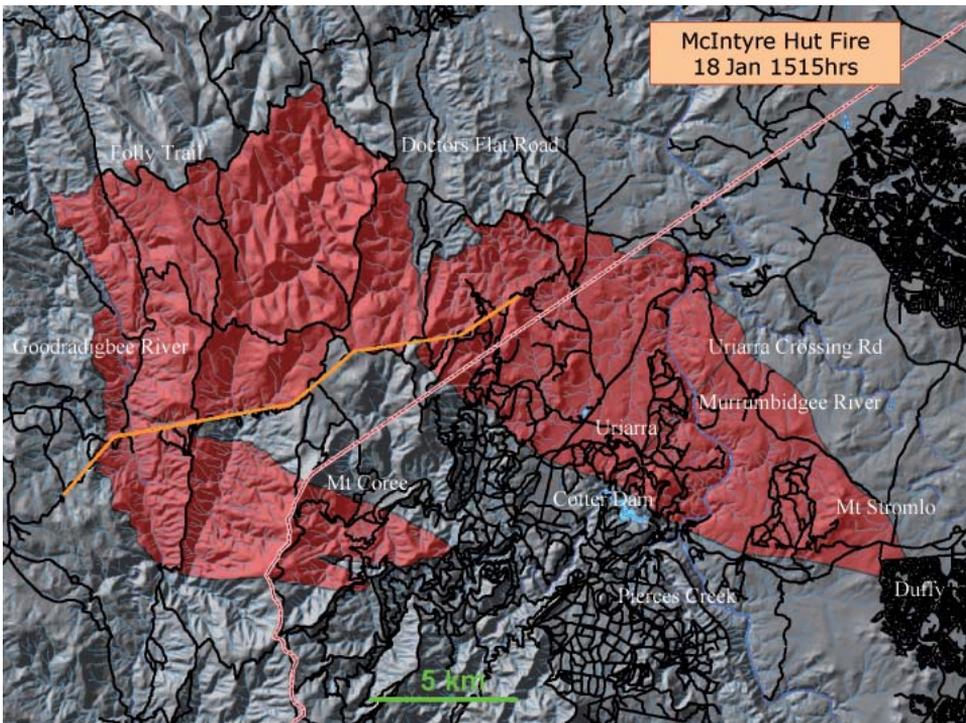


Plate 12

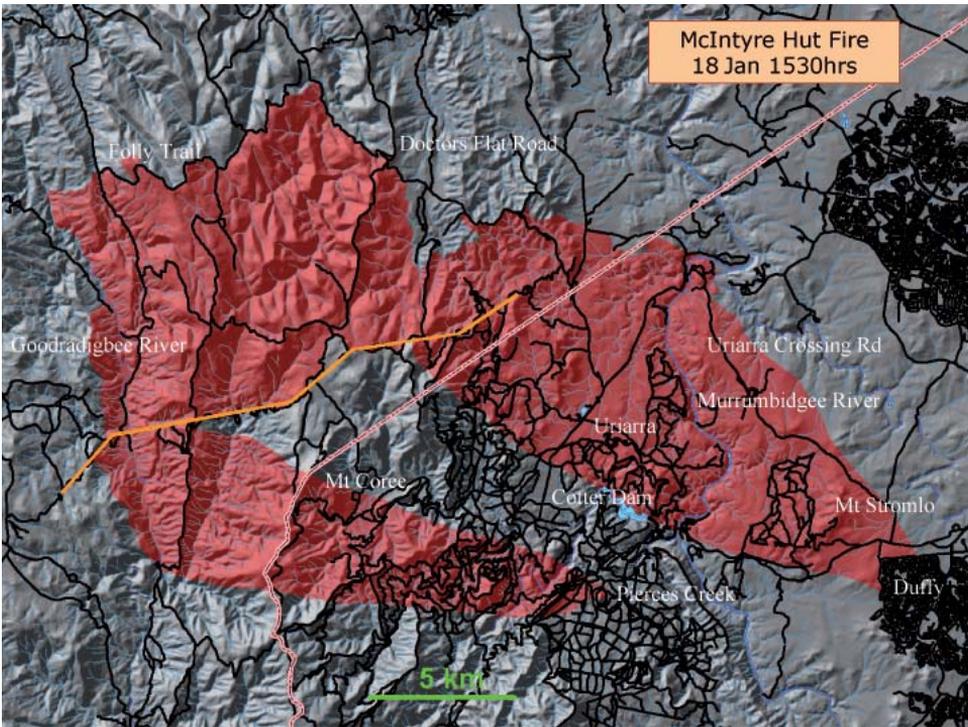


Plate 13

Images courtesy of the Cheney report

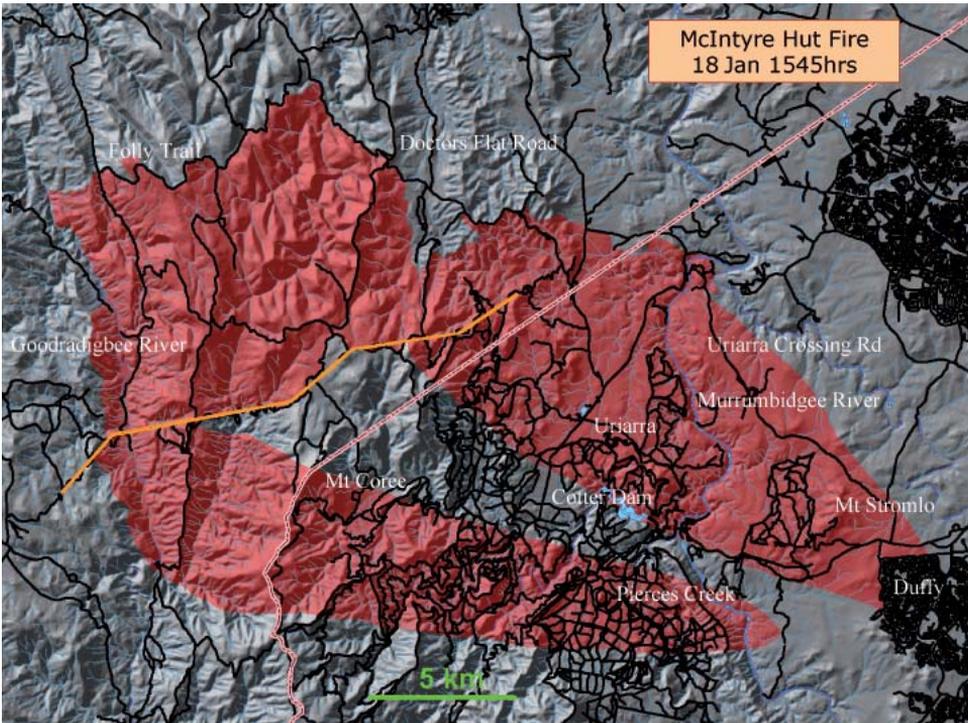


Plate 14

The Bendora fire

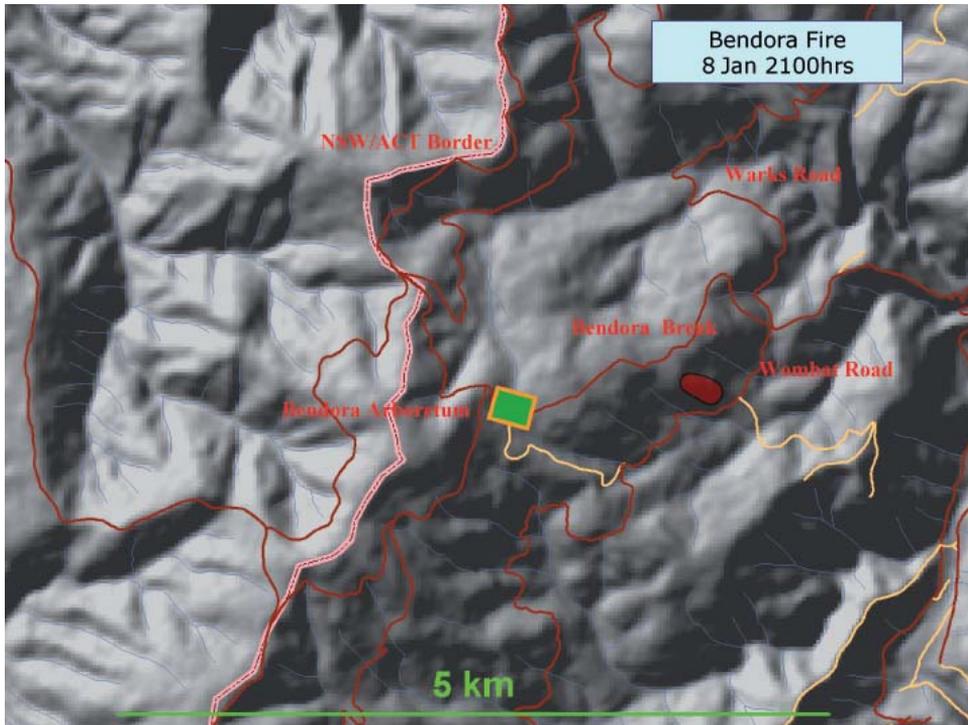


Plate 15

Images courtesy of the Cheney report

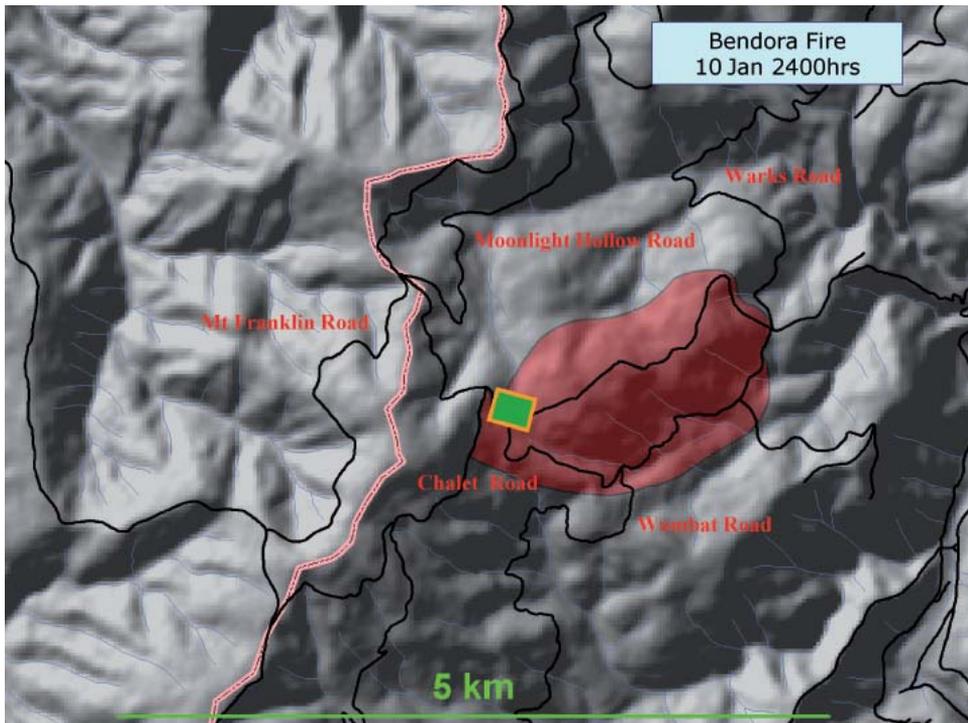


Plate 16

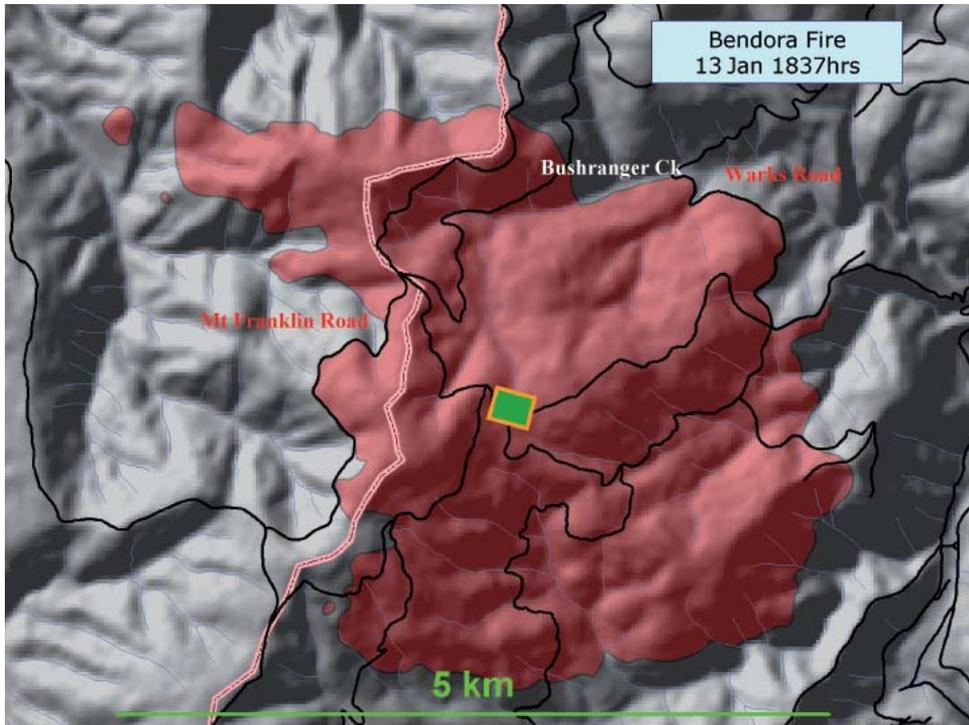


Plate 17

Images courtesy of the Cheney report

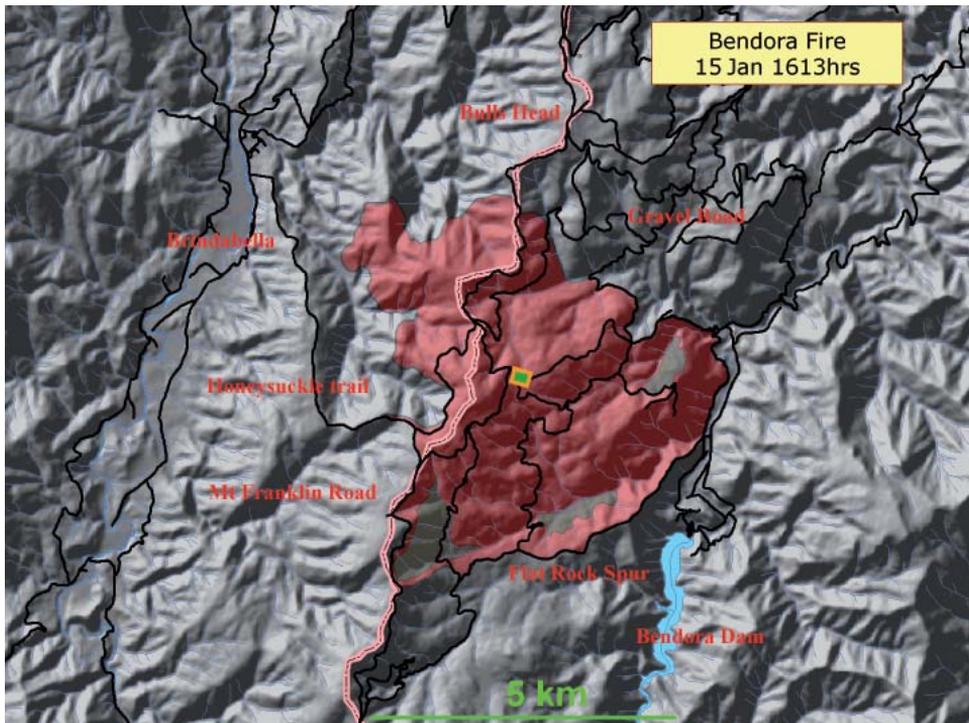


Plate 18

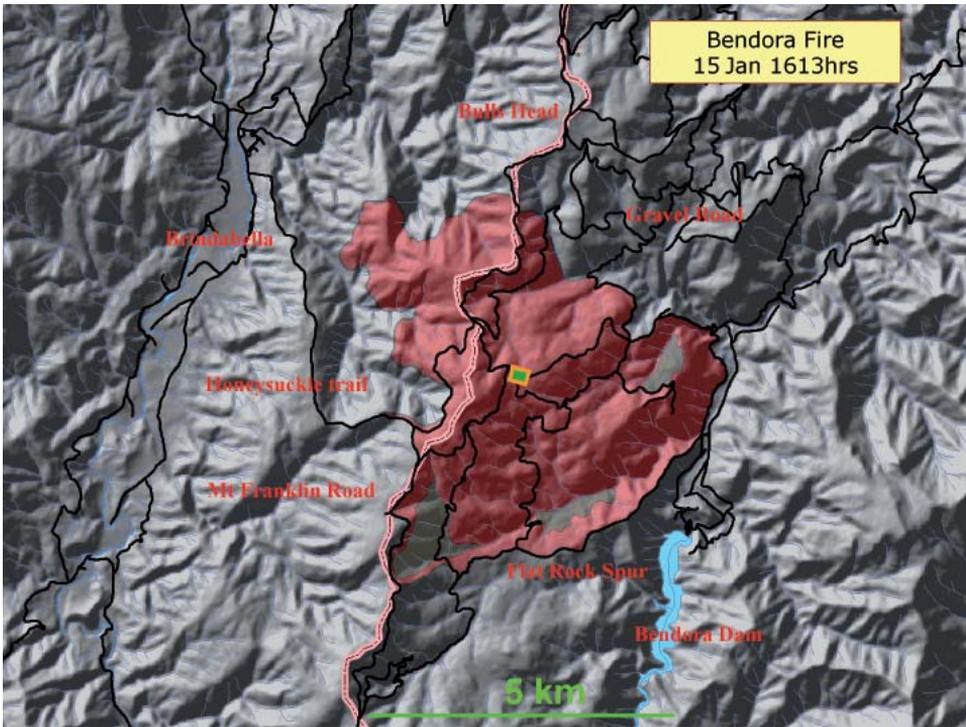


Plate 19

Images courtesy of the Cheney report

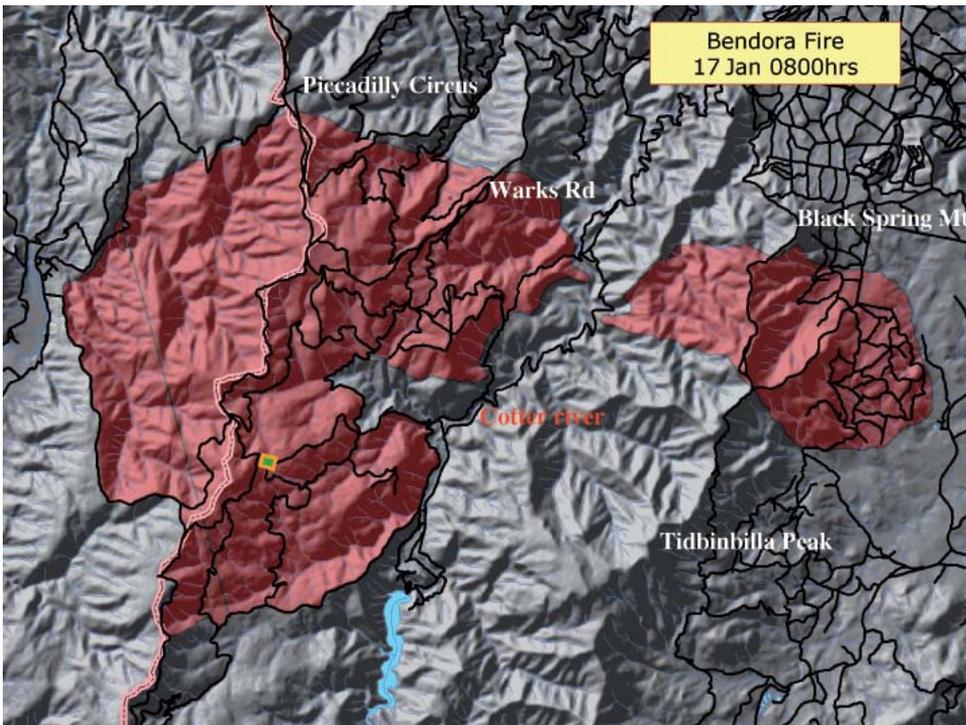


Plate 20

The Stockyard Spur and Gingera fires

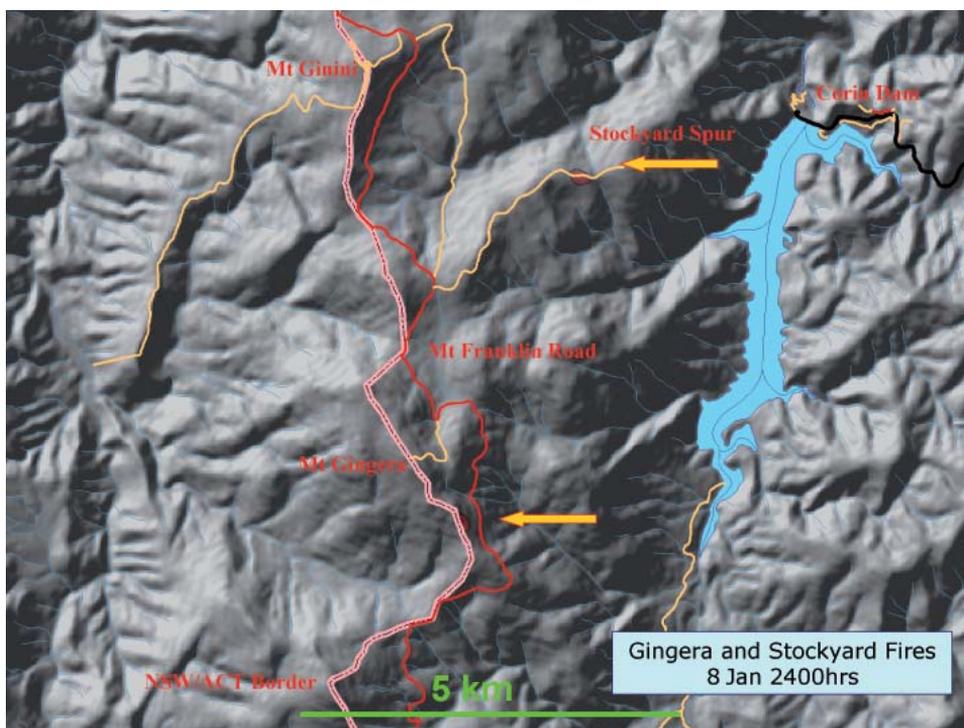


Plate 21

Images courtesy of the Cheney report

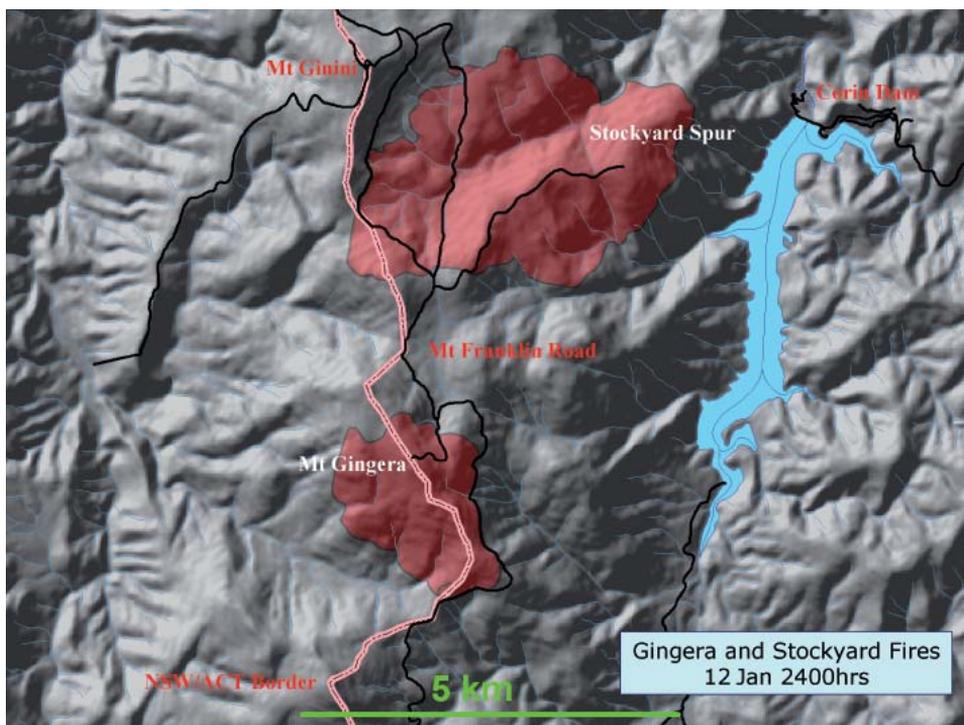


Plate 22

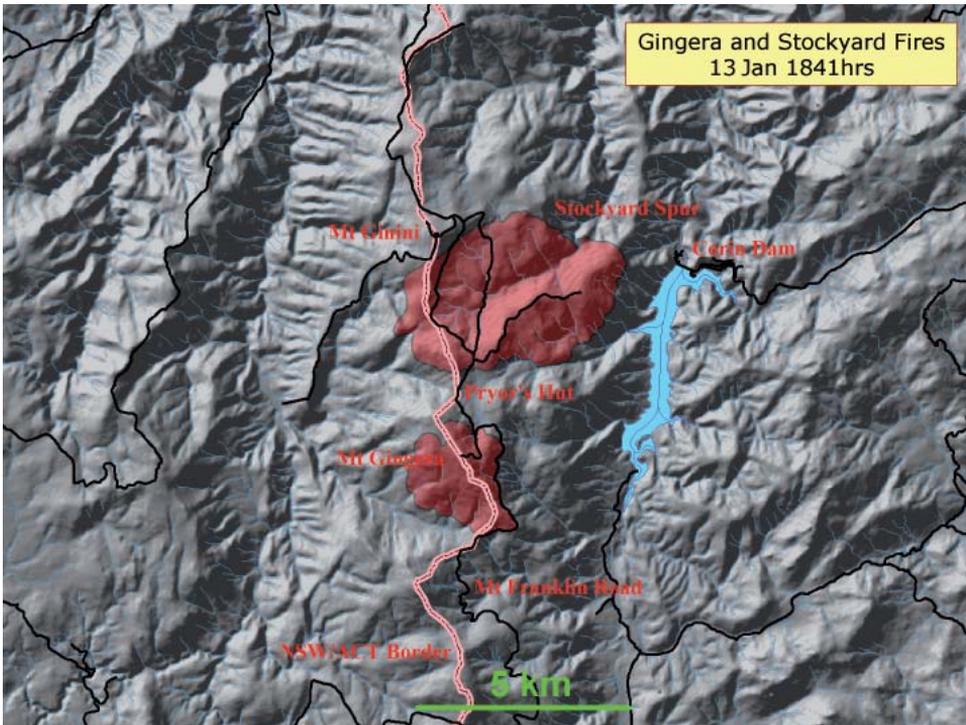


Plate 23

Images courtesy of the Cheney report

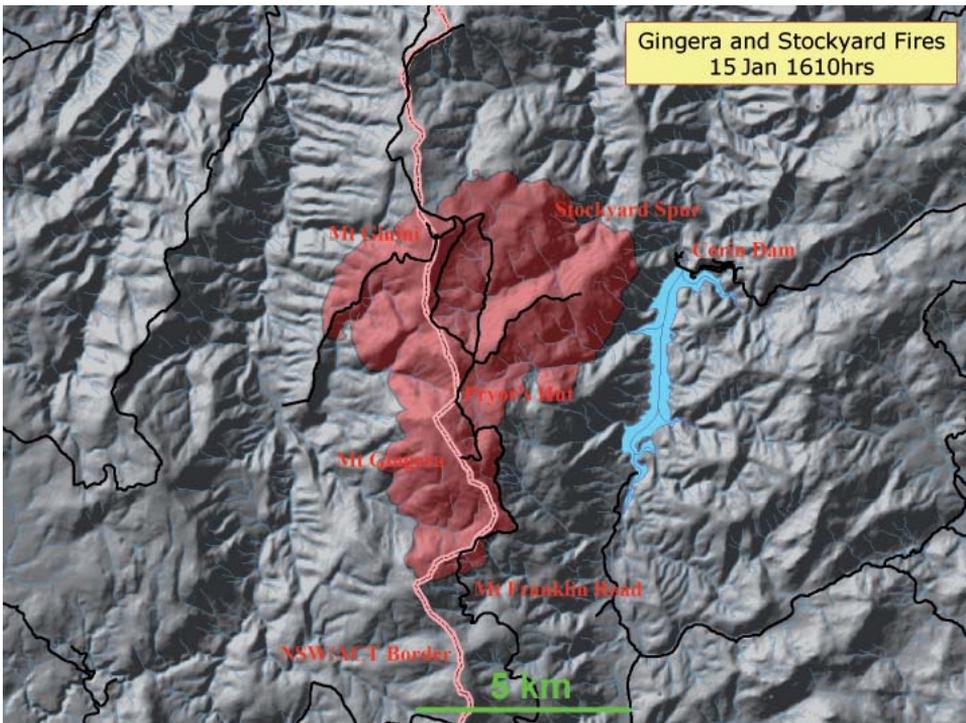


Plate 24

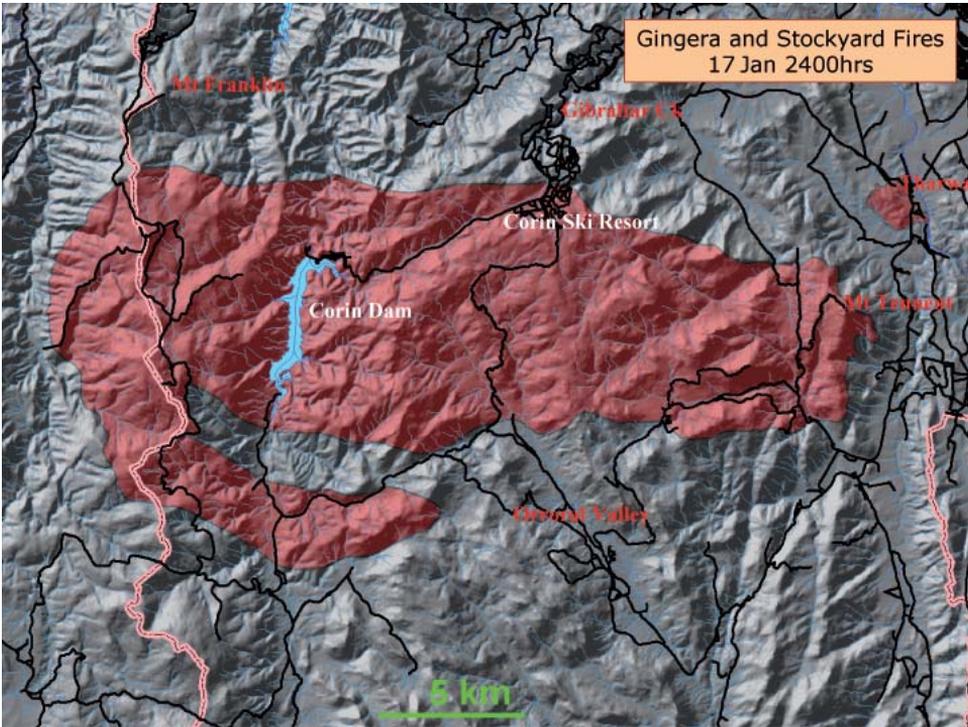


Plate 25

Images courtesy of the Cheney report

The McIntyres Hut and Bendora fires begin to merge

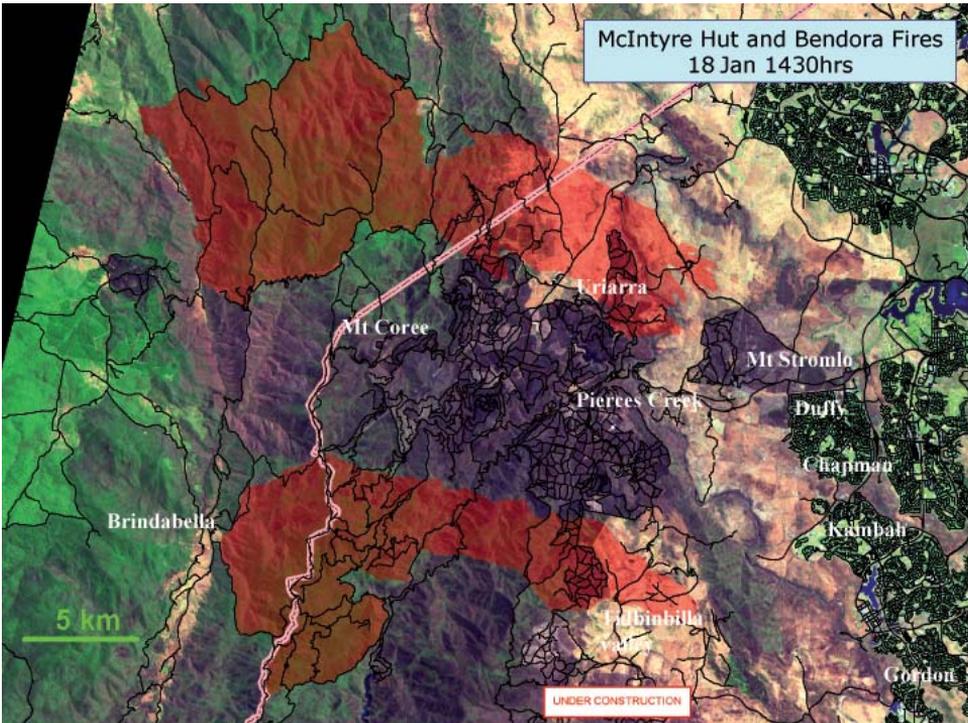


Plate 26

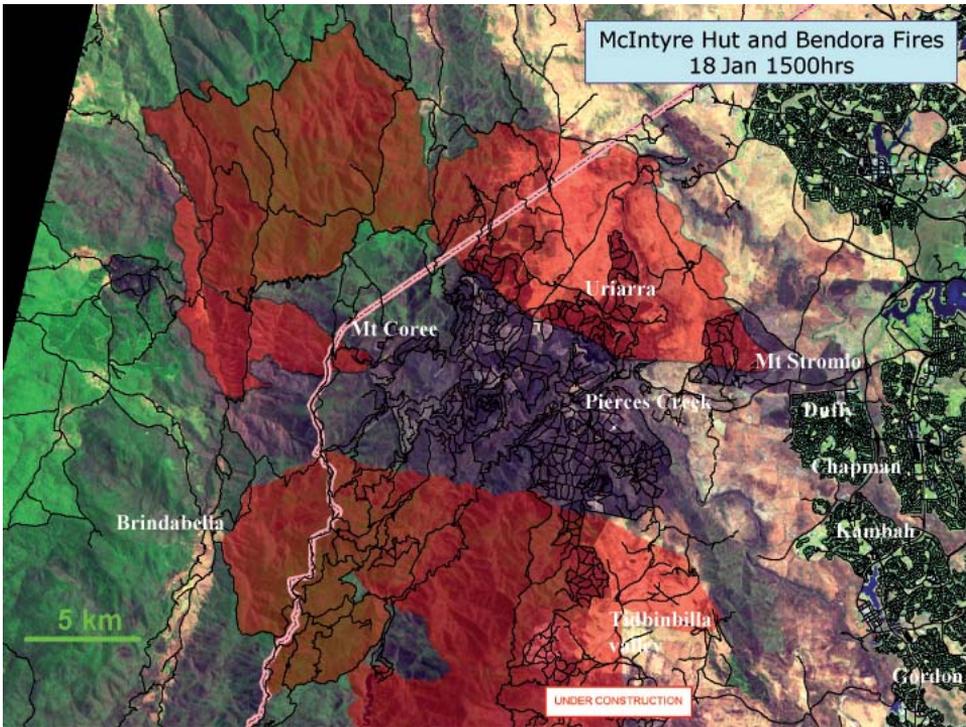


Plate 27

Images courtesy of the Cheney report

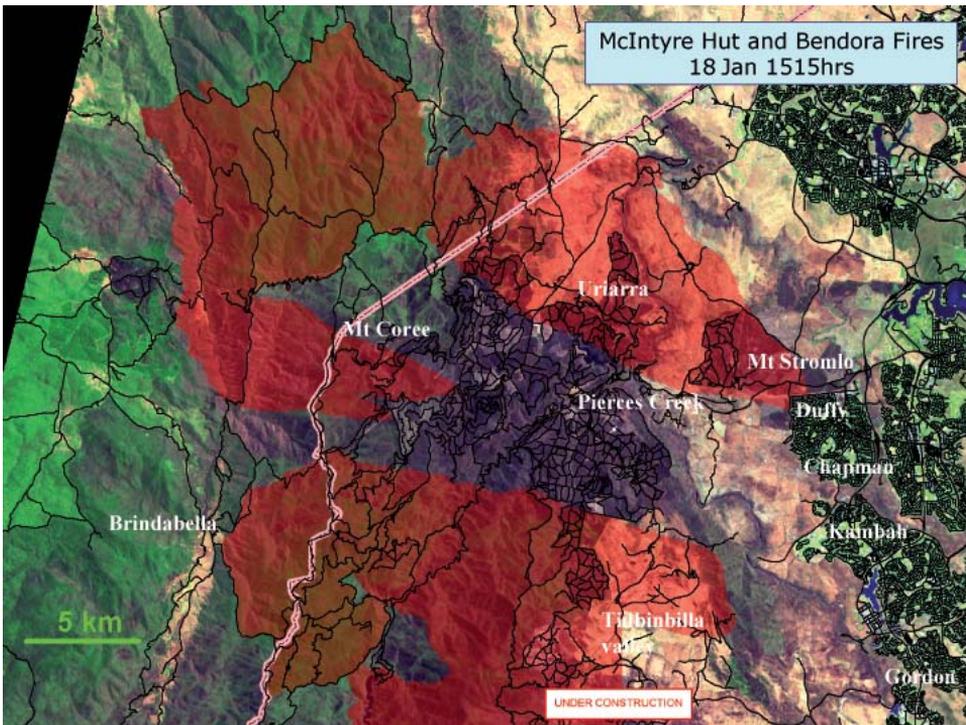


Plate 28

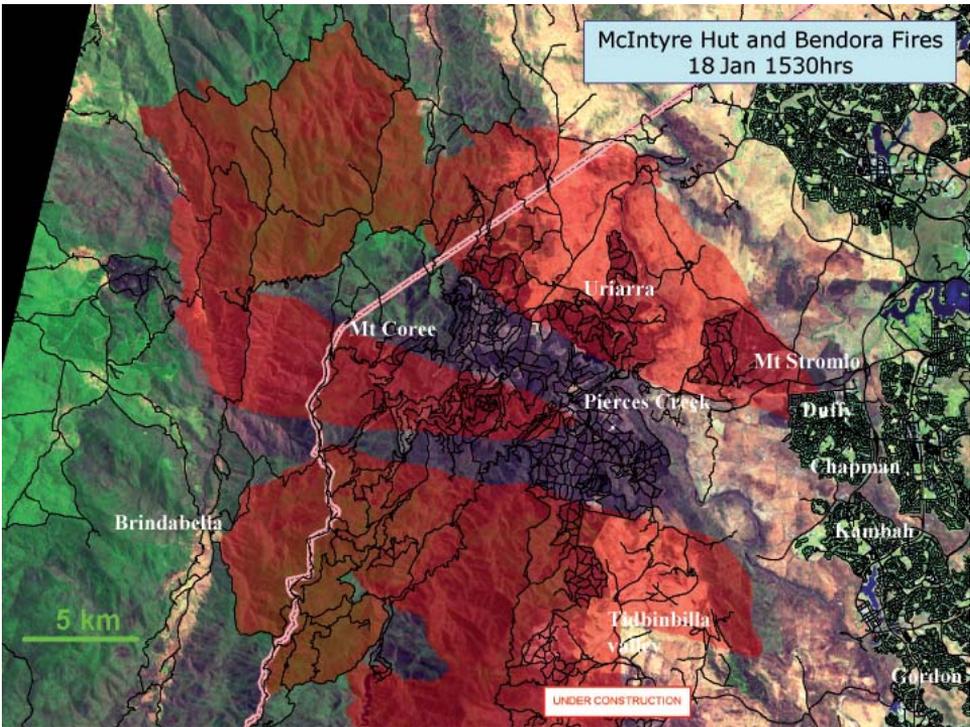


Plate 29

Images courtesy of the Cheney report

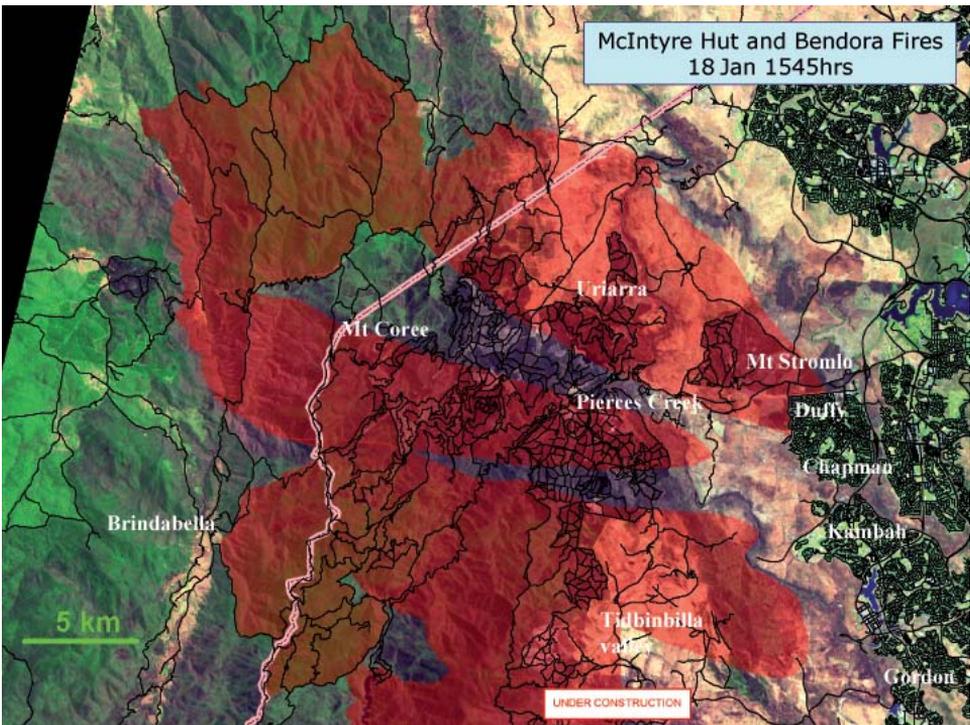
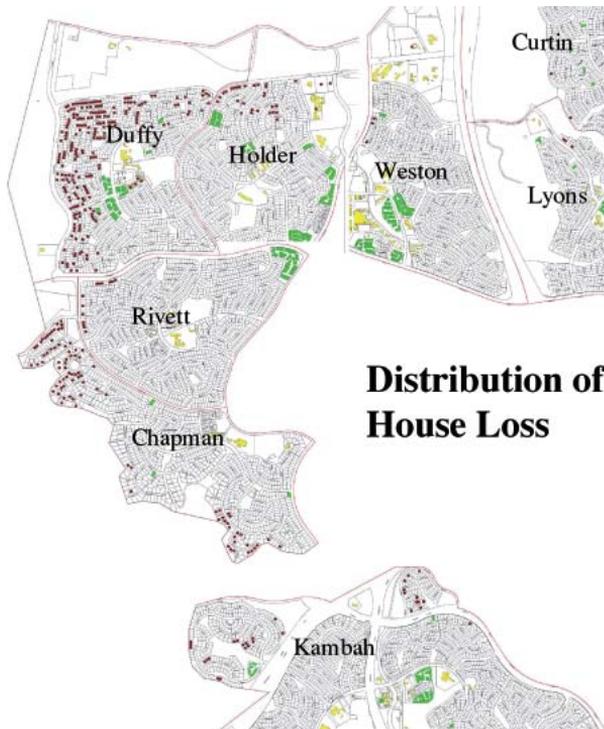


Plate 30



Distribution of House Loss

Plate 31 Houses burnt

Image courtesy of the Cheney report

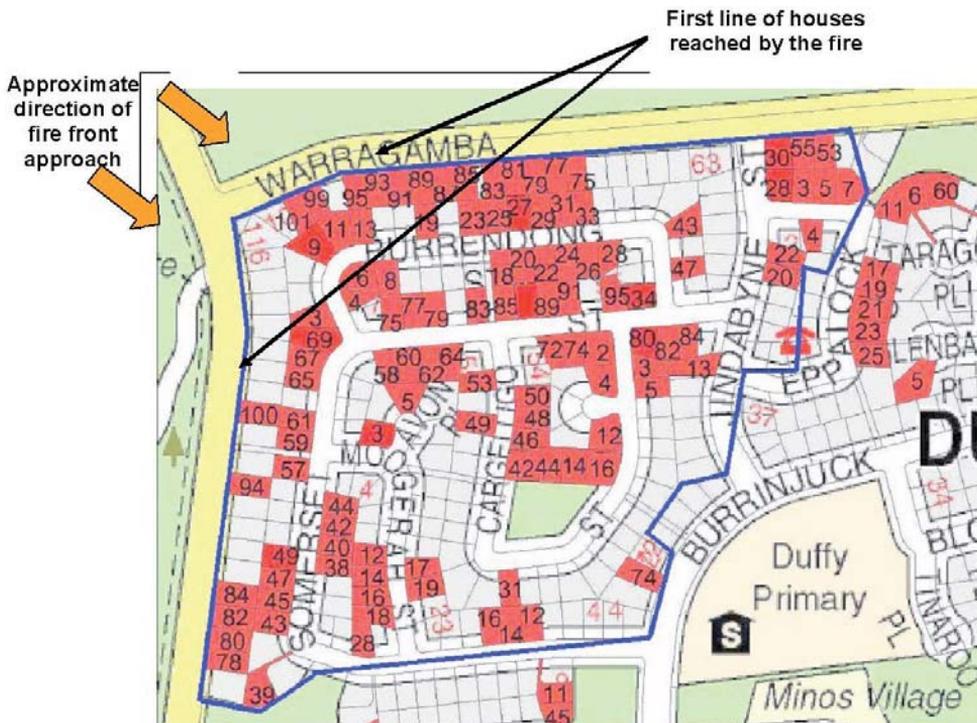


Plate 32 Houses burnt, Duffy

Image courtesy Justin Leonard

Bush burning

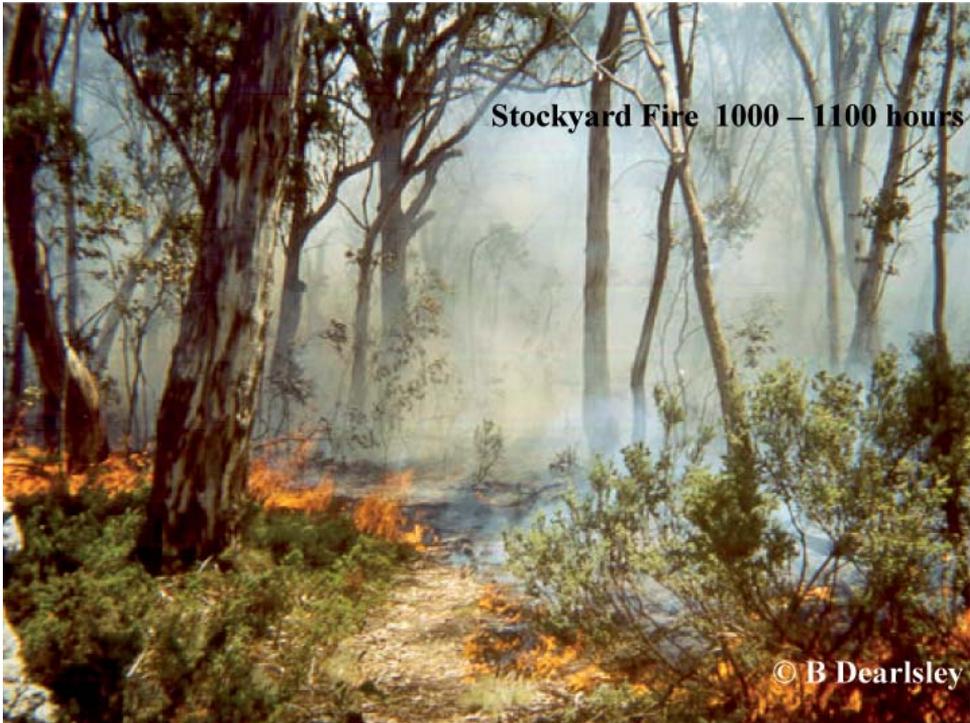


Plate 33

Images courtesy of the Cheney report



Plate 34



Plate 35

Images courtesy of the Cheney report



Plate 36

In the suburbs



Plate 37

Photographs courtesy of the Canberra Times



Plate 38



Plate 39

Photographs courtesy of the Canberra Times



Plate 40 The BP Service Station, Duffy



Plate 41 Chapman

Photograph courtesy of the Canberra Times



Plate 42 Tullaroo Street, Duffy

Photograph courtesy of News Limited



Plate 43

Photographs courtesy of News Limited



Plate 44 Tullaroop Street, Duffy



Plate 45

Photographs courtesy of News Limited



Plate 46



Plate 47
Embers

Photographs courtesy of News Limited



Plate 48
Water bombing



Plate 49 Burnt pines

Photographs courtesy of News Limited



Plate 50 Mount Stromlo Observatory



Plate 51
Chauvel Circle
Chapman



Plate 52
Lincoln Close
Chapman

Photographs courtesy of the Ellis report

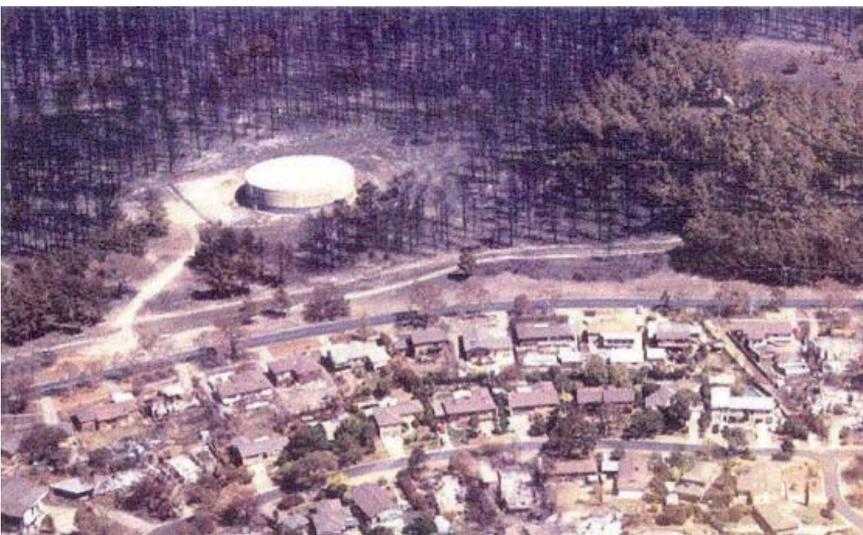


Plate 53
Eucumbene Drive
Duffy



Plate 54
Eucumbene Drive
Duffy

Photographs courtesy of the Ellis report

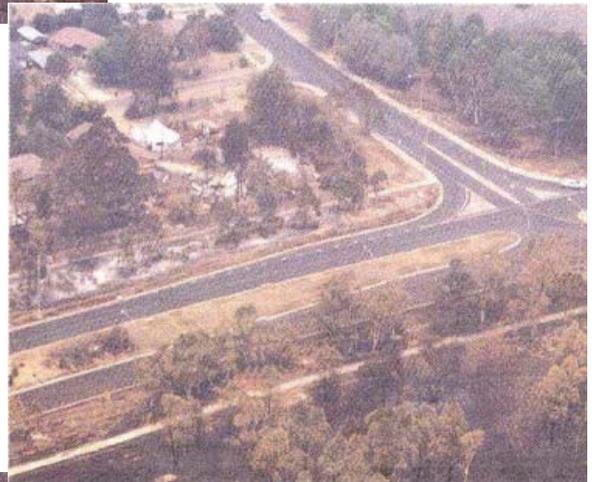


Plate 55
Streeton Drive
Weston



Plate 56
Allchin Circuit
Kambah



A rally in Canberra in support of Coroner Doogan

Plate 57



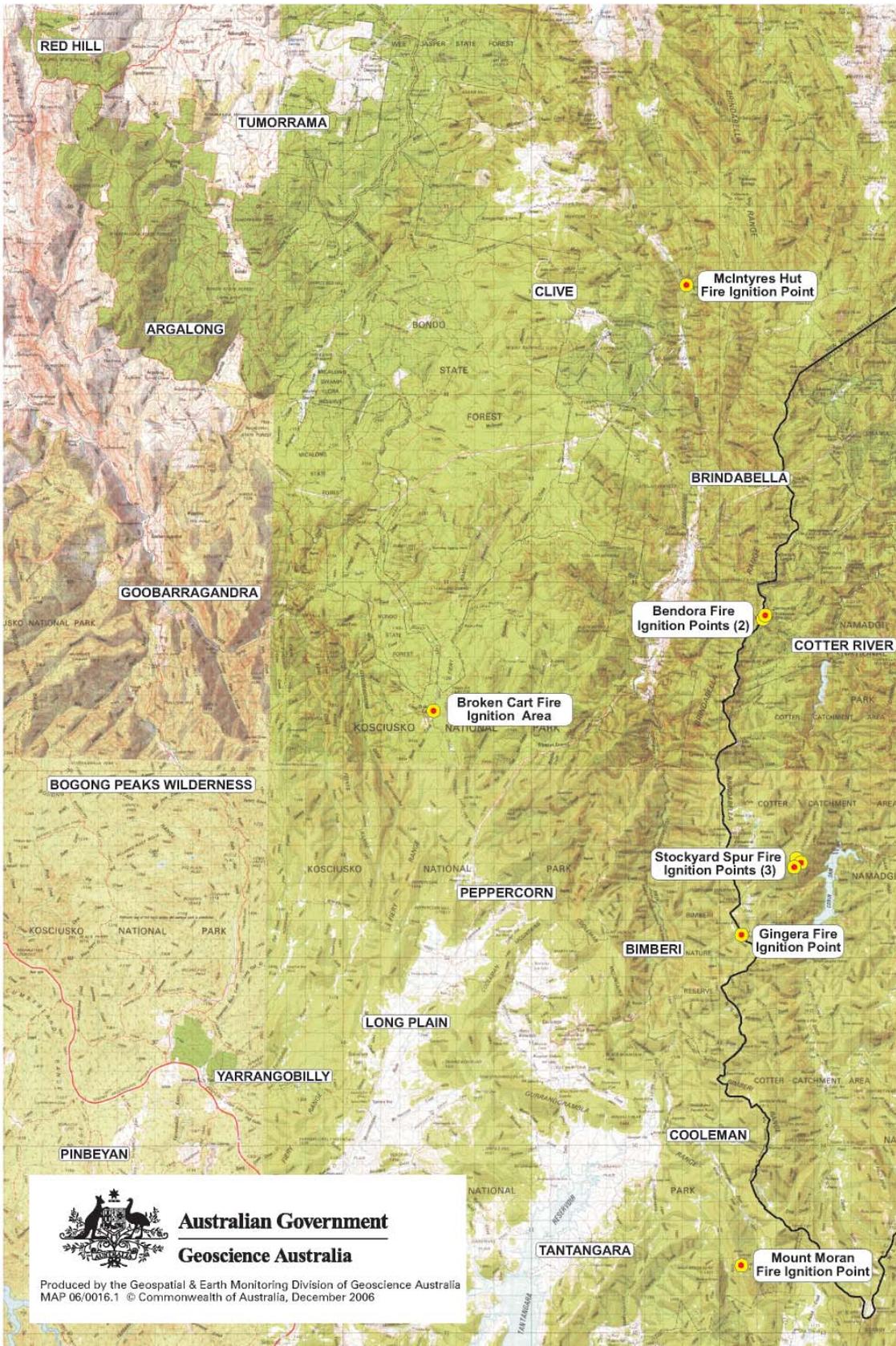
Plate 58

Photographs courtesy of Dr Andrew Rastawicki

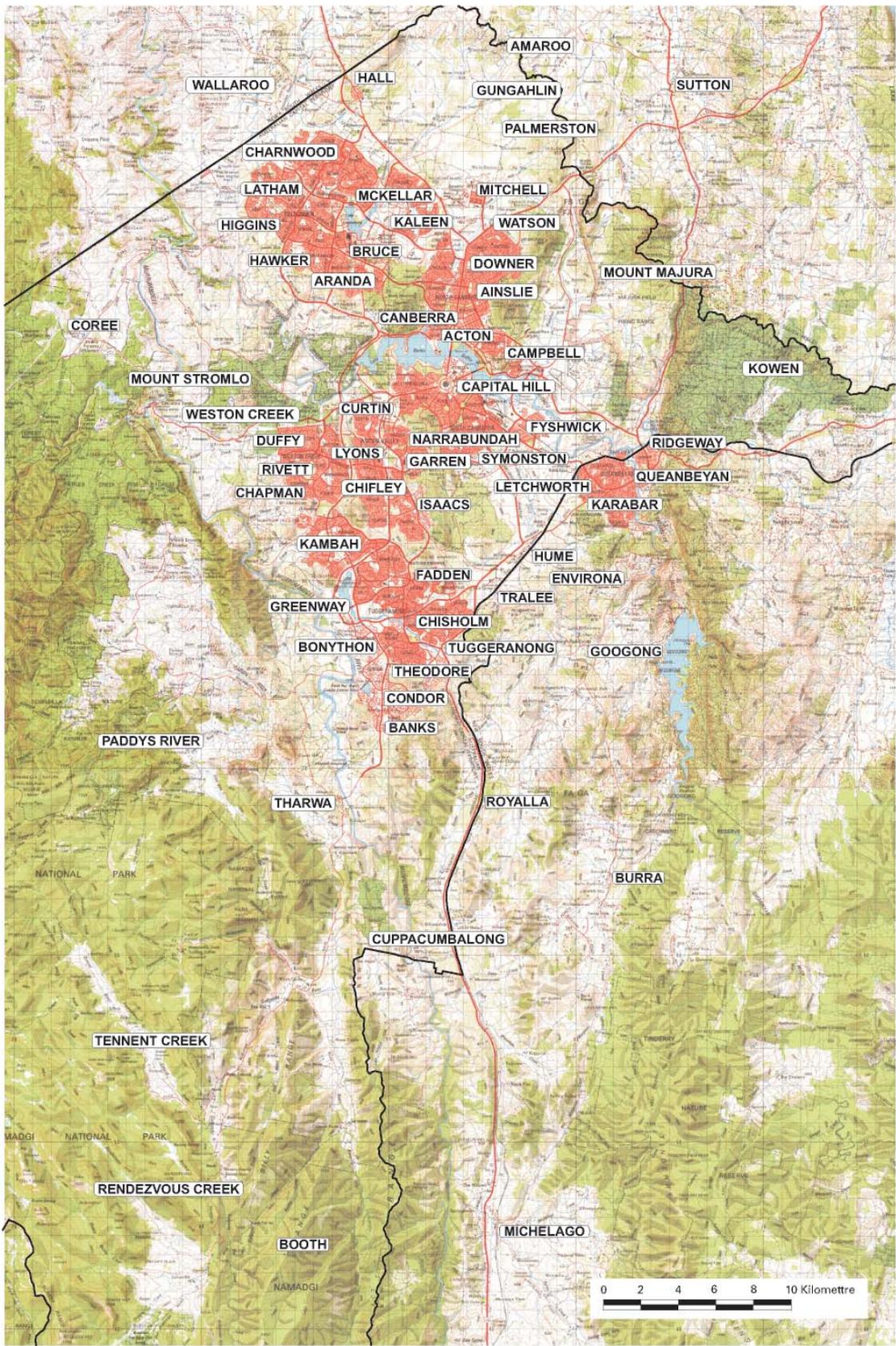


Plate 59

Plate 60
 The ignition points of the four fires, and others in the area




Australian Government
Geoscience Australia
 Produced by the Geospatial & Earth Monitoring Division of Geoscience Australia
 MAP 06/0016.1 © Commonwealth of Australia, December 2006



The Canberra Firestorm: Inquests and Inquiry into Four Deaths and Four Fires between 8 and 18 January 2003

Plate 61 This satellite image, acquired on 26 January 2003, shows burn scars caused by the bushfires to about two-thirds of the Australian Capital Territory. Burnt areas appear as dark red-brown; bushfire smoke appears as pale blue and healthy vegetation appears as green

