

ACT FIRES
JANUARY 2003

SUBMISSIONS OF
COUNSEL ASSISTING

INQUESTS INTO THE DEATH OF DOROTHY
MCGRATH, ALISON MARY TENER, PETER
BRABAZON BROOKE
AND DOUGLAS JOHN FRASER

AND

INQUIRY INTO THE FIRES OF JANUARY 2003

LEX LASRY QC
TED WOODWARD

COUNSEL ASSISTING THE CORONER
2 APRIL 2006

Between January and March the daily fire weather is determined by the passage of high and low pressure systems across southern Australia. The most serious weather occurs just after a high pressure system has moved out in the Tasman Sea and a cold front is approaching across Victoria and southern NSW. Strong north-westerly winds often precede the front and as they are generated from dry air from the interior of Australia they may be extremely dry and very hot. Most of the major fires in recent years have occurred in these months when strong north-westerly winds precede the southerly change. If the change occurs while the fire is still burning there is a sudden wind shift from the north-west to the south-west and large areas of country can be burnt. Under the worst recorded conditions grass fires can travel up to 18 to 20 km per hour and fires more than 60 km away may threaten the ACT. An area of more than 60,000 hectares may be burnt in eight hours and if only two or three fires break out at the same time it is possible for them to burn most of the ACT. Also, it must be remembered that fires starting within the ACT under these conditions have the potential to burn through to the south coast.

It is important that we recognise that, under these extreme fire weather conditions, which may occur every five years or so, it is impossible for any fire suppression organisation to control the fire if it is burning in abundant fuels. While much can be done with early detection and rapid initial attack, if a fire burns from some distance away and enters the ACT in a broad front then fire suppression forces available in both rural and urban fire brigade services will be overwhelmed. Prevention of loss of life and damage to property can be undertaken only by individual home-owners. Thus it is vitally important for the ACT Bush Fire Council to promote a sound understanding of fire spread and what can be done under severe conditions to protect life and property and extend this to individual home-owners through the volunteer bushfire brigade movement.

The suburban area of Canberra has never been directly hit by a large fire travelling in from the west. However, the potential weather to create widespread havoc within the suburban area has existed and there are adequate examples in history to indicate the potential for a bushfire disaster. In 1939 fires burning west of the Brindabella ranges in the Mountain Creek and Flea Creek catchments rained firebrands on Capital Hill, now the site of Parliament House.

During a severe summer the orientation of the pressure systems over southern Australia means that a cold change occurs roughly on a seven day interval. Therefore, during the week the fire danger conditions may be low to moderate immediately after a cool change and gradually build up to extreme just before the next cool change passes. [\[1\]](#)

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CHAPTER 1 PRELIMINARY

1.1 INTRODUCTION

1.1.1 THE INQUESTS AND INQUIRIES

1. Dorothy McGrath, Alison Mary Tener, Peter Brabazon Brooke and Douglas John Fraser all died as a direct result of a fire that burnt into Canberra on 18 January 2003. That fire, which became known as the McIntyre's Hut fire, was one of a series of fires started by lightning strikes in the Brindabella Ranges east of Canberra during the afternoon of 8 January 2003; at McIntyre's Hut in New South Wales and at Bendora, Stockyard Spur and Mt Gingera in the ACT. An inquest into each of the deaths pursuant to s13 of the *Coroners Act* 1997 ("**Act**") and an inquiry into the fires pursuant to s18 of that Act (held concurrently) ("**Inquest**") commenced hearing evidence on 7 October 2003. The evidence concluded on 25 October 2005. We make the following submissions in the Inquest.

1.1.2 ISSUES IN THE INQUESTS AND INQUIRY

2. Ultimately, two broad issues relevant to the cause of the fires that wreaked such devastation in Canberra and surrounding rural areas were raised on the evidence:
 - a. first, the adequacy of the initial response to the three fires in the ACT and the McIntyre's Hut fire in NSW; and
 - b. secondly, once the fires had become uncontrollable, the timeliness and adequacy of warnings to the public likely to be affected the conflagration which occurred on 18 January 2003.
3. In our submission, the second of these broad issues is also relevant to the manner and cause of two of the deaths – that of Alison Tener and Dorothy McGrath.

1.1.3 PURPOSE OF THESE SUBMISSIONS

4. These submissions are intended to perform several functions to assist Your Honour. Firstly, they include a comprehensive narrative of the evidence relevant to the two issues identified above (chapters 2 and 3). If Your Honour is satisfied that the narrative fairly summarises the evidence of what occurred, or does so once supplemented or amended based on submissions on behalf of represented parties, you may wish to adopt all or part of it as the narrative established by the evidence for the purpose of compiling your report. The narrative is also intended to be the platform from which we make submissions as to the findings, comments and recommendations you should make under the Act.
5. These submissions are divided into chapters, as follows:
 - a. Chapter 1 is a preliminary chapter which broadly describes the course of the Inquest together with some discussion of the collateral proceedings before Whitlam J[2] and the subsequent proceedings before the ACT Court of Appeal[3];

- b. Chapter 2 commences the narrative of what occurred referring by way of background to the history of fires and fire risk in the ACT, community education programs, the history, structure and operation of the ESB, the antecedent weather conditions leading to the fires on 8 January 2003 and an outline of what the evidence reveals about the fuel loads then in existence in the areas in the path of the fires;
 - c. Chapter 3 describes the origin and path the fires took and the response to each of the fires by the emergency services in the ACT and NSW, tracing chronologically the events between 8 and 18 January 2003, as revealed by the evidence.
 - d. Chapter 4 examines briefly the issue of the Coroner's jurisdiction, although that matter was discussed at some length by the ACT Court of Appeal in *R v Doogan*;
 - e. Chapter 5 is our submissions on the evidence concerning the initial response to the fires and the findings the Court should make on that topic;
 - f. Chapter 6 is our submissions on the evidence concerning the warnings to the public about the fires as they developed, or the lack of them, and on the findings the Court should make on that topic;
 - g. Chapter 7 deals with the detail of property damage, injury and death;
 - h. Chapter 8 deals briefly with recommendations and, as stated in that section, will be supplemented in due course by further submissions as to appropriate recommendations the Court might consider making.
6. For the most part, the evidence summarised in chapters 2 and 3 informs our submissions in chapters 5 and 6 on cause and origin of the fires and manner and cause of the deaths, thus the relevance of the evidence is apparent from the cross-references in those latter chapters to the relevant paragraphs of chapters 2 and 3. In the relatively few instances where we have not specifically referenced the evidence summarised in chapters 2 and 3 in those latter chapters, we have included it because, in our submission, it is a necessary part of the broader factual matrix of the evidence that is directly relevant to Your Honour's jurisdiction.
7. In our submission, Your Honour should find that chapters 2 and 3 of these submissions are an accurate summary of all of the evidence both of the conditions leading up to the fires and what actually occurred from 8 to 18 January 2003, in so far as those matters are relevant to the cause and origin of the fires and the manner and cause of the deaths. Those chapters themselves contain no other submissions as to the findings for which we contend, save in respect of formal findings as to the cause of the initial ignition of each of the fires^[4]. As we have explained, our submission on the findings that we contend are open based on our narrative of the evidence, can be found in chapters 5 and 6.

1.2 THE COURSE OF THE INQUEST

1.2.1 PRELIMINARY DIRECTIONS HEARINGS

8. The Inquest was formally opened by Your Honour at a directions hearing on 16 June 2003. There was a further directions hearing in the Inquest on 1 September 2003, before the commencement of the first phase of the evidence in the Inquest on 7 October 2003. That first phase concluded on 15 October 2003. There was a further directions hearing on 15 December 2003 concerning the commencement of the second phase of the evidence in the Inquest, which began on 16 February 2004 and concluded, after a number of lengthy delays, on 25 October 2005.
9. Applications were made during the first directions hearing for leave to appear. Your Honour gave leave to us to appear to assist you^[5]. Mr Bayliss of the ACT Government Solicitor sought leave to appear on behalf of the ACT, and foreshadowed that in relation to those employees of the Territory who were to be called as witnesses, that leave to appear on their behalf would also be sought. Mr Bayliss explained that the appearance on behalf of the Territory encompassed certain agencies which were administrative sub-units within the Territory, but did not have any independent legal persona. In responding to the application by Mr Bayliss for leave, we submitted that: *We don't object to the grant of leave to the entity of the Australian Capital Territory at this stage. Our concern and its been expressed to my learned friend, and no doubt will be again, is that as the hearing develops, there is a significant prospect that individuals and groups within that broad entity will have different interests and I think that's clear from the issues which have been raised on a public record about these fires. But I agree, with respect, that at this stage, they may not be clear... Our concern is that in the event of an individual or some other entity requiring representation, separate from our learned friend, that that not result in loss of time.* Mr Bayliss agreed with Mr Lasry and indicated that he thought, once a witness list was made available to the parties, decisions could be made at that stage whether there was potential for conflicts or a variance of interest. Your Honour then made comments echoing the concerns expressed by us^[6].
10. An application was made for leave to appear on behalf of the United Firefighters Union and on behalf of individual firefighters who were members of the union and may be called to give evidence. Your Honour refused leave to the union, but indicated that you proposed to grant leave on a case by case basis for the representation of individual firefighters who may be called to give evidence^[7]. Your Honour granted leave to the Australian Federal Police to be represented during the hearing of the matter^[8] and also granted leave to Mt Stitt QC to appear on behalf of ActewAGL^[9]. An application was made by Mr Livingston of Lamond Howard & Associates for leave to appear on behalf of 170 affected victims of the fire. In refusing leave, Your Honour noted that some of the persons represented by Mr Livingston and Mr Livingston himself were free to attend the hearings and obtain transcript and could bring to our attention any matters which he felt were not being ventilated sufficiently^[10]. Your Honour also refused leave to appear to Mr Mossop on behalf of Chubb Insurance Company of Australia Ltd whose interest related particularly to the destruction of the Mt Stromlo Observatory^[11]. Finally, an application for leave to appear was made by Mr Lowe in his capacity as President of the ACT Sustainable Rural Lands Group. Because of a concern that members of the group may be subject to criticism concerning their management of lands affected by the fires, Your Honour adjourned consideration of the application to 1 September 2003^[12].

11. In the course of further submissions in relation to the subsequent conduct of the Inquest, we indicated to Your Honour that we anticipated that at the end of the first phase of the evidence, we would endeavour to formulate a list of issues in conjunction with those who had been given leave to appear and that the formulation of that list of issues may involve a debate before Your Honour. We informed Your Honour that it remained to be seen whether, after the first phase of the evidence, people would come to understand that they were at least at risk of some adverse finding.[\[13\]](#)
12. There was a further directions hearing on 1 September 2003. At that directions hearing, Mr Lowe on behalf of the ACT Sustainable Rural Lands Group made further submissions in support of his earlier application for leave to appear. Your Honour granted Mr Lowe limited leave to appear for the purposes of defending any specific allegation that was made about the conduct of any member of the ACT Sustainable Rural Lands Group.[\[14\]](#)

1.2.2 THE OPENING

13. On 7 October 2003, we opened the evidence in this case to Your Honour. In that opening we submitted that the bushfires culminating in the events of 18 January 2003 *may have been preventable or at least its intensity lessened*[\[15\]](#). We described *the lack of aggression demonstrated in response to these fires at the earlier stages – that is, during the 8th, 9th and 10th of January*[\[16\]](#). In these submissions, we have referred to that topic as the *initial response* and, within the ambit of that topic, we have examined events between 8 and 10 January. In our submission, no fire suppression measures that might practicably have been implemented thereafter were capable of controlling these fires before 18 January 2003. While we have referred to aspects of the fire suppression effort after 10 January, any real chance of controlling each of the three ACT fires and the McIntyre’s Hut fire was lost when opportunities for a more aggressive response in the initial stages of each of the fires were not taken or were overlooked.
14. In the course of opening, we also indicated that the nature and timing of public warnings would be examined with some care, and that has occurred. We submitted that the evidence may suggest that the community in the ACT were not given *anywhere near the information they needed to cope with this catastrophe*[\[17\]](#). In our submission, this is what the evidence shows. But the reasons why proper information and warnings were not disseminated, is a matter of some contention.
15. Although a number of qualified people had expressed the view to senior personnel in the Emergency Services Bureau (“*ESB*”) that Canberra was under threat from the fires, those personnel either could not accept, or were unwilling to admit publicly, that the threat existed. In our submission, there was no valid reason why the ACT community was not given adequate warning of the prospect of the fires burning into Canberra. Suggestions of not wanting to cause panic or not being able to be specific about exactly where and when such an event would occur, do not justify the failure to give timely and informative warnings.
16. We also raised the question as to whether the border between the ACT and NSW was in some way an obstacle to effective bushfire fighting[\[18\]](#). It is clear from the evidence that the fire that caused most damage to Canberra started in NSW, and thus the attempts to control that fire and

predictions and warnings about its likely impact within the ACT, were properly the subject of evidence during the inquest. We will, however, deal with the jurisdictional questions raised by counsel for the NSW agencies in December 2003. In our submission, it is unlikely that much, if anything, in our submissions will raise the difficulties to which he referred.

17. Management of fuel loads was also raised in our opening^[19], although in their judgment in *R v Doogan*, fuel management and associated issues were topics which the Court of Appeal made tolerably clear were likely to be too remote from the concept of cause and origin of the fires to justify detailed examination in the course of the Inquest. We have therefore restricted our examination in these submissions to what the evidence shows about the state of the fuel loads in the affected areas and references to the advice which had previously been given by a variety of people who might be described either as experts or stakeholders about how they should be controlled. In our submission, this aspect of the fuel loads issue is important to understanding the condition in which the fires started and then developed, and is therefore not remote from the issue of cause and origin.

1.2.3 PHASE 1 OF THE EVIDENCE

18. The first phase of the evidence was largely taken up with the expert evidence, including the evidence of representatives of the Bureau of Meteorology, the evidence of Mr Cheney concerning aspects of fire behaviour fire spread and the path of the four fires from ignition in the afternoon of 8 January 2003 until they burnt into the suburbs of Canberra on 18 January. Mr Cheney's evidence in this first phase also included commentary and a critique of aspects of the fire suppression undertaken during that period. However, Mr Cheney made it clear during his evidence that much of his report was based on hearsay, he expected it to be tested during the second phase of the evidence and he would be filling any gaps in his report as the Inquest progressed^[20]. Evidence was also given in this first phase by Mr McBeth, about his report prepared in 1994 which included concerns about the inevitability of a conflagration fire impacting on the suburbs of Canberra, by the lightning chaser Mr Tycehurst and by Dr Peter Ellis, on his research on the contribution of garden types to the spread of fire in the suburbs on 18 January 2003. The first phase of the Inquest concluded with the evidence and preliminary findings on the four deaths.

1.2.4 FINDINGS CONCERNING THE DEATHS

19. At the conclusion of our opening, we indicated that at the conclusion of the evidence in phase one of the Inquest, we would present all the evidence specifically relating to the four deaths and invite you to make findings in relation to those deaths *on a preliminary basis, so that at least for the families of those people, the matter will be brought to a conclusion for the benefit of those people*^[21]. That suggestion was repeated by us later in the proceedings and Your Honour indicated that the findings would be preliminary^[22].
20. It was only in the case of the deceased Douglas Fraser that any member of the family sought to be present for the hearing of evidence. At the conclusion of the evidence concerning the death of Douglas Fraser, you made a finding in relation to Mr Fraser *pending the ongoing inquiry into the*

fire[23], that he died between 4:00 pm and 6:15 pm on Saturday 18 January 2003 at his home at 23 Burrendong Street, Duffy and that the cause of death was *most likely* due to smoke inhalation from a fire which entered Duffy at about 3:15 pm on Saturday 18 January 2003.

21. Later, in what Your Honour described as interim findings[24], you further found that:
 - a. Alison Mary Tener died on the afternoon of Saturday 18 January 2003 inside her home at 9 Burrendong Street, Duffy. The cause of death was *most likely* smoke inhalation from a fire which had entered the suburb of Duffy at about 3:15 pm on Saturday 18 January 2003.
 - b. Peter Brabazon Brooke died on the afternoon of Saturday 18 January 2003 at his home at 40 Tullaroop Street, Duffy. The cause of death was *most likely* a heart attack which he suffered as the effect of a fire which had entered the suburb of Duffy at about 3:15 pm on Saturday 18 January 2003.
 - c. Dorothy McGrath, also known as Dolly McGrath, died on the afternoon of Saturday 18 January 2003 at her home at Cottage 5, Stromlo Forestry Settlement, RMB 113 Cotter Road, Stromlo. The cause of death was *most likely* the effects of a fire and most likely thermal injury from a fire which had entered the Stromlo forestry settlement at about 3:00 pm on Saturday 18 January 2003.
22. We outline in these submissions[25] whether it is open to Your Honour to make further findings concerning the manner and cause of each of the four deaths. In our submission, it is, particularly as to two of the deaths – Alison Tener and Dorothy McGrath

1.2.5 INTERIM DIRECTIONS HEARING

23. The evidence adduced in phase one of the Inquest assisted the preparation of the list of issues that we had foreshadowed in the initial directions hearings would set the framework for the evidence in the second phase. We distributed a draft of that issues list to Your Honour and the represented parties in advance of the second directions hearing on 15 December 2003. The draft list was headed *Phase 2 Issues List* and was accompanied by a memorandum explaining the list and indicating how we envisaged the list would assist in narrowing the issues to be examined in the course of the Inquest. We informed Your Honour at the directions hearing that we had received a response from two parties in relation to the draft list, *although none of those nor anyone else seems to take significant exception with the general process*[26].
24. We also informed Your Honour at the directions hearing that our expectation was that the program of witnesses we would follow would essentially be to start with senior officers who are witnesses, including people such as Mr Lucas-Smith, Mr Bennett, Mr Castle, Mr Koperberg, Mr Keady and the Chief Minister and then to move down the scale to the ACT Service Management Team, to the Incident Management Team at Yarrowlumla and to fire controllers and firefighters in the field, police witnesses, a representative sample of residents and then the three named experts: Mr Cheney, Mr Roche and Mr Leonard.

25. Mr Johnson QC for the Territory confirmed that the Territory had had an opportunity to consider the issues list and that there was nothing that Mr Johnson wished to be added or taken from the list. *It would seem to in general terms summarise issues that appear to arise*^[27]. Mr Bret Walker QC with Mr Erskine sought Your Honour's leave to be heard for the State of New South Wales, instructed by the legal officer of the Department of Environment & Conservation (formerly the NSW National Parks & Wildlife Service) and by the NSW Rural Fire Service. However, he indicated that he was not then asking for leave under s42 of the Act. Mr Walker then went on to make submissions concerning the issues list and questions of jurisdiction dealt with elsewhere in these submissions^[28].

26. Despite the fact that:

- a. the issues list was a genuine attempt to give the longer phase of the evidence some structure and assist the parties to understand the issues they may have to confront; and
- b. the process of production of the list was supported by the represented parties, who also generally agreed that the issues identified therein were appropriate for examination,

both the production of the list and its contents were heavily criticised during submissions by the represented parties who pursued the application to the Court of Appeal discussed below.

1.2.6 PHASE 2 OF THE EVIDENCE

27. The second phase of evidence in the Inquest commenced on 16 February 2004, with witnesses being called more or less in accordance with the plan referred to at the directions hearing on 15 December 2003. Notwithstanding issues raised at the first directions hearing and privately with the representatives of the Territory and the evidence given (particularly by Mr Cheney) during the first phase of the Inquest, counsel appeared at the commencement of the second phase only for the Territory. In particular, Mr Lucas-Smith, Mr Castle, Mr Graham, Mr McRae and Mr Bennett were not independently represented.

28. On 19 February 2004, shortly before Mr Johnson for the Territory was due to commence to cross-examine Mr Lucas-Smith, Your Honour noted that, having listened to the evidence of Mr Lucas-Smith, Your Honour was curious to see how Mr Johnson was proposing to cross-examine Mr Lucas-Smith. Your Honour pointed out that: *It is rather obvious to me now that there are some serious areas of discrepancies that exist between the evidence that Mr Lucas-Smith has given and the evidence that perhaps will be called from other witnesses, and witnesses who are employees of the ACT Government.* In response, Mr Johnson confirmed that he was acting for the ACT and there was only one client. *We are not acting for individual witnesses; we are acting for the Territory.* Your Honour went on to refer to the fact that the issue of representation was raised at the very first directions hearing and asked Mr Johnson whether he perceived a conflict. Mr Johnson again confirmed that he was acting for the ACT and that *there are employees of the Territory who will give evidence, and we will seek to defend the interests of those individual witnesses as they come forward. If there are areas of conflict and of significant conflict then obviously we will have to give consideration as to whether that poses a difficulty at some stage.* Mr Johnson later indicated that he would take on board what Your Honour said and would seek some instructions. Your

Honour said: *I simply raise it because I am concerned that witnesses such as Mr Lucas-Smith's interests are protected, as I say, and indeed the interests of other employees of the Government. But I will leave it with you, Mr Johnson. I can only do so much and I can only raise my concern again on the matter*[\[29\]](#).

29. We made submissions in support of Your Honour's remarks and in particular, made it clear that *for someone in Mr Lucas-Smith's position, who has been an important witness, and there will be some others to come, I am not Mr Lucas-Smith's counsel, for example, for the purpose of cross-examining a witness like Mr Cooper. So I share Your Worship's concerns that there are several witnesses, including this current witness, who are entitled to have their interests protected.* After a short adjournment, Your Honour granted Mr Johnson's request that the further hearing be adjourned until the following Monday so that he could obtain further instructions[\[30\]](#). On that following Monday, Mr Johnson again confirmed that: *the legal representatives for the ACT continued to appear for the ACT only; but there is no application made on behalf of an individual.* He went on to explain that there had been in place for some time an arrangement between the Legal Aid Commission and the Department of Justice and Community Services whereby independent legal advice would be available to ACT employees. Mr Johnson was unable to indicate at that time whether that would translate into any application for independent representation. Mr Johnson confirmed that he had spoken to Mr Lucas-Smith and it was Mr Johnson's understanding that he did not make any application to Your Honour for any separate legal representation for himself. We reiterated our concerns in response to the submissions from Mr Johnson[\[31\]](#).
30. The hearings then proceeded for several days, during which Mr Lucas-Smith concluded his evidence and each of Mr Castle and Mr Bennett also commenced and concluded their evidence. However, at the end of the day on 4 March 2004, during the examination of Mr Keady, Your Honour indicated that circumstances have come to light which necessitated the inquiry being adjourned for some extra days and Your Honour adjourned until 10 March. Upon resuming on 10 March, Mr Philip Walker sought leave under s42 of the Act to appear on behalf of Mr Lucas-Smith and sought a further adjournment until 16 March. Mr Walker also indicated that Mr Whybrow would be making a similar application in relation to Mr Castle, which he duly did on 16 March. Your Honour granted leave to Mr Walker and Mr Whybrow[\[32\]](#).
31. The second phase of the evidence in the Inquest then proceeded uninterrupted until 25 March 2003 when Mr Johnson informed Your Honour that Mr Graham had indicated that it was his desire to make an application to have his own legal representation and that Mr Johnson had been instructed that the next two witnesses, Mr McRae and Mr Ingram would be making a similar application. This had been raised with us outside court that morning. We indicated to Your Honour that it was unfortunate that the situation had occurred again and that: *We would submit that it would be appropriate, as it were, for as far as can be seen, this to be the last occasion on which such a situation arises. As Your Worship observed, we have been concerned about the potential of this, certainly since counsel has been involved in this case*[\[33\]](#). Your Honour also expressed concern: *I am concerned and I am rather displeased that again the progress of this inquiry has to be disrupted due to something which from the start...has been, at least to me and certainly to counsel assisting very blatantly obvious, and that is the need for some witnesses who were to be called and who are to be called before this inquiry to be... separately represented*[\[34\]](#). Your Honour ultimately agreed to grant the adjournment to allow Mr Graham, Mr

McRae and Mr Ingram to be represented and cautioned that any other person who considered they may need independent representation, take the opportunity of the adjournment to make the necessary arrangements[35]. Your Honour adjourned the further hearing of the Inquest until 5 April and also allowed additional time to for the newly represented parties to prepare over the Easter break. There were numerous later applications for leave to appear on behalf of witnesses, but none of these resulted in further delays in the evidence.

32. On 24 April 2004 we indicated to Your Honour and to counsel representing parties in the Inquest that we had reviewed the witness list and divided the witness list into those who were still to be called to give evidence and other witnesses on the list marked *MA* (for *make available*) who were witnesses that we considered did not need to be called over and above their statements or any other material that they might have provided. We indicated that the procedure we intended to adopt was that, unless any counsel wanted any of the *make available* witnesses called, we would not call them, but their statements or other material in the brief would go in as though they had been called. We emphasised that we intended that the evidence of those witnesses be treated by Your Honour as though the witnesses had been called and sworn as to the truth of their statements. We requested that represented parties read some distance ahead so they could give us notice as to who amongst the *make available* witnesses they might want to ask questions of[36]. No request was later made of us on behalf of any party that any of the *make available* witnesses be called for cross-examination. In the circumstances, Your Honour is entitled to rely on the evidence of each of the witnesses marked *MA* in the list of witnesses circulated to Your Honour and the represented parties on 23 April 2004, as if each of them was called and sworn as to the truth of their statements and other material provided by them in the Inquest.
33. Following the adjournments in late March and early April 2004, the evidence proceeded essentially uninterrupted until 4 June 2004, after which there was a delay of some four weeks to allow parties sufficient time to consider the reports of Mr Roche and Mr Leonard which had not then been completed in the time originally anticipated. Your Honour directed that if there was any witness or other evidence that any counsel wished to be called, then they should so indicate to us by 16 July and otherwise adjourned the hearing of evidence until 9 August[37]. However, on that date, an application was foreshadowed for access to documents. Your Honour heard that application on 25 August and delivered your ruling the following day. That issue subsequently became the subject of the application and judgment by Whitlam J discussed below. The evidence of Mr Leonard proceeded on 26 August, followed by the further evidence in chief of Mr Cheney which concluded on 27 August. The cross examination of Mr Cheney was delayed until 15 September and Mr Cheney's evidence concluded on 21 September when the hearing of further evidence was adjourned until 5 October, when it was anticipated at that the evidence in the Inquest would conclude with the expert evidence of Mr Roche and Mr Nicholson and, possibly, the recall of Mr Lucas-Smith and Mr Castle.
34. At the commencement of the evidence on 5 October 2004, we indicated to Your Honour that, while we had originally anticipated that Mr Lucas-Smith would be recalled, we had reconsidered our position and it was no longer our view that he needed to be recalled by us. Counsel for Mr Lucas-Smith had indicated to us by that time that he may wish Mr Lucas-Smith recalled and we

indicated that we would facilitate that. There was also, at that time, some uncertainty about the recall of Mr Castle[38]. The evidence of Mr Roche commenced that day and continued until the end of 8 October 2004, when Mr Philip Walker's cross-examination of Mr Roche was still part heard. However, on the morning of 11 October 2004, application was made to Your Honour to disqualify yourself on the grounds of apprehended bias, which matter was later the subject of the hearing before the Court of Appeal as also discussed below. This application ultimately led to an interruption to the completion of the evidence for over 12 months, until 17 October 2005. Mr Roche's evidence continued that day and the next. There was then a delay of a week to accommodate the availability of Mr Nicholson, whose evidence occupied 24 and 25 October 2005. Before the conclusion of Mr Nicholson's evidence, we had confirmed that we were not proposing to recall Mr Castle and Mr Whybrow and Philip Walker (respectively) notified us that they did not require the recall of Mr Castle and Mr Lucas-Smith. Accordingly, Mr Nicholson was the last witness called in the Inquest.

1.2.7 WITNESSES

35. In the second phase of the evidence, a large number of witnesses were called and it is appropriate to deal with the relevant biographical details of some of them individually. In several cases, the personal qualifications and experience of the individual witness were relevant to the issues raised by their evidence and generally.

1.2.7.1 *Peter Lucas-Smith*

36. Mr Lucas-Smith has been the Chief Fire Control Officer ("**CFCO**") in the ACT since 1986 and held that position at the time of the fires[39]. Since its formation in 1995 and at the time of the fires, Mr Lucas-Smith has also held the position of Director of ACT Bushfire and Emergency Services[40]. Mr Lucas-Smith agreed that he was the person most experienced in bushfire fighting of all the personnel at that ESB[41]. Mr Lucas-Smith's professional career had been in firefighting. Between 1971 and 1987 he was employed with the NSW National Parks & Wildlife Service in fire management roles. Since 1971, according to his CV[42], he had been the incident controller or part of the incident management team of 10 major bushfire events and for more than 4,000 medium and minor bushfire and other emergency service events. Among other honours, Mr Lucas-Smith is the holder of the Australian Fire Service Medal (AFSM) for meritorious and distinguished service to bushfire management. Mr Lucas-Smith's knowledge and experience in bushfire fighting and management is not in issue.

1.2.7.2 *Mike Castle*

37. Mr Castle was, at all relevant times, the Executive Director of ESB – a position that was not operational[43]. By the time he gave evidence he no longer held that position and was then Executive Director of the Emergency Management Unit[44]. Mr Castle's background was in the Australian military, including service in Vietnam ultimately rising to the rank of Lieutenant Colonel. He holds a degree in economics from ANU and a degree from the US in Personnel Management. He has lectured in managerial economics at the RMC Duntroon. During his

military service he was involved in providing support to emergency operations including fire and flood[45]. As to the experience in relation to the fires, that was in *non fire-fighting* roles[46].

38. In 1990, Mr Castle joined the ACT Public Service and became involved in aspects of emergency management. In his statement to the Inquest, Mr Castle described his role as ESB Executive Director of both ESB and Emergency Management as being one where he is responsible for ensuring that there are effective plans and arrangements in place for the prevention of, preparedness for, response to, and recovery from emergencies. Mr Castle was also the *single point of contact for requesting Commonwealth assistance*[47]. Mr Castle was also a director of the Australian Fire Authorities Council, the ACT and South East NSW Aero Medical Service Ltd and the South Care Helicopter Fund[48]. In his evidence, Mr Castle said that in the 9 years of running the ESB there had been some *2000-odd* bushfire events and he estimates something like 175,000 *different incidents*. Mr Castle said he had done some Incident Control System training after he joined ESB in 1994 although he does not have any formal accreditation[49]. In his statement, Mr Castle explained that the ESB is a *cost centre within the Department of Justice & Community Safety (DJACS) Portfolio and I report to Mr Tim Keady, the Chief Executive of DJACS. The Bureau has a budget of approximately \$35 million. About 450 full time members, and about 850 volunteers staff it*[50].

1.2.7.3 Rick McRae

39. At the time of the fires Mr McRae was the acting manager of the Risk Management Unit at ESB. At the time he gave his evidence, he had been confirmed in that position. As Mr McRae explained it, his role was to provide risk-based services to agencies within the ESB as required[51]. In his evidence, Mr McRae said he was a trained ecologist and by reference to his written CV, Mr McRae outlined that during the early 1980s he worked for the Blue Mountains National Parks and in that capacity he had some role in relation to bushfire suppression. That involved a fire fighter and crew leader of remote area teams. He said he was involved in about six significant fires. He worked for the Victorian Department of Conservation, Forests & Lands on Alpine Management in the later 1980s. That did not involve any bushfire fighting role. In July 1989, Mr McRae began working for the ACT government and in the early stages was the fire management planning officer for the ACT Bushfire Service. That apparently involved a *wide range* of support roles including weather, mapping and fire behaviour prediction services. Mr McRae gave evidence that once the ICS system began to be used in the ACT he became the *core planning officer* and that occurred probably in the early 1990s. That role continued up and beyond the January 2003 fires[52]. As best we can tell from his evidence, that role did not involve any direct firefighting activities. Mr McRae said he no direct role in community education but would sometimes provide some assistance and support in that area[53].

1.2.7.4 Tony Graham

40. Mr Graham was, at all relevant times, the Operations Manager with the ACT Bushfire and Emergency Services section of the ESB and as such was involved in some critical decision-making, both in connection with firefighting strategies and resources. Mr Graham had held that position since July 1997 (then with the title Manager) and from that point on had a role as one of the duty co-ordinators or duty officers at ESB and was the designated Operations Manager in the

Service Management Team[54]. The documents produced including Mr Graham's CV and written statement indicated that he had spent 21 years in the Royal Australian Navy. He was an aviation qualified sailor and he had a *key responsibility* [for] *firefighting and aircraft crash rescue*. Upon discharge from the navy in 1993, Mr Graham was a warrant officer and had spent most of 21 year naval career *in catering*. Although everyone aboard ship had a firefighting responsibility, Mr Graham's actual experience of such incidents was limited to two or three incidents. There was also the occasional bush or grass fire near shore facilities. Over the entire period of his naval service, there may have been no more than half a dozen of those[55]. In the last three or four years of his naval service, Mr Graham joined the ACT Emergency Services as a volunteer and received bushfire training. His CV indicates that he actually joined in February 1989. In January 1994, Mr Graham, in his capacity as a volunteer, attend the NSW fires and travelled up there in the portable communications vehicle, spending some 3 days in the area[56].

41. Mr Graham has been involved in training for AIIMS-ICS and is accredited as an instructor, achieving that in 1994/1995. Mr Graham has had some experience as an incident controller having been the deputy IC on the fire-line at the 1998 Dingi Dingi Ridge fire supporting Mr Rob Hunt from the NPWS. In December 1998, Mr Graham was the IC in a 4 to 5 hectare grass fire along Canberra Avenue. He was similarly involved in an incident in 2000. In December 2001 he was an operations officer at a 7 to 10 hectare fire at Pialligo. Mr Graham has never actually fought a fire by holding a hose or rake hoe and has no training in fire behaviour. He accepted in his evidence that he had never been involved in anything like the magnitude of the January 2003 fires[57]. Mr Lucas-Smith described Mr Graham's role as *a controller of resources*[58].
42. As will become apparent later in these submissions, there is a significant issue about Mr Graham's lack of qualification and experience for the role he was endeavouring to fulfil, particularly at the time of the initial response to the fires.

1.2.7.5 Ian Bennett

43. At the time of the fires and since October 2000, Mr Bennett was the Commissioner of the ACT Fire Brigade, being the ACT's urban firefighting force. However, he has not held that position since February 2003 due to ill health. He later became attached to the ACT's Bushfire Recovery Task Force. Mr Bennett had been with the ACT Fire Brigade since he joined in 1976 as a recruit fire fighter. In 1986 he was promoted to Station Officer after which he performed a number of roles until he was appointed to superintendent in 1994[59]. Mr Bennett had been involved in other kinds of emergencies including the Thredbo disaster. He had not been an Incident Controller for any incident that required a multi-jurisdictional response. Also in 1994, Mr Bennett led a Task Force to the Sydney wildfire and was involved in firefighting along St Ives Road. Apart from that incident, he had no exposure to anything of the magnitude of the January 2003 fires and most of his earlier experiences of non-urban fires had been in grassland areas. His only experience of wildfire in pine plantations had come from the fires of Christmas 2001[60].

1.2.7.6 Tony Bartlett

44. Mr Bartlett was at the time of the fires the Director of ACT Forests[\[61\]](#) - a position he had held since October 1999. He holds the degrees of Bachelor of Forest Science from Melbourne University and a Masters degree in Science (Forestry) from Oxford. Mr Bartlett has some 25 years experience in forest management and fire suppression. Mr Bartlett's considerable relevant experience is set out in his statement and was supplemented by his evidence[\[62\]](#). In summary, it is as follows:
- a. two years as Fire Protection Officer in East Gippsland;
 - b. two years managing the Forest and Fire Program in North East Victoria;
 - c. Divisional Commander role in fires leading up to and including Ash Wednesday in 1983;
 - d. several other large fire events after that event, including the wildfires in the Byadbo wilderness area in 1988;
 - e. compiled a fire research report published by the Victorian Department of Conservation and Natural Resources;
 - f. leader of 120 Victorian fire fighters to the Blue Mountains in NSW in 1994;
 - g. in 1998, Incident Controller at the Caledonia wildfires in alpine north-east Victoria.
45. In addition Mr Bartlett has attended a large number of formal fire training programs. He has various accreditations, including as Incident Controller for Type 3 fires and a Statement of Attainment in Competency 6.02 Major Operations Management under AFAC's National Fire Training Framework. He is nationally recognised to fulfil the role of Incident Controller under the AIIMS ICS at major wildfires.

1.2.7.7 Dave Ingram

46. Mr Ingram was the logistics co-ordinator with the ACT Bushfire and Emergency Services[\[63\]](#). Mr Ingram has a Diploma of Education in Adult Education and has attended numerous courses in logistics management. He has assisted in logistics in major operations including the Canberra Hospital implosion incident, the Thredbo landslide and the 2001 fires in Canberra. He assisted in a similar capacity with the Canberra aspect of the 2000 Olympic Games. As a public servant he joined the ACT ESB in 1995 as the operational support officer. In 1997 he became the logistics co-ordinator for both the Bushfire Service and Emergency Service. His role includes ensuring equipment is available and that the volunteer side of the service has the best possible equipment to deal with the incidents they have contend with[\[64\]](#).

1.2.7.8 The Chief Minister and Senior Departmental Officers

47. Hon. John Stanhope MLA: Mr Stanhope was elected to the ACT Parliament in 1998[\[65\]](#) and has been the Chief Minister in the ACT since November 2001 and, obviously, occupied that office at

the time of the January 2003 fires[66]. Mr Stanhope also holds the office of Attorney-General. Mr Stanhope was on leave between 8 January 2003 and 13 January 2003 and Mr Quinlan was acting in the role of Chief Minister[67]. Mr Bill Wood, the Minister for Police and Emergency Services was on leave for a short time (including on 17 and 18 January) and Mr Stanhope acted in that position while Mr Wood was on leave[68]. From time to time Mr Stanhope was briefed on the fires including the Cabinet briefing on Thursday 16 January 2003[69].

48. Tim Keady: Mr Keady had been a career public servant in NSW in the Attorney-General's Department and then as Director-General of the NSW Ministry of Police and Emergency Services. He moved to the ACT in 1996 and took over what was then Attorney-General's Department. In that same year the ESB moved from the Department of Urban Services to the Attorney-General's Department. At the time of the fires, Mr Keady was the Chief Executive Officer for the Department of Justice & Community Safety. The relevant activity of Mr Keady examined during the evidence was his involvement at ESB during the fires. In his capacity as CEO of the Department, Mr Keady attended planning meetings at the ESB. He described his role at those meetings as a *support role*[70] and not as a primary decision-maker.
49. Robert Tonkin: In January 2003, Mr Tonkin was the chief executive of the ACT Chief Minister's Department and had held that position for almost three years[71]. Mr Tonkin's first relevant connection with the bushfires was on Sunday 12 January 2003, when he contacted the Chief Minister, which led to a briefing being arranged for the following day, 13 January 2003[72]. Mr Tonkin was also present at the briefing of Cabinet on 16 January 2003[73] and at the ESB on the morning of 18 January 2003, where he participated in a meeting to discuss community recovery[74].

1.2.7.9 *Media and Administration*

50. Natalie Larkins: Ms Larkins is a journalist employed by the ABC and was a Canberra resident, living in the suburb of Rivett. Her home was destroyed by the fire on 18 January 2003. Ms Larkins was responsible for the weekend news bulletins on ABC radio over the weekend commencing 17 January 2003, and was engaged in attempting arrange interviews with ESB personnel.[75]
51. Marika Harvey: Ms Harvey had worked in the public relations area of the ACT Government for about six years and was predominantly involved in media liaison. At relevant times, Ms Harvey was the manager of public relations within the Chief Minister's Department[76]. During the fires, one of her roles was to assist with media aspects of the fires and she was reporting primarily to Mr Castle and Mr Lucas-Smith[77].
52. Amy Lowe: Ms Lowe holds a Bachelor of Communications specialising in community relations. She was Community Education and Public Relations Co-Ordinator at ESB. She was employed in that position from 19 December 2001 until 30 October 2003 on a series of short term contracts. The roles she had been fulfilling before the fires ranged from assisting with the production of a firefighters calendar and with a fashion parade for the Ambulance Service. Media liaison had been a relatively small part of her role.[78]

53. Janelle Wheatley: Ms Wheatley was employed by the Department of Education, Youth & Family Services as executive officer. Her department was required to provide community recovery services to affected persons in the event of emergency. She became aware of briefings that were being given at ESB during the week leading up to 18 January 2003^[79]. She attended the ESB planning meeting in the evening of 17 January 2003 and other meetings later that evening and the following morning, where she took notes of the matters discussed. She also assisted in the process of contacting rural lessees on 17 and 18 January^[80].
54. Kate Keane: Ms Keane was the Emergency Management Support Officer at ESB. She liaised with members of the Emergency Management Committee and assisted with the taking notes and preparing minutes of ESB planning meetings. ^[81]
55. Jillian Ferry: Ms Ferry was the administrative liaison officer for the bushfire emergency services branch at ESB. She assisted Peter Lucas-Smith and involved herself with various administrative duties, including assisting with taking notes and preparing minutes of ESB planning meetings.^[82]

1.2.7.10 The Planning Unit

56. Nick Gellie: Mr Gellie is a landscape ecologist and holds tertiary qualifications including Bachelor of Science in Forestry. In 1983 he was appointed as the fire management officer for the NSW National Parks & Wildlife Service in the Blue Mountains National Park. In that position, he developed systems of fire appraisal and fire management. In 1995 he moved to Queanbeyan and became a manager of the Natural Heritage Unit. He retired in 2000. On 16 January 2003, he went to ESB as a volunteer and undertook the role of aiding in the prediction of fire behaviour.^[83]
57. Nick Lhuede: Mr Lhuede is a fire management officer with Environment ACT having been appointed in September 2002. Prior to that he had been employed with NSW State Forests as a harvest planning manager and was involved in fire suppression at various levels. He had some incident control training and some RAFT training. As a fire manager in the ACT, Mr Lhuede became a member of the Land Managers Fire Working Group. ^[84]
58. Hilton Taylor: Since 2001 Hilton Taylor has been the Manager of Strategic Planning and Harvesting with ACT Forests. He holds an Associate Diploma of Applied Science in Forestry from Queensland and Bachelor of Science from the ANU. He has international experience and also holds some firefighting qualifications including ICS training and accreditation as a Planning Officer level 2. He has also completed formal study in fire behaviour, fire management and fire weather.^[85]

1.2.7.11 Other Service Management Team Officers

59. Robert Gore: Mr Gore is a public servant in Commonwealth Department of Defence^[86]. He joined the SES in 1986 and then joined Jerrabomberra Volunteer Brigade in 1994. At the time of making his statement he was in his third year as Captain of that brigade. On 17 January 2003 he was the overnight duty coordinator at Comcen. ^[87]

60. Dave Jamieson: Mr Jamieson was employed by ACT Forests as the Manager of Environment & Recreation. He retired on 30 May 2004. Until mid-2002 he had been the Bushfire Captain with the Forests Brigade[88]. On Saturday 11 January 2003, he was requested to work the night shift in the control room at ESB. That request came from Tony Graham[89]. He worked on that night shift on 11, 12 and 13 January 2003 and on 15 January 2003 took over responsibility for plant co-ordination and became the ACT Forests representative. Some time in the afternoon on 18 January 2003 he moved into the Operations Officer position as the State of Emergency was declared[90].
61. Arthur Sayer: At the time of the fires Mr Sayer was a District Works Officer with Environment ACT, Parks and Conservation[91]. Mr Sayer had approximately 37 years of firefighting experience, 24 as a government employee. Until July 2003, when he resigned, Mr Sayer was a deputy CFCO[92].
62. Tony Corrigan: Mr Corrigan is a rural contractor. For two years he was a wildlife ecologist with ACT Parks & Conservation and then in 2000 became the Manager of ACT Parks & Conservation. From December 2002 onwards he ceased to be in that position and was an *unattached officer* at the time of the fires[93]. In the 1980s and 1990s he had significant bushfire experience, usually as a team leader. That included a number of remote area fires. In December 2001 he was the Planning Officer for the Stromlo fire and this was the first type 3 incident where he had been involved in an IMT in the field[94]. On 12 January 2003 he was the ACT liaison officer at Yarrowlumla and his impression was that he was to represent the interests of the ACT government in both an administrative and operational sense[95].

1.2.7.12 *Field Officers*

63. Odile Arman: At the time of giving her evidence, Ms Arman was attached to the ACT Chief Minister's Office as a liaison officer for Environment ACT. Her substantive position was District Conservation Officer for Environment ACT[96]. She had been a ranger at Namadgi National Park from 1984 until 1995 and attended remote fires as a crew member. Her first role in a command position would have been approximately 1994. Most of her fire experience had been in small urban interface grassland, woodland and open forest fire. She had attended very few forest fire incidents from 1995 in a command position, because there had not been many such incidents[97]. She was the incident controller at Bruce Ridge during the 2001 fires[98]. She was in command in the initial response to the Bendora fire on the night of 8 January 2003.
64. Neil Cooper: At the time of the fires, Mr Cooper was employed by ACT Forests as manager of debris removal and fire control. He was formerly manager of plantation management[99]. He was responsible for ACT forest fire management and had been in that position since 2001. He holds a Bachelor of Science from the Australian National University (1982). He has filled a senior role as a fire controller for some 15 years and had undertaken the ICS training in 1991 and in 2002. He is an accredited trainer[100].
65. Dennis Gray: Mr Gray was at the time of the fires employed by ACT Parks & Conservation as a depot foreman. He had been with that service for 25 years and has had 22 years as an active fire

fighter. He has training in incident control systems and has been active within the Parks Brigade. He has experience as an incident controller over the previous 3 years since he was nominated as deputy captain[\[101\]](#). On 8 January 2003, Mr Gray was deployed to attend the Stockyard Spur fire.

66. Rick Hayes: Mr Hayes had worked for the ACT Department of Urban Services until about 1980. He became a member of the Temora Brigade and then in 1987 resumed employment with the Department of Urban Services and joined the O'Connor Brigade. In the early 1990s he was employed with the Cityscape and the Cityscape/CUPP employees formed into one brigade. He has had experience in a number of fires and in 2001 was a sector leader at the Stromlo fire. He had done ICS training in 1998[\[102\]](#). Mr Hayes was the incident controller at the Bendora fire on 9 January 2003.

1.2.7.13 Officers of the ACT Fire Brigade and Ambulance Service

67. David Prince: At the time of giving evidence, Mr Prince was the Acting Fire Commissioner at the ACT Fire Brigade. In January 2003, he was the Acting Superintendent and Deputy Director Communications Upgrade Project for the ESB[\[103\]](#). Mr Prince attended the briefing by Mr Lucas-Smith on 16 January 2003 and was closely involved in the preparations by the ACT Fire Brigade in the days leading up to 18 January and in meetings to discuss community warnings and preparedness on 17 and 18 January.
68. Peter Newham: Mr Newham was at all relevant times either an Acting Superintendent or Superintendent with the ACT Fire Brigade. He has been a fire-fighter since 1978 and has various ranks including station officer and manager. He has various qualifications involving command and control development course in various Australian states. He was a commander of an ACT taskforce at the 1994 Sydney fires and also undertook a command role at the 1997 Thredbo landslide and the 1999 Sydney hail storm incident[\[104\]](#). Mr Newham attended the briefing by Mr Lucas-Smith on 16 January 2003 and was involved in directing the preparations by the ACT Fire Brigade between that date and 18 January.
69. Michael Collins: Mr Collins is a Fire Brigade Officer in the ACT Fire Brigade having joined in 1988. After joining the Fire Brigade, he was an operational fire fighter until 1997 and from then he was assigned to the Fire Safety section of the Brigade which was concerned with prevention[\[105\]](#). Mr Collins also attended the briefing by Mr Lucas-Smith on 16 January 2003 and was closely involved in the work of the ACT Fire Brigade IMT over the following 3 days.
70. Peter Cartwright: At the time of the fires Mr Cartwright was a relieving district officer in the ACT Fire Brigade[\[106\]](#). On 16 January 2003, Mr Cartwright attended a briefing by Mr Lucas-Smith for Fire Brigade officers at ESB at Curtin and made notes of what transpired at that meeting.
71. Shawn McIntyre: Mr McIntyre is a station officer with the ACT Fire Brigade having been appointed to that position in August 2002. He has been a fire-fighter for 14 years. At the time of the fires he was a relieving officer and attached to the Chisholm fire station. He has had some experience with fighting rural fires and attended the Sydney fires in 1994 and was involved in the

Jannali and Como fires. He had also been involved in some small events in the rural area around Canberra. [\[107\]](#)

72. David Dutton: Mr Dutton is the Operations Manager for the ACT Ambulance Service [\[108\]](#). In that role, Mr Dutton attended meetings at ESB including the briefing by Mr Lucas-Smith on 16 January and subsequent ESB planning meetings and prepared memoranda of information obtained at those meetings that were circulated to ambulance officers.

1.2.7.14 Val Jeffrey

73. Mr Jeffrey was a foundation member of the Tharwa Fire Brigade in the 1950s which later became the Southern Districts Brigade. Mr Jeffrey has been involved in firefighting since he was very young. In 1994 he was awarded the Australian Fire Service Medal. At the time of giving evidence he still held the position of Brigade Captain. He has fought many fires including *campaign fires* in both the ACT and NSW many of which have threatened rural residences. He has completed several training courses including in ICS [\[109\]](#). Mr Jeffrey was a member of the Bush Fire Council for 14 years, including as its chairman from 1978 to 1991 and during that period was closely involved with the organisation and management of the bushfire suppression capability in the ACT, outside the urban area [\[110\]](#).

1.2.7.15 Officers of the NSW Incident Management Team and Related Witnesses

74. Given the involvement of New South Wales as the State in which several fires started on 8 January 2003, the largest of which having the most dramatic effect on the ACT, a number of witnesses from their agencies were called.
75. Phil Koperberg: Mr Koperberg is the Commissioner of the NSW Rural Fire Service and his fire experience is extensive both operationally and administratively. He commenced firefighting activities in 1967 and became Deputy Captain and then Captain of the brigade he joined. In 1970 he became the Fire Control Officer for the Blue Mountains and in 1972 became the first Chairman of the Fire Control Officers Association. In 1985 he became the Executive Officer of the Bushfire Branch of the Office of the Minister for Police and Emergency Services which led to his appointment to his present position [\[111\]](#). He was in contact with Mr Arthur by telephone on a number of occasions in the period 8 to 18 January 2003, and attended meetings at the Queanbeyan incident control centre on 15 January with members of the IMT responsible for the McIntyre's Hut fire and with Mr Lucas-Smith.
76. Bruce Arthur: Mr Arthur joined the Army as a field engineer in 1965. He saw service in Vietnam and was decorated for that service. In 1973 he re-trained as an Army firefighter, retiring from the Army in 2002. He spent a year working for Chubb and then joined the NSW RFS. At the time of the January 2003 fires, he was District Fire Control Officer for the Yarrowlunla and Queanbeyan rural fire district. Mr Arthur has attended a number of wildfire incidents and has been the incident controller at 2 or 3 *campaign fires* [\[112\]](#). Mr Arthur was the day shift incident controller responsible for the McIntyre's Hut fire from 9 to 18 January 2003.

77. Julie Crawford: In January 2003, Julie Crawford was the area manager for the Queanbeyan area for the NSW National Parks & Wildlife Service. Her fire experience began in 1979. She had been in the National Parks & Wildlife Service for the previous six years and has spent her firefighting activity as part of Incident Management Teams, although she has had some further recent fire ground experience^[113]. Ms Crawford was the incident controller responsible for the McIntyre's Hut fire on the from the time of its ignition on 8 January 2003 until the following day and thereafter fulfilled other operational IMT roles in respect of that fire.
78. Robert Hunt: Mr Hunt is Ranger with NSW National Parks & Wildlife Service. He is responsible for the Brindabella National Park and Bimberi Nature Reserve. His fire involvement began in 1989 as a student at Charles Sturt University some time after which he joined up as a field officer in Kosciusko, then ranger in Narrabri and ranger in the Queanbeyan area for just less than 10 years^[114]. Mr Hunt was involved in the initial assessment of the McIntyre's Hut fire on 8 January 2003 and fulfilled other roles in respect of that fire over subsequent days.
79. Kevin Cooper: Mr Cooper has been a volunteer member of the NSW Rural Fire Service since August 1987. Mr Cooper has extensive experience in emergency response as a result of his position as the coordinator of emergency response with the NSW Department of Agriculture^[115]. On 15 January 2003, Mr Cooper was asked to be the Task Force Commander of the NSW RFS Task Force that was going to Canberra. The Task Force went to the ACT on 16 January 2003. Mr Cooper's role was to liaise with the ACT and also to ensure that the well being of members of the Task Force was being attended to^[116]. During that period, he spent time at the ESB in Curtin and had discussions there with both Mr Graham and Mr McRae.
80. Peter Smith: Mr Smith is the captain of the Brindabella Brigade and has been with that brigade for 30 years. He has been Captain of that brigade since 1990 and qualified to Group Officer level^[117]. He was involved in the response to the McIntyre's Hut fire and also in travelling to the site of the area of the point of ignition of the McIntyre's Hut fire to assist in assessing its accessibility to fire tankers.

1.2.7.16 Officers of the Australian Federal Police

81. John Murray: In January 2003, Mr Murray was the Chief Police Officer for the ACT and a Deputy Commissioner in the AFP. His career commenced in 1963 in South Australia and he was a member of the South Australian Police Force at various ranks until 1997. From 1997 until 2000, Mr Murray was an associate professor at Charles Sturt University and in September 2000 he became Chief Police Officer for the ACT. He held that position until February 2004. ^[118]
82. Mandy Newton: At all relevant times, Commander Newton was Commander of Operations in ACT Policing. She has been a member of the Australian Federal Police since 1983 apart from the period between 1995 and 2002. During that time she worked for ActewAGL and also for a time with the Australian Taxation Office.^[119]
83. Steven Kirby: Mr Kirby is a member of the AFP holding the rank of Sergeant. During the week prior to 18 January 2003, Sergeants Kirby had been the acting officer in charge of the specialist

response and security team. On 16 January 2003, he was appointed by Commander Newton as the ACT policing liaison officer with ESB. [120] Mr Kirby had meetings with Mr Prince and others on 17 and 18 January where he was given information about the threat posed by the fires.

84. Jason Byrnes: In the period prior to 18 January 2003 Mr Byrnes was the acting officer in charge of the Tuggeranong Police Station[121]. In that capacity, he had a telephone conversation with Mr Graham on 15 January 2003. On 18 January, Mr Byrnes was in a police liaison role at ESB.

1.2.7.17 Bureau of Meteorology and Lightning

85. Rob Webb: Mr Webb is the senior severe weather meteorologist with the Bureau in Sydney. Within the NSW region he heads a specialist section and has responsibility for severe thunderstorm warning services and bushfire warning services in NSW. He liaises with the Canberra meteorological office. During the fires he was involved in discussion about weather patterns and the provision of briefings to senior personnel within the NSW Rural Fire Service. [122]
86. Ian Mason: Mr Mason was acting as the officer in charge of the Canberra meteorological office from August 2002 and was also acting in that position between 8 and 18 January 2003. At the request of Mr McRae, Mr Mason attended the morning planning meetings at the ESB on 15 to 17 January (inclusive) to provide a briefing on weather conditions[123].
87. Clem Davis: Mr Davis has been a meteorologist working in Canberra for 31 years. Mr Davis provided the briefing on weather conditions to the planning meeting on the morning of 18 January 2003.[124]
88. Kenneth Tycehurst: Mr Tycehurst is an electrical engineer and owns the company Kattron which specialises in lightning detection systems[125]. He provided evidence to the inquest on the location of lightning strikes in the area of the point of origin of each of the 4 fires.

1.2.7.18 Experts

89. Phil Cheney: At the time of giving evidence, Mr Cheney was a senior principal research scientist with the CSIRO concerning bushfire behaviour and management. Mr Cheney has a number of relevant tertiary qualifications which include Diploma of Forestry from the Australian Forestry School; Bachelor of Science in Forestry from Melbourne University. During the first half of the 1970s, Mr Cheney lectured at the ANU on subjects associated with fires and fire suppression[126]. He has held various positions over the years in forestry with the Forest Research Institute, which included developing prescribed burning guides and the application of aerial prescribed burning for fuel reduction in mountains and forests. Mr Cheney has led research projects matters such as the use of large air tankers, the behaviour of high intensity fires, effectiveness of retardants, understanding the spread of bushfires in the natural environment and the development of models to predict fire behaviour. Mr Cheney worked with Mr Alan McArthur in the development of what had become known as the McArthur Index[127]. Mr Cheney has been involved in some 54 consultancies as a fire behaviour expert and written or co-

written a substantial number of publications. Mr Cheney also has some experience as an operational fire fighter in the field, although not since 1972. He was also involved in fire suppression and control on experimental fires[128]. He initiated and led the Project Vesta experiments on fire spread in Western Australia which commenced in 1996[129]. In our submission, on the evidence, it is correct to describe Mr Cheney as Australia's pre-eminent expert on fire behaviour and a person who also has considerable expertise, both practical and research based, on fire suppression and management.

90. Trevor Roche: Mr Roche joined the Victorian CFA as a volunteer in 1963. He later joined the staff of the CFA and attended numerous large bushfires as a fire fighter and commanding officer. He became an Assistant Regional Officer in the CFA in 1969 and became a Regional Officer in charge of the CFA's northern Victorian region in 1978. In 1990 he was appointed Assistant Chief Officer with responsibility for command and control and business management across three regions. He was later promoted to the position of Deputy Chief Officer and in 1993 to the position of Deputy Chief Officer with responsibility for CFA operations throughout the entire State. In 1995, Mr Roche was appointed to the position of Chief Officer - a position he held until his retirement on 26 June 2002. During his time with the CFA, Mr Roche attended numerous courses on many aspects of fire and other emergency management and activity. Since leaving the CFA he has been involved with Emergency Management Australia dealing with multi-jurisdictional emergency management and preparedness[130].
91. John Nicholson: At the time of giving evidence and since March 1999, Mr Nicholson was the principal of his own consultancy, operating under the name Community Safety Service Pty Ltd. Between 1994 and 1999, Mr Nicholson was the Director Risk Management with the CFA and between 1967 to 1994 he was employed as an operational officer with the CFA, rising to Deputy Chief Officer in 1991[131]. Relevant aspects of Mr Nicholson's CFA career including his various operational roles and firefighting experience is set out in the first two pages of his report[132].
92. Howard McBeth: During the period 1981 to 1986, Mr McBeth was in charge of the fire management department of the Department of Environment and Planning with the NPWS of South Australia which managed fire for all government managed lands. Between 1986 and 1994 he was the Deputy Chief Officer with the South Australian Country Fire Service and its Chief Operations Officer. He was effectively in control of rural fires in that State. Since 1994, Mr McBeth has been a consultant on fire issues and given evidence as an expert witness[133]. Mr McBeth prepared a report dated 29 September 1994 in relation to fuel management in the ACT and the risk of wildfire.
93. Justin Leonard: Mr Leonard holds the degree of Bachelor of Mechanical Manufacturing Engineering Mr Leonard holds the degree of Bachelor of Mechanical Manufacturing Engineering. Mr Leonard is the head the Bushfire Research Team in the Manufacturing and Infrastructure Technology division of the CSIRO. That division supports, among other things, the building industry in Australia with particular reference to the effects of bushfires on structures. Mr Leonard carried out research into the Canberra fires as part of his team's *long history of investigating urban and peri urban impact by significant bushfires in Australia*[134].

94. Peter Ellis: Dr Ellis is also a research scientist with the CSIRO, in the Bushfire, Paper and Management Group. His scientific work has been in modelling fire brand and spotting behaviour and also assessing radiant heat^[135]. In August 2003, Mr Ellis prepared a report in conjunction with Andrew Sullivan for the ACT Planning and Land Authority which concerned itself with pathways of fire attack on and within the suburbs of Canberra.

1.2.8 THE APPLICATION TO WHITLAM J

95. On 26 August 2004, Your Honour delivered a ruling in relation to the request by certain represented parties for the production of documents affecting the evidence of the witnesses of Mr Cheney and Mr Roche. In view of the fact that the ruling was that you declined to direct that certain documents be produced, proceedings were commenced in the ACT Supreme Court on the following day, when Gray J granted orders to show cause and directed that the orders be served on the ACT Director of Public Prosecutions as *contradictor*. The proceedings were heard before Whitlam J on 6 and 7 September 2004. His Honour made orders on 10 September 2004 and published his reasons a week later, on 17 September 2004. His Honour held that it had been established that Your Honour had failed to afford procedural fairness to the prosecutors in the matter and were entitled to relief under section 34B of the *Supreme Court Act* 1933. Orders were made that Your Honour be prohibited from further taking evidence from Messrs Cheney and Roche until particular documents were provided.
96. At the conclusion of the hearing before Whitlam J on 7 September, His Honour indicated that he would be making some orders concerning the production of documents. In anticipation of those orders, on 9 September a letter was sent to the office of the ACT Government Solicitor to inform the parties that documents concerning Mr Cheney over and above Mr Cheney's original source material would be available for collection and most parties collected those documents on or before 10 September 2004, the date of His Honour's order, and a week before His Honour published his reasons.
97. The orders having been made by Whitlam J on 10 September, the matter was mentioned before you that day made and Your Honour directed that the matter be mentioned again on Tuesday 14 September 2004 with a view to re-commencing Mr Cheney's evidence on the following day. The directions hearing was held and the cross examination of Mr Cheney by the various parties commenced the following day.

1.2.9 THE APPLICATION TO THE COURT OF APPEAL OF THE ACT SUPREME COURT

98. Less than a month after the evidence recommenced following the application before Whitlam J, an application was made by Mr Glissan QC on behalf of various represented parties to Your Honour to *proceed no further* with the hearing of the Inquest on the basis of apprehended bias. Mr Glissan's application was supported by counsel on behalf of the ACT. Mr Glissan had not previously taken part in the Inquest, announcing his appearance on that day. The ACT also later retained Mr Tracey QC, to lead the (then) team of three existing counsel led by Mr Johnson, to appear in the hearings before the Court of Appeal. It was obvious that the matter had been under

preparation for some considerable time but no notice, apart from a perfunctory phone message on the day of the application, had been given. We continue to assume that that course was taken with a view to gaining some kind of forensic or other advantage from the element of surprise. The immediate consequence was that the application could not proceed because the position of counsel assisting needed to be considered and new counsel briefed for the purpose of the application.

99. On 19 October 2004, Your Honour considered the application and declined to disqualify yourself. *Ex parte* applications were made the next day to Crispin J who made orders *nisi* and directed Your Honour to show cause. His Honour also directed that the matter be heard before a Court of Appeal. The applications proceeded over 10 hearing days in February, March and May 2005. The Court delivered its judgment three months later on 5 August 2005. Having ordered that the order nisi be discharged, the hearing of the Inquest resumed at the convenience of all the parties with a directions hearing on the 13 October 2005. The consequence was that a full year was lost as a result of the application and subsequent proceedings. Further, the fact that little or no useful work could be done pending the hearing and determination of the applications, has prolonged the process of submission and report.
100. In the hearing of the applications, the Prosecutors relied on twenty two matters said to be *suggestive of bias*. They included:
- a. The view the scene;
 - b. The production of notes of the view;
 - c. The suggestion that Cheney and Roche were independent investigators;
 - d. The inclusion of Cheney and Roche in *the team*;
 - e. Responses to applications for access to documents relating to experts;
 - f. Notes of conferences in June and July 2003;
 - g. The role of counsel assisting in preparation of expert reports;
 - h. The selection of potential witnesses to be interviewed;
 - i. The rejection of maps;
 - j. The survey of affected residents;
 - k. The warning of Ms Harvey;
 - l. The suggestion that slants had been put on the evidence;
 - m. The criticism of the cross-examination by Mr Watts;

- n. The criticism of Mr Bayliss;
- o. The remarks to Mr Walker;
- p. The e-mail from counsel assisting;
- q. Counsel “struggling” to put a case;
- r. The proposal for counsel to assist in writing the final report;
- s. The dissemination of copies of submissions by a court officer;
- t. The brevity of the decision to refuse the application [to disqualify] and the absence of reasons;
- u. The suggestion that the [Coroner] had *descended into the arena*.

101. In the course of the submissions made to the Court of Appeal, assertions were made that, on occasions, the conduct both of Your Honour and counsel assisting was potentially or actually intentionally misleading and/or disingenuous^[136]. Apart from the manner in which the individual issues referred to above were dealt with, the Court concluded that the applications were made prematurely. Their Honours observed that ...*some of the grounds relied upon plainly provide no basis for any reasonable apprehension of bias, while other provide some possible ground for concern but only if adverse findings as to certain issues are contemplated. Any findings as to some of those issues would clearly be beyond the scope of the jurisdiction conferred by the Coroners Act and the likelihood of adverse findings on others is presently a matter of speculation*^[137] (emphasis added). The Court went on to hold that they could not be satisfied that even the cumulative weight of the matters raised by the Prosecutors had established the required grounds and, given the manner in which the Court dealt with several of them, that is hardly surprising. Indeed the Court held that even if they had been so satisfied, they would have nonetheless not have made the orders sought since, at the most, all that would have been raised would have been *grounds for concern* in relation to circumstances that had not arisen and might never arise.

102. It is trite that as time passes between an event such as the January 2003 fires and the conclusion of an investigation into that event, public interest in the outcome of that investigation begins to wane. This problem is exacerbated if, during the period of any delay, there is no evidence being adduced or other developments that help to keep the investigation in the public eye. A long delay in finalising the investigation process will inevitably mean that there is less public interest in the outcome and, accordingly, less public and political will to act upon any findings and recommendations resulting from the investigation process. In this way, a delay of the kind resulting from the applications in this case, can materially diminish or defeat the fundamental purpose of the Coronial investigation process, regardless of the outcome of the application.

103. The substantial interruption to the progress of this Inquest by these proceedings to which we refer, presented by senior counsel briefed only for the purpose of conducting the application,

and which were substantially based on grounds which in the opinion of the Court clearly could not establish the required grounds for apprehended bias, should not be permitted to be repeated in other inquests or inquiries except in the most unusual or extreme case. In our submission, this case was not such a situation.

104. In the circumstances, we urge Your Honour to recommend to the Attorney-General that the Act be amended to provide (in effect) that:
- a. no application likely to result in a material delay to the commencement or continuation of an inquest or inquiry under that Act can be brought except by leave of the Coroner conducting the inquest or inquiry, or the Supreme Court;
 - b. such leave will be granted only if the Coroner or the Supreme Court (as the case may be) is satisfied that:
 - i. the application raises a serious question to be tried; and
 - ii. deferring the hearing and determination of the application until after the Coroner has served any notices under s55 of the Act and/or delivered findings, will result in real and substantial prejudice to the applicant, which outweighs the prejudice likely to result from a delay of the inquest or inquiry.

1.2.10 RELEVANCE OF FUEL MANAGEMENT

105. In view of the fact that the issue of fuel management was raised by the ACT Supreme Court in *R v Doogan*, in our submission, it is appropriate to identify the context in which we include reference to it in these submissions.

106. Their Honours referred to the issue in the following terms on the question of the jurisdiction of a Coroner in the circumstance now confronting Your Honour and said^[138]:

To take but one example, it may be thought that the thickness of the vegetation at the site where the fire commenced had some causal relevance and, if the first respondent came to that view, then she would clearly be entitled to make a finding to that effect. However, that observation may evoke other questions. Why was the vegetation in that state? Was there some failure on the part of a government agency to detect its growth and embark upon fuel reduction measures? If so, was this attributable to lack of resources, public policy related to conservation of the natural environment and/or other considerations? The answers to those questions could, in turn, evoke yet others. How much does the ACT Government spend on the construction of fire breaks and other fuel reduction measures in and around Canberra? Is that amount of money appropriate having regard to the Government's competing responsibilities such as those relating to the provision of adequate funds for education, public health facilities and law and order? As a matter of public policy, has an appropriate balance been struck between the need to protect housing on the fringes of Canberra and the need to ensure that the surrounding bushland is maintained in its natural state? If not, is that because the legislature has been misled as to the relative importance of wilderness areas?

Even further questions could be asked. Should people have been permitted to build houses in the areas in question? Should the New South Wales Government have taken measures to prevent fires spreading from forest or bushland into the Territory? Should the ACT building code have required houses constructed in those areas to incorporate various features designed to ameliorate the danger posed by potential bushfires? Should fire crews have been deployed in one suburb in preference to another? Did some occupants contribute to the danger and/or the damage by failing to remove flammable materials from their yards?

Each of these questions could, of course, lead to yet others and, ultimately to a virtually infinite chain of causation. Yet the scope for judicial inquiry pursuant to s 18(1) must be limited. Whilst none of these suggested issues could be said to be irrelevant, they are somewhat remote from the concept of the cause and origin of the fire, and any adequate investigation of them would involve not only substantial time and expense, but also delving into areas of public policy that are properly the prerogative of an elected government rather than a coroner or, indeed, any other judicial officer.

Section 18(1) does not authorise the coroner to conduct a wide-ranging inquiry akin to that of a Royal Commission, with a view to exploring any suggestion of a causal link, however tenuous, between some act, omission or circumstance and the cause or non-mitigation of the fire. (emphasis added)

107. It will be apparent from the conduct of the proceedings that, ultimately, no exhaustive analysis was conducted, presented and cross examined about concerning fuel management. The outline of the evidence and these submissions will not go beyond the first two levels to which the Court referred and which are emphasised above – the fuel loads that were actually in evidence at the time of the commencement of the fires on 8 January 2003 and the fact that several witnesses including experts and personnel from ESB had, putting it broadly, expressed concern that fuel reduction burning had not occurred to the level where a benefit would be obtained in the event of a serious conflagration as occurred on and shortly before 18 January 2003. Such evidence, in our submission, is well within the test of the concept of cause and origin of the fire to which the Court referred in its discussion of s18(1) of the Act.

108. Further, findings about those matters will provide a proper jurisdictional foundation for any comments and recommendations Your Honour is minded to make on fuel management practices in place at the time of the fires and how those practices might be improved for the future.

CHAPTER 2 CONDITIONS LEADING UP TO THE FIRES

2.1 HISTORY OF FIRES AND FIRE RISK IN THE ACT

109. The purpose of this section of the narrative is to summarise the evidence about the history of fires and fire risk in the ACT, largely because much of that history (or at least the lessons of that history) were known to key senior officers at the ESB and can be assumed to have formed part of their thinking and decision making as the threat from these fires increased. It also provides some illustrations of how the threat from these fires might have been approached in years gone and thus offers practical examples of what might have been done differently by those managing the fires in January 2003.

2.1.1 HISTORICAL FIRES

2.1.1.1 *Rural Fire Control Manual*

110. At the time of the fires, the Bush Fire Council constituted under the *Bush Fire Act* 1936 was required by that Act to: *in writing, prepare a Rural Fire Control Manual containing particulars of all aspects of the operation and organisation of the [Rural Firefighting Service]*^[139]. The *Bush Fire Act* also contained provisions governing the matters to be included in the Rural Fire Control Manual and the process for approval of the Manual. The Rural Fire Control Manual in force at the time of the fires was the Rural Fire Control Manual of July 1992, a detailed extract from which appears at the commencement of these submissions^[140]. The Rural Fire Control Manual governed all aspects of the organisation and structure of the ACT's Rural Firefighting Service, including administration, organisational structure, infrastructure and equipment, safety, training, fire protection, fire control and incident management.

111. The extract of the Rural Fire Control Manual appearing at the commencement of the submissions, found in s.2.7 of the Manual and headed *Characteristics of Fire and Fire Weather in the ACT*, is notable in the context of these fires in a number of respects. In particular:

- a. it identifies precisely the weather pattern confronted on 17 and 18 January 2003, including the fact that *the most serious weather occurs just after a high pressure system has moved out in the Tasman Sea and a cold front is approaching across Victoria and southern NSW. Strong north-westerly winds often precede the front and as they are generated from dry air from the interior of Australia they may be extremely dry and very hot.* Later in the extract, there is a direct reference to this weather pattern occurring *roughly on a 7 day interval* during a severe summer;
- b. it includes a reference to the speed of travel of fires under extreme conditions and the amount that may be burnt in 8 hours: *Under the worst recorded conditions grass fires can travel up to 18 to 20km per hour and fires more than 60km away may threaten the ACT. An area of more than 60,000 hectares may be burnt in 8 hours and if only two or three fires break out at the same time it is possible for them to burn most of the ACT. Also it must be remembered that fires starting within the ACT under these conditions have the potential to burn through to the south coast.* In relation to the capacity of the firefighting authorities to have any impact on wildfires travelling under these conditions, the Manual notes: *it is important that we recognise that, under these*

extreme fire weather conditions, which may occur every 5 years or so, it is impossible for any fire suppression organisation to control the fire if it is burning in abundant fuels... If a fire burns from some distance away and enters the ACT in a broad front then the fire suppression forces available in both rural and fire brigade services will be overwhelmed,

- c. it acknowledges that *much can be done with early detection and rapid initial attack;*
- d. it confirms the importance of a well informed community in preventing fire spread and saving lives. *Prevention of loss of life and damage to property can be undertaken only by individual home-owners. Thus, it is vitally important for the ACT Bush Fire Council to promote a sound understanding of fire spread and what can be done under severe conditions to protect life and property and extend this to individual home-owners through the volunteer bushfire brigade movement;*
- e. finally, it refers to a number of historical fires to support the assertion that *the potential weather to create widespread havoc within the suburban area has existed and there are adequate examples in history to indicate the potential for a bushfire disaster.* Among other things, it identifies that in 1939, fires burning west of the Brindabella Ranges in the Mountain Creek and Flea Creek catchments (that is, burning in areas very similar to the areas affected by the McIntyre's Hut and Bendora fires in January 2003), *rained fire brands on Capital Hill, now the site of Parliament House.*

112. Mr Lucas-Smith was asked in re-examination some questions concerning emergency planning in the ACT and, in particular, the decision of the Emergency Management Committee not to have a bushfire management plan. In the course of explaining why there was no bushfire management plan, Mr Lucas-Smith noted: *From the bushfire side of things, what we had was a Bush Fire Act which described the powers and responsibilities for fire suppression in the ACT and also required the production of a rural fire control manual which outlined the structure and processes in relation to rural firefighting in the ACT. So we were already well on our way, I suppose, in a sense, to having a full operational plan.*[\[141\]](#)

113. Mr McRae said in evidence that he was familiar with the Rural Fire Control Manual. He broadly agreed with s.2.7 of the Manual headed *Characteristics of Fire and Fire Weather in the ACT* but disagreed with some of the content. In the section dealing with the speed fires can travel and the area that may be burnt in eight hours, Mr McRae thought that there was a *confounding in that material of grass fires and forest fires which have different characteristics.* He expressed the view that: *perhaps it needs to have the distinction between grass fires and forest fires fleshed out,* but went on to say: *But it is not to say I disagree with it*[\[142\]](#). Later Mr McRae described some of the concepts referred to in the document as simplified but, *if you accept the simplification, I agree with what is in the document.* It was suggested to Mr McRae that: *the message that this is trying to convey is it is important not to underestimate the potential of fires taking hold in the ACT,* to which Mr McRae responded: *Totally agree.* He also agreed with the reference to fire suppression forces being overwhelmed if a fire enters the ACT in a broad front[\[143\]](#). Mr McRae also accepted that the potential was there for fires to create *widespread havoc within the suburban area*[\[144\]](#). In relation to the 1939 fires *raining fire brands on Capital Hill* Mr McRae commented that the spotting distance achieved from that fire was *near an*

Australian record to my understanding, but considered that the expression raining fire brands was overstating what occurred, to the extent that it was referring to long distance spotting.

114. In the context of discussing spotting distances, Mr McRae noted that: *You will get burnt leaves falling out. That's quite a common thing near large bushfires. Burnt leaves, black but cold, they are not fire brands. Raining fire brands sounds very unusual to me. Usually if they occur they will occur in small numbers*[\[145\]](#). This is an important distinction to have been drawn by Mr McRae, having regard to the Media Update issued by the ESB at 15:45 on 17 January 2003 and Mr Nicholson's comment that the reference in that Media Update to *ash and burnt material* (emphasis added) was *otherwise known as spotting* and was providing information about *embers and burning material*[\[146\]](#).
115. Mr Graham confirmed that the Rural Fire Control Manual still governed the operations of the ACT Bushfire Service as at January 2003. Parts of the section extracted at the commencement of the submissions were read to Mr Graham during his evidence. Asked if he was familiar with the statements in that section, he responded: *To the point that I have read the Rural Fire Control Manual through, yes. But I haven't read it for some time, so I wouldn't necessarily agree with all of those particular passages.* He was aware as at January 2003 that under the extreme conditions that were prevailing at that time, the Rural Fire Control Manual did refer to the sorts of calamities that may arise. However, he could not recall reading that an area of more than 60,000 hectares may be burnt in 8 hours, *and it is certainly not something I have ever experienced.* He said that he did not believe that he had read numbers like that in any other document but did not disagree with it. Mr Graham also confirmed that he was not conscious at the time of the fires that during a severe summer *a cold change occurs roughly on a 7 day interval.*[\[147\]](#)

2.1.1.2 Early Fires

116. During his evidence in the first phase of the Inquest, Mr Cheney provided a brief summary, supported by a PowerPoint presentation, of fires in and near the ACT between 1920 and 2001. At least three of the early fires referred to by Mr Cheney in his evidence were discussed by Mr Lucas-Smith during his briefing of the ACT Fire Brigade and ACT Ambulance Service on 16 January 2001, in the context of discussing the potential of the January 2003 fires.[\[148\]](#)
117. In relation to the 1939 fire, Mr Cheney confirmed that: *...the fire came from north of Wee Jasper and burnt into this area, which is called Mountain Creek and finally burnt out and stopped through the pine plantations in Uriarra and stopped when it came out to the grassland and the Murrumbidgee River... This was a similar drought situation, except that the fire control people had the benefit of rabbits and those pastures were really completely eaten out and almost bare, and so there was very little burning in grassland areas of the ACT, although spot fires... landed in Civic Centre... and also on Capital Hill... plus other spots which were in the grassland in the vicinity of Mt Stromlo*[\[149\]](#). In discussing the fire known as the Royalla fire that commenced on 13 January 1939, Mr Cheney explained that the shape of the fire could only be created because the areas in the middle of the fire that were unburnt, *have been burnt 1 or 2 years before... The shape of that fire and many fires in high country up to 1939 and before were constrained by the degree of burning by graziers and other people in the intervening period*[\[150\]](#).

118. In relation to the 1952 fires, Mr Cheney explained that these were two fires that started in January and February of that year. He referred to the second of these fires as the *Stromlo fire* and described that it *occurred from lightning in February... and burnt through the grassland up over Mt Stromlo and didn't go much further than Narrabundah Hill and the present location of Duffy, which at that stage was open farmland. Again, it was controlled once it came out of the forest and into the grassland*[\[151\]](#).
119. Mr Cheney included in his PowerPoint presentation maps of a fire in the Tumut Valley between 3 and 13 March 1965. This fire occurred in weather conditions similar to those experienced in Canberra in January 2003. *It had similarities to the fire problems that authorities were faced with this season. It started in the Tumut ravine ...under very high fire danger conditions, made a brief run down to the south and then a run up...towards the east. They had 3 days in which to try and contain it before there was an extreme weather forecast and they had set out to establish control lines... and they were unable to complete that within the 3 days that they had*[\[152\]](#). Mr Cheney described that when these fires made their major runs on 6 March, *they had basically 1 day spread distances of between 30 and 40km*[\[153\]](#).

2.1.1.3 Pago Fire

120. Mr Cheney included in his PowerPoint presentation and evidence on historical fires a more detailed description of a fire known as the Pago fire that started on 21 December 1972, *in a similar location to the Bendora fire. It started off Warks Road...on a south-easterly aspect and it started in a forest with 1926 alpine ash and it burnt under somewhat more severe conditions.* Mr Cheney explained that he, *wanted to include this fire because in some respects it reflects some operation and cultural changes that have happened in the last 30 years.* Mr Cheney later explained that at that stage ACT Forests were responsible for the fire, under the direction of Tony Fernside, who was the CFCO at that time. Mr Cheney was at the time involved in fire research and attended the fire as part of the ACT's firefighting force. [\[154\]](#)
121. Mr Cheney began his presentation on the Pago fire by demonstrating that the weather conditions at Canberra airport were very similar to the weather conditions on 8 January 2003, *35 degrees Celsius, 15% humidity, with a wind speed of 32 kilometres an hour, which gave us a Forest Fire Danger Index just going into the extreme range, with a drought index of 103. I think it was 104 on 8 January.* Although it was earlier in the year, Mr Cheney explained that there had been *a hot spring and a short intense drying period. I don't think the real levels of drought were as bad on this fire as they were in this year, although the index is about the same in Canberra*[\[155\]](#). The ignition was followed by 2 days of very high to extreme fire danger[\[156\]](#).
122. The fire was detected at 15:07 hours and probably started a little before 15:00 hours. Initial attack was a single light unit that came in at approximately 15:30 hours and it failed. Bulldozers and support tankers were brought in at 18:00 hours. *They used a ...variety of suppression actions. Direct attack with bulldozers on the western and eastern flanks, some burning out from roads and fire lines, mostly after midnight when the actual positions of the fire was known and some lines had been constructed. I think importantly it was contained by 09:00 hours and then patrolled for the following 3 weeks*[\[157\]](#). Mr Cheney's PowerPoint presentation also referred to the construction of a hand tool control line along the south-eastern flank. Mr Cheney included in his PowerPoint presentation some photographs demonstrating the intensity of the fire.

123. Mr Cheney summarised his evidence on the Pago Fire in the following terms: *So in summary, this was a fire that started in alpine ash forests. The fuels were up to 40 tonnes per hectare...Controlled overnight by combined attack with bulldozers, tankers, hand tool attack and burning out and held for periods of very high to extreme fire danger. I'd just like to add that the direction of the fire attack was held by two very competent forestry foremen...and really their knowledge of the country and knowledge of tracks and access and what could be done with bulldozers was fairly critical and the crews being able to bring that under control. And they had a very experienced bulldozer operator, who was on the job and really didn't need instruction about how to build line around fires.*[\[158\]](#)

2.1.1.4 Fires in Neighbouring Jurisdictions

124. In his report, Mr Nicholson suggests that: *No doubt ESB senior managers were learning from the wildfire experiences of the Australian States and keeping abreast of developments in capability to deal with wildfire risk, then making budget requests to government [for] improved capability. Unfortunately, as an incentive to government to allocate funds necessary to grow the agency to meet its evolving responsibilities and take advantage of new developments in mitigating the wildfire threat, the ACT Bushfire Service had been too effective in protecting Canberra from wildfire. Unlike Victoria, New South Wales and South Australia, the ACT had not experienced a "watershed" fire until January 2003. "Watershed" fires shock governments into fiscal largesse and the allocation of funds to upgrade firefighting equipment and implement new programs*[\[159\]](#). Mr Roche didn't agree with Mr Nicholson's view that the ACT had not experienced a *watershed* fire. *I think the ACT had previously experienced significant fires, including 2001 and before that, that should have provided a catalyst for a whole range of changes; and I am certain that in fact it did.* Mr Roche agreed that it was the combination of circumstances leading to a fire season as much as the fire itself that should affect the provision of resources for firefighting[\[160\]](#).

125. Mr Nicholson was asked whether the December 2001 fire was a *watershed* fire. He responded: *Not really. I consider a watershed fire to be a turning or a defining event. My experience in other places is that a watershed fire, a defining, turning event has been where there has been loss of life, and maybe not just one life but significant loss of life*[\[161\]](#). In a different context, however, when Mr Nicholson was being asked about whether the ACT community should have been alerted to the dangers of the fires getting away by media reports on 17 January, Mr Nicholson commented: *I think if you live in an environment, you are conscious of what goes on around you, and I think the people of Canberra/ACT had the advantage of major fires, the most recent in the Sydney region with fires burning into the back of Lane Cove – quite graphic television – fires in other parts of Australia, that it should have been a trigger. I don't know that it needs to be spelt out chapter and verse. It should be a trigger, "Hey, there's something going on here." There should be some linkage with the bushfire education material that has been distributed*[\[162\]](#).

126. Later in his evidence, Mr Nicholson was taken to the article written by him in the magazine *Fire Australia* in May 2002 entitled *Bushfire Shock and Awe – Will We Ever Learn?* Referring to (among other things) the January 2003 fires in Canberra. In that article, Mr Nicholson states: *And what of the average citizen? Probably the majority of Canberrans prior to the fires in early January 2003 at risk from bushfire where the country meets the urban areas? From the extensive and sometimes graphic television coverage of the run of the fires into Duffy and other suburbs, newspaper photographs and discussions with people with homes directly involved, it seems most people had not given any thought to how a bushfire might affect them,*

particularly those residents abutting the open space surrounding and within greater Canberra[\[163\]](#). In evidence, after drawing attention to two other paragraphs of the article, Mr Nicholson said: *It is just a sad fact of life that until people are subjected to what I have called “a watersbed event” or directly impacted, that they tend not to take notice. That is human nature. That is very sad, actually*[\[164\]](#).

2.1.2 THE 2001 FIRES

127. The fires that started to the west and north-west of urban Canberra on 24 December 2001 constituted the largest wildfire event faced by the ACT emergency authorities since their restructuring in 1995[\[165\]](#). The Stromlo fire burnt 1240 hectares, including 510 hectares of plantation in two days, while burning under conditions of very strong west north-west winds. A further 111 hectares was burnt in the Huntly fire. As the report by Mr Bartlett into these fires shows, the features exhibited by these fires included frequent spotting over control lines by distances in excess of one kilometre, rapid spread (including a rate of spread of 2.5 km/h in the Stromlo Plantation) and difficulties in containment[\[166\]](#). The fires of January 2003 exhibited similar features, although on a more dramatic scale. The 2001 fires were contained by the end of the second day, having in some places burnt up to the urban fringe. It is notable that containment was assisted by a burning-out operation successfully completed on the first night of the fires[\[167\]](#). There were no significant injuries and no significant damage to built assets.
128. In his discussion and recommendations[\[168\]](#), Mr Bartlett emphasised the importance of quick deployment of the Incident Management Team following the outbreak of fire and that *sufficient resources need to be provided to ensure that the Planning and Logistics Sections operate effectively at the fire control headquarters*. He recommends that these sections *must be adequately staffed on a two shift basis*. Similar issues were discussed as part of a Bushfire Operation Strategic Debrief for Senior Officials into the fires on 16 January 2002[\[169\]](#). Mr Bartlett also observed that: *When a forest fire is burning under the weather conditions that prevailed on 24 December it is impossible to halt the forward spread of the fire. The Tuggeranong Parkway which might have operated as a major north south firebreak was no barrier to the progress of the fire*[\[170\]](#).
129. The fires of December 2001 have been the subject of a separate inquest, and it is neither necessary nor appropriate to traverse to ground already covered in that inquest. However, those fires form part of the relevant background to the subject matter of this Inquest in three respects:
- a. First, they prompted a re-think of the approach to fuel management in the ACT resulting in a revision of the draft of the 2002-2004 Bushfire Fuel Management Plan then in the course of preparation. Importantly, this revision saw a move towards broad-scale fuel reduction burning in forested areas, an approach that had been strongly advocated by a number of experts over a long period, as discussed below[\[171\]](#). However, little could realistically have been done to commence the implementation of planned broad-scale fuel reduction before the January 2003 fires. The result was that, apart from areas affected by the 2001 fires and some additional prescribed burning by ACT Forests under the direction of Mr Bartlett prompted by the experience of the 2001 fires[\[172\]](#), as at January 2003 fuel loads in the Namadgi National Park to the west of Canberra were at maximum or “equilibrium” levels[\[173\]](#).

- b. Secondly, the area burnt by the fires had prevented the spread of the January 2003 fires northwards through Black Mountain and around Government House and Yarralumla. Mr Cheney considered that, in the absence of the 2001 fires, the 2003 fires would have burnt on to Black Mountain but probably not much further than Aranda to the north: *...but if it had burnt on to Black Mountain when the winds shifted from north-west to westerly, that would have had a similar impact on O'Conner as it did on Duffy. It may have been a bit less because it would have been an hour or two later in the day but I suspect not much*^[174].
- c. Thirdly, the circumstances of the 2001 fires appear to have led to a perception on the part of some involved in combating the January 2003 fires that, as in 2001, the 2003 fires could be halted at the urban fringe^[175]. This is despite the fact that, as discussed below, the conditions in January 2003 (particularly those forecast for Saturday 18 January) were known to be significantly worse than in December 2001. In an article in the Canberra Times on 29 November 2002, Mr Lucas-Smith is quoted as describing the fires experienced in December 2001 as *probably only an entrée to what's potentially going to occur this year*^[176]. Mr McRae broadly agreed with this assessment^[177]. Further, in the period after December 2001 fires up and including the afternoon of 15 January 2003, Mr McRae repeatedly warned senior ESB officers of the severity of conditions, even when compared to earlier bad seasons: *The fires last Christmas pushed ESB and many agencies of Government to their limits. And yet these fires occurred under Fire Danger Indices in the high 30s. An El Nino drought with strong winds would push Fire Dangers over 100*^[178]. On Saturday 18 January 2003, the forest fire danger index at Canberra Airport reached 102^[179].

2.2 FUEL MANAGEMENT AND FUEL LOADS

130. The purpose of this section of the narrative is not to examine and comment on policy decisions and other matters that may have resulted in the fuel management regime at the time of the fires. Rather it is to summarise the evidence that shows what that regime was and the state of the fuel loads that existed at the time of the fires as a consequence of that regime. It also confirms what the senior officers at the ESB knew about the those issues which, once again, can be assumed to have been part of their thinking and decision making from the moment they became aware that the fires had started.

2.2.1 THE HISTORY OF FUEL MANAGEMENT IN THE ACT

2.2.1.1 *The Cheney Fuel Management Report*

131. The history of the management of forest and grass fuels in the ACT is conveniently summarised Mr Cheney's report on Fuel Management in the ACT prepared for the Coroner. Omitting footnotes, Mr Cheney's summary is as follows:

Since settlement basic fuel reduction in both forest and pastoral lands has reduced the impact of bushfires. There are few official records of deliberate burning-off, but oral histories suggest that burning-off in the Cotter catchment was extensive between 1926 and 1945 and low-intensity fires in the spring of 1938 reduced the impact of the 1939 fires and crash grazing (grazing pastures until they are eaten out) was common around homesteads on the rural leases until the 1970's.

Broad-area prescribed burning under specified weather was introduced in the 1960's by Alan McArthur who developed the first prescribed burning guide after conducting experimental fires in dry forests at Kowen and on Black Mountain. The first trials were carried on the foothills of Black Mountain (between the current location of Bruce Stadium and Aranda) and in the headwaters of Blundells and Lees Creek between Piccadilly Circus and Bulls Head. The first prescribed burn ignited from aircraft in eastern Australia was conducted in the Flea Creek catchment in 1967.

Broad-area burning was conducted on the bushfire lease area during the late sixties and seventies but after 1985 an active hazard reduction burning program has not been pursued because the fuel loads were not considered to be heavy in areas adjacent to assets. After 20 years fuels in most forest types would be approaching their equilibrium levels.

Within the ACT, the last major burning in forest areas was 118 hectares on the western slopes of Mount Tennent. Apart from the burning of debris after harvesting pine plantations fuel reduction by burning was generally less than a few hectares and focused around the assets within the reserves.

Since 1990 fuel management has focused on the urban interface and planned at the micro scale (and in my opinion managed to the micro scale as well) (2002 – 2004 ACT Bushfire Fuel Management Plan). The primary focus was fuel management to protect assets of value (with some notable exceptions such as the Stromlo Observatory) both on the urban fringe and within the areas managed by government land management agencies. My review of the draft 2002 – 2004 Bushfire Fuel Management Plan pointed out the lack of broad-scale fuel management programs particularly in areas managed by ACT Forests and Environment ACT. In my opinion, the condition of the fuels adjacent to the urban areas of the ACT, setback distances from forest vegetation and the compact nature of ACT urban development provided Canberra with the safest interface of any city within the equivalent or higher rainfall zone anywhere in Australia. Other fire experts agree.

The fact that bushfire burnt into the urban area under extreme conditions did not reflect a failure of fuel management on the urban interface but rather a failure of fuel management in the forest areas. Heavy fuels hindered suppression efforts early in the fire development and contributed to the fires burning a large area before the onset of extreme fire weather that drove them into Canberra. While not reducing the effort on the urban edge fuel management is required in the forests to assist suppressing fires at an early stage.[\[180\]](#)

132. Mr Cheney's summary is broadly consistent with the fuel management documents identified and summarised during the first phase of the inquest[\[181\]](#) and with the McLeod Report[\[182\]](#). The latter also makes reference to the establishment of the Task Force on Bushfire Fuel Management Practices chaired by Mr Graham Glenn AO, to identify possible inadequacies in the then current bushfire fuel management approach: *The Task Force's principal recommendation called on government land managers to produce bushfire fuel management plans for the land over which they had control and specified that these plans should be submitted to and approved by a Bushfire Fuel Management Committee*[\[183\]](#).

2.2.1.2 *The McBeth Report*

133. The work of the Task Force was preceded by a review into the fire hazard reduction practises of the ACT Government with particular emphasis on the role and functions performed by the (then) ACT Parks & Conservation Service. That review was undertaken by Mr HR

McBeth who notes in his report of the review that he was to: *provide an expert opinion on the capacity of the activities undertaken by the Service to modify the impact of bushfires (either including deliberate, accidental and natural ignitions) on the urban interface with lands under its management.*[\[184\]](#) Both the report by Mr McBeth and the work the Task Force chaired by Mr Glenn were prompted by: *a difficult bushfire season in New South Wales in 1993-94 including a number of fires in the ACT that threatened property, one of which caused minor property damage in Curtin*[\[185\]](#).

134. The report by Mr McBeth is notable not only because he is critical of the lack of fuel management planning and practices in place in the ACT at the time of his report[\[186\]](#), but also identifies in unequivocal terms the inevitability of what he describes as a *conflagration fire disaster* in the ACT and on its urban rural interface:

The “Bush Capital” Canberra populous as a whole migrated to the Capital with its industry or enterprise base being predominantly Government Administration and Ancillary Services. The vast majority of these people came from other urban communities with no tradition, experience or understanding of living in the bush or with successive bushfires...Although major fires swept across the ACT “Bush Capital” in 1936 and again in 1952, Canberrans have not been subjected to the ravages and trauma of events like Hobart 1967, Ash Wednesday 1 1981 in South Australia; the deaths and mutilation of fire fighters in the Royal National Park, Sydney, 1983 or the 1983 Bushfire Disasters in Victoria and South Australia.

Culturally, socially, politically and departmentally the ACT community is and has been lulled into a sense of false security with regard to the ravages of bushfire.

If the existing Government Statutes Departmental Structures, Reporting Relationships and Programming of Wildfire Mitigation Works continue as currently structured, it is inevitable that significant loss of assets will accrue together with loss of life during the next single, multiple or configuration fire event.

The urban rural interface will obviously bear the brunt of such losses.

The author stresses a set of climatic conditions will eventuate producing “fire weather” conditions of such an intensity that such losses will occur.

It is not if such a disaster will occur, but when[\[187\]](#).

135. According to Mr McBeth, to reduce the impact of the type of fire that he predicted would occur in the ACT resulting in loss of life and significant property damage: *individuals, families, street communities and government agencies as a whole must manage the only manageable component of fire physics [namely, fuel loads] in a collective cooperative manner*[\[188\]](#).

136. Mr McBeth attached to his report a document by Mr Cheney, commenting on the report by the Hannon Group Pty Ltd on the ACT Fire and Emergency Services in September 1991. Although this document is concerned primarily with the then proposed restructuring of the ACT Emergency Services, it includes observations similar to those by Mr McBeth: *The fundamental basis for disaster management, which includes bushfires in Australia, is to carry out an analysis of the worst case scenario. Our knowledge of fire behaviour and fire weather is adequate to realistically put a worst case scenario to*

the people of the ACT and perhaps to estimate a frequency of occurrence and to estimate the damage which is done...My estimate is that a 1-50-year conflagration fire will burn a total area of around 60,000 hectares in 1 day and severely damage suburban dwellings where they are adjacent to forests, hill parks and nature reserves. Under this scenario the firefighting 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 fire starting in their gardens and dwellings.[\[189\]](#)

137. In evidence, Mr McBeth was asked whether any requests were made by anyone during the time of his investigations in 1994 in relation to attempts to improve the fuel reduction regime. His evidence was that the only people that he could recall who had the level of anxiety about the issue that he thought appropriate, were Mr Lucas-Smith and Mr McRae[\[190\]](#).

2.2.1.3 Mr McRae's "Phoenix Imperative"

138. This same concern is reflected in the document prepared by Mr McRae in February 2002 entitled *The Phoenix Imperative Some Thoughts on the Namadgi Fire Age Bottleneck* and the evidence of each of Mr Lucas-Smith and Mr McRae concerning the issues raised in that document[\[191\]](#). Mr McRae's document is introduced by the following warning: *In recent history Namadgi National Park has rarely carried fire, and when it did they were often very large wildfires – over 20,000ha. The park is in a vicious cycle – by keeping fire out most of the time, we are endorsing the occasional very large wildfire. However very large wildfires are the ones that are able to leave the reserve and damage property elsewhere. They are also the fires that can cause the most impact on biodiversity management goals.*[\[192\]](#)

139. In the course of promoting an active fire management programme, Mr McRae made a number of remarks in the document concerning the fuel loads then existing in the Namadgi National Park and the consequences of a fire starting in the park: *Namadgi National Park covers a large fraction of the ACT, and is the area in which extensive landscape fires are most likely to occur. While there are few valued (non-environmental) assets within the Park, the exception being the water supply catchment, its neighbours could suffer large losses from fires leaving the Park*

For most of the Twentieth Century the area suffered very large wildfires every decade on average. The legacy of these was that its fire age distribution was concentrated in a few large clusters. However there has been no large fires in 20 years now, and basically the entire area is now at or near equilibrium – ie. maximum-fuel loads. Only around 20ha out of 120,000 would be fuel reduced in any way.

The potential for a drought to occur shortly as a new El Nino forms in the Pacific Ocean raises the spectre of the highland fuels in the Park becoming flammable. Should they be ignited, then a fire could easily become a landscape fire if the FDI is high enough. Difficult access makes rapid suppression harder than elsewhere in the Territory.

[\[193\]](#)

140. Mr McRae broadly recommended a fuel reduction programme by burning areas of the Namadgi National Park in rotation to achieve a "fire age spectrum" where roughly 20% of the Park will have been burned in the last 0-10 years, a further 20% in the last 10-20 years, 30% in the 20-50 year age class and the remaining 30% over 50 years. Mr McRae notes that, when this

spectrum is achieved: *This also gives a high likelihood of a large head fire eventually reaching fuel-reduced ground, and becoming more controllable*[\[194\]](#). Thus, consistently with Mr Cheney's report to the Coroner[\[195\]](#), Mr McRae's document is promoting broad-area fuel reduction as distinct from fuel reduction burning targeted at particular assets[\[196\]](#), and reinforces that the purpose of fuel management is to assist in fire suppression.

141. In this regard, Mr Cheney identifies the aim of fuel management as being: *To alter the structure of the fuel bed and the load of the available fuel to make firefighting safer and easier*[\[197\]](#). Mr Cheney goes on to explain that: *Hazard reduction burning will reduce the total load of fine fuel and is also effective in reducing the height and flammability of elevated fine fuel such as shrubs and suspended dead material. Burning is the only practical way of reducing the fibrous bark on trees, which is the prime source of firebrands that cause spotting.*

Hazard reduction reduces fire behaviour by:

- *reducing the speed of growth of the fire from its ignition point;*
- *reducing the height of flames and rate of spread;*
- *reducing the spotting potential by reducing the number of firebrands and the distance they are carried down wind; and*
- *reducing the total heat output or intensity of the fire.*

Prescribed burning is not intended to stop forest fires, but it does reduce their intensity and this makes fire suppression safer and more efficient. Prescribed burning is not a panacea nor does it work in isolation. It must be used in conjunction with an efficient firefighting force[\[198\]](#).

2.2.2 THE STATE OF THE FUELS AT THE TIME OF THE FIRES

2.2.2.1 ACT

142. To the knowledge of at least Mr Lucas-Smith and Mr McRae, none of the potential advantages of broad-area fuel or hazard reduction burning described by Mr Cheney above were available to those tasked to fight the Bendora, Stockyard Spur and Mt Gingera fires, each of which burnt within the Namadgi National Park from 8 to 17 January 2003. Mr Lucas-Smith confirmed that there had been no rigorous burning programme as recommended by Mr McRae in his Phoenix Imperative document. The Bush Fire Council organised a field trip with the Land Management Agencies and the people responsible for the catchment, to go out on site and have a look at the fuel loads and talk about the issues in relation to Mr McRae's document and there was a *fair bit of discussion*. But there was still a need for more work to be done[\[199\]](#). Mr Lucas-Smith was a *little disappointed* that the land managers were not responding more proactively to the issues that had been raised. He had not seen any plans developing either through the Bushfire Fuel Management Committee or from the Land Management Agencies to start to address this issue of high fuel loads in a lot of the catchment areas of the ACT[\[200\]](#).

143. Mr McRae acknowledged that the risk had not been mitigated, but considered that the fact that nothing had been done by January 2003 to implement the burning program recommended by him in February 2002 was acceptable, because a lot of preparation was required[\[201\]](#).

144. Mr Bartlett gave detailed evidence concerning the fuel reduction works undertaken by ACT Forests during 2002. He noted that the 2000-2002 Fuel Management Plan is supposed to give

details of what ACT Forests needed to do in that plan period, but he found it confusing[202]. He nevertheless ensured that ACT Forests took some steps over and above what was in the plan. These are referred to in Mr Bartlett's evidence[203], and in his supplementary statement[204]. It is unclear what (if any) effect these works had in mitigating the spread and intensity of the fires after they burnt into plantation areas on 18 January 2003[205], but those works are not relevant to any consideration of fuel loads and consequential fire spread and intensity in native forest areas.

145. In this regard, Mr Bartlett noted in evidence that, from his time working on the fires, the fuel loads in the Bendora area were very heavy. He agreed that it would be reasonable to say that the fuel loads were heavy in all locations and that did have some impact on firefighting operations[206]. He would have said that fuel loads would have been generally in excess of 25 tonnes per hectare and in some places quite a bit more than that. According to Mr Bartlett, that is at the scale in eucalypt forest where the fuels become in *equilibrium* or *as high as it can get*[207].

2.2.2.2 *Brindabella National Park*

146. The state of the fuels in the Brindabella National Park under the control of the NSW National Parks and Wildlife Service and, more particularly, in the area of the National Park affected by the McIntyre's fire, is referred to in the joint submission from the NSW Rural Fire Service and the NSW Parks and Wildlife Service to the NSW Coronial hearing. The submission states: *In January 2001 an additional 6192ha was added to Brindabella National Park, including the section east of the Goodradigbee River, and a large area NE of Mt Coree. The majority of these additions had not been burnt for a long period, with areas along the Goodradigbee not subject to fire since 1972 and most of the area north-east of Mt Coree last burnt in the 1939 fires. **The site of the McIntyre's Hut ignition on 8 January 2003, the eastern edge of the Baldy Range ignition and the area where the fire broke containment lines on 17 January 2003 are all located within the area added to Brindabella National Park in January 2001.*** (emphasis in original) [208]
147. A chart later in the submission summarises estimated fuel loads in each of those areas at the time of the fires[209]. Notably, fuel loads at the McIntyre's ignition point are estimated at 10-14 tonnes per hectare and at the Baldy Range ignition point the estimate is 12-20 tonnes per hectare. This compares with fuel loads up to 30 tonnes per hectare estimated for the area of the Mountain Creek ignition points. The submission assesses whether a practicable and implemented program of block burning in the National Park would have had any impact on the development of a major fire event in the Park. It concludes that the likely impact would be minimal: *Table 2 compares the influence of fuel loads on rate of spread given the conditions prevailing at the McIntyre's Hut ignition on 8 January. It demonstrates that even if the surface fuel loads had been reduced from 14 to 4 tonnes/ha (which would require a higher intensity hazard reduction burn than would be desirable), the fire would have reached the top of Webb's Ridge about one hour later (ie at approximately 1830 hrs instead of 1730 hrs). Given the time required to travel from (sic) to the area, and the presence of other fires in the locality and the associated risk, this would have made no difference in the ability to put firefighters in front of the fire that night, nor the decision to go to an indirect containment strategy.*[210]

148. This accords with the evidence of (among others) Mr Cheney concerning the likely futility and risks associated with attempting to control the head of the fire at the Webb's Ridge track on the afternoon or evening of 8 January 2003[211]. However, the submission does not examine the likely impact of the alternative indirect containment strategy advocated by Mr Cheney that would have seen an early concentration of firefighting resources in the areas of lower fuel loads at Lowell's track near the site of the McIntyre's ignition point and on the Baldy Range, resulting in a significantly reduced burnout area[212].

2.3 ACT EMERGENCY SERVICES–STRUCTURE AND OPERATION

149. This section outlines briefly the structure and operation of the ESB, which is a necessary part of the factual matrix because it assists a proper understanding of the organisational dynamics operating at the time of the fires. It also identifies those particular aspects those operational dynamics that appeared to directly affect decision making on both the issues of initial response and warnings.

2.3.1 THE CREATION AND STRUCTURE OF THE ESB

150. Aspects of the history and structure of the ESB are conveniently summarised in a number of documents in evidence before the Inquest[213]. For the purposes of these submissions, it is necessary only to note that: *At the time of the January 2003 fires, with the exception of policing, emergency services in the ACT were provided by the ... ESB. Policing is and was provided by arrangement with the Australian Federal Police... The ESB was a government agency having the responsibility for emergency management and other support arrangements throughout the Territory...the ESB was an administrative unit within the Department of Justice & Community Safety, responsible to the Minister for Police and Emergency Services and comprised four emergency service response organisations, specifically the ACT Ambulance Service, the ACT Bushfire Service, the ACT Emergency Service and the ACT Fire Brigade. These operational services were supported by a corporate administration function comprising a number of units and four operational and administrative support units within the ESB. Within its corporate portfolio, amongst other matters, the ESB was responsible for public safety education, public safety information and community support relating to public safety and emergencies. The organisational structure of the ESB as at January 2003 is set out in a charter at page 6 of the ... McLeod Inquiry Report[214].*

151. There are five aspects of the ESB's structure and operational arrangements that, on the evidence, form part of the factual matrix informing the broader issues of initial response and warnings. These are:

- a. the Service Management Team concept;
- b. the position of the media unit in the organisation structure;
- c. the ESB headquarters as a control centre;
- d. the allocation of roles; and
- e. weight of response.

2.3.2 OPERATIONAL ARRANGEMENTS

2.3.2.1 AIIMS ICS

152. The Rural Fire Control Manual confirms that^[215], at least since the publication of that manual in July 1992, bushfire emergencies in the ACT have been managed in accordance with the Australian Inter-Service Incident Management System Incident Control System (“*AIIMS ICS*”)^[216]. In very broad terms, under that system, an incident is managed by the Incident Controller or IC. The principal responsibility of an Incident Controller under the system is set out in Mr Roche’s report^[217]. The role of the Incident Controller is supported by three subsidiary roles, namely planning, operations and logistics. As their name suggests, the Operations Officer is generally responsible for managing the response to the incident (in this case the fires). According to the Roche report, *during large incidents, the role of the Operations Officer shifts away from front line activity into appraising the performance of divisions and providing information to the IC. The Operations Officer’s time should be allocated to: crisis resolution; supporting Division Commanders; strategic planning, briefing the IC; and ensuring that communication systems are effective*^[218].
153. The Planning Officer is responsible for the collection, evaluation and dissemination of information about the incident, including information on the current and forecast situation. Under the AIIMS ICS structure, there are a number of units under the Planning Officer, including the situation unit which is engaged in the collection, analysis, processing of information and incident predictions and the Information Services Unit. In his report, Mr Roche notes that: *An Information Officer or Media Officers attached to the Information Services Unit will usually be the first point of contact for the media or other agencies to obtain information pertinent to the incident. The Information Services Unit is expected to develop strategies to manage the media, communicate across agencies and to government and to keep the community informed. For multi-agency incidents, only one Information Unit should be established with staff appointed by other responsible agencies integrated into the Situation Unit*^[219].
154. Finally, the logistics section is responsible for ensuring the required facilities, services and materials are readily available and adequate planning occurs in the areas of response, resource availability and staffing. It also has a number of sub-units ranging from air support to catering.

2.3.2.2 The Service Management Team

155. The system of incident management that had been adopted by the ESB at the time of the fires in January 2003 was described in evidence by Mr McRae as *a local variant of the AIIMS ICS system. In a lot of areas, local arrangements force some tweaking. It is our response to make ICS allow to fulfil the obligations under the Bush Fire Act*^[220]. In his statement, Mr McRae described the SMT as follows: *At that time, management of bushfires in the ACT used the concept of a Service Management Team to coordinate overall activity and to provide centralised roles. The SMT is organised and run in the same way as an IMT. SMT roles and responsibilities, and their linkages to IMTs were clearly defined in standard operating procedures then current. The SMT is housed in ESB headquarters while IMTs work in the field*^[221]. In evidence, Mr McRae identified the document he had referred to in his statement *standard operating procedures* was a document headed *The SMT Role in ICS*^[222].

156. The document referred to by Mr McRae defines the *SMT Role* in the following terms: *The SMT is the executive of the ACT BS, which has legal responsibility for all bushfire incidents outside the built up area, and includes the Chief Fire Control Officer (CFCO), DC [Duty Coordinator] and any other officer assigned to the SMT. The SMT is structured in the same way as the IMT, ie Controller, Operations Officer, Logistics Officer and Planning Officer. The SMT establishes policy, gives direction and allocates authority and resources to the IC. Given that the ACT is a small jurisdiction, it is not practical to duplicate certain functions.* The document then goes on to identify certain functions that *are only available through the SMT*, including certain specialised resources and fire weather forecasts. Under the heading *SMT Responsibilities*, the document provides that: *The SMT delegates to the IC the responsibility for effective management of the incident. In some circumstances this delegation may be in writing, but generally it is verbal.* The document provides that the Incident Controller has responsibility for incident objectives (in consultation with the SMT) and the strategy or strategies to achieve objectives. Notably, the SMT's responsibilities include: *Identify hazardous and adverse conditions that may compromise firefighter and community safety, monitor multi jurisdictional concerns, manage media participation, and monitor social and policy concerns*[\[223\]](#).

2.3.2.3 *The Implementation of the SMT Concept*

157. In his statement and evidence, Mr Bartlett referred to concerns held by him about the implementation of AIIMS ICS by ESB during the December 2001 fires and, according to Mr Bartlett, *some of the fundamental problems were still evident in the 2003 fires*[\[224\]](#). Mr Bartlett considered that: *On the basis of my experience, for ICS to be effective there is a strong need to have a close link between the planning and operational sections*[\[225\]](#). Mr Bartlett agreed that despite the importance of that close link, to his perception, there was anything but a close link between those sections during the 2001 fires, a problem that was still evident in the 2003 fires[\[226\]](#). Later in his evidence, while expressing the view that the planning and logistics needed to support operations in the management of an incident need to be located as close as possible to the fire, Mr Bartlett clarified that: *...in a number of cases in the ACT that could be at Curtin. It is not so much the location that is an issue; it is the management responsibility for those sections.* Mr Bartlett agreed that there is not a problem with planning being done at Curtin, provided the product of the planning is being disseminated effectively to the controllers in the field, *and also the input from the field people into the planning as well. It is a two-way process.* Mr Bartlett referred, in particular, to a problem of there being no clear plan for deploying resources, *that's why people were sitting around, until it was worked out as to where they were going to go.* According to Mr Bartlett, there was no routine incident planning process during the 2001 fires and there were similar problems in the 2003 fires[\[227\]](#).

158. Mr Bartlett also made specific reference in his evidence to the importance of control headquarters being adequately staffed on a two shift basis. *In order to develop the plans to deploy the people for the day shift, you have to have someone working during the night; and conversely the other way. The people on the day shift work during the day, and then the last task they do is hand over the plans for the night shift. So it needs to be a 24 hours a day operation.* In Mr Bartlett's view, the criteria for determining whether, for example, an overnight planning section should be operating is whether the fire is likely to continue beyond the first 24 hour period. *I mean, if people are going to be working on the second*

day then someone needs to plan during the first night what they are going to be doing. Mr Bartlett had a fairly strong conviction that the January 2003 fires were not going to be put out on the first day.[\[228\]](#)

159. More broadly, Mr Bartlett confirmed that he did not have a problem with the way the Service Management Team is described in the ESB document describing the SMT role in ICS. *But that wasn't the way it operated in 2003.* According to Mr Bartlett, the difference was that: *The document... indicates that there would be full incident management team set up for each incident, and that is certainly not what happened in 2003, and that the role of the Service Management Team would be more coordination rather than detailed operational planning for an incident.* Mr Bartlett considered that there was a real need for a full incident management team for the Bendora fire. *It needed the capacity to have a planning section that could develop the details of deployment for a particular day.* Mr Bartlett also referred in his statement and his evidence to a number of instances where Comcen was giving instructions directly to firefighting resources under Mr Bartlett's control and, in a number of cases, he had to override those calls from Comcen. [\[229\]](#)

160. In the context of discussing the concept of the SMT, Mr McRae gave evidence that he *certainly expected* that there would be a planning unit in the field, comprising a dedicated planning officer with, under them, dedicated officers in the situation unit and perhaps other elements of the planning cell, *if the situation required it*[\[230\]](#). Mr McRae agreed that by about 9 January the fires had developed to a stage warranting having someone in those roles. Mr McRae thought that some of those roles were being done in Curtin and some in the field but he did not have a good recollection of what was being done in the field, *because I was busy managing what was needed in Curtin.* Mr McRae did not know whether or not there was a dedicated planning unit operating in the field at any stage up until 18 January. He went on to say that: *It was never the intention that planning in Curtin would be doing all of the planning functions for all of the fires, but Mr McRae did not have a strong recollection of what the structure was in the field.* It was put to Mr McRae that, as the planning officer within the SMT with all the resources available to him, he would have been aware if there was someone fulfilling a discreet planning function in the field because he would have been communicating with that person. Mr McRae responded: *There was a problem with communications which prevented me from directly communicating with the Incident Management Team in the field... That was to do with the physical separation between the parts of our headquarters where the radio is and the part of the headquarters where the planning section had to operate*[\[231\]](#). Later in his evidence, Mr McRae referred to Mr Taylor travelling to the Bendora fire *as a representative of my section... He wasn't tasked to the Incident Controller in the field. He was tasked to me. ... As I say, his goal was to make sure the information was synchronised.* Mr McRae agreed that it was part of his role to support the incident controllers in the field[\[232\]](#).

161. Mr McRae would not agree that, in a general sense, the entire planning function in relation to the period from 8 to 18 January was being conducted under his supervision out of Curtin. According to Mr McRae, *all of our key officers are trained in ICS, and that includes trained to operate as planning officers... in the absence of a dedicated planning officer the incident controller does those functions.* Mr McRae assumed that the planning function was to some extent being carried out in the field and that the incident controllers in the field were responsible to ensure that planning function was being carried out adequately either by them as having absorbed all functions or by someone

dedicated to that task[233]. Mr McRae considered that responsibility for incident prediction to support strategies and tactics lay with the field controllers and incident prediction to support coordination lay in Curtin and was ultimately Mr McRae's responsibility[234]. Mr McRae later explained that he would expect a person in the field who is undertaking the planning function to be predicting for the current shift and the next shift[235].

162. Mr McRae also confirmed in evidence his view that the responsibility for completing incident action plans rested with the incident controllers in the field and any planning staff that they had identified or nominated. Mr McRae suspected that the problems encountered during the fires with the preparation and provision of incident action plans were *more fundamental to do with the training that was given to people beforehand and our inability to adequately exercise these roles*. Mr McRae agreed that, in hindsight, it was fairly clear that people did not properly understand the way in which the SMT structure was supposed to work[236]. In reference to the SMT document, it was put to Mr McRae that having an SMT with each of the functional roles filled at Curtin and, at least in a theoretical sense, having an incident controller in the field again with each of the functional roles under the incident controller being filled, *creates the very vice that this document is seeking to avoid; namely duplication*. Mr McRae responded: *With hindsight, we know it created a number of issues. We have put considerable effort into fixing them. We didn't anticipate these issues arising until we were in the middle of a large incident.*[237]

163. Mr Graham gave evidence that he would not necessarily agree that the SMT is a variation on the standard ICS structure. *We still had incident management teams and we had an incident controller; and each of the fires were allocated an incident controller and a number of people to make up their team. What we were doing back at Curtin was we were providing a strategic overview. We were providing them with the additional resources that they might require*. Mr Graham considered that the role of the SMT was similar to what the NSW Rural Fire Service do at their Rosehill headquarters[238]. However, Mr Graham agreed that, unlike the Incident Management Team managing the McIntyre's fire out of Queanbeyan which was a fully constituted Incident Management Team, the incident controllers in the field may from time to time have had someone fulfilling a role not unlike an operations officer but at no stage did the incident controllers have a planning officer working under them. Mr Graham noted that there were instances where people from the planning unit at Curtin went into the field to provide guidance, but he agreed that they were working under Mr McRae. Mr Graham agreed that in reality what the incident controller in the field was having to do in order to ensure that those other functions within the ICS structure were being fulfilled, was to refer back to Curtin and he accepted that that was a significant difference between what was operating at Queanbeyan and what was operating out in the field in respect to the ACT fires[239].

164. Mr Graham could not specifically recall a discussion with Mr Bartlett on 12 January during which Mr Bartlett raised concerns with Mr Graham about the lack of operational planning and support for operation staff at Bendora and the need for a forward control point in response to which Mr Graham provided some support staff, *but indicated that they would only be available to assist with crew changeovers and that the main planning function would continue to be undertaken in Curtin*. However, he agreed that it was consistent with his approach to the way in which the fire had been managed that he would say that to Mr Bartlett. He also agreed that the only planning

function was in Curtin. Mr Graham went on to accept that, although people in the field might have the title *Incident Controller*, in fact because they had no planning function supporting their role in the field and had to rely on Curtin for that, the reality was that they were fulfilling a role equivalent to a Division Commander under the ICS structure. [\[240\]](#)

165. Mr Graham also agreed in evidence that, while the tactics were being determined in the field, *in terms of the strategies, I would suggest it was probably a fairly equal mix of who was devising what. And certainly as the incident was escalating, the development of strategies were being done more in the field than back in Curtin.* On the other hand, Mr Graham agreed that there was very little being done in the field to take things beyond the next shift[\[241\]](#). Mr Graham also accepted that the role of officers in the field designated as incident controllers may have been made difficult by the fact that they had primary responsibility for a particular incident but effectively no planning or other support in the field[\[242\]](#).

166. In his report, Mr Roche noted that *the concept of the SMT is not unique to the ACT. Most firefighting agencies replicate the functions of an IMT at their corporate operations headquarters to ensure adequate support is provided to the IMT. It also needs to be recognised that the agency with prime responsibility for the incident will be required to ensure that senior officers of the organisation who have an executive management responsibility are kept informed and government is adequately advised of each situation. This is a function that should remain at the corporate headquarters. Where multiple events occur and multiple agencies are involved, it is likely that more than one IMT will be established. Under these circumstances the functions and activities of each IMT need to be coordinated and resource allocation prioritised. It is also prudent that media and public information is managed centrally to ensure that stakeholders receive the total picture rather than having to piece elements together*[\[243\]](#). However, Mr Roche goes on to express the view in his report that: *...when agencies operate using this framework, there must be clear and unambiguous delineation between what are the responsibilities of the headquarters team and those of the IMT. Although the concept of an SMT appears to have been well intentioned, I am firmly of the belief that the manner in which the concept was applied in January 2003 caused significantly confusion among personnel, poor planning and inadequate information to the community.* Mr Roche summarises and references in his report the evidence of witnesses suggesting that personnel assigned to key positions had conflicting opinions on the role of the incident controller in the field and the SMT at the ESB headquarters[\[244\]](#).

2.3.2.4 Management and Role of the Media Unit

167. Mr Castle confirmed in his evidence that: *...the media cell that was established is actually part of the planning function within the ICS system, so the planning – the media people that actually were obtaining information were part of the planning function.* He confirmed that the media unit was actually physically located in the same area as the planning unit[\[245\]](#). Mr McRae confirmed that under the ICS structure, the media unit sits within the planning cell but that, for the purposes of these fires, *the decision would appear to have been made by Mr Castle to treat the media along the lines specified in the media part of the ACT Emergency Plan, which is something that is a well-practised process. It is my understanding that's why Ms Harvey was brought in. What that required to mesh media into the Service Management Team structure was for Ms Harvey to be working to Mr Castle or Mr Lucas-Smith as required but in terms of locking the media unit into the ICS structure, is still to report to me. What that means is, if there is content of media*

material she works with Mr Lucas-Smith or Mr Castle. But if she needs to ask for a meal to be provided then she comes to me.

168. According to Mr McRae he did not have any responsibility during the period of the fires for media releases by the ESB. Asked if he could identify the individuals who did have responsibility for the content and issuing of media releases, Mr McRae gave evidence that: *In terms of content there is perhaps not an easy answer to that. We would discuss at planning meetings from time to time media information, and in that sense the whole team was having some input into media content. But after the planning meetings, it was my understanding that Ms Harvey and Mr Castle and perhaps others would go and do the wordsmithing to come up with a polished media release.* Mr McRae's evidence was that the person with responsibility to make the decision that information needed to go out to the public, whether in the form of a media release or some other form, *would be Mr Castle or perhaps Mr Lucas-Smith from time to time.* Mr McRae considered this arrangement *a very slight variation* on what is contemplated under the ICS structure[246].

169. Mr Prince and Ms Harvey also gave evidence that Ms Harvey reported to Mr Castle and Mr Lucas-Smith[247]. Ms Harvey confirmed that it was the responsibility of Mr Castle and Mr Lucas-Smith to make sure that, where a threat had been identified, people were notified of that threat. According to Ms Harvey, the people who were responsible for giving her the instruction to get a warning out to the community, were either or both of Mr Castle and Mr Lucas-Smith, *and possibly some of the other high level public servants who were involved at that stage and directing us what we needed to be doing.* The context of this evidence suggests that the *high level public servants* that Ms Harvey was referring to in this answer were Mr Keady and Mr Tonkin[248].

170. In his statement, Mr Gellie remarked on the fact that the media unit was, in effect, operating outside the planning unit in the following terms: *The community relations aspect of planning was not initiated. This meant that a lot of stress was placed on public relations via media, rather than creating a string of local networks to prepare the community for potential threats. This should have been a lot given a lot more priority and attention in the lead up to and during the fire emergency.*[249]

2.3.2.5 *The ESB Headquarters as a Control Centre*

171. It appears to have been universally accepted by those with whom the issue was raised in the course of the evidence that the layout of the ESB headquarters hampered the efficient management of the fire emergency in January 2003. However, no witness suggested that this contributed in any material way to any deficiencies in the initial response to the fires, nor to the development and dissemination of timely information and warnings to the ACT community.[250]

172. In particular, Mr Graham was asked whether his earlier comments about concerns over the layout of the facility at Curtin might have impeded those responsible for issuing warnings to the Canberra community. Mr Graham responded: *No, that's not what I was saying. What I was saying, it was difficult from my point of view for me to make the necessary contacts with the people that I may have had to make contact with – for example, Mr Lucas-Smith, Mr McRae, Mr Castle and others – because in my view the layout is not conducive for us doing that.* Mr Graham agreed that if the person responsible for issuing

warnings to the Canberra community is, for instance, present at a planning meeting where the level of risk is being discussed, there would be nothing about the facility at Curtin that would prevent that person leaving that meeting and immediately doing something in order to get that warning issued.[\[251\]](#)

2.3.2.6 Allocation of Roles

173. Mr Graham confirmed in evidence that he was the rostered duty officer for 8 January 2003. He explained the arrangements for allocation of roles during an emergency as follows: *If it is a relatively minor incident then the duty coordinator, whoever that might be, will manage the incident by him or herself without any external assistance. When they need external assistance, then they will call for it from somebody else. So if I wasn't the duty coordinator and somebody else was, they would in fact from a service management team point of view fulfil the roles of operations and incident controller and planning and logistics. When we get to a major event when a full Service Management Team is established, I would ordinarily fill the operations officer role.* Mr Graham confirmed that there was no document which describes the scaling up process. Mr Graham also explained that if Mr Lucas-Smith as the incident controller wanted someone else to fill the operations officer role as an alternate or instead of Mr Graham, then *he would certainly do that.*[\[252\]](#)

2.3.2.7 Weight of Response

174. The ESB uses colour codes to identify the level of readiness, ranging from green to blue to yellow to orange to red. The status of readiness determines (among other things) the deployment of firefighting tankers and light units to reports of smoke or fire. On Tuesday, 7 January 2003, the ACT had a day of extreme fire danger with the readiness level set at red. A total fire ban had been declared in the ACT and surrounding NSW district. A total fire ban had also been declared for 8 January to harmonise with the one declared by NSW for the Southern Tablelands district. The weather forecast for 8 January was for possible storms later in the day. On Wednesday 8 January, the ACT had a readiness status of orange.[\[253\]](#)

175. The ESB standard operating procedure (“**SOP**”) for weight of response then in force[\[254\]](#) provided that the weight of initial response for an orange state of readiness was three tankers and two light units. SOP 7 also provided that if the initial response was found to be insufficient, the incident controller may request through Comcen to the duty co-ordinator the assistance of additional units. SOP 7 was derived from Chapter 9.1 of the Rural Fire Control Manual of July 1992[\[255\]](#).

2.4 WEATHER

2.4.1.1 Relevance of Antecedent Weather Conditions

176. Antecedent weather conditions contribute significantly both to the likelihood of fires occurring during a forthcoming fire season and the difficulty in suppressing fires that do occur. More particularly, data about antecedent weather conditions comprise one of the key variables in the various indices of fire danger and fire behaviour on which firefighting authorities rely in planning their response to fires and fire risk. For this reason, like other fire authorities

throughout Australia, the ESB continuously monitored weather patterns in the lead-up to the 2002/2003 fire season, based on information available from the Commonwealth Bureau of Meteorology and from internationally available data[256].

177. As this section demonstrates, the antecedent weather which directly affected the area in and around the ACT was particularly adverse in 2002, culminating in a recognition by ESB as early as January of 2002 of the consequences for bushfire development. The material demonstrates that bushfire impact on the Canberra suburbs was also in contemplation during that year. This section also introduces concepts that are relevant to a complete understanding of the evidence about the predictions of fire spread undertaken at the time of the fires and, thus, the extent to which the threat from the fires was, or should have been, identified.

2.4.1.2 *Rainfall*

178. In the two year period 2001/2002, most of central and western NSW and the north-western corner of the ACT experienced “decile 1”, or rainfall in the lowest 10% of all records[257]. In the year 2002, the ACT is in the lowest 20% to 30% on record[258]. For the six months between July and December 2002, again much of New South Wales was in the lowest 10% on record. The whole of the ACT itself was within that lowest 10% on record[259]. Finally, for the three months from October to December, the whole of the ACT remained within the lowest 10% on record and a number of areas in central western New South Wales, including near Goulburn north-west of the ACT, experienced their lowest rainfall on record[260]. By January 2003, the Bureau of Meteorology had recorded 270mm of accumulated rainfall at Canberra Airport against an average of 470mm[261].

2.4.1.3 *Temperatures*

179. For the period October to December 2002, the area over the south-east of NSW around the ACT had an average maximum temperature 2° to 3° above average. In evidence speaking to the Bureau of Meteorology submission, Mr Webb described this as a “large number”[262]. The submission itself stated: *When examining the maximum temperature for the months leading up to and including the fires...a very large positive anomaly is evident. The average maximum temperature in November 2002 was 5° above normal*[263].

2.4.1.4 *Fire Danger Rating System*

180. The fire danger rating system was developed in 1966 by A G McArthur: *...and, with minor modifications, has been used by all fire authorities across Australia for the past 35 years. The system combines an index of soil moisture deficiency with the weather variables of temperature, relative humidity, wind speed and recent rainfall to produce an index of the difficulty of suppression of fires occurring in a standardised fuel type broadly characterised by a dry eucalypt forest carrying 12.5 tonnes per hectare of fine fuel*[264]. The weather variables making up the fire danger rating system as referred to by Mr Cheney vary both from day to day and diurnally (between day and night). It is the soil moisture deficiency that is determined by reference to longer term rainfall and temperature data of the kind summarised above. The index of soil moisture deficiency that is incorporated into the fire danger rating system is known as the

drought factor which is, in turn, calculated by reference to the Keetch-Byram Drought Index (or KBDI).

181. The Bureau submission provides a convenient explanation of the KBDI and summarises the changes in the KBDI in the period leading up to January 2003: *In NSW and the ACT, fire authorities use the [KBDI] to measure the level of dryness of the soil. The index is calculated in millimetres and is the theoretical amount of rain required to bring the upper levels of the soil to saturation. It incorporates daily rainfall and maximum temperature data. Rising temperatures during the Spring of 2002 saw a rapid increase in the KBDI values reaching the extreme levels of more than 100mm late in December 2002...The combined effects [sic] of very dry and hot conditions between October and January can be clearly seen in the rapid rise in KBDI during this period, the rate of increase far larger than would be typically expected*[\[265\]](#).

2.4.1.5 *The McArthur Meter and Project Vesta*

182. The components of the McArthur forest fire danger rating system, including drought factor and the KBDI, are explained more fully in the report by Mr Cheney[\[266\]](#) and in his evidence[\[267\]](#).

183. The work undertaken by Mr Cheney as part of Project Vesta was described in detail in Mr Cheney's Report on Fuel Management[\[268\]](#) and discussed further during his evidence. In his report, Mr Cheney introduced the topic as follows: *The development of more sophisticated burning guides requires a better understanding of fire behaviour in fuels of different structure and composition. Recent work by CSIRO (Project Vesta – work in progress) has identified the importance of fuel structure in determining fire behaviour and has developed a system for quantifying fuel structure with a numerical index that can be used as a fuel predictor variable to replace fuel load*[\[269\]](#). Mr Cheney explained in evidence that the project involved carrying out field experiments *at as higher a level of fire danger as we possibly could and therefore it took years to extend out knowledge of high intensity fires... The question arose because the original fire behaviour guides, including the McArthur meter, the prescribed burning guides both in the eastern states and in Western Australia used only fine fuel loads as the major variable that described the effects of fuels on fires.* Mr Cheney referred to a number of research projects which resulted in accumulating data calling into question the basic premise that rate of spread was directly proportional to the amount of fine fuel consumed. Mr Cheney started preparations for Project Vesta in 1989. He described in evidence the extensive preparation, the number of years over which the burning of the experimental fires occurred, the extent and frequency of burning, the size of the areas burnt and the analysis conducted during the burning operations and afterwards[\[270\]](#).

184. Later in his evidence, in the context of discussing predictions of fire spread for 18 January that might have been made on the evening of 17 January, Mr Cheney referred to the fact that his predictions were based on *McArthur Forest Fire Danger Meter Mk5 with x3 correction and the CSIRO grassland fire spread meter.* Mr Cheney confirmed that the *x3 correction* is the recommendation that had come out of Project Vesta and added: *There is also a warning on that meter printed in 1992 that it may underestimate at high wind speeds, on the back of the meter.* Mr Cheney went on to explain: *It was indicated on the meter that it may under-predict at high wind speeds, which is on the back of the meter in the footnote just above the top of the table, I think. The initial work that prompted Vesta was the fact that under certain conditions we knew that McArthur was underestimating. As indicated on the meter, we thought that was*

*primarily for high wind speeds only. In the Vesta work where we started the fire at a size that reflected its potential rate of spread for the prevailing conditions, we found that this was being borne out on wind speeds which were lower than 20km/h or so that is indicated on the meter. Mr Cheney confirmed that on the back of the McArthur meter the word *warning* appears in bold type followed by: *The fire behaviour information provided in this table is a guide only. No warranties, guarantees or representations are made that it is 100% accurate. Current research indicates that this table may under-estimate rates of spread at high wind speeds.* [271]*

185. In his report, Mr Cheney identified that: *During Project Vesta CSIRO recognised that the Forest Fire Danger Meter under-estimated fire spread on large fires at wind speeds above 20km/hr and a warning was sent to all fire agencies to multiply the value calculated by the McArthur Meter $\times 3$. The ESB planning officer did not accept that this recommendation applied to the ACT and suggested that in fact the meter would over-predict. Mr Cheney confirmed in evidence that the warning sent out about Project Vesta was providing a little bit more detail to the warning that already appeared on the back of the McArthur meter and providing an actual multiplier that could be used*[272]. The warning was sent out in the form of a pamphlet dated 1999[273]. The pamphlet commenced: *A preliminary examination of the behaviour of experimental fires conducted during Project Vesta has raised a number of important points... The fire spread table on the back of the McArthur Mk 5 Forest Fire Danger Meter under-predicts the potential rate of spread (ROS) over most fire danger indices... Forest fires in fuels with a developed shrub layer taller than 1 metre can spread up to three times faster than predicted by McArthur's forest fire spread table fires in litter fuels with a low shrub layer can spread two times faster.*

186. Minutes of a meeting of the Fire Controllers Group on 27 January 2000 attended by (among others) Mr Graham, Mr Ingram and Mr McRae, confirmed that one of the items for discussion was *some comments and notes from Phil Cheney*, which includes reference to Project Vesta and, in particular, that Project Vesta *found that the McArthur meters can under-predict the rate of spread possibly by a factor of 3*[274].

187. Mr McRae confirmed in evidence that he was *very aware that one of the early findings in relation to the work of Project Vesta was that there was scope for the McArthur meters to under-predict rates of spread in forest fuels*. Mr McRae agreed that Vesta was finding that the under-prediction could be by as much as a factor of 3. Mr McRae was asked whether he had any reason to doubt those findings. He responded: *Well, some years prior to that I had seen a research paper done by Stephen Kessell which indicated that, on the basis of wildfires in south-east Australia, the McArthur system could over-predict by a factor of 3*. Mr McRae also agreed that part of the Vesta findings was that in certain conditions, usually under very low winds, the McArthur index would over-predict. *So the situation we were in was that the fundamental tool that we were tooled up to use had to some extent been undermined and we didn't have an alternative to work with that would have had higher confidence on it.*[275] Mr McRae confirmed that, in undertaking fire spread predictions on the night of Friday 17 January, he did not factor in the Project Vesta findings[276].

188. Later in his evidence, Mr McRae agreed that Mr Cheney was effectively responsible for Project Vesta which was the most detailed research in relation to fire spread analysis undertaken in recent years[277]. Later still, Mr McRae repeated that he was aware that Project Vesta had indicated that there could be deficiencies with the McArthur indices as a fire rate of spread

prediction tool but, *I still don't have a sufficient replacement for me to use*. He was aware that there was published work from Project Vesta that, under certain conditions, large fires could spread up to three times faster in the forest than indicated by the McArthur forest fire danger meter: *I was aware that was published work, as was other work*. However, according to Mr McRae neither he nor anyone in his team included in their range of fire spread projections the Project Vesta correction[278].

189. Mr Cheney was asked whether he was familiar with the research by Mr Kessell referred to in the evidence of Mr McRae. He knew a little of Mr Kessell's research and, after describing what he understood of the research, confirmed that it was based in part on an American model of fire spread which, in turn, relied on theoretical research using a wind tunnel. Mr Cheney was not aware of any other research apart from Project Vesta that had been assessing the accuracy of the McArthur meter to the same degree as Project Vesta including lighting up to 100 test fires in the field. Mr Cheney responded: *No. There had been other research done by ourselves in Western Australia prior to Vesta which basically led up to setting up the project, because on a limited data base, yes, we came to the conclusion that it was under-predicting when fires were large, at wind speeds which were probably higher than 10-15kmb.*[279]

190. Mr Roche confirmed in evidence that, as an operational fire fighter, he was aware of Project Vesta. His evidence was that: *For the majority of my career, in fact as far back as I can recall, I have always been aware that there were issues associated with the low end and the high end of the McArthur meter. At these lower values the meter tended to over-predict, and at the very high to extreme scales the meter tended to under-predict. Therefore, in an operational sense when the meter was in use it was always made on the basis of using the outcomes from calculations as conservative figures one way or the other. It really didn't matter down the lower end of course, but certainly at the higher end it did*[280]. As the Chief Officer of the Victoria Country Fire Authority, the action Mr Roche took was to notify all of the CFA operational people of the findings of Project Vesta and the brochure was circulated to all of Mr Roche's senior operational managers. *I issued instructions to people when they were planning, when they were using those predictions in an operational sense, that they were to take into account the fact that the meter was under-predicting*[281].

2.4.1.6 Deteriorating Conditions During 2002

191. In referring in evidence to the KBDI chart at page 17 of the Bureau submission, Mr Webb explained that, with rainfall in September 2002, the KBDI actually dropped down to a low value of 0 (that is, fully saturated) but the warm and dry conditions through October to January saw the index rise very rapidly and seemingly far more rapidly than you would expect[282]. By January 2003, the official BKDI was 120mm, significantly exceeding the extreme level of 100mm.

192. As noted above, Mr McRae had himself identified these deteriorating conditions from as early as 4 January 2002, when he expressed a lack of confidence in the official BKDI (that is, the BKDI as issued by the Bureau of Meteorology): *There are some on-going issues associated with the drought indices, especially for the ACT's highland sites. There is not a high confidence in the official BKDI of 39mm. Ecomise supply us with fire forecasts based on river hydrology, and these have long proven useful "reality check" for our indices. These show that rivers in the region are drying out rapidly, and indicate considerable*

potential for large forest fires[283]. Mr McRae agreed that there was the potential for the official BKDI to be again over-stating the level of moisture in the fuels as at January 2003[284].

193. On 23 January 2002, Mr McRae sent the first of a series of e-mails discussing the deteriorating outlook for the fire season 2002/2003. That e-mail, sent to Ian Bennet, Peter Lucas-Smith, Tony Graham and David Ingram and copied to Vivien Raffaele had a subject line (in capitals) as follows: “DOOM & GLOOM SUCH AS NOT EVEN THE DARK KINGDOM OF MORDOR HAS SEEN!” Its importance rating was high. The e-mail commences: *It now appears more likely than not that we have just started down the path to a full blown El Nino (I estimate 67% 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*[285].
194. On 30 May 2002, Mr McRae provided an “El Nino update”. After a detailed explanation of the data used to predict the likelihood of certain weather events, Mr McRae states: *As of 18th May it appears likely that we are now in the next evolutionary phase, which will very likely produce an El Nino event by October 2002. The risk is now, in my opinion, rising to around 0.9 [that is, 90%]*[286]. Later in the e-mail, Mr McRae lists what is required in order to be prepared for the forthcoming season. The list includes land managers needing to do all possible to mitigate risks on their lands, the community needing to be warned to take steps to protect themselves, planning needed to guide response to large and complex fire situations and strategic planning being needed for areas like the Cotter Catchment. Mr McRae concludes by estimating the probability for a *nasty El Nino* for next summer as 0.5 (that is, 50%). Later than month, Mr McRae provided a further update on his 4 May e-mail concerning the likelihood of an El Nino event. It commences: *I was wrong. I underestimated!*[287].
195. On 12 August, Mr McRae had sent an e-mail to Mr Graham summarising the outlook. After explaining that there was still some uncertainty about the “species of El Nino” that would be faced, Mr McRae continues: *There are a few things that are fairly certain, however. (1) the warm pool near the dateline is already strong affecting the weather in India, Indonesia and eastern Australia. All of these areas are entering or are in dry spells. In eastern Australia, Canberra is almost the greenest patch east of the Divide – but it clearly unseasonally (sic) dry here, despite the rainfall we are getting. Lake George is dry, and Canberra’s water supply is drying out – Corin @ 47%; Bendora @ 60% and Googon @ 82%. Other areas are very dry, and many parts of NE NSW are already into their fire season. (2) it remains fairly windy. This has been the case since before the Xmas events. Fire danger reflects dryness and windiness. If the drought and the winds occur together, then we will get extreme fire behaviour. This gives us the potential for fires that are far more serious than those last summer. While there are no guarantees that this will eventuate, the risk is far higher than for a normal year, requiring careful planning and preparation* [288].
196. Minutes of a meeting of the Land Managers Fires Liaison Group on 15 August 2002 attended by (among others) Peter Lucas-Smith and Tony Graham record that ESB reported to

the meeting that: *El Nino is here and it is already worse than in 1997 and could be worse than 1994. This has dire consequences if it is linked with a particularly windy summer*[\[289\]](#).

197. Mr Graham gave evidence that either he or Mr Lucas-Smith would have provided this report based on information given to them by Mr McRae. Mr Graham thought it was something of which he was aware in August 2002[\[290\]](#).

198. On 18 October 2002, Mr Webb circulated (including to Mr Graham and Mr McRae[\[291\]](#)) the Bureau of Meteorology October seasonal climate briefing[\[292\]](#). The briefing provides detailed information and tables referring to the rainfall deficiencies and above average temperatures as at October 2002 referred to above, and concludes: *This outlook presents a serious situation within NSW, particularly given the current severe rainfall deficiencies in many parts. The continued severity of the coming fire season will still depend on the individual systems that pass over NSW and continued vigilance will be required.*[\[293\]](#)

199. Mr McRae's e-mail updates on weather conditions continued with a further e-mail on 6 November 2002 commencing as follows: *What's that you say? Not enough doom and gloom of late? Well, at Risk Management we're responsive to our customers needs. So sit back, get comfortable and BRACE! BRACE! BRACE! I've just done a detailed grass curing assessment and the results are fairly worrying. Overall the curing has risen in the last 8 days by between 10 and 45 points. This is unprecedented in my records... if the curing climbs at the rate that it did in the last drought from this base (November 16, 1997) then we will be near fully cured by November 18 2002. This would leave us with full flammability for the entire summer, and the winds are consistently up! I hope it rains. There are few mm forecast for mid-November. It seems certain now that we will have a drought for the entire summer, and the winds will be nasty and the water will be scarce. The forests are apparently nearly fully flammable already and should remain that way. Severe fire activity is likely*[\[294\]](#).

200. The following day, there was a further e-mail from Mr McRae, with the subject title "Doom & Gloom (contd)". In the e-mail, Mr McRae states: *What's new? In the last 57 days we have had just on 12.3mm of rainfall. That's bad. It's now 41 days since we had any real rainfall. If you do the maths, that's now 1000 hours! So ALL dead-and-down timber of any size is now fully flammable. After setting out his calculations of drought factor and related indices, he continues: Had enough? Wait there's more. The ACT's total water storage is now below 61% of maximum capacity, and falling... More? In any normal year, today would have been a rainy day. Instead all we got was a massive spike in RH [relative humidity] to 72%!!!!*[\[295\]](#).

201. After providing a further update later on 14 November 2002[\[296\]](#), the e-mail series continued with an e-mail dated 15 November 2003 entitled *You thought I was finished with the doom and gloom?!!!* This e-mail is an assessment by Mr McRae of the hydrology forecast just provided to him by EcoWise Environmental. In summary, Mr McRae explains that the EcoWise forecast indicates that on a scale of "low/attention/action/critical", which reflects rapidly increasing potential for bushfires, each of the river flow traces was at or was approaching "critical". His conclusion is as follows: *All up, it is a gloomy scenario, with the catchment hydrology indicating a potential for fires of over 10sq.km. The eastern side of the ACT is the most threatened, and the Tinderrys in NSW are a dangerous place. The rapid drying out suggests that, without rainfall, within a month we will have no moisture to*

get in the way of a major, landscape-scale wildfire. The Cotter River is still flowing, as you would expect due to its peatlands and highly sheltered mountain slopes. These will dry out rapidly when summer sun angles return. We should not confuse subsoil water flows with moist fuels. The original work on bushfire potential from hydrology showed that while river flows can drop, most of the time when they do a “death roll” [my term] we get serious fires[297].

202. The contents of Mr McRae’s 15 November e-mail is echoed at a meeting of the Land Managers Fire Liaison Group on 21 November 2002, attended by (among others) Tony Graham, Peter Lucas-Smith and Rick McRae[298]. The minutes record that Mr McRae reported to the meeting: *64 days since rain – none in the last 48 days means over 1000hrs with no rain which means the big timber is now dry.* Mr McRae confirmed in evidence that these minutes show that there was a substantial discrepancy between the BKDI and the soil dryness index. The result of this was that although the figures from the Bureau of Meteorology was suggesting a drought factor of 9, the soil dryness index confirmed that the drought factor had already reached its maximum level of 10[299].

203. Mr McRae sent further e-mail updates on 2 December, 3 December, 10 December 2002 and 6 January 2003. The first of these provided details of rainfall for the period from September which he describes as showing a *serious rainfall deficiency*. He calculates that while the drought factor was then at 9: *in 3 days the latter will return to 10. It does not qualify as useful rain in any way. We got to 55 days without effective rain[300].* Mr McRae’s outlook as at 30 December 2002 is described by him as: *...a mixed bag...The drought level increases steadily. The ACT and the highlands adjacent are now uniformly at a drought factor of 10. This is bad. ...The equatorial wind anomalies have backed off again...this again opens the door for some rain to sneak into the region over the next 2 weeks. This is good, unless the rain comes as thunderstorms. The models do indeed forecast some rain in forthcoming days – perhaps as much as 25mm. However, based on recent performance of the rain in actually falling and hitting the ground, this may translate to about 5mm... I guess the SOI [southern oscillation index] for December will come in at minus 14. This is bad. The El Nino is far from mature, and has a long way to go yet. This, too, is bad. ACT water supplies continue to drop by about 1% every 10 days. I estimate that we are now at 54.5%. That’s about 3 months to Stage 2 water restrictions. We have to remember that, due to reductions in watering, the flammability of the urban interface may reach levels that we have not seen before, and extra forethought is required for bushfire protection. Fire fronts could move through gardens, and embers could start spot fires well within the suburbs. It appears that the only significant fire in New South Wales is in the south of Kosciusko NP. This is a bad sign. The ‘fire problem’ has reached our region[301] (emphasis added).*

204. The concerns about the urban interface area recognised by Mr McRae in this e-mail and, more particularly, his reference to embers starting spot fires *well within the suburbs* are similar to concerns expressed by Mr McRae in training sessions conducted by him at ESB leading up to January 2003. This issue arose in the context of an e-mail sent to Mr McRae after the fires by someone who had attended one of these training sessions. In the e-mail (which came to be described in the course of the Inquest as *the Dr Doom e-mail*), the sender Peter Mills said: *I cannot help remembering your words during one training session at ESB (when you had you Dr Doom had on, grrrr) and said to us, when the fire (big one) hits Aranda one day we will probably pull it up two or three streets in (to the suburb), quite ironic..... I now know you were not kidding us[302].* Mr McRae said in evidence that he

did not recall the specific training session to which Mr Mills was referring: *But it's – firstly, it's the sort of thing I do say repeatedly to get the message across. However, the qualifier is it is two or three rows of houses in, not streets, that I say when I talk about these matters*[\[303\]](#).

205. Mr McRae was asked whether the view expressed by him at the training sessions was limited to a fire in the Aranda bushland or did he put it more widely than that: He answered: *Well, 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*[\[304\]](#). Later in his evidence, in reference to what he had said in the ESB training sessions in the lead-up to the fires as referred to in the *Dr Doom e-mail*, Mr McRae described what on 15 and 16 January he was anticipating the impact of the fires on the urban edge might be. It should be noted that, read in its proper context as discussed below[\[305\]](#), the impact being referred to by Mr McRae in this answer, was expected by him to occur not on 18 January 2003, but the following Monday, 20 January. *We would probably pull up the head fire right on the urban interface. But what a lot of people call the momentum of the fire in terms of embers and firebrands would be likely cause some damage up to three rows of houses in*[\[306\]](#).

206. Finally, 2 days before the lightning strikes that started the fires, Mr McRae reported as follows: *Hi. Outcomes of today's helicopter flight... (1) We went searching for green grass [outside of the city!] and found none. All we found that was green was green graminoids (grass like objects) in the highland swamps. All else was basically over 95% cured – including the dry lands adjacent to the highland swamps. (2) The river flows are not good. (3) Grasses in highland areas (such as Brandy Flat – Half Moon Creek) are fully cured – this is not good at all. (4) Many farm dams are at or below 10% full. (5) Few head of livestock are to be seen. The photo comparison with the 1997 situation shows that at the end of that drought the swamps were dryer, but Corin Dam was a lot fuller. There is no rain in the horizon at all – up til past January 15th. Result: GLOOM*[\[307\]](#).

207. These observations were reflected in Mr Lucas-Smith's evidence, and led him to conclude: *This meant that in January 2003 the ACT forest and grassland were in a volatile state*[\[308\]](#).

2.5 PRE-FIRE PREPARATION

2.5.1 RELEVANCE OF ISSUES OF PRE-FIRE PREPARATION

2.5.1.1 Background

208. A number of factors were raised in the course of the Inquest concerning the period leading up to the fires that can be said to have played a part in the cause and origin of the fires that burnt into Canberra on 18 January 2003 and, more particularly, directly impact upon consideration of the adequacy of the initial response and warnings. On of these matters, knowledge of issues concerning fuel management and the state of the fuel loads at the time of the fires, is discussed above[\[309\]](#). The others are:

- a. community awareness of risk and appropriate preparations;
- b. pre-planning of aircraft and heavy plant;

- c. issues of access to the fires; and
- d. recognition of the importance of rapid aggressive response.

209. There is a degree of inter-dependence about each of these factors. For example, there is evidence to suggest that there can be a trade-off between fuel management, on the one hand, and ease of access and rapid aggressive response on the other. The potential impact of an approach to fuel management that involves little or no prescribed burning, can to some extent be ameliorated by a policy of rapid aggressive response^[310]. Further, rapid aggressive response will be facilitated by well maintained fire trails and helicopter access points, pre-planning and pre-positioning of aircraft and heavy plant and well trained and equipped remote area firefighting teams (“**RAFT**”).

210. Each of these factors (among others), including their effect on the development and impact on the fires, were discussed in the report and evidence of Mr Roche. The cross-examination of Mr Roche served to highlight the evidence about what in fact was done by the ESB and other responsible agencies in the lead-up to the fires in each of these areas. Other evidence in the Inquest, more particularly that of Mr Jeffrey and Mr Bartlett, assists in understanding how a different approach to one or more of these factors might have produced a different result for the people of the ACT on 18 January.

2.5.1.2 *The Evidence and Cross-examination of Mr Roche*

211. In Part 5 of his report under the heading *Risk Management*, Mr Roche refers to evidence that demonstrated that the NSW Rural Fire Service and key operational personnel from the ACT Bushfire Service recognised the expected severity of the 2002/03 fire season and asserts that: *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*^[311]. Mr Roche then expresses the opinion that a risk analysis of the emerging conditions in accordance with the methodology outlined in the Australian Standard on risk management would have identified an extreme level of risk that would have warranted immediate treatment to ameliorate the level of risk, *and to ensure both the organisation and the community were well informed and prepared*. Mr Roche then sets out a number of examples of the actions that, in his opinion, should have occurred including concentrated and initial ongoing community education and awareness campaigns, possible adjustments to the weight of attack criteria for individual and multiple incidents, increased access to aircrafts, hire of heavy plant and pre-positioning options and inspection and familiarisation of primary and secondary access routes throughout high risk or vulnerable areas^[312].

212. Mr Roche was cross-examined extensively on behalf of Mr Bartlett and the ACT in connection with this section of his report. In particular, Mr Roche agreed that Mr Bartlett’s supplementary statement indicated that there was a consciousness, at least in ACT Forests, of the need to get things prepared for the fire season. However, in the context of the reference in Mr Bartlett’s supplementary statement to the actions relating to remote area firefighting^[313], the addition of remote area firefighting capability arranged by Mr Bartlett before the fire season was not used on 8 or 9 January 2003^[314]. Mr Bartlett’s evidence was to the effect that notwithstanding his offers of assistance to Mr Lucas-Smith and Mr Graham, neither he nor the

ACT Forests crews that he had available were deployed on 8 or 9 January or, indeed, on the morning of 10 January. In his evidence, Mr Bartlett confirmed that ACT Forests firefighting crews that were on standby were not deployed on 8 or 9 January, as referred to in his statement[315]. He also confirmed that, as at the morning of 10 January, the ACT Forests personnel ready to be deployed that day, other than personnel Mr Bartlett had made available to work in the planning unit[316].

213. Later in cross-examination, Mr Roche agreed with counsel for the ACT that the items listed in his report and referred to above were things that, on the evidence available to him at the time, should have been done but were not done[317]. In relation to the visit by members of the ACT Bushfire Service to residents at Chauvel Circuit, Mr Roche acknowledged that this did occur, but considered that *one visit to one location is not what I consider to be a concentrated initial and ongoing community awareness campaign*[318]. Mr Roche was also taken to documents distributed to householders in the context of bushfire prevention works. He agreed that the documents did highlight a bushfire risk but considered that it was *not directed enough to personalise the risk that I have talked about*[319].
214. In relation to the question of weight or response, it was put to Mr Roche that the fact that there were people available to be called upon, irrespective of whether they were stood up, constituted an adjustment to the weight of response that Mr Roche had asserted was lacking. Mr Roche would not agree with the proposition. More particularly, it was put to Mr Roche that he acknowledged that a number of people who recognised the danger were ready to be deployed and *that is an adjustment to the weight of attack by reference to the severity of the season, irrespective of whether they are deployed or not*. Again, Mr Roche did not agree. *I don't agree that the weight of attack was adjusted so they were deployed. In fact, the evidence says that they weren't.*[320]
215. In relation to aircraft, Mr Roche agreed that at the time of his report he did not have the specifics of what aircraft were available to the ACT but maintained that: *...arrangements should have been made to secure or to ascertain... the availability of additional aircraft*[321]. In relation to heavy plant, Mr Roche was taken to the statement of Mr Ingram prepared and provided late in the Inquest. Mr Roche agreed that the annexure to the statement listed various places from which the ESB could obtain graders and bulldozers. It was put to him that: *There are 9 pieces of heavy plant recognised and listed on the data base of ESB available*. Mr Roche would not agree with that analysis of the document. *My understanding of this list is a list of equipment whereby ESB or BFS... could have tried – I emphasise tried – to obtain that equipment in the event of a fire. I have seen nothing in this that says it was available – unfettered availability to the BFS during the season*[322]. Mr Roche was asked further about this issue in re-examination, and he explained that: *My experience is that...it doesn't matter how much you ring up prior to a season or prior to a fire occurring and saying, "Will your plant be available this year?" then my experience is that answer is always qualified on the basis, "Yes, if it is not doing something else". No-one is going to leave expensive machinery sitting idle just in case an agency may need it. The only way, in my experience, of being sure that it will be available is, in fact, to contract it, so that the operator or the owner is realising a return on his investment. Otherwise, there is no guarantee it will be available*[323]. Mr Roche also referred in his evidence to the availability of a float, the availability of experienced operators and ensuring the

suitability of the equipment for the task required were also significant factors in attempting to arrange to hire heavy equipment at short notice[324].

216. In connection with inspection and familiarisation of primary and secondary access routes, Mr Roche was referred to a memorandum entitled *Namadgi National Park Pre-Suppression Plan*[325]. Mr Roche agreed that the whole purpose of the document was to provide an update on the progress of the Namadgi National Park Pre-Suppression Plan and to indicate that more efficient access and egress areas and better access to water points is required. However, Mr Roche did not accept that it dealt with the kinds of things that he was referring to in his report. *It is not an inspection. It is a document that says "This appears to have been undertaken" and the purpose of that particular dot point ... is that... there should have been an on-ground inspection... and familiarisation of those things*[326]. According to Mr Roche, *there is a significant difference between those who have the responsibility to carry out fire suppression in that area to have a look at it compared to a document that somebody prepared*[327].

2.5.1.3 The Evidence of Mr Jeffrey

217. Mr Jeffrey summarised in his statement the approach of the Bush Fire Council to issues of pre-planning of resources and rapid aggressive response as follows: *The Bush Fire Council owned its own bulldozer, grader and float as well as tankers and light units. Having our own bulldozer, grader and float allowed these to be used in trail maintenance as well as fire suppression... The Bush Fire Council encouraged early detection and rapid aggressive initial response. The BFC maintained aggressive standby arrangements, particularly on days of high to extreme dangers. For instance it was recognised that the western areas provided the greatest risk to the ACT so standby was increased in those areas as the forecast weather conditions dictated. Units to respond to fire calls were called out by experienced CFCO or DCFCO's. Fire fighters on standby did no other work on that day. On those days, water carrying equipment were reinforced with bulldozers and graders on standby. Members on standby during days of very high to extreme weather would expect if responding to a bushfire, to remain at the fire overnight until relieved by day shift crews next morning. Further, when Forestry was managing the Cotter Catchment, they were encouraged by and supported with funds by BFC to carry out regular hazard reduction and trail maintenance... With the inception of the Emergency Services Bureau (ESB) in about 1994 the BFC was directed that it would be only an advisory body despite the Bush Fire Act still being in place... the Chief Fire Control Officer (CFCO) moved from direct operational involvement as his administrative duties increased with his takeover of the Emergency Service component. Responsibility for turnout of units to fire calls moved from experienced CFCO or DCFCO's to Duty Officers with considerably less experience in operational requirements. The policy of working fire fighters on other duties whilst on standby was introduced causing problems when fire attack needed to be carried on past knock off or overnight... this meant that rather [than] having crews for example at Bulls Head ready should there be a fire to the west of the ACT, the crews were now at their depots some distance away and were expected to work their normal duties. During days of very high extreme weather the BFC would have a dozer on a float and the grader stood up at Stromlo Depot and a second Forestry dozer on a float as well as a grader at Uriarra Forestry Depot. This would be at BFC's expense. This would mean that the time taken to respond equipment and mount an important aggressive initial attack on a fire in the mountains or to the west of Canberra would be reduced dramatically.*[328]

2.5.1.4 The Evidence of Mr Bartlett

218. During Mr Bartlett's taped record of conversation, he described an alternative response to the fires on the afternoon and evening of 8 January 2003. Mr Bartlett was asked what should have been deployed to the fires on the evening of 8 January. Mr Bartlett qualified his answer by saying that he did not have the role and also did not have information as to what resources were available. After then referring to identifying resources that could be deployed immediately and using whatever mechanism was most efficient to get them to the fire he continued: *...having done that, I would have said, "right, I need incident management team here and in particular I want to appoint planning people and we want to think about strategic issues associated with fighting these fires. What happens if we don't get a rake hoe trail around this fire tonight? What are we going to need tomorrow?", and start that planning process... 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*^[329]. Mr Bartlett was asked about this answer in his evidence and he agreed that the point he was making was that his opinion as at the afternoon of 8 January was that whatever was available to be sent to those fires should have been sent. He was then asked whether throwing everything that there was to be thrown at these fires would have included the deployment of bulldozers and other similar heavy machinery. He responded: *I would have, first of all, deployed the RAFT crews and made some arrangements to see what the availability of bulldozers were. But generally in forest fire situations, particularly in dry summers, you usually put a trail around it manually first and then follow that up with a bulldozer train afterwards*^[330].

2.5.2 COMMUNITY AWARENESS OF RISK AND APPROPRIATE PREPARATIONS

219. As we have stated, an important issue in this Inquest concerns warnings about the impact of wildfire to the people of the ACT, including the residents of Canberra and nearby forestry settlements. An important element of that issue is the state of community awareness and preparation for such an event. This section examines the evidence about those matters in the period leading up to 8 January 2003.

2.5.2.1 ESB Mission and Objectives

220. According to the ESB's submission to the McLeod Inquiry, the mission of the ESB was: *To work with the community to preserve life, property and the environment.* After then setting out the values established by the ESB, the submission continues: *The ESB provides a range of emergency services and related functions consistent with its obligation to the ACT Government. These are: Compliance; Community Education, Awareness and Assistance; Preparedness; Response and Recovery*^[331]. In his statement, in the context of discussing the ESB's mission and objectives, Mr Castle observed: *The philosophy focuses on self-help in that ESB advice to the community is about self-helping, helping neighbours, helping people. This allows the organisation to set priorities and establish the efficient use of the emergency services. This can be narrowed down to helping those in most need and leading to a recovery and review process. This in turn leads to improved prevention measures and strengthening the philosophy of community resilience and feedback to improve our systems*^[332]. Consistently with this approach, Mr Castle confirmed in evidence that it was the ESB's position in respect of the risk of bushfire, that if adequate preparations have been made and a person is able bodied, that person should be entitled to remain and to protect their home^[333]. On the other hand, Mr Castle also agreed in evidence that the concept of self-help and helping neighbours would depend on an awareness that there is a risk and an understanding

of what to do when confronted with the risk, which in turn raises the issue of education programs[334].

221. At the time of the fires, the ESB had established a Risk Management Unit to be responsible for (among other things) community education, but Mr Castle described the unit as *embryonic*[335]. Before the creation of that unit, the individual services within the ESB had conducted various components of community education, with the Bushfire Service broadly responsible for educating the community about the risk of bushfire[336].

2.5.2.2 *Community Awareness Material and Community Appreciation of Risk*

222. Mr Castle was asked in evidence about a bundle of what was described as *community awareness* documents. The documents were provided in a folder, together with a summary that included reference to the dissemination of each of the documents. The principal documents included in the folder and Mr Castle's evidence about each of them is set out below.

- a. The *Will You Survive?* Brochure, which the summary indicated was *letterbox dropped* along with a series of fridge magnets *after the bushfires in early 1994*. According to Mr Castle, this was done before his time at the ESB. As he understood it, the letterbox drop referred to in the summary included houses on the edge of urban Canberra[337]. Mr Castle confirmed that although the brochure had been updated and reprinted in 1997, apart from the letterbox drop in 1994 there had been no further targeted campaign for the distribution of the brochure. Instead, it has been distributed *at community events, Canberra Shows, field days, school fetes, other public forums and on request by groups or persons*[338]. Generally the brochures would be available wherever the Bushfire Service volunteers had a stand and they would be handed out by volunteers[339].
- b. The ACT Fire Prevention Handbook was printed and distributed in 1995, 1996 and May 2002[340]. According to Mr Castle, primary schools were *its primary target*. He thought it was also available *for the same sorts of venues of the Canberra Show*[341]. Mr Castle understood that the intention was to give a copy to every primary school student but no-one had checked to see whether this occurred[342].
- c. A *Letter to Householder*[343] and other documents issued to residents in connection with hazard reduction work. According to Mr Castle, these documents were not part of *a general mail out to every householder that lived on an interface*, but rather were sent to targeted areas of bushfire fuel reduction work[344]. Mr Castle was asked in evidence about the part of the document that deals with what to do if a resident decides to stay and protect their property and, in particular, the bullet point *fill bathtub with water*. Mr Castle gave evidence that: *I think we could improve on that and I believe we have...I don't think the particular purpose to everybody was perhaps quite as clear as it could be*. Mr Castle agreed that the intention was not for people to immerse themselves in the tub[345].
- d. Other documents included in the community awareness material discussed by Mr Castle during his evidence included The *Bushfire Action Guide* fridge magnet[346] (there was no

letterbox drop of this document that Mr Castle was aware of[347]), promotional material and other information concerning the standard emergency warning signal issued in December 1998[348] and a children's colouring book[349].

223. A number of other documents were discussed with Mr Castle during his evidence, including newspaper articles and other documents forming part of the pre-season publicity referred to below[350]. It was put to Mr Castle in evidence that it was the case that it was a common theme in these publications to identify people who live in properties that are adjacent to or back onto bushland or grassed areas that need to be concerned to clear up the areas immediately adjacent to their homes as part of their bushfire preparation. He responded: *That's correct, because people who have a road around them already have a space*[351]. Mr Castle was also asked about the briefing session to residents of Chauvel Circle on Saturday 24 November 2002 arranged at the request of Mrs Jane Smyth, who was herself a witness during the inquest[352].

224. Mr Castle was not aware of any publication directed at members of the community in the urban interface that identified for their benefit that they were in an area that was at risk[353]. More particularly, Mr Castle was asked whether residents in the suburban area, places like Duffy, understood that they were at risk from the impact of bushfire. He responded: *You specifically mentioned Duffy. Duffy does not have a common back fence with the grasslands, it has a road on two of its most vulnerable borders, one of which has in places 40-50 metres of mowed grass area along it. So in terms of that, you used Duffy in this example, there are probably others that are more intimate with the interface*[354]. According to Mr Castle, residents on Warragamba Avenue and Eucumbene Drive should have been aware as at January 2003 that their homes were at risk from the impact of bushfire, *I suppose by mere proximity to those areas*[355]. Mr Castle did not have a view as at January 2003 about how well people in Duffy, particularly those on Warragamba Avenue and Eucumbene Drive understood the nature of the risk they faced. However, he believed that there was *a level of awareness and information given to the public on which they can make some reasonable assessment*[356]. *I am saying I believe we made the information available*[357]. Mr Castle later agreed that *we could improve* on the information available to residents in the area of the urban interface for them to understand that they are at risk from the impact of bushfire[358], but he had no reason to believe that residents in places like Duffy did not have a sufficient understanding that they were exposed to a risk of bushfire[359].

225. At the conclusion of the review of the community awareness material, Mr Castle confirmed that the *Will You Survive?* document was *possibly the primary source of the information*. Mr Castle was taken to parts of the document which depicted what appeared to be farming properties and referred to *equipment for you to consider at your country home*, and asked *if a person who perhaps lived on Eucumbene Drive or Warragamba Avenue was at a fair or a place of that type and was shown this document they might be forgiven for thinking that it didn't apply to them?* He responded: *I don't think I could assess whether that was the case. It would depend on their own thoughts about their own property*. Asked more generally about whether the community awareness material would suggest to someone who did not back onto an area of park or forest or bush that they were at risk from the effects of bushfire, Mr Castle said: *I think general education level of people would assess that if they live in what is described as a 'bush capital' there is some understanding what that means. Each of those items that we have gone through at various stages, I think pointed out, that it doesn't only refer to people that back onto bushland*. He went on to agree

that the material identified that people who are either in the bush or who have houses that back onto bushland, forests or parks have the higher risk. [360]

226. Mr Castle agreed that a person living in the suburb of Duffy, for example, whose house did not back onto bushland or park or forest could be forgiven for not appreciating that the community awareness material was relevant to them, *but that does not mean to say they had that view and that they weren't taking heed of the information or the efforts that we had put in to advising people that there were risks*. Mr Castle considered that the events of December 2001, gave people living in areas such as Duffy a greater understanding: *I think as at January 2003 they would have had a realisation that there was some risk to them*. Mr Castle believed that he was confident that they had a degree of understanding about the risk.

227. Mr Castle was familiar with the potential for an attitude of apathy and complacency about bushfire risk among urban communities. *I think all emergency managers right throughout the country and perhaps even world-wide face an issue of "It won't happen to me". ...in terms of general community knowledge and understanding, there is almost an optimistic view that "It won't happen to me" [361]*. It was later put to Mr Castle that if people don't appreciate the fundamental fact that they live in an area or in a house that is at risk of bushfire they are not going to absorb the community awareness material. He responded: *I think anybody that doesn't realise that they are at potential risk – it is back to the complacency that you referred to earlier [362]*.

228. Mr McRae described in his evidence how, in his role as Acting Manager of the Risk Management Unit in the period leading up to 2 January 2003, he had no direct responsibility or role in connection with community education. It was not part of his responsibility in that unit to manage the development or dissemination or publication such as *Will You Survive?* [363]. Concerning the extent of community awareness in the urban community of Canberra of bushfire risk, Mr McRae: *felt that it was probably as high as its ever been, given the community's awareness following the Christmas 2001 event and also the fact that the fire agencies had been doing material for the media in the lead up to the bushfire season to make the community aware of what they should be doing*. Mr McRae thought that the level of community awareness was adequate [364].

229. Mr McRae later gave evidence that: *Bearing in mind that I wasn't involved in any formal feedback process that was actively seeking that opinion, my feeling would be that, because of the then recent experience of the '01 fires, a lot of the community had a raised awareness of the potential for bushfires to hit the urban interface. We generally felt that the people living right on the urban edge can see the fuel so they are most aware. The further you go inside the suburbs, the awareness drops off quite rapidly [365]*. *My expectation would be that those who see the broad acre land uses out of their lounge room windows would tend to have a higher awareness than those who don't. But then you have the effect of nature strips and whatever else. Depends on someone's background, their experience in all the phases of their lives. Perhaps they lived in the Blue Mountains – I don't know [366]*.

2.5.2.3 Pre-Season Publicity

230. In October 2002, the ESB began publicising the severity of the forthcoming season. An article in the Tuggeranong Chronicle on 15 October 2002 reported: *With an exceptionally dry winter already marked by unseasonal bushfires in New South Wales, Canberrans have been warned they could face the*

worst bushfires of 20 years.^[367] The article quotes Mr Lucas-Smith as saying: *We are expecting a long and severe season extending well into April. We don't expect any real problems until the end of November, however... The thing that pushes us over the edge is the wind. If there is no wind, we still have fires, but not nearly as severe... the wind will dictate the severity of the fire season.* An article about the need to prepare now for the bushfire season, quoting Mr Lucas-Smith as saying that conditions were much worse than this time last year, appeared in the Canberra Times on 22 October 2002^[368]. Similar concerns were referred to in a short article in The Chronicle later that month.^[369]

231. On 13 November 2002, the Legislative Assembly passed a resolution which, among other things, noted that: *The fast approaching summer contains bushfire conditions that are anticipated to eclipse those of 2001-2002 with severe weather conditions likely to exacerbate a desperately dry situation*^[370]. It appears that this resolution prompted a publicity campaign aimed at arson offenders in the ACT. It was primarily a juvenile prevention campaign^[371].

232. On 29 November 2002, a report in the Canberra Times provided advice to residents on preparing homes for bushfires and referred to comments by Mr Lucas-Smith as follows: *Mr Lucas-Smith said that clearing the bush would make a big difference enabling some fires to be stopped quickly before they spread. This was particularly important this year as the season was expected to be bad. "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*^[372].

2.5.2.4 Expert Evidence on Community Awareness

233. Mr Roche deals with the issue of community safety and education in Part 10 of his report. He identifies that the aim of community education is to:

- *Have the community understand the risks associated with a wildfire (the hazards);*
- *Have the people personalised the risks;*
- *Provide advice to the community on what may be expected when a wildfire approaches and/or impacts their property;*
- *Provide advice on the options that the community has to ameliorate the risk to themselves and their property.*^[373]

234. Mr Roche summarised in his report the education programs implemented by the ESB over the past several years as referred to above and echoes the Rural Fire Control Manual in noting that: *Fire services have long recognised that during a wildfire, their resources will more than likely be insufficient to afford protection to every individual and structure in the area at risk.* He then stated that this recognition imposes two significant obligations on fire services. First, *to inform the community that in the circumstances of a wildfire with a potential to impact multiple properties, the fire service will not be able to attend every property at risk...secondly, having informed the community of its limitations, the service then has the obligation to advise the community of what they can do individually and collectively to protect themselves and their property in the absence of a fire service presence.* Mr Roche considered that: *the traditional methods of the distribution of suitable material through schools, letterbox drops and other events, similar to that used by the*

ESB...suffers from two flawed assumptions:

- that the act of distributing information in this manner creates an awareness that the individual and their property is at risk from a wildfire; and
- that this awareness will result in a range of actions by the community designed to ameliorate the risk and, when the risk is real, actions to secure their own safety and the survival of their property. [374]

235. Mr Roche completed this section of his report with a brief analysis of the evidence given by residents concerning their knowledge of the actions they should contemplate or initiate when threatened by wildfire and concluded: *There can be little argument that the Canberra community was neither well prepared or informed concerning the escalating risk that they were presented with in January 2003. In my opinion, by current standards, the steps initiated by the ESB to raise community awareness before the event was superficial and largely inadequate.*[375]

236. Later in his report Mr Roche refers to the importance of having the community understand and accept that they are at risk from a wildfire. He notes that, in his experience, *the most successful way of achieving this is to have the community participate in the process of defining what they are at risk from and, subsequently, what steps they can take to minimise their exposure*[376]. Mr Roche summarises in his report the results of a workshop undertaken by a CFA research team in 1999. The report sought to identify the key things or elements in community and individual preparedness. Mr Roche notes that, according to the report, *an awareness of the hazard and recognition of the risk were considered to be fundamental elements of preparedness*[377].

237. In his evidence, Mr Roche acknowledged that: *It takes a long time for the community to generally understand the risks they face from wildfire and is an ongoing program, particularly in those communities where there is perhaps a transitory population.* He explained in more detail his views concerning the difficulties of a program based largely on dissemination of information by letterbox drops and the like[378]. In cross examination, Mr Roche repeated his view that *passive mediums have been shown not to have the penetration that is really required*[379]. He discussed as an example the *Letter to the Householder*[380]. *Unless people see it as individually applying to them then the tendency, and I can only speak from my own experience, is to put what a lot of people call "junk mail" straight into the rubbish tin.* Mr Roche had similar concerns about the *Will You Survive?* document. He agreed it was a document that provided advice to people about bushfire dangers and what to do but again identified the problems with the need to personalise the message[381].

238. Mr Roche confirmed in evidence that he had not analysed the 411 victim impact questionnaires referred to below which indicated that some 86% of those persons who were at home on the day stated that they knew what preparations to take and took some preparations. Mr Roche raised in evidence concerns about the validity of the survey and the questions asked[382]. In re-examination, he expressed the opinion that if there was a level of understanding on the urban rural interface before the fires as indicated by an analysis of those surveys, then *it seems to me that the losses that occurred were out of step with the understanding that, I would assume, people would have if there was an extensive pre season information publicity campaign.* He referred to the article by Mr Nicholson appended to Mr Nicholson's supplementary statement[383] and, in particular, Mr Nicholson's statement in the article that: *We should understand and accept that effective bushfire risk*

mitigation not only requires a technologically advanced and well-trained and resourced fire response capacity, but a well-informed, prepared and empowered community which is well aware of the bushfire threat it faces and prepares accordingly is also fundamental to achieving bushfire mitigation. Mr Roche confirmed that he agreed with that statement and added: *I believe that had there been that level of understanding to that extent in the community then the losses may have been, and should have been significantly less*[\[384\]](#).

239. Mr Nicholson does not deal directly in his report or the addendum to his report with the adequacy of the community education program implemented by the ESB in the period up to the fires in January 2003. However, in the context of discussing the adequacy of warnings provided to the community as the fire approached Canberra, Mr Nicholson makes the point that: *In providing advice and warnings to the community, advance work needs to be done to identify what they are to be told and how advice to leave will be given. Then, work needs to be done well in advance to identify where people who choose to leave will go*[\[385\]](#). As discussed in more detail below[\[386\]](#), he goes on to criticise Mr Roche for referring to the deficiency in the provision of warnings as the fires approached Canberra as *a failure of the SMT*. Mr Nicholson explained that: *It is a far more long term issue than a few hours before the arrival of the fires at the edge of Canberra*. He then went on to refer to the heavy investment by the CFA in community preparedness and the fact that, compared to the CFA in Victoria or the NSW Rural Fire Service, at the time of the fires, the ESB's capability was limited[\[387\]](#).

240. In an earlier draft of his report, Mr Nicholson had commenced the paragraph criticising Mr Roche with the sentence: *Clearly, as far as advice and warnings regarding the 18 January fires were concerned, the Canberra community, including its emergency services, were not well prepared*. Mr Nicholson discussed his decision to delete this sentence during his evidence[\[388\]](#). Despite removing the sentence from his report, Mr Nicholson's evidence was that: *Clearly, as advice and warnings regarding the 18 January 2003 fires are concerned "the Canberra community, including its emergency services, were not well prepared", and I wouldn't back away from that*[\[389\]](#). Later in his evidence, Mr Nicholson agreed with Mr Roche that, for warnings to communities to be effective, the risk which people faced needs to be personalised: *...If you really want to reach the target you almost have to personalise it, street corner meetings, even getting into people's homes*. He agreed that people need to understand that it is their risk and his opinion was, in relation to the citizens of Canberra, that had not been achieved *to the extent that it could have been*[\[390\]](#).

241. Mr Nicholson confirmed in his evidence that he still held the opinion expressed in the article attached to the addendum to his report[\[391\]](#): *And what of the average citizen? Probably the majority of Canberrans prior to the fires in early January 2003 at risk from bushfire where the country meets the urban area? From the extensive and sometimes graphic television coverage of the run of the fires into Duffy and other suburbs, newspaper photographs and discussions with people with homes directly involved, it seems most people had not given any thought to how a bushfire might affect them, particularly those residents abutting the open space surrounding it within Greater Canberra*. Mr Nicholson added that: *It is just a sad fact of life that until people are subjected to what I have called a "a watershed event" or directly impacted, they tend not to take notice. That is human nature. That is very sad, actually*[\[392\]](#).

2.5.2.5 Survey of Households

242. At the conclusion of the Inquest, counsel for Mr Castle tendered a statement of Dee Watson. In the statement, Ms Watson explained that she had been tasked by Mr Castle to undertake an analysis of bushfire victim questionnaires completed by police officers and contained in the brief of evidence. She sets out in her statement the questionnaires she considered, the topics covered by the questionnaires and attaches a number of spreadsheets analysing the responses to the questionnaires.[\[393\]](#)
243. Other evidence in the Inquest confirms that the questionnaires were completed only in respect of residents of Canberra whose home was destroyed or who suffered significant injuries[\[394\]](#). Of those people, a total of 411 responded to the questionnaires. Ms Watson's analysis shows that 378 of those respondents either owned or rented houses that were destroyed. Of those, 286 (75.7%) were at home on the day and 92 (24.3%) were not. Of those respondents who were home on the day, 246 (86%) answered *Yes* to the question: *Were you aware of how to prepare your house for a bushfire threat?* It appears that 33 (13.4%) of those respondents did not take any action despite knowing how to prepare and a number apparently took some action despite not knowing how to prepare.
244. Because of the lack of information in the questionnaires themselves, the analysis of the questionnaires does not identify what the knowledge of how to prepare comprised. In particular, it does not distinguish between those who may have had a general understanding that they should clean, block and fill their gutters and wet down areas outside their home or whether their knowledge and understanding extended to the risks of ember attack, how to respond to ember attack, what clothing to wear, the dangers of late evacuation and so on. Anecdotal observation including the evidence given by residents during the Inquest as referred to by Mr Roche and Mr Nicholson[\[395\]](#), would suggest that the level of knowledge and understanding may not have been very detailed.
245. In any event, the last question in the questionnaire asks respondents the open question: *Did you have any issues you consider relevant for the Bushfire Coronial Investigation Team to pass on to the Coroner for the Inquiry?* Ms Watson's summary of the questionnaires discloses that the almost universal theme of the respondents in their answers to that question is the inadequacy or complete absence of information and warnings about the fires[\[396\]](#). This is echoed in the evidence of the residents called as witnesses in the Inquest[\[397\]](#) and the numerous submissions to the Coroner included in the brief.

2.5.3 PRE-PLANNING OF AIRCRAFT AND HEAVY PLANT

246. In his October 2005 statement, Mr Ingram confirmed that: *Each year a number of services or contractors that may be required during the fire season were contacted to ensure their continued readiness to assist if required, and to update their contact details. I undertook this task for both Aircraft and Plant readiness. Mr Ingram annexed to his statement a copy of the aircraft and helicopters list for October 2003 and a copy of the plant list for season 2001/02 and season 2003/04. Mr Ingram did not produce the aircraft and helicopters list for 2002 nor the plant list for 2002/03. He indicated in his statement that he was unable to locate the latter but he believed both the aircraft and helicopters list and the plant list for the 2002/03 seasons were substantially similar to the list for the previous year.*

The statement indicates that Mr Ingram *used the same information from year to year, but did make calls prior to each season checking for the accuracy and the information.* [398]

247. Consistently with the evidence of Mr Roche,[399] there is nothing in the statement from Mr Ingram in connection with weight of response, pre-planning or pre-positioning of resources or arrangements in respect of aircraft that suggests that anything was done in the lead-up to the 2002/2003 fire season over and above the ESB's usual pre-season preparations. In particular, there is no suggestion in Mr Ingram's statement to suggest that actions of the kind referred to by Mr Jeffrey as having been implemented by the Bush Fire Council prior to the establishment of the ESB, were implemented by the ESB in anticipation of what was clearly identified within ESB as an unusually severe season[400]. Mr Castle, Mr Graham, Mr Ingram, Mr Corrigan and Mr McNamara all either confirmed that nothing had been done in terms of preparation which was over and above what might be a standard response to the fire season, even though the 2003 season was an extreme one, or were unable to point to anything that was done[401].

248. Mr Lucas-Smith was asked in evidence whether it has ever been done in the lead up to a fire season to have heavy machinery at various staging points like Bulls Head or Piccadilly Circus. He responded: *Not to that extent. Generally when we get to the red readiness or orange levels, the machines we can get access to are primarily from ACT Forests. They will continue to work or cease work depending on the sort of work they were doing, their float capability will be nearby. They know where they all are. All it takes is a phone call from us to determine where they are. They know what is required to move them. The difficulty is, of course, you tell me where the next fire is going to start and I will make sure I have got all the resources there. We don't know that. So wherever we stage resources will not necessarily be in the right place.* Mr Lucas-Smith went on to make a point similar to that made by Mr Roche about the difficulty of having heavy equipment on standby. Asked whether there were places in a forest or national park where you could make an educated guess, he said: *I would think ACT Forests would put a higher value in relation to their machines and their commercial product.*[402]

249. Regardless of the question of pre-planning of heavy plant, Mr Lucas-Smith both in his statement and in evidence confirmed that ESB did not start to organise heavy plant until after the afternoon planning meeting on 9 January 2003[403]. This was confirmed in the evidence of Mr Graham. Mr Graham had earlier agreed that he did not think that the ESB had contracted or in any way obligated anybody to provide ESB with plant. *But I do believe that David Ingram had made contact with several providers of plant around the territory to determine their availability if required.* He also gave evidence that he understood the value particularly in respect of a fire starting in a remote area, of having heavy plant available at the earliest opportunity[404]. When later asked why it was not until 9 January that any thought was being given to the likelihood that heavy plant was going to be an essential firefighting tool with these remote fires, he responded: *We needed to know where the fires were. If the fires were burning alongside a track and burning uphill towards the track, they could have been contained immediately.* Mr Graham later agreed that on the evening of 8 January, he could have been speaking to people like Mr Bartlett or Mr Cooper at ACT Forests and saying to them *look, we don't quite know where these fires are yet, but as soon as we find out, there is a chance we might want to get a dozer onto it quickly. What have you got available?* He didn't do that because: *I just don't think it was considered at the time*[405].

250. Similarly, Mr Ingram believed that he was asked sometime on the afternoon of 9 January about sourcing bulldozers. He explained in evidence that he tasked Mr Nelson to see if he could source any bulldozers. Asked what attempts Mr Nelson made to obtain bulldozers that day, Mr Ingram responded: *He tried and tried, as far as I am aware, he contacted ACT Forests – I believe Peter Beutel in Forests – to see what resources they had... they didn't have anything available at that time, as I believe he told me*[406]. Mr Ingram said in evidence that he had been advised since the fire that Mr Bartlett had made an offer to source bulldozers on 9th January, but he was not aware of that at the time. Mr Ingram confirmed that Mr Nelson was able to source a dozer through ACT Forests which he arranged to arrive on the morning of 10 January. *I have since found out that two of the other bulldozers that were available at the time were actually broken down, and they were waiting for replacements to turn up*[407].

2.5.4 FIRE TRAIL MAINTENANCE AND ACCESS TO THE FIRES

251. The memorandum entitled *Namadgi National Park Pre-suppression Plan*[408] put to Mr Roche in cross-examination confirms that the need for the development of a pre-suppression plan for the Namadgi National Park was *highlighted during the development of Bushfire Fuel Management Plan 2002-2004*. The memorandum contemplates the development of a plan which was to address concern relating to vehicle access and egress points, water points and access by remote area firefighting teams. In this context, the memorandum acknowledges, among other things, that: *Many track/trails within the Park are unsuitable for use by fire tankers, often due to the lack of passing and turnaround areas or due to overhanging trees*. It also notes that: *Some areas of the park are so far from vehicle access tracks that RAFT members would have to walk for many hours before undertaking any attack on a fire such as a slow moving, low intensity fire resulting from a lightning strike*. The memorandum contemplates that the working draft of the pre-suppression plan would be available by 29 November 2002. It appears that the draft plan was finished in December 2002[409].

252. However, there is no evidence that any substantive work was done on the implementation of the plan before the fires in January 2003. In his statement, Mr Blinksell described fire trail maintenance in the Namadgi National Park as *basically non-existent*[410]. The impact of these concerns with fire trail maintenance at the time of the January 2003 fires is referred to in the evidence of Mr Lucas-Smith. He described that the *considerable discussion over maps* referred to in his statement[411] related to the fact that: *The maps showed a series or network of trails and we didn't know whether those trails actually really existed on the ground or whether they were on the maps. We needed some assistance in relation to that*. Mr Lucas-Smith agreed that it was *certainly an advantage* to know before a fire event happens where the fire trails are, which fire trails are workable, which ones need to be cleared and which could be used as containment lines, rather than waiting until the fire hits. Mr Lucas-Smith confirmed that the ESB did not have that information. *It was certainly an issue that we had had a number of discussions with land management agencies over a number of years on and off in relation to trails and trail networks in the ACT. You need to remember these are trails and management trails primarily in lands not managed by the bushfire service, and the bushfire service have no control or responsibility for any of these trails*[412].

253. Mr Lucas-Smith explained that a reconnaissance exercise in the off season in preparation for a bad season to check how up to date maps are was a resource that the bushfire service did not

have. *It was issues raised with the land management agencies over a number of years. They responded to it. They knew what the condition of their trails were. We had asked to be advised in relation to that a number of times. There was a fair bit of discussion even going on about access ...through locked gates and a whole range of different things. The land management agencies were responding. They were compiling a pre-suppression operations map which included trails and helipads and that sort of stuff. Up until that time I had only ever seen that map once and it was very much in an embryo stage and that was in a workshop in relation to highlands fire issues.*[\[413\]](#)

254. Mr Lucas-Smith agreed that it was *an appalling situation* to be finding out like Mr Gray did when he tried to get to Stockyard on the night of 8 January that the track which would have taken him down to the Stockyard Spur fire was covered over with logs.[\[414\]](#)

255. Mr McNamara confirmed in evidence that the Bendora break was not trafficable to any form of vehicles at the time of the 2003 fires, *it was overgrown*. He agreed that there were references to it on maps at the time of the fires but that in the 12 years that he had been involved with the Namadgi National Park, there had been no means of actually trafficking the Bendora break. Similarly in the 12 years that he had been involved with the Namadgi National Park he had not known the Stockyard Spur trail to have been trafficable. He indicated that, at the time he gave evidence, there was a process to look at a strategic approach to the maintenance of these trails, but there was no process in place into 2003 that he was aware of[\[415\]](#). Mr Sayer knew the Stockyard and Gingera area well and had been travelling or moving around that area on and off for a number of years. Mr Sayer considered that there were sufficient trails to get into the area but that: *From the firefighting perspective, there is probably a lack of east-west trails which gives you the better containment lines. Most of the trails through there are south-north*. He explained that an east-west trail gives you a better chance of containing the fires that are coming because you can work to an edge of the fire. Mr Sayer was not sure whether the maintenance of the Mt Franklin Road was sufficient as at January 2003[\[416\]](#). Mr Cheney also commented on the absence of a trail on the Stockyard through to Corin Dam Road. He considered that such a trail would have provided very rapid and immediate access into the Stockyard fire[\[417\]](#).

2.5.5 RECOGNITION OF THE IMPORTANCE OF RAPID AGGRESSIVE RESPONSE

256. The October 2005 statement of Mr Ingram that was put to Mr Roche in part response to the matters raised on page 39 of Mr Roche's report as discussed above[\[418\]](#), confirms that for many years before 2003, a pre-season preparedness strategy was in place for the ACT Bushfire Service, including the preparation by Mr Graham of a Pre-Season Planning Checklist[\[419\]](#). The checklist identifies a number of tasks that are undertaken as part of normal preparations for each fire season. One such item is the pre-season workshop. Mr Ingram confirmed in his statement that the workshop exercise for 2002/03 involved fires in the Namadgi National Park. The *Namadgi Burn Scenario 2002* developed in the latter part of 2002 for the workshop[\[420\]](#) is as follows: *It is January 2003. We are in an El Nino year. The ACT has just experienced the driest winter/spring and early summer on record. By November the Byram/Keetch Drought Index (BKDI) was 132, the highest recorded for so early in the fire season. The ACT is experiencing its worst drought on record, with November temperatures averaging 6.4°C above average and no significant rainfall since September 2002. Surface litter fuels are very dry and the moisture content of the green foliage of understorey shrubs and trees is depleted and*

often close to wilting point. The Emergency Services Bureau and Government Land Management Agencies have been on a high readiness level since November 2002 and are ready to respond immediately to fire calls or smoke sightings. Mr Graham agreed that a number of the elements of the scenario were similar to those in fact experienced in January 2003. He recalled in evidence that Mr McRae was largely responsible for putting the exercise together and that Mr Graham assisted Mr McRae in running the exercise on the day[421].

257. A number of witnesses were asked about the outcomes of the workshop and, in particular, the outcome that: *In any fire situation in the Cotter Catchment, the Emergency Services Bureau (ESB) would attack the fire aggressively*[422]. Mr McRae said that was an outcome of the Workshop that he was aware of and that it was a philosophy that he would agree with[423]. Mr Graham could not specifically remember that comment being made, *but I would accept that that would be standard practise... As a matter of course, we will say we will fight fires aggressively.* Mr Graham believed that this approach had been reinforced by the Namadgi Burn Scenario Exercise[424]. Although in the context of evidence concerning a different document (namely, Mr McRae's *Phoenix Imperative* document discussed above)[425] Mr Lucas-Smith agreed that quick response and quick suppression was something that he was very much conscious of and conscious of the need for[426]. The outcome of the Namadgi Burn Scenario is consistent with the reference in the Rural Fire Control Manual referred to above: *While much can be done with early detection and rapid initial attack.*[427]. It is also consistent with the approach historically of the Bush Fire Council, as demonstrated by Mr Cheney's evidence concerning the response to the Pago fire discussed above[428], Mr Jeffery's statement extracted above[429] and other evidence during the Inquest[430].

CHAPTER 3 THE FIRES: ORIGIN, PATH AND RESPONSE

3.1 LIGHTNING STRIKES

3.1.1 BACKGROUND

258. The origin of each of the McIntyre's fire, the Bendora fire, the Stockyard Spur fire and the Mt Gingera fire was examined in Mr Cheney's report^[431], and discussed in Mr Cheney's evidence during phase one of the evidence^[432]. The conclusions reached by Mr Cheney as to the origin of each of the fires is supported by the report from Kattron Lightning Data Search^[433], and the evidence of Mr Tycehurst concerning the Kattron report^[434]. In particular, Mr Tycehurst gave evidence that the lightning detection system operated by Kattron is accurate to within 500 metres^[435]. The Kattron lightning detection system recorded only one lightning strike within 500 metres of the point of origin of each of the four fires as identified by Mr Cheney^[436].
259. In relation to the McIntyre's fire, the location of the point of origin is also identified in the joint submission from the NSW Rural Fire Service and the NSW Parks and Wildlife Service to the NSW Coronial hearing. That submission includes photographs of the lightning scar on the tree and states: *the ignition point is part way up the slope rising from the Goodradigbee River east to Webb's Ridge, about one km north-east of McIntyre's Hut and 100 metres west of McIntyre's trail (GR 586963 – AMG66) at an altitude of approximately 640m*^[437]. The submission accords with Mr Cheney's report, except that the reference to McIntyre's trail should be to Lowell's trail and the grid references are slightly at variance. However, these differences are not material.
260. Mr Cheney gave evidence that following initial ignition of the McIntyre's fire, the fire rapidly filled out the valley to the east of the point of origin, moving into the steep western aspects of the range below Webb's Ridge, throwing firebrands that started a total of six spot fires to the west of Webb's Ridge into Mountain Creek and out on the Baldy Range^[438].
261. Some doubt has been expressed about whether one or more of six spot fires, were started by further lightning strikes or by fire brands generated from the main run of the McIntyre's fire^[439]. Mr Cheney concluded that: *these fires were spot fires from fire brands generated by the fire starting near McIntyre's Hut when it burned onto the steep western aspects of the range below Webb's Ridge*^[440]. In his evidence, Mr Cheney noted that spot fires would normally fall out with the prevailing wind direction within an envelope of about 12°. He would expect that there would be spot fires falling from a convection column of the intensity of that generated by the main run of the McIntyre's fire on the afternoon of 8 January. Further, the Kattron lightning detection system showed no evidence of lightning discharges to the east of the McIntyre's fire^[441].
262. In the case of the Bendora fire, Mr Cheney refers to an alternative point of origin at grid reference 644 791 where a large tree adjacent to the Bendora break had burnt out. However, in Mr Cheney's opinion, a point of origin at this location is inconsistent with the observations of Mr Cliff Stevens who first attended the fire at around 17:50 on 8 January. When searching for the fire Mr Stevens observed only one column of smoke and believes that this was the only fire in the vicinity. Further, the crowns of five trees in the vicinity of grid reference 644 785 had either

recently died or appeared sickly and browning off, consistent with death that occurs around a lightning strike location. Although fire had burned up the lower bark on the tree bowls, the damage to the crowns was not due to heat scorch. Accordingly, Mr Cheney concluded that the point of origin of the Bendora fire was in the vicinity of these five tree at grid reference 644 785[442].

263. Mr Cheney also comments that the 30 minute delay between the recorded lightning strike in the Bendora area and the first sighting of smoke in the area from the Mt Coree fire tower, is likely to have resulted from confusion with the smoke from the Stockyard Spur fire that was dead in line of 180° from that fire tower and higher in the topography[443].

264. Mr Cheney's identification of the point of origin of each of the Stockyard Spur and Mt Gingera fires is less precise. In the case of the Stockyard Spur fire, Mr Cheney notes that helicopter Firebird 7 was undertaking reconnaissance in the area and at 15:57 described the location of the Stockyard Spur fire at grid reference 633 651 on the crest of the hill and about 50 square metres. Mr Cheney also notes that it is likely that the smoke reported from the Mt Coree fire tower at 15:25 was from the Stockyard Spur fire. In the case of the fire at Mt Gingera, Mr Cheney comments that it does not appear to have been accurately plotted in its early stages. However, a report from helicopter reconnaissance suggests that the fire was burning just inside the ACT on the south-east ridge of Mt Gingera. On that basis, Mr Cheney concluded that the point of origin of the Mt Gingera fire was in the vicinity of grid reference 619 606[444].

3.1.2 SUBMISSIONS

265. Concerning the cause and origin of the initial ignition of each of the fires starting in the vicinity of McIntyre's Hunt and at Bendora, Stockyard Spur and Mt Gingera, we submit that the Your Honour should find as follows:

- a. Cause and origin of the initial ignition of the fire near McIntyre's Hut: The initial ignition of the fire near McIntyre's Hut was caused by a lightning strike at approximately 15:41 on 8 January 2003 at a point of origin in the vicinity of grid reference 587 965, being the location of a lightning struck tree a short distance (approximately 100 metres) to the west of Lowell's fire trail. Smoke from that fire was first detected from the Mt Coree fire tower at about 16:06 that day. Following initial ignition, the fire rapidly filled out the valley to the east of the point of origin, moving into the steep western aspects of the range below Webb's Ridge, throwing firebrands that started six spot fires to the west of Webb's Ridge, including a spot fire out on the Baldy Range.
- b. Cause and origin of the initial ignition of the fire at Bendora: The initial ignition of the fire at Bendora was caused by a lightning strike at approximately 15:11 on 8 January 2004 at a point of origin in the vicinity of grid reference 644 785, about 50 metres north of Wombat Road, being the location of five trees that had either recently died or appeared sickly and browning off. Smoke from that fire was first detected from the Mt Coree fire tower at 15:41 that day.

- c. Cause and origin of the initial ignition of the fire at Stockyard Spur: The initial ignition of the fire at Stockyard Spur was caused by a lightning strike at approximately 15:14 on 8 January 2003 at a point of origin in the vicinity of grid reference 633 651. Smoke from that fire was first detected from the Mt Coree fire tower at 15:25 that day.
- d. Cause and origin of the initial ignition of the fire at Mt Gingera: The initial ignition of the fire at Mt Gingera was caused by a lightning strike at approximately 15:35 on 8 January 2003 at a point of origin in the vicinity of grid reference 619 606, being a location on the south-east ridge of Mt Gingera just inside the ACT border.

3.2 8 JANUARY 2003

3.2.1 FORMATION OF THE SMT

3.2.1.1 Notification of the Fires and First Response

266. At about 16:00 hours on 8 January 2003, Peter Lucas-Smith was informed that at approximately 15:25 hours the ACT fire towers had reported fires, he confirmed with Mr Graham that *we had responded appropriately* and that *as these fires were small and resources were still in the process of being responded, I left the management of this initial response to Mr Graham*[\[445\]](#).
267. Tony Graham was the rostered duty co-ordinator for bushfire and emergency services for 8 January 2003. He was advised by Comcen at about 15:20 hours, while he was in a meeting with Mr Lucas-Smith, that a number of lightning strikes had been reported by the fire towers strategically located around rural ACT[\[446\]](#). In his statement, Mr Graham said that he then spoke with Mr Lucas-Smith, they analysed the information that was coming in from the fire towers and that at about 15:30 hours he dispatched David Ingram to the police complex at Weston where he was to meet up with the bushfire service contracted helicopter (call sign "Firebird 7") to conduct an aerial reconnaissance of the affected areas. Mr Graham described Mr Ingram's job in undertaking the aerial reconnaissance to *provide a description of the fire behaviour, fire size, assets threatened, and the precise location of the fires*[\[447\]](#).
268. Mr Ingram took off in Firebird 7 at 15:44 hours. Firebird 7 first flew in the direction of Corin Dam and on arrival over Stockyard Spur, flew directly over the top of the fire site. He reported to Comcen at 15:57 that the Stockyard Spur fire was *about 50sqm circumference with a flame height of about 1 metre* and that *there was no apparent vehicle access to that fire's location*[\[448\]](#). Mr Ingram then flew north to the Bendora fire and at 16:02 hours he reported the Bendora fire as being *about 100 metres down from a ridge line and burning mainly on the ground and not yet up into the tree canopy*[\[449\]](#). It appears that Mr Ingram did not at this stage provide a report as to the size of the fire at Bendora.
269. At 16:03 hours Mr Graham commenced the process of responding units to the various fires[\[450\]](#). According to Mr Graham, *the initial deployment to the fires was based on using rostered resources. Because the ACT fires were situated in the Namadji National Park I responded Parks Brigade units along with the Parks Brigade officers as the field incident controllers to the Bendora and Stockyard Spur fires. At 16:03 hours, the Comcen operator, following my instructions, deployed the nearest and most appropriate units, being the*

Forest Brigade units Forests 7 (Cliff Stevens) 15 and 25 to the vicinity of the Lees Creek camp area, the site of one of the early smoke reports. These units then continued onto the site of the Bendora fire. A short time later, I also responded Gungahlin 20 (this unit was at Camp Cottermouth on the Cotter Road at the time) and Parks 12 and 22, and the Captain of the Parks Brigade Odile Arman (Parks 1) as the field incident controller, to the Bendora fire^[451].

270. The firefighting vehicles responded to the Bendora fire thus comprised Forest 7 (Mr Stevens in a four wheel drive vehicle), Forest 15 (a tanker), Forest 25 (a light unit), Parks 12 (a tanker), Parks 21 (a light unit) and Gungahlin 20 (a light unit)^[452]. This response comprised 1 additional light unit and one less tanker than designated under SOP 7.

271. At the same time, Mr Graham arranged for Mr Denis Gray (Parks 9) to respond to the Stockyard Spur fire as the field incident controller, along with 2 tankers and a light unit, being Parks 10, Rivers 10 and Parks 20^[453]. Thus, the wait of response to the Stockyard Spur fire was 1 tanker and 1 light unit less than required under SOP 7. No units were responded to the Mt Gingera fire on the afternoon or evening of 8 January 2003^[454].

272. According to Mr Lucas-Smith, the response to the Stockyard Spur and Bendora fires *was made in accordance with our SOPs, which is designed to maintain adequate coverage for the entire ACT District should it be required, especially in light of recent arson activity on Black Mountain and the potential for additional lightning strike fires to emerge*^[455]. In his statement, Mr Lucas-Smith then confirmed the configuration of the response to each of the Bendora and Stockyard Spur fires which, as indicated above, was less than required under the SOP 7 (although only marginally so in the case of Bendora)^[456].

3.2.1.2 Allocation of Responsibilities

273. According to Mr Lucas-Smith, *a short while after 16:00 hours it became apparent that there were multiple lightning ignitions in and around the ACT and so I assembled the Service Management Team (SMT), consisting of Tony Graham as Operations Officer, Rick McRae as Planning Officer and myself as Controller. Dave Ingram, who would normally be included in the SMT as the logistics officer, was at this stage in Firebird 7 (the ACT's contracted helicopter), conducting an initial reconnaissance. The SMT is responsible for the control, coordination and strategic management of all bushfire activity in the ACT and is scaled up as incidents grow*^[457].

274. Meanwhile, Arthur Sayer who, along with Mr Graham and Tony Bartlett was one of the ACT's three deputy CFCOs, heard the reports from the fire towers about sightings of smoke plumes in the Brindabella Ranges. Mr Sayer arrived at the ACT Parks central depot at the corner of Athllon Drive and Sullwood Drive within 30 to 45 minutes of hearing the smoke reports. Mr Sayer said to other officers of ACT Parks present that: *I was concerned about the location of the fires and their remoteness. I said that if we do not get onto them quickly, they would become a fairly big problem for us. I also expressed my concern that we had several fires at once and this would mean having to spread our resources carefully in order to catch the fires early. I said to Mr Wells and Mr Galvin that I thought heavy machinery, and in particular bulldozers, should be responded immediately to put effective containment lines around the fires. Although I expressed this opinion to Mr Wells and Mr Galvin, none of us had any responsibility for taking action in response to any of the fires. It was just something I discussed with them*^[458].

275. On the afternoon of 8 January 2003, Mr Bartlett was in a meeting which concluded at around 16:00 hours. When Mr Bartlett left the meeting, he could see the smoke plumes in the Brindabella hills and could hear radio traffic in relation to various smoke sightings. Mr Bartlett went straight to the ESB headquarters at Curtin, arriving at about 16:20 hours. *Being a deputy chief fire control officer, I went straight into the Operations Room to enquire as to what I could do. I was worried about the McIntyre's Hut fire and the potential threat it posed to our forest resources at Uriarra and Pierces Creek. I met Tony Graham and Peter Lucas-Smith and was advised that there was no role for me at that present time as they were still trying to confirm the number of fires and their specific locations. I indicated that from what I had seen on my way over to ESB that there was a need to deploy additional resources as quickly as possible. Tony Graham informed me that until he had received confirmation from the on-ground incident controllers about resource requirements he was not willing to deploy additional resources to the fires*[\[459\]](#). Mr Lucas-Smith does not remember the conversation with Mr Bartlett but accepted that it may have occurred as described by Mr Bartlett[\[460\]](#). Likewise, Mr Graham does not recall the discussion with Mr Bartlett but agreed that it could have happened[\[461\]](#).

276. Mr Neil Cooper was with Mr Bartlett when they first heard reports of the fires. Mr Cooper returned to the ACT Forests Stromlo depot at about 16:30 hours *and commenced holding ACT Forests personnel back after normal knock-off, just in case they were needed. Several ACT Forests units had already been responded to the Bendora fire and Mr Cooper started making arrangements with ACT Forests' staff because we could see that the fires were building rapidly, especially in the McIntyre's Hut area and it was going to require overnight shifts. According to Mr Cooper: At the time, we were experiencing benign weather conditions. We were under a south-easterly air stream. However, we were also aware that weather patterns come in roughly 5 day cycles where benign conditions are followed up by strong north-westerly wind. Every 15 minutes or so we checked outside and even from the office at Stromlo the smoke plume from the McIntyre's Hut fire was huge by the time it completed its initial afternoon run. I regularly sent people on a short drive down the Cotter Road to obtain information and descriptions of what was occurring. The sight of this smoke plume reinforced our belief as to the urgency that needed to be given to the situation. My concerns were mainly on the McIntyre Hut fire although I was fully aware of the urgency that was required to address the other fires in the ACT*[\[462\]](#).

277. At 16:46 hours Mr Ingram in Firebird 7 again flew over the Stockyard Spur fire and reported that it was now *70 square metres in circumference with flame height now 1 to 1½ metres. Firebird 7 then returned to the Bendora fire and at 16:55 Mr Ingram reported that this fire was about 100 square metres with flame height about 1 to 2 metres and burning very slowly uphill at that stage*[\[463\]](#).

278. At about 17:20 hours, Mr Bartlett had been at the ESB expecting that the situation would become clearer and that he would have a role in managing the initial response or resource allocation, mindful of the speed in which the fires of 24 December 2001 had developed. However, by about that time he assessed that he would no longer be required and decided to return to the ACT Forests headquarters at Stromlo to coordinate the ACT Forests response as required. As Mr Bartlett walked out the door of the ESB headquarters he *observed a huge column of smoke blowing right across town from the McIntyre's Hut fire, which caused immediate concern. I went back into ESB and spoke to Mike Castle, suggesting that he come outside and observe the same smoke plume for himself, rather than relying on information coming from other sources before a response was initiated. After assessing this*

smoke for himself, he advised that he was going to communicate the significance to those responsible in the Operations Room and so I advised that I would be returning to ACT Forests to await further instructions[\[464\]](#).

3.2.2 BENDORA.

3.2.2.1 *Arrival at the Fire*

279. Mr Ingram had made his first report from Firebird 7 concerning the Bendora fire at 16:02 hours, during which he did not provide an estimate of the size of the fire. In his second report at 16:55 he described the fire as about 100 square metres with a flame height of about 1 to 2 metres and burning very slowly uphill at that stage[\[465\]](#). At 17:13 hours Comcen contacted Firebird 7 on behalf of the duty coordinator, (Mr Graham) asking for *full sit rep* on the Bendora fire. In response, Mr Ingram in Firebird 7 reported that: *the fire is about 100 metres by 50 metres wide... the under story hasn't gone up into the trees. Flame height is still 1 metre to 1.5 metres*[\[466\]](#).

280. Cliff Stevens (Forest 7) got to the Bendora area at approximately 16:40 hours. He was accompanied by the Forest 15 tanker. He left the tanker to follow and drove ahead to look for the fire and he reached the fireground at approximately 17:50 hours and set about marking the track into the fireground[\[467\]](#).

281. Odile Arman (Parks 1) had been told when she was first responded to the fire while at Mitchell that she would take charge of the fire[\[468\]](#). At 17:58 hours, Ms Arman contacted the Southcare 1 helicopter that was conducting water bombing on the Bendora fire and asked it to indicate the size of that fire. Southcare 1 responded that *at present the... fire front is an approximately on a 750 metre front*[\[469\]](#).

282. Ms Arman arrived at the site of the Bendora fire at approximately 18:50 hours. All of the other units were there before her, comprising 2 tankers, 3 light units and Mr Stevens (Forest 7) in a Forests vehicle with a radio[\[470\]](#). On her arrival, Mr Stevens informed her that they were a long way from water and, as he was familiar with the area, he offered to find a water source. She agreed that Mr Stevens should find and mark the track to water[\[471\]](#).

3.2.2.2 *Initial Tactics*

283. At that point, Ms Arman had two objectives. The first was to get an assessment of the fire so that she could give a situation report to Comcen and, secondly, to commence a direct attack on the fire. Ms Arman decided that to properly assess the fire, she needed to walk around the fire. Mr Stevens had suggested that she not go alone because the ground was rough and there were a lot of large trees with the fire burning actively. According to Ms Arman, there was a danger of trees or timber falling[\[472\]](#).

284. Shortly before commencing her walk around the fire, Ms Arman again spoke by radio with helicopter Southcare 1. At 18:53 hours, Southcare 1 informed Ms Arman that they were going to check with the fire controller at Curtin to see what they want the helicopter to do. Southcare 1 then radioed to Ms Arman: *we estimate the fire's stayed fairly contained over the last hour, hour and a half. We estimate it's between ab 500 metres and ab 750 metres square.* Ms Arman responded *that's 500 by 350,*

to which Southcare responded *negative, 500 metres square to 750 metres square*. The exchange concluded with Ms Arman stating ... *copied that. We've got some units on scene now and we'll be running up some canvass hoses up to it. Parks 1 out*[\[473\]](#).

285. In her statement, Ms Arman summarised this exchange: *At about that time, Southcare 1 advised me directly via radio that the fire was about 500 to 750 square metres in size. This was significantly at odds with their previous report, at about 18:00 hours that the fire was on a front of 750metres*[\[474\]](#). This may represent a misunderstanding of the report from the Southcare helicopter which, on one view of their description, is referring to an area of 500 metres by 750 metres square, as distinct from 500 to 750 square metres.

286. Before leaving to assess the fire, Ms Arman believed that she spoke to the Parks crew about starting a direct attack on the fire. She could not recall the specific conversation, nor could she recall whether the Forests crews were part of the conversation about putting water on the fire[\[475\]](#). However, her report to Southcare 1 at 18:53 referred to above confirms that she had given some instruction to commence direct attack at this time.

287. The evidence of others present at the Bendora fire and under the command of Ms Arman also confirms that the crews of the Parks 12 tanker and the Parks 22 light unit were given instructions to commence direct attack on the fire before Ms Arman left to assess the fire. But the crew of the Forests 15 tanker were not[\[476\]](#).

3.2.2.3 *Assessment by Ms Arman*

288. Ms Arman commenced her walk around the fire at approximately 19:00 hours. She was accompanied by a Forests crew member, John Kane[\[477\]](#). Ms Arman and Mr Kane walked around the fire in a clockwise direction with the fire on their right hand side all of the time. They took little rests as they walked upslope and Ms Arman was marking the fireground on a 1:100,000 map that she had with her. They were not walking rapidly around the fire. The slope was moderate but the debris on the ground was difficult to negotiate. The slope flattened out toward the top of the fire. The southern edge of the fire was burning very slowly and not noticeably spreading further south. The flame height at the edge of the fire, for most of its circumference, was about half a metre. The western flank was on an uphill slope and in more open terrain, flatter than the southern flank. There was less under story and debris under foot. The fire was again burning very slowly in the upslope westerly direction. [\[478\]](#)

289. Ms Arman described the north side of the fire as having moved partly into a gully line where the vegetation was much more dense. She and Mr Kane continued right back around to Wombat Road, traversing the eastern flank of the fire where they encountered the Parks crew spraying water on the fire on the eastern flank. She observed that fire activity seemed more intense on this flank, probably because of higher fuel loads. The crews were having difficulty in negotiating their hoses because there was a lot of material and obstacles on the ground. *Having to drag hoses upslope added to the problem and they had to be mindful of the fact that they were below any falling timber, which was quite dangerous.*[\[479\]](#)

290. More generally, the vegetation in the area where the fire was burning comprised very tall and in some cases, large mountain gum and brown barrel eucalypts. *The fire appeared to be drawing in on itself. However some distance in from the fire edge, the flame height averaged about 2 metres, particularly around the base of trees where bark had accumulated to some depth. Some of the trees were in fact burning quite well, with tongues of increased intensity well up the trunks of the trees*[\[480\]](#). According to Ms Arman, the photograph taken by Mr Cutting[\[481\]](#) from Wombat Road at 21:00 hours was reasonably representative of what Ms Arman saw during her reconnaissance and generally during the evening[\[482\]](#).
291. Ms Arman was walking only 1 or 2 metres from the fire edge and the intensity *wasn't too dramatic. Certainly you could work alongside it.* Her reference to flame heights averaging 2 metres was what she could observe further into the fire area. So far as the intensity was concerned, the fire was susceptible to direct attack with water and rake hoe teams[\[483\]](#). Ms Arman could *bear timber falling occasionally.* She didn't know whether they were trees or just timber[\[484\]](#). She was not able to see any falling trees or branches. What she was hearing was coming from somewhere within the fire area. It was consistent with Ms Arman's experience that falling timber would normally be in an area where the fire had been burning for some time. It depends on the size of the trees and if they are already existing hollows[\[485\]](#).
292. In her statement, Ms Arman estimated the size of the fire to be 300 by 400 metres *although this estimate was fairly crude and was made difficult by the fact that we were scrambling upslope and there was a lot of vegetation and ground obstacles to negotiate*[\[486\]](#). She later considered that she probably overestimated the size and that it was more around 200 by 300 metres[\[487\]](#). Having been there and walked around the fire, it was Ms Arman's strong view that the fire was significantly larger than 20 x 25 metres, which was how she interpreted the estimate by Southcare 1 at 18:53 namely, 500 to 750 square metres[\[488\]](#). Ms Arman observed that the fire was moving slowly, but she didn't really stop to measure the rate of spread[\[489\]](#).
293. Ms Arman estimated that she returned from her reconnaissance at about 20:00 hours. When she reached Wombat Road, she found the Forestry crew on that trail and it was apparent to her they'd not been putting water on the fire. Ms Arman directed the Forest tanker driver to get his hoses out and walk in to put some water on the fire. At around 20:00 hours, Ms Arman provided a situation report to Comcen. [\[490\]](#)
294. The evidence given by Ms Arman included a video recording of a drive by her to the site of the Bendora fire, and a walk around the area of the fire as she recalled it from the night of 8 January 2003. She was accompanied on the site visit by police investigation officers (among others) and Ms Arman's responses to questions from the police officers are included in the video recording[\[491\]](#). The video walkthrough constitutes a very helpful visual representation of the area of the fire, as supplemented by Ms Arman's descriptions. However, apart from a reference by her to difficulties likely to have been encountered in rake hoe work in the dense vegetation on the north end of the western flank of the fire[\[492\]](#), Ms Arman said nothing during that video walkthrough that added materially to her statement, TROC and evidence.

3.2.2.4 Mr Graham's Telephone Conversations

295. At 19:03 hours, about the time Ms Arman was setting off to undertake her assessment of the Bendora fire, Mr Graham had a telephone conversation with Bruce Arthur concerning the current status of the fires in the region. Towards the end of the conversation, Mr Arthur said to Mr Graham: *So I don't, you guys don't envisage doing much tonight, I guess?* Mr Graham replied: *I don't think so, no.* Mr Arthur then said: *Hopefully – I mean, until we know what this thing's doing, you can't put people in that country today.* Mr Graham replied: *No, no exactly*[\[493\]](#).
296. When asked about this telephone conversation, Mr Graham's evidence was that, in his remarks, he was reflecting on all the fires, not just the McIntyre's fire. Mr Graham was agreeing with Mr Arthur's sentiment for the whole fire event. But he could not remember the specific thoughts that were going through his mind at the time. He did not at that stage have any detailed report from Ms Arman. On the question whether Mr Graham's remarks indicated if he had a preference one way or the other as to whether the ESB were going to send more crews or keep crews there overnight, Mr Graham said he may have had a leaning one way or the other, he just didn't recall. He hadn't made up his mind when he made the response. He was still open to various scenarios. [\[494\]](#)
297. At about 19:31 hours Comcen contacted Mr Ingram in Firebird 7 and requested that he provide an estimate of the size of the Bendora fire. Mr Ingram responded *Yeah estimated at this stage about 500 square metres over*[\[495\]](#). In his evidence, Mr Ingram confirmed that this was a mistake. His earlier report was of a fire of 50 metres by 100 metres, which is 5000 square metres. The fire that he could see when he provided the report to Comcen at 19.31 hours was 5000 square metres, about the size of a rugby field[\[496\]](#).
298. Some 12 minutes later, and still before Ms Arman's situation report, Mr Graham telephoned Mr Lucas-Smith. It is likely that, at the time of the call, Mr Lucas-Smith was in his car on his way to meeting with representatives of NSW Rural Fire Service and NSW Parks at Queanbeyan, to discuss the McIntyre's Hut fire[\[497\]](#). The full text of the conversation, which commenced at 19:42:08 hours, is as follows:
- Lucas-Smith: Hello*
- Graham: Yeah giddy Peter, Tony*
- Lucas-Smith: Yeah*
- Graham: That Bendora fire*
- Lucas-Smith: Yep*
- Graham: Approximately 500 square metres, burning very slowly*
- Lucas-Smith: OK, is Odile on it?*
- Graham: Don't know. We can't, we've just spoken to Parks Forest 15 and they're goin' to go and grab Odile. She's in the scrub at the moment. That's the message we got.*
- Lucas-Smith : OK so what they are they going to be able to do anything tonight do you think?*
- Graham: I would be very doubtful that they could I'd...*
- Lucas-Smith: So we'd be looking at crews back tomorrow?*
- Graham: Yep.*
- Lucas-Smith: OK I wonder if you could organise that.*

Graham: OK

Lucas-Smith: *That with Odile. Need to make sure we are, that we don't commit ourselves beyond what we might end up needing to commit to the McIntyre fire.*

Graham: *Yep, sure.*

Lucas-Smith: *But I think we need to if we can get them out of the way the better.*

Graham: *Yep.*

Lucas-Smith: *But McIntyre's will most likely be tankers with back burning operations any way so*

Graham: *Yep OK*

Lucas-Smith: *So we might use other resources for that.*

Graham: *Sure. Not a worry. I'll work on that and let you know when you come back.*

Lucas-Smith: *Thanks mate.*

Graham: *Righto.*

Lucas-Smith: *See ya.*[\[498\]](#)

299. Mr Lucas-Smith gave evidence concerning his telephone conversation with Mr Graham, in the course of which he produced a transcript of the telephone conversation[\[499\]](#). Reading Mr Graham's statement in about December 2003, jogged Mr Lucas-Smith's memory that there was a conversation on the telephone between Mr Graham and Mr Lucas-Smith on the night of 8 January 2003[\[500\]](#). Mr Lucas-Smith knew from the telephone conversation that Ms Arman was in the scrub, that Mr Graham was doubtful that they were going to be able to do anything that night and that the fire is 500 square metres, 50 metres by 10 metres, which is a small fire[\[501\]](#). Mr Ingram, Mr Graham and Ms Arman were experienced officers and he trusted their judgment, but as CFCO he was entitled to have a say and, in the end, had to take responsibility for the decision. Mr Lucas-Smith accepted in evidence that he approved the decision not to do anything that night in the phone call, without knowing anything of the detail[\[502\]](#).

300. As far as Mr Lucas-Smith could recall, the only discussion he had with Mr Graham was the telephone conversation at 19.42 hours. That was not a conversation in which Ms Arman's concerns were discussed. Mr Lucas-Smith was not aware of being involved in any discussion about Ms Arman's concerns about the safety on the night of 8 January until he had returned to Curtin and after the decision had been made and the crews had withdrawn.[\[503\]](#)

301. At the time of the telephone conversation Mr Graham did not yet have a report from Ms Arman as to what she had seen in her reconnaissance of the fire. That was the crucial piece of information that Mr Graham was waiting for before starting to firm up about whether crews should be left overnight. Mr Graham agreed that his comment to Mr Lucas-Smith during the conversation that *um, I would be very doubtful that they could*, followed by a discussion about crews the following day, suggested that it would appear that Mr Graham was starting to develop a view that it was very unlikely that he would have crews in there overnight[\[504\]](#). When asked what factors had caused Mr Graham to start to think that way, he responded: *I think we knew at that time, we had a better idea of the location of the fire. We knew there were crews on it. We knew there had been some falling timber.* He later agreed that he couldn't find any references to falling timber before the telephone conversation[\[505\]](#).

302. In answer to subsequent questions, Mr Graham said that he did not believe it was the case that he had a preference for withdrawing crews. He believed he was going to keep a very open mind on it until he had heard back from Ms Arman. He may have made those comments to Mr Lucas-Smith at that point in time, *but I think as the evening progresses, there is no way I led Odile Arman or anybody else into giving any kind of view of whether the crews should remain overnight.* Mr Graham then conceded that his conversation with Mr Lucas-Smith shows that there was leaning towards the decision that it was not appropriate to leave crews in before he had received a situation report, but he didn't think it showed that a decision had been made at that point. There was a leaning that way on his part. [\[506\]](#)

303. When Mr Graham concluded his conversation with Mr Lucas-Smith he didn't believe that Mr Lucas-Smith would have been opposed at that time to having crews withdraw if that had been the view of the incident controller at the time of the conversation. Apart from the observation of Firebird 7, Mr Graham really had no information one way or the other that assisted a decision as to whether or not it was appropriate to leave crews in overnight. [\[507\]](#)

304. Mr McRae travelled with Mr Lucas-Smith to Queanbeyan. Mr McRae recalled in evidence Mr Lucas-Smith having a "hands free" mobile telephone conversation with Mr Graham on the way to Queanbeyan, but he did not recall the content of the conversation. [\[508\]](#)

3.2.2.5 Ms Arman's Sitrep to Comcen

305. Ms Arman provided her situation report to Comcen at 20.01 hours, as follows: *OK this fire's doing about 100 metres from the Warks Road uphill. It's drawing into itself. It's not moving very fast. We can access the eastern side of it from Warks Road with tankers and light units but we will need rake hoe lines around the top section.* Comcen then repeated the situation report back: *Fire 100 metres from the road moving uphill slowly. Eastern access is possible but will require rake hoe lines on topside with water bombing assistance. Is that correct?* Ms Arman responded: *That's affirmative on the western side which is the uphill side.* Ms Arman then received a message from the Southcare 1 helicopter as follows: *Parks 1 Southcare 1. We're inbound to your position this time. ETA 10 minutes with a bucket of water and copied your last on the high side the western side of the fire.* Ms Arman responds: *That would be great thanks Parks 1 out to you.* [\[509\]](#)

306. A few moments later, Comcen and Ms Arman had a further exchange. Comcen asks: *Yeah received your sitrep. Any further information for me Parks 1.* Ms Arman responded: *No could you ask the duty co-ordinator what he'd like us to do given that it's going to be dark soon. Not really sure whether we should be sending a rake hoe team in.* Comcen's reply was: *Parks 1. I understand that teams will be removed from location this evening and returned tomorrow but I will check with the duty co-ordinator to confirm that.* Ms Arman responded: *I'll wait for you to get back to me, Parks 1 out.* [\[510\]](#)

307. Mr Graham referred to this exchange in his statement. *At 20.01 hrs Odile Arman spoke to me, via Comcen about whether to keep ground crews on the fire ground over night and sought advice through Comcen about whether to stand her crews down for the evening. While crews are trained and capable of night time operations, this is usually conducted once the strategies have changed from direct attack to indirect attack. When this happens crews are generally not presented with the immediate danger of falling timber, and avenues of retreat are more accessible. I discussed Odile Arman's concerns with Peter Lucas-Smith and Rick McRae. I can no longer*

recall whether these conversations were in person or by phone. I can only recall discussing these concerns with them. The three of us agreed with the assessment made by Odile Arman of the risks to fire fighter safety of the Bendora fire as outlined above and, based on this, the SMT supported her position that her crew should not remain at this fire overnight for safety reasons. This decision was confirmed in a telephone conversation between Odile Arman and myself that 21.18 hrs that evening[\[511\]](#).

308. It is clear from the evidence of Mr Lucas-Smith and Mr Graham that the only conversation that took place between Mr Lucas-Smith and Mr Graham before the decision was made to withdraw crews from the Bendora fire was the telephone conversation at 19.42. Mr McRae did not take part in that discussion[\[512\]](#). Further, Mr Lucas-Smith did not agree with Mr Graham's statement to the effect that night time operations are usually conducted once strategies have changed from direct attack to indirect attack. He accepted the proposition that if the conditions were right, there would be no problem with an overnight crew engaging in direct attack[\[513\]](#).
309. Mr Graham thinks that he was in Comcen when Ms Arman gave her situation report at 21.01 hours. He was not conscious that Ms Arman had not given details of the dimensions of the fire. He did not recall hearing Ms Arman ask what the duty co-ordinator would like them to do and her being told that the Comcen operator's understanding was that the teams would be removed from the location that evening and returned tomorrow but the Comcen operator would check with the duty co-ordinator to confirm that. Mr Graham did recall Ms Arman asking for advice about whether or not she should stay in overnight. Asked whether Mr Graham could assist as to how the Comcen operator would have had the understanding that crews would be removed that evening, his evidence was: *I mean he or she may have overheard discussions that I was involved in – maybe overheard the telephone conversation I had with Mr Lucas-Smith at 19.42. But I don't know.* Mr Graham believed that he was in Comcen at the time of his telephone conversation with Mr Lucas-Smith. Mr Graham could not remember saying any other things to the Comcen operators about leaving crews in overnight.[\[514\]](#)
310. Mr Graham then gave the Comcen operator instruction to ask Ms Arman whether she intended remaining or leaving crews on location overnight and an estimate of how many crews would be required next morning[\[515\]](#). The precise message was as follows: *Yeab Parks 1. Compliments of the duty co-ordinator. Do you intend remaining or leaving crews on location overnight. If not, crews will be going in first thing in the morning and could you give us an estimate on how many crews would be required for that.* Ms Arman responded: *I'll get back to you. Give me a few minutes to work that out. Parks 1 out*[\[516\]](#).
311. Mr Graham did not believe he had an expectation when he asked that the message be sent as to what the response would be. He did not believe he had formed a *solid view* either way as to whether he was expecting Ms Arman to say no. He *may have had a leaning*, and based on that leaning he combined the question with a further request that Ms Arman provide information that was only relevant if the decision was made to withdraw. Regardless of the decision to stay or go, there would have been a requirement for crews to return the following day[\[517\]](#). Mr Graham later gave evidence that he did not believe there was any suggestion on his behalf that Ms Arman should withdraw[\[518\]](#).

312. In his evidence, Mr Graham referred to the fact that the ESB radio transcript discloses that there was an exchange between 20.01 and 20.06 hours (that is, between the situation report from Ms Arman and the question from Comcen about whether she was proposing to stay overnight) from the Parks 12 tanker to a portable radio. In the transcript, the Parks 12 tanker makes a remark to the portable radio which includes the words *keep an eye on those trees, Parks 12 clear*[519]. In his evidence, Mr Graham speculated that the exchange may well have contributed to Ms Arman deciding that maybe it wasn't worth staying overnight. Mr Graham did not know whether he heard that exchange on the night. He had certainly read it since when he read the Comcen transcripts. His evidence was that it could well have influenced him in the way he approached the issue that night[520].

3.2.2.6 *The Decision to Withdraw*

313. In her statement, her TROC and in evidence, Ms Arman refers to a number of factors that influenced her thinking concerning her response to the request for Mr Graham via Comcen. Firstly, Ms Arman identified a tendency in recent years not to have crews staying at fires overnight in remote areas. In her evidence, she referred to a fire at Rendezvous Creek earlier in the fire season when crews were not put in on the first night. She said she presumed this was for occupational health and safety reasons[521]. In her statement Ms Arman says that she *made my recommendation against the background of recent remote area fires where I knew that crews had been withdrawn by ESB on the first night for safety reasons*[522]. One of the reasons Ms Arman sought guidance from Comcen was because she had identified a tendency not to leave crews in on the first night. Occupational health and safety was a significant factor in that tendency[523]. For his part, Mr Graham did not think that anybody at ESB held the view that, generally speaking, it was undesirable to have overnight firefighting[524].

314. Secondly, Ms Arman referred to some confusion as to who had the responsibility to continue firefighting overnight. She described it as a *grey area*[525]. In her evidence, Ms Arman said that, in a strict sense, it is the role of the incident controller on the ground to make the decision about leaving crews overnight. But there is often a lot of discussion between the duty co-ordinator and the incident controller at a fire ground about various decisions on the fire ground. Often those decisions are made jointly. That was why she was asking for guidance and advice about what she should do. Ms Arman felt that she had the responsibility for making the decision but she wanted it confirmed by ESB, partly because it is a bit of a grey area[526].

315. Thirdly, Ms Arman agreed that she was influenced by the response from Comcen to her original request referring to the understanding that teams will be removed from the location. That response gave her the impression that they were not going to keep crews on the fireground. She didn't know what was going on elsewhere and *I guess it did influence me a bit*. Her question was never answered. *In hindsight I should have clarified that issue with them*[527]. The comment by Comcen *did throw me a bit because they gave me the impression that... they were going to have some involvement in the decision making*. Ms Arman *had a bit of a feeling we weren't going to leave crews, but they were still asking me what I wanted to do, so I was a little confused there. I decided to proceed to make a recommendation and see how they would respond to that*[528]. In her evidence, Ms Arman described that *in the back of my mind, I did*

have the impression that we weren't going to keep crews and I knew at that point I'd have to make a recommendation. I did see it as a recommendation and I thought that if they weren't happy with that they would say so[\[529\]](#).

316. Fourthly, Ms Arman was concerned about factors relevant to the safety of the crews. In her view, the fire was too big for them to contain or put out that night. They were not able to run canvasses around the whole perimeter of the fire and the crews would have had to rake hoe containment lines for substantial sections of the fire. According to Ms Arman, this was a time consuming and physically demanding activity, especially when doing it without any real visibility. It was getting dark and she was becoming increasingly concerned about the safety of the crews because of the increased likelihood of falling timber as the fire progressed during the night and the possibility of an accident arising from this and potential fatigue caused by the demanding terrain. Ms Arman was concerned that the fire was in a remote area and a long distance from Canberra which meant there was no access to medical care in the event of injury. *The falling timber was going to pose a definite threat during the night when crews would not be able to see so well to avoid fallen trees, branches and other material while trying to work upslope*[\[530\]](#). Ms Arman was conscious that the crews had been working since 07:30 hours that morning and she was reluctant to ask them to start an overnight 12 hour shift. Ms Arman did not know whether the Gungahlin crew had been working since 07.30 hours because they were volunteers[\[531\]](#).
317. On the other hand, Ms Arman agreed that overnight firefighting can be done safely and that it was consistent with her experience of the fire behaviour on the first night is usually at its most benign. *You need to take into consideration the sort of environment you are working in, too*[\[532\]](#). Ms Arman also agree that it would have been possible to arrange SES support during the night if she had decided to stay overnight[\[533\]](#).
318. Fifthly, Ms Arman also took into account that the fire was moving fairly slowly[\[534\]](#). Ms Arman agreed that she would have had an awareness of what the forecast was for that night and the following morning as she was considering the various factors that influenced her decision. She was not sure whether that forecast influenced her thinking. She knew it was going to be an orange day the following day[\[535\]](#). She did not undertake an assessment of what the unattended rate of spread might be overnight except that she didn't think it would grow excessively. She knew the fire would be larger by the following morning when the crews turned up. She was reasonably confident that the fire wasn't going to cross Wombat Road[\[536\]](#).
319. Ms Arman was certainly aware of the drought, but *it was difficult to gauge it*[\[537\]](#). Ms Arman thought it may be possible to contain the fire the next day, but she agreed that was not sure of the weather for the next day and what resources were going to be supplied and there were a number of things she did not know. She thought control was going to be difficult[\[538\]](#). Ms Arman indicated that she was *not really putting a lot of thought into* what would happen if the fire did expand and could not think of any other factors she took into account in weighing up the consequences of leaving[\[539\]](#).

3.2.2.7 *The Attitude of the Crews*

320. A significant factor in Ms Arman's thinking on the night of 8 January 2003 was the welfare of the crews and the fact that at least the Forests and Parks crews had been working since 07:30 hours that morning. In her statement, Ms Arman explained that she was *very reluctant to ask them to start an overnight 12 hour shift*[540]. However, Ms Arman's recommendation in response to the question from Comcen was made without speaking or consulting any other personnel present at that time[541]. A number of the crew members present at the Bendora fire that evening have provided statements to the inquest in relation to their involvement in the fires. While none of these witnesses gave evidence, they were all in the make available category of witnesses referred to above. No party requested that they be made available for cross-examination.

321. Cliff Stevens is an experienced fire fighter, having worked with ACT Forests for 35 years as a logging supervisor and fought many fires in the ACT through that period[542]. On the decision to withdraw from the Bendora fire, Mr Stevens' evidence was as follows:

Before I got back from marking the trail to the water source I heard Comcen talking to Parks 1 via radio about what resources she would want overnight. I assumed this was after a sitrep would have been sent through, about the size of the fire and what sort of assistance might be required. She replied that there wasn't much she could do that evening and she set out the crews required for the next morning. After the fires, I spoke to Parks 1 about the decision to pull crews off that night she said to me that she had understood that Comcen wanted her to 'pull crews out and not leave them in overnight'.

I got back from my reconnaissance to find water some time shortly after 8.15pm...the fire was about 150 metres long and 120 metres in width. I did a visual estimate of the fire size, based on my experience over the years. This estimate was based on where I could see the smoke rising for each end of the fire, although I could not see the flame edge and was making my estimate from the road edge. There is no doubt in my mind that we could have got it out. We had the tanker and 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 think the Parks unit had about 4 or 5 lengths of hose out, and I think our unit had approximately 3 lengths. A length is about 30 metres; end to end is about 120 metres for 4 hoses. I reckon about 2 or 3 hose lengths would have reached that fire easily.

Access to the fire from Wombat Road was on the shady side of the hill, on the east facing slope. Light was still sufficient to walk around the fire ground when I arrived back from making the track to the water source.

By the time I arrived back at the fire ground the decision to leave for the night had already been made. I did not enter discussion with the incident controller about it at the time. I do not recall any other conversation by others with her about the decision – although I was not present at the time it was made.

The light units are ineffective in that territory. The fire was virtually only trickling around at that stage, although there was a bit of fire up towards the canopy in some of the trees; but it was running up the candlebark on the sides of the trees. They were gum trees, and there was a lot of ground material; it was pretty thick and hard to get through. It was not a real problem because we did not have a lot of breeze (about 5kms at that time). It was fairly calm and it was towards the cooler part of the evening, about 8.15pm when the decision was made to leave. The only danger at night, in my opinion, is stumbling around in the bracken and bush and falling over things. There is that risk, but we have faced that risk many times before. There were no fire breaks or trails in place, but the incident controller and one other person had walked the fire ground.

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 crews were prepared to stay and wanted to stay. But the decisions were already made upon my return from searching for top-up points for water to the crews standing by on scene. I also observed the crews rolling hoses up and I gave them a hand. [543]

322. During her TROC, Ms Arman was asked whether she thought about discussing what options she had with the crews. Her response was: *No, I didn't... Cliff Stevens was still on his reconnaissance, he hadn't actually come back, had he come back that might have been a different story but he hadn't. [544]*

323. Mr Stevens' crew included 3 crew members on Forest 15 tanker. The driver of the tanker was Doug Mitchell. At the time of the fires Mr Mitchell had had over 28 years experience with ACT Forests and NSW Forests and had undertaken firefighting duties during the whole of that period. Mr Mitchell described in his statement how the Forest 15 tanker crew waited for an hour or more until they had instructions from the incident controller as to whether to fight the fire or not. They rolled out 5 lengths of canvass hose in preparation to fight the fire and then were told by Ms Arman not to put any water on it at all. Mr Mitchell continues: *I then heard Parks 1 say "pack up the hoses we are going home". Each length of hose is about 30 metres, so we had about 150 metres rolled out. We were at the fire, 150 metres from our tanker on the road, and we were not to do the job. [545]*

324. The remaining crew members on the Forest 15 tanker (Tamera Beath and Rebecca Blundell), two crew members on the Parks 12 tanker (Andrew Hewlett and Matthew Brooke) and one of two crew on the Parks 22 light unit (Stephen Harding), also provided statements. Each of these crew members was well trained, but relatively inexperienced, in remote area firefighting. They all described in their statements problems with the difficult terrain and dense undergrowth. Some of their statements make reference to concerns about falling trees or branches. They also, in various ways, expressed surprise or disappointment at Ms Arman's decision to withdraw from the fireground and a willingness to remain at the fire, at least for some time. [546]

325. Ms Arman was unaware of these views. In her evidence, she reiterated that she didn't ask anyone how they felt about working overnight. However, she noted that, from what Mr Kane said about leaving the light unit to ensure the fire didn't cross Wombat Road, she gathered he would have been happy to have stayed [547].

3.2.2.8 *Communication of the Decision to Withdraw*

326. Ms Arman responded to the question from Comcen about her intentions at 20.14 hours. She said: *An update on what's required for tomorrow, there's not too much that we can do this evening. We'll need at least two rake hoe teams first thing in the morning to work the southern and northern sides of the fire and if its possible to have some water bombing done on the western side... we also require at least one heavy tanker. [548]* In her statement, Ms Arman said she then awaited further direction from Comcen. That direction came approximately 2 minutes later as follows: *Parks 1, compliments of the duty co-ordinator. Thanks for your attendance at this incident. You may return to your area and crews will be returning in the morning. [549]*

327. Mr Graham did not question Ms Arman on why she had reached the view that there was *not much they could do that evening*. According to Mr Graham, ESB supported her decision. Mr Graham played no role whatsoever in providing advice or debating with Ms Arman the relevant issues or hearing from her what her concerns were. She made the decision entirely without input from ESB other than its acceptance of the decision[550]. Mr Graham said that he had enormous confidence in Ms Arman in making these decisions[551].

3.2.2.9 Mr Graham's Role in the Decision

328. Mr Graham believed that *there was an opportunity to question further the decision or the view that Odile Arman had come to*[552] and *understand better the reason behind her decision*[553]. He agreed that the failure to take that opportunity was a deficiency in the way the matter was handled. He believed that he should have taken that opportunity. Asked whether anyone else should have taken that opportunity, Mr Graham responded: *At that point I was the only person in the Service Management Team in one of the key roles in the operations centre, so there was nobody else for me to refer that decision to at that time*. On the other hand, Mr Graham agreed that he could have telephoned or otherwise contacted Mr Lucas-Smith at that point but he did not try to do that[554]. It was suggested to Mr Graham that the way in which decision was handle was negligent. Mr Graham responded that he *wouldn't describe it that way*[555]. Asked whether it was a failure in the decision making process, Mr Graham responded that: *In the endorsement of the decision-making, I would accept that it could have been done better... Whether or not it was failure are words others may use*. Mr Graham went on to clarify that in saying that it could have been done better, he was referring to himself, not himself and Ms Arman[556].

329. Mr Graham knew that they were in drought conditions and that he recognised the fires had the potential to be very difficult to contain. He was also aware that, generally speaking, the first night is usually the time when the fire is the most easiest to control and agreed that to lose that opportunity was a very significant decision[557]. However, on 8 January Mr Graham did not recognise a threat from the McIntyre's Hut fire to the Uriarra pine plantations and had not done anything to make arrangements to ensure that there were dozers available first thing in the morning to put fire trails around the 3 fires for which he was responsible. He did not recognise on that evening the need to do that. He had not looked at the possibility of deploying additional crews or finding out from ACT Forests whether they could deploy additional crews during the night[558]. Mr Graham also never gave any consideration to a typical summer weather pattern, involving benign conditions followed up by strong north-westerly winds on a five to seven day cycle[559].

330. Mr Graham accepted in evidence that Mr Sayer and Mr Cooper were talking that night about what needed to be done in relation to an aggressive attack on those fires and that was something they recognised that night. He agreed that he didn't recognise that same level of concern at that point[560]. Mr Graham accepted that Mr Sayer, Mr Bartlett and Mr Cooper had considerably more experience in bushfire fighting than Mr Graham did at that time. Mr Graham also accepted that the reason that Mr Sayer, Mr Bartlett and Mr Cooper were recognising risks and concerns that Mr Graham was not recognising, was because of that additional experience[561].

331. However, Mr Graham would not accept that he was not sufficiently experienced in relation to bushfire behaviour and bushfire fighting at that time to be in the position he was in, making the sorts of decisions he was being called upon to make that night[562]. More specifically, it was suggested to Mr Graham that one of the reasons why he was not more actively testing Ms Arman and ensuring that the decision to withdraw was a properly formulated decision, was because he did not have the experience to recognise what these fires could do if that opportunity was lost. Mr Graham believed that: *I had some considerable experience in the role that I was fulfilling at the time, being an operations officer in our terminology in our service management team. It was experience that I had gained through what would probably number in the hundreds of fire events over my time there.* Mr Graham agreed that you needed to be able to understand how bushfires worked to make those judgments but said he could not answer whether his understanding was sufficient at that point. He was confident that he had the capacity to do the job[563].

3.2.2.10 Comments on the Decision to Withdraw

332. For her part, Ms Arman considered that someone with more experience might have made a different decision: *I guess my depth of experience is not as deep as – is not as extensive as some other people and if I erred on the side of caution I did that in the interests of the crew that I had for their safety and their welfare*[564].

333. This is echoed in Mr Lucas-Smith's evidence. Mr Lucas-Smith recalled that he and Mr Graham had a discussion about Odile Arman's concerns after he had returned to Curtin and the crews had already been stood down. *Once I heard the information from the discussions that had taken place between Tony Graham and Odile Arman, I thought there probably should have been a little bit more in-depth consideration.* Mr Lucas-Smith's evidence was that: *If I had been on the fire ground, I may have done things differently*[565]. Mr Lucas-Smith agreed that the decision to withdraw was not a decision that he particularly agreed with. Mr Lucas-Smith didn't express any disagreement with the decision in his statement because it is a *hindsight issue*[566]. Mr Lucas-Smith later agreed that in paragraph 26 of his statement, he was effectively condoning the decision, but that was not really his state of mind: *With people with more experience in highland firefighting under those sort of conditions, they might have made a different judgment. If I had been sitting in Odile Arman's position, I think I would have made a different decision, but I was not.* Mr Lucas-Smith also agreed that if he had been at Curtin, he might have been a bigger contributor to the decision[567].

334. Mr Lucas-Smith also gave evidence about whether the difficulties encountered on 9 January 2003 might have been avoided if a different decision had been made on the night of 8 January: *If we made the decision we direct attack on the night of the 8th, at first light on the morning of 9th we would have had heavy plant in there opening those trails and doing what we could to limit the growth of that fire*[568].

335. Mr Graham agreed that Mr Lucas-Smith's comment that there should have been a little bit more in-depth consideration of the decision to withdraw is a fair comment. Mr Graham believed that *we could have done better* than make a decision to withdraw based simply on the statement from Odile that *there's not much we can do this evening*, without any input from Mr Graham or anyone else: *I believe that we in ESB could have taken greater consideration of the information we were getting back from Odile about overnight resourcing and possibly could have questioned her further.* [569]

336. On the question of responsibility for the decision, Mr Graham's evidence was that: *I think it is a joint decision. I think if the incident controller out at the incident ground feels strongly enough that the need to withdraw is paramount, than that decision must be supported. I believe that ESB and the service management team within ESB could probably have questioned in some greater detail – or in some detail the reason behind the decision to withdraw*[\[570\]](#). Mr Graham later referred to his view that *if the incident controller believes categorically that there is a need to withdraw crews, then I would support that 100%*. However, Mr Graham agreed that he would not consider Ms Arman's response to the question from Comcen (namely, *there's not too much we can do this evening*) to be a categorical statement. He accepted that it was short of a categorical statement[\[571\]](#).

337. It would appear that Ms Arman also would not describe her position on the question as *categorical*. She refers to her response to the question as *a recommendation* and states: *...if they felt that given they had a much bigger picture than I did of what was going on, if they felt we should stay I was happy to accept if we were overruled* (emphasis added). She considered that if ESB had wanted her to stay over the night, they would have told her to: *well I would have thought so, yes, given there have been times when they have given out an instruction for a – on a specific thing so I would have thought for something like that they – if they felt we should, they would have told me, yeah. I was uncertain about whether we should withdraw or not and did raise it with Tony Graham who was the duty co-ordinator later in the evening – when I had an opportunity to get in mobile range and asked him about it cause I said I wasn't 100% certain about whether we should do that. But he said it was supported, so, yeah*[\[572\]](#).

3.2.2.11 Cheney's Evidence on the Decision to Withdraw

338. Like Ms Arman herself and Mr Lucas-Smith, Mr Cheney and Mr Roche also thought that Ms Arman lacked the experience sufficient to arm her to make the decision to stay and attack the Bendora fire overnight on 8 January 2003. In his report, after noting that Ms Arman apparently felt that keeping crews of the fire overnight posed significant safety issues, Mr Cheney expressed the opinion that Ms Arman *did not have the experience to control the fire in this type of forest. It is the responsibility of the Service Management Team to know the level of training, experience, level of firefighting proficiency of all firefighters under their command and be able to assign the person appropriate to the task at hand. They should have been able to assess the seriousness of the situation and recognised that a more experienced person should replace the Incident Controller*[\[573\]](#). Mr Cheney confirmed in evidence that if Ms Arman's decision was based on her later comment that she felt not competent to tackle the fire, then he would support her decision that night. *Because that is the whole basis of the AIMS system, if someone is not competent or capable of handling a particular situation, then you replace them with someone who is... I believe in this case, because I believe there were more experienced firefighters available that night, the decision should have been made by the incident control team to put them in place of Ms Arman, it is certainly not a criticism of Ms Arman herself*[\[574\]](#).

339. Mr Cheney also explained in evidence what he meant by his reference in his report to the *seriousness of the situation*. *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 those conditions were known or should have been known.[\[575\]](#)

340. Mr Cheney was extensively cross-examined in relation to his opinion concerning the decision of Ms Arman to withdraw from the Bendora fire on the night of 8 January. Mr Cheney confirmed that he was aware that the concern which motivated Ms Arman's decision was related to firefighter safety. He explained that: *I think you have to look at safety from both angles. You have to look at safety for the firefighter and you have to look at safety for the public as a consequence of the firefighters not taking action... If it comes to a choice, and I think this is a decision that undoubtedly is a legal one, then I think the weight has to be given that the risk to the firefighter must be expected to be higher because they are trained, than the risk to the untrained resident or citizen of Canberra who may be threatened by the fire. Now there is no doubt that firefighting is a dangerous business and there is no doubt that people can get injured in that situation, but that is a risk that is inherent in this job. If it is not faced with the associated risk of the consequences of not controlling that fire, then we are not going to progress very much at all in the firefighting business.*[\[576\]](#)

341. Mr Cheney agreed that he would expect that there would be falling trees at Bendora that night. *But my experience in that terrain is that that occurs within inside the fire area, it doesn't occur principally right on the edge of the fire because it takes some time for trees to burn down. As far as falling limbs alight in the tops of trees, that is something which firefighters experienced and trained to work in that vegetation type and that topography should be trained to be aware of to minimise the risks. Obviously they are not going to completely eliminate it because they have to do a dangerous job, but good training and experience can be minimise it.* Mr Cheney later confirmed that if those responsible for the despatch of the incident controller were of the opinion that she was experienced, *then they were mistaken because, by her admission and her own actions, she demonstrated that she was not experienced.* Mr Cheney formed that opinion based on what she said and his view of her conduct.[\[577\]](#)

342. Mr Cheney was then taken to some notes made by the CSIRO team that travelled to the Baldy Range spot fire on the night of 8 January and, in particular, an indication in the notes that the team did not drive through the fire area because of the danger of falling trees. According to Mr Cheney, the CSIRO team *told me that they didn't drive through the fire area because of the danger of falling trees within the area, as I understood it.* His evidence was that if they had the task of constructing a line around the perimeter of that fire, he believed their statements would have been quite different[\[578\]](#). Mr Cheney later confirmed that he knew that in February of 2004 a bushfire fighter in Western Australia was killed by a falling tree, but he did not know any of the specific details. *It is not uncommon but it is usually firefighters in vehicles travelling along roads or firefighters felling falling trees. ...I am aware it was a real hazard. It was a real hazard in our experiments, which we had to manage*[\[579\]](#).

343. Mr Cheney also agreed that cutting down hazardous trees is dangerous even for experienced tree fellers and that it is more difficult of a night time than it is of a day time. *In fact I wouldn't do it at night*[\[580\]](#). He explained that if there is a tree near the edge of the fire line that may fall *that is a tree which would be marked, have a safety zone marked around it, and the firefighters probably would be stationed there expecting it to fall... so that when it does cross the fire line that break-way effectively a break-away across the line could be controlled*[\[581\]](#). Mr Cheney agreed that a tree that is in tree height of the fire edge has the

potential to be a hazard to firefighters working on the fire edge. He also agreed that such a tree has the potential of bringing down other trees or branches and therefore being a hazard beyond its own length, so that a tree burning inside the fire lines still has to be taken into account for the hazard which they present. *And this situation was no different to the situation faced by firefighters later on in the week. When they were burning out from roads and through the same sorts of forest they were faced with the same hazard of trees coming down across the road in the areas where they were working and being a threat to them and falling on them. There is no real difference between this and doing burning out from a road where you have to patrol it to watch out for spot fires*[\[582\]](#).

344. Mr Cheney was cross-examined further about these matters later in his evidence and essentially repeated the views he had expressed in his examination in chief and earlier cross-examination[\[583\]](#). In particular, Mr Cheney confirmed that from an early stage and continuing up to the time he gave evidence, it had always been his view that the ACT Bushfire Service should have stayed on 8 January and fought the fires[\[584\]](#). Mr Cheney also confirmed that people experienced in suppressing forest fires knowing that the fire danger was low to moderate on the night of 8 January should have been aware that the fire was *eminently put-out – able under those conditions*. He agreed that just as Ms Arman should have stayed and fought the fires, the fires should have been put out[\[585\]](#).

345. In his report, Mr Cheney explained how that might have occurred if the decision had been made to stay and fight the Bendora fire on the night of 8 January: *The fire started in a stand of alpine ash regeneration (probably from fires in 1926) that had been last burnt in January 1979 by CSIRO and ACT Forests staff as a buffer for a high-intensity summer experimental fire in the Bushranger Creek experimental catchment. The area containing the fire was bounded by Wombat Road, the Bendora fire break, which had been closed off and was poorly maintained, and a track constructed to secure the buffer burn that connected Wombat Road to the Bendora Arboretum. This track was overgrown and had not been maintained but was marked on the 1:25000 Tidbinbilla map sheet. In my opinion, the prescribed burn in 1979 had reduced the surface fuels to a non-flammable condition and removed a proportion of hollow stags killed in 1926. Although the fuels had accumulated for 24 years, the area was less hazardous than similar stands in the area that had not been prescribed burnt. In my experience, the past practise would have been to attempt to control fire by a direct attack with water and secured with a mineral earth trail constructed by hand tools. Hollow trees that caught alight and threatened to burn down would be flagged to keep people away from the potential drop zone and patrolled throughout the night to watch for firebrands being thrown across the control line. To back up the direct attack, a bulldozer would have been transported to the nearest point and directed to open up the Bendora break and the old control line between Wombat Road and Bendora Arboretum. Sunrise on 9 January occurs at 0558 hours and there is enough light on clear mornings for machines to start working up to an hour earlier (nautical twilight 0453). A bulldozed line would have been put in the next morning to replace or strengthen the hand tool line, smouldering logs would have been pushed further onto the burnt area, burning hollow trees with the potential to throw embers across the line would have been felled and the fire line patrolled for up to 30 days to detect and suppress re-ignition within the burnt area. In the event of an initial attack being unsuccessful a crew would have been stationed overnight to prevent the fire from crossing Wombat Road towards the east where it would be burning in more difficult terrain.*[\[586\]](#)

3.2.2.12 Roche's Evidence on the Decision to Withdraw

346. Mr Roche also expressed the opinion in his report that the actions of Ms Arman that night suggest to me that she lacked the necessary experience to recognise fully the implications of the decision she was called to make and to undertake a detailed assessment of the pros and cons of withdrawal. A firefighter with more experience may have weighed the factors differently and concluded that firefighting should have continued overnight, with support from fresh resources and at least one dozer first thing on the morning of 9 January. Mr Roche noted in his report that despite Ms Arman's request for guidance, she was given none and nor was she provided with any planning support from the SMT at Curtin. He concluded this section of his report as follows: *In all the circumstances, I do not criticise the field IC for her failure to reach a different decision. She appears to have recognised her own lack of experience and uncertainty about the decision, sought advice and was not adequately supported*[\[587\]](#).
347. Mr Roche also set out in his report a detailed analysis of the measures that can be implemented to address the safety concerns that Ms Arman had that led to her decision to withdraw and expressed the opinion that: *Under the control of experienced personnel, firefighting at night is no more dangerous than at any other time, providing basic safety steps are implemented. Such a position is supported by the fact that from 10 January onwards, firefighting continued in the ACT on a 24 hour basis. During the course of this activity, I believe firefighters were confronted with significantly more difficult circumstances associated with fire behaviour, terrain and allocated tasks than existed at Bendora on the evening of 8 January.*[\[588\]](#)
348. In his evidence, Mr Roche confirmed the views expressed in his report and that the conclusion he came to was that the decision to withdraw objectively was a wrong decision[\[589\]](#). On the question of the consequences of the decision, Mr Roche's evidence was that: *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.* Mr Roche later went on to identify the factors that he considered demonstrated that it was an important decision, including the drought condition, that there were multiple fires and the significant lightning activity across the ACT giving rise to a possibility that additional fires may have shown up. *Therefore the more you can deal with the ones that you know about, the better you can deal with those, the more flexibility it gives you later on if additional fires do show up in subsequent days*[\[590\]](#).
349. Mr Roche was also extensively cross-examined on his views in connection with the decision to withdraw from the Bendora fire on the night of 8 January. Concerning the difficulty with falling trees or limbs, Mr Roche gave evidence that the difficulty presented by the possibility of falling trees or limbs is not necessarily accentuated at night. His evidence was that he had a fair amount of experience of night firefighting and that: *In more circumstances than not the limbs that are likely to fall or the trees that are likely to fall are clearly visible because of the burning – the glow and the flame. Just as equally during the day that might not be so visible, particularly where the fire has been burning within a very dry tree or limb for some period of time and is not emitting a significant quantity of smoke that can't be discerned from the general smoke in the area. So the risk of falling limbs and falling trees is equally a risk at night or during the day and is something that the incident controller must consider in making a decision of a particular strategy or tactics.* He agreed that reduced visibility is one factor that needs to be considered amongst a whole range of factors.[\[591\]](#)

350. Like Mr Cheney, Mr Roche also set out in his report the firefighting tactics that could have been implemented overnight on 8 January with a view to containing the Bendora fire. *This would have required an initial commitment of at least 3 RAF teams with tanker and light unit support. Despite the terrain and condition of the understorey on the south-eastern sector of the fire, the RAF teams should have been able to achieve a construction rate of around 100 metres per hour. With some hot trailing, supported by tankers and extended hose lays, containment of the fire perimeter could have been achieved overnight or at the latest mid morning on the 9 January. Whether this objective was implemented by, in part, utilising the initial response crews with adequate supplementation, or deploying other crews was problematic given that they all face the same issue of not having been at rest or off duty during the day. As discussed above, these circumstances will always apply and are an expected part of firefighting on the first day of operations. In my opinion, this formula would have constituted in an “aggressive initial attack”.* In Mr Roche’s opinion, the Bendora fire could have been contained in 24 hours and secured prior to the deterioration in weather conditions. [\[592\]](#)
351. Mr Roche confirmed this view in evidence and both in examination and in cross-examination elaborated on the tactics that, in his opinion, would have resulted in containing and ultimately securing the fire before the onset of the deteriorating weather conditions. *Well, as I understand it there had already been hose lines extended from at least one firefighting vehicle. I think there could have been a lot of work done on the lower portions of that fire down towards Wombat Road to contain the southern and northern flanks of the fire and commence a hand trail up around the higher elevations where the ground tended to flatten out more. That would have given them a head start for the resources that were going to be deployed the following morning and certainly limited the growth of the fire overnight*[\[593\]](#). In response to the view expressed by Mr Nicholson in his report that there was *no imperative* to leave personnel at the Bendora fire overnight, Mr Roche gave evidence that: *I believe there is always an imperative to extinguish a fire as quickly as possible notwithstanding that there are safety considerations, but my view again is that they can be adequately dealt with... So the need to deal with the fires that were known as rapidly as possible to free up resources to deal with other ones that weren’t extinguished overnight or might have shown up is an imperative in my view. Whilst the immediate weather forecasts may not have indicated a change in the weather immediately or a deterioration in the weather immediately, our well concreateed experience on the normal weather cycles is that within a period of some 5 to 8 days there was going to be a deterioration*[\[594\]](#).
352. It was suggested to Mr Roche by reference to the photograph at page 66 of his report that: *You are not going to stop a fire like that from continuing to burn just with a rake, are you?* He responded: *Yes, you are. I’ve seen it done hundreds of times.* He confirmed that you can stop a fire like that from continuing to burn by putting a rake hoe line and rejected the suggestion that you could only have effectively controlled the Bendora fire by using the road in the area. Mr Roche went on to explain that the rake hoe line would be an initial containment line, particularly concentrating on the north-eastern flank, backed up by the deployment of heavy machinery at first light on 9 January to clear the Bendora break and other tracks and roads as an *insurance policy*[\[595\]](#). Mr Roche also explained that he would not have sought to construct a hand trail at the bottom of the fire. As indicated in his report, he would have hand-trailed up the flank of the fire off Wombat Road and then let it burn back to the road[\[596\]](#).
353. Mr Roche rejected the suggestion that containment of the fire depended upon the dozer clearing the Bendora break to allow vehicle access before the fire crossed the break. *That was the*

*security line. Containment initially was dependent on crews working that night to put a hand trail up in that area. Mr Roche also rejected the suggestion that construction a hand line in that area would have been dangerous. As the night wore on, the humidity would have increased, the fuel moisture of the fuels would have increased and the fire would have dropped significantly in intensity... there are always circumstances that may arise during the course of any fire where, due to fire behaviour, reduction in fire behaviour, access, etc that you do get across ahead of it[597]. Mr Roche agreed that the evidence of Mr Hayes as to when the fire crossed the Bendora break would suggest that the fire would have beaten the ability to clear Bendora break before it got away to the north. But Mr Roche added: *If the hand trail hadn't been put in. Despite being further pressed on this point, Mr Roche reiterated that: As I said, my strategy was not – the clearing of the Bendora break was not the initial dependent strategy. The hand trail was. The hand trail wasn't put in and, therefore, in the absence of that, the fire crossed the Bendora break, which then made it more difficult. That is not to say that the strategy should not have continued to be the Bendora break, because it was easily accessible, even though it had crossed it, and then hand trail a little bit or bulldoze a little bit that had crossed over. There are a number of alternatives that were available.**

354. Mr Roche agreed that he had heard Mr Hayes' evidence of the scale of the fire that he faced that day and it was put to him that: *there was no practical way at all that he could have controlled that fire heading north, was there?* Mr Roche responded: *I think once the night in the morning of the 8th passed without action then the task was becoming more difficult[598].*

3.2.2.13 Nicholson's Evidence on the Decision to Withdraw

355. Notwithstanding Ms Arman's evidence in her taped record of conversation that her position on whether to stay was not categorical and that if ESB had overruled her she would have been *happy to accept[599]*, and to the views of most of those present at the Bendora fire on the night of 8 January (particularly Mr Stevens) and the evidence of Mr Lucas-Smith, Mr Cheney and Mr Roche, Mr Nicholson expressed the view in his report that a decision to stay and attempt to contain the fire on the night of 8 January would have been *reckless[600]*. Mr Nicholson indicates in his report that Ms Arman's taped record of conversation was among the documents he reviewed for the purposes of his report[601], but he does not refer to Ms Arman evidence about her attitude to being overruled by the ESB.

356. In reaching that conclusion, Mr Nicholson began by summarising the views of Mr Roche and Mr Cheney, then set out a passage from a CFA operations update dealing generally with issues of safety (but not specifically with overnight firefighting) and followed this with a substantial extract from Ms Arman's statement. Mr Nicholson also noted in his report that Ms Arman made no reference to weather forecasts prior to deciding to recommend that the crews be withdrawn, but nevertheless sets out details of those forecasts. Mr Nicholson also refers in his report to documents supporting a *safety first* approach to firefighting and to issues of terrain, fatigue and falling trees. In relation to the latter, Mr Nicholson states in his report that: *Anyone with any knowledge of the Australian bush is well aware of the tendency for Eucalypt species trees to shed limbs or indeed fall over at any time, not just when affected by fire or wind[602].*

357. In evidence, Mr Nicholson confirmed that, in reaching his conclusions, he did consider the consequences of withdrawing, even though he did not deal with it in any detail in his document.

Mr Nicholson agreed that he did not conduct any analysis in his report of Mr Cheney's reasoning about the consequences of not fighting the fire on the night of 8 January. He also initially gave evidence that he was not aware that Mr Lucas-Smith had given evidence that if he had been in Ms Arman's position, he would have made a different decision[603]. However, after being taken to what Mr Lucas-Smith said on the issue, he thought he might have seen that reference. It was put to Mr Nicholson that Mr Lucas-Smith's position was that, although he supported Ms Arman, his view was that if he had been in her position, he would have made a different decision. Mr Nicholson was asked if he was surprised that Mr Lucas-Smith gave that evidence *bearing in mind your view that to continue to fight the fire that night would have been reckless*. Mr Nicholson responded: *I am not surprised he said that. I've had personal experience of the situation where I went forward in the aftermath of the Ash Wednesday fires in 1983 south of the town of Gisborne, where some of my senior volunteers were dithering on the edge of the tracking into the bush where I wanted them to construct a control line to enable them to backburn, to clean out between the new control line and the main fire, the only way I could get to go down there was to rake hoe and go down the hill in front of them. I accept what Mr Lucas-Smith has said. If I had been required to perform that function over a considerable perimeter of the Ash Wednesday fire that I had involvement with, I couldn't be everywhere at once. That is a reasonable statement*[604].

358. Mr Nicholson agreed that it is appropriate to undertake firefighting at night if the weather and terrain conditions are favourable and when the fire intensity is low. Mr Nicholson volunteered the evidence that: *and probably one of the principal issues involved there is usually when the fire is at its most quiet*. Mr Nicholson also agreed that if the fires were small and direct attack was the best strategy, that would be an overwhelmingly strong reason to attack the fires on the first night if at all possible[605]. Mr Nicholson broadly agreed with the evidence of Mr Lucas-Smith to the effect that if you were keeping to the fire edge for the purposes of direct attack, the risks are not significantly greater at night than those faced during the day and that if the fire intensity is such that you can direct attack with hand tools then that is fine, with the only caveat that there is an increased risk in using chain saws overnight[606].

359. Mr Nicholson first gave evidence that when he walked around the entire perimeter of the fire, *it went from reasonably slope to very steep slope*[607]. He later clarified that he did not walk around the whole perimeter of the fire and that the slope was moderate near the top[608]. Mr Nicholson also said that he understood there was some night firefighting from 10 January onwards and that *he would be the first to agree* that sometimes, notwithstanding the risks, night time firefighting becomes an absolute necessity. *I have done that, always the case on its merits. There have been occasions in the bush where the reconnaissance has been done overnight so that the plans can be developed in the early hours of the morning and the people and machinery in position to go to work at first light. It's a reasonable position too*[609].

360. Mr Nicholson was asked about notes he made of discussions with Ms Arman and, in particular, a note to the effect that Ms Arman had told him that her crews could have chased a fire that got over the road but that Mr Nicholson decided not to pursue this with her. Mr Nicholson gave evidence that he did not pursue the matter, *probably because I didn't consider it an issue at the time*. He rejected the suggestion that the answer did not fit with the charter that he had been engaged to carry out[610]. Mr Nicholson was also asked about an e-mail sent by him to

counsel for Mr Lucas-Smith and Mr Castle in which he refers to *Odile's peace of mind*. Mr Nicholson explained that he: *had a personal view that she had been somewhat traumatised by all of this. ... I just had a view that I wanted to talk with her in a calm sort of way to see how she really felt about some of these things*. Mr Nicholson rejected the suggestion that the visit to the site of the Bendora fire was in part about Mr Nicholson assisting Ms Arman: *to gain some peace of mind, in the knowledge that he would at least be on her side*. He referred to her peace of mind in the e-mail, *because it was something that occurred to me. I was not out there to defend her. I just wanted to see what the circumstances were*[\[611\]](#).

3.2.2.14 Ms Arman's Report to Mr Graham Post-Withdrawal

361. At 21.18 hours, Ms Arman made a telephone call to Mr Graham in order to provide more information about the water point and to provide as much information as she could for the crews coming on the next day. The call lasted 9 minutes and 23 seconds. In her statement, Ms Arman said that: *I told him I was unsure about the recommendation to withdraw crews overnight. He said words to the effect of "we were hoping you would do that". I don't recall discussing that issue with him in detail and I cannot recall expanding with him the safety concerns I weighed up against the likely effectiveness of the crews, in coming to my recommendation*[\[612\]](#). In her evidence, Ms Arman said she did have a memory of Mr Graham saying *we were hoping you would do that* after she discussed with him that she was unsure about the recommendation to withdraw. She did not recall him saying anything about anyone else's views on the topic. He did not say who he meant by "we". She assumed it was the SMT[\[613\]](#). Later in her evidence, Ms Arman confirmed that she did not recall the whole of her mobile conversation with Mr Graham, but there were some things she did recall[\[614\]](#).

362. Mr Graham agreed that he and Ms Arman did have a discussion like the one referred to in Ms Arman's statement at paragraph 65. In evidence, Mr Graham did not recall saying *we were hoping you would do that*. He agreed that he was not saying that he did not use the words, he did not recall either way. He added that he did not know why he would have said that, *because I don't think that was in our thinking at all. We were asking her to make the decision about that*. He believed it was unlikely that he made a comment to that effect, *but whether I did or not I just don't know*. Mr Graham also did not recall in evidence Ms Arman saying that she was unsure about her recommendation.[\[615\]](#)

3.2.2.15 Preparations for the Following Day.

363. In her radio transmission to Mr Graham at approximately 20:14 hours on the evening of 8 January 2003, the resources Ms Arman said would be required for the following morning were *at least 2 rake hoe teams and at least one heavy tanker*[\[616\]](#). In her evidence, Ms Arman said that her thinking was that the resources she had requested would do the following morning pretty much what she would have tasked them to do that evening. She said *at least* because she knew there had been various fires reported and she was not sure what resources would be available to the ESB to send out the following morning. She was intending to convey that what she had requested was the absolute minimum[\[617\]](#).

364. During her telephone conversation at 21:18 hours that lasted 9 minutes and 23 seconds, Ms Arman again discussed resources for the following day. She recalls saying to Mr Graham

something to the effect that more resources would be better. During the phone call, she thought she said to Mr Graham that she would have liked to have at least four rake hoe teams[618]. Ms Arman was pressed in cross-examination on behalf of Mr Graham concerning her recollection of the telephone conversation and, more particularly, her comment to him that she would have liked more resources, including four rake hoe teams. In response, Ms Arman said that could not recall her precise words but was clear that she said to Mr Graham something to the effect that she would have liked to ask for four rake hoe teams[619]. Ms Arman could not recall whether she discussed the size of the fire during the phone call[620]. Ms Arman thought that rake hoe teams would be adequate. She wasn't thinking of dozers immediately and did not discuss dozers with Mr Graham that evening[621]. In his statement, Mr Graham indicated that during further discussions between himself and Ms Arman (which appears to be a reference to the telephone conversation at 21.18 hours that evening) *we agreed on the number of resources to be allocated to the Bendora fire the following day. These crews were to deploy at first light to appraise the situation, and to commence fighting the fire*[622].

365. Mr Graham had a discussion with Mr Lucas-Smith and Mr McRae on their return to Curtin from Queanbeyan. He believes he spoke about the fires and related to them what he had discussed with Ms Arman during the telephone conversation with her. He did not recall any discussion that night about resourcing for the morning[623]. This accords with the evidence of Mr Lucas-Smith and Mr McRae[624].

366. Later that evening, Mr Graham contacted the agency representative for ACT Parks and asked him or her to organise a Parks officer to be the field controller at the Bendora fire at 06:00 hours the following morning. He later received a call confirming that Rick Hayes (Parks 6) had been assigned to that task and he organised the Rivers RAFT crew, Rivers 21 (a light unit) and the Guises Creek RAFT crew to the Bendora fire, advising them to assemble at the intersection of Brindabella Road and Warks Road at 06:00 hours. He considered that travel time from there to the Bendora fire would have taken about 30 minutes and, allowing for briefing time, he believed the crews would probably have been actively fighting that fire by 07:00 hours. [625]

367. Mr Graham thought that the resources that Ms Arman had requested for the following day were appropriate for that fire. He agreed that a radio transmission from Firebird 7 at 17.13 hours referred to the Bendora fire being about 100 metres by 50 metres wide and accepted that there appeared to be some discrepancy between these sizes. However, he was working on the basis of a 500 square metre fire when he was speaking with Ms Arman at about 20:00 hours that evening and never had cause to change his position as to the size of the fire.[626]

368. At 21:48 hours on 8 January 2003, Mr Graham, who had sent a pager message to Mr Hayes, spoke to Mr Hayes about his response to the Bendora fire the following day[627]. During the course of that conversation, Mr Graham confirmed to Mr Hayes that he would have two rake hoe teams comprising 6 personnel in each team and the Guises Creek tanker. Mr Graham also mentioned that Ms Arman was saying be wary of big trees that are falling. Mr Hayes asked whether Ms Arman had given a size for the fire and Mr Graham responded: *about 500 square metres*. Thus, it seems unlikely that during the telephone conversation between Ms Arman and Mr

Graham earlier that evening, Ms Arman had corrected the earlier misinformation that Mr Graham had received about the size of the fire being 500 square metres. Just before concluding the conversation Mr Graham asked Mr Hayes to provide a basic situation report as soon as he reached the fire ground including *if you think that the size has changed at all*. Mr Hayes indicated *we can soon work its size out amongst ourselves*[628].

369. Based on Mr Graham's statement and the transcript of his telephone conversation with Mr Hayes, the resources that Mr Graham arranged to attend the Bendora fire on the morning of 9 January comprised a tanker from Guises Creek and a command unit and a light unit from Rivers, with a total of 12 personnel, plus Mr Hayes in his own vehicle. These resources involved significantly fewer firefighting vehicles than had been part of the initial response on the evening of 8 January and less still than the weight of response according to SOP 7 for a code yellow day (two tankers and two light units[629]). 9 January 2003 was a code yellow day[630].

3.2.2.16 Fire Development Overnight

370. Mr Cheney's opinion is that when the southerly change arrived in the area of the Bendora fire after 21:00 hours bringing in a moist air, the behaviour of the fire would have reduced even further than the behaviour observed by Ms Arman and others in the late evening. *However, the fire was burning in fuels last burned in 1978 and continued to spread overnight in the heavier patches and developed a fingered perimeter where the fire had self-extinguished in lighter or moist patches of fuel.* [631]

371. In evidence, Mr McRae couldn't remember the detailed figures on the size of the fires, but he had in his mind the size of the Bendora fire was less than 1 hectare. He didn't have sufficient information to do detailed predictions on the spread of the Bendora fire overnight. His expectation was that when the wind change hit, it would increase in size, but not knowing how the wind change would interact with local terrain there, it was difficult to know in which direction it would change with the wind change. His expectation was that some of the fire perimeter in the high country would self-extinguish overnight. However, his evidence was that he would not have expected all of it to self extinguish. He would have expected perhaps partial self extinguishment; something in the order of 30% of the fire line self extinguishing. On the night of the 8 January, Mr McRae conducted an informal assessment of the rate of spread of the fire and was of the view that it may double in size. He could not recall in evidence if he expressed that view to anyone else at Curtin that evening. [632]

372. There is some uncertainty about when during the night the fire crossed the Bendora Break. Mr Hayes arrived at the site of the fire at approximately 07:12 hours on 9 January[633]. Mr Hayes observed that the fire was a strange shape and it was difficult to say how big it was. The fire was burning out in fingers and he was unable to walk right round the fire or see all the way around it from access trails: *it was a long fire from north to south – it had crossed Bendora break by the morning*[634]. Mr Hayes clarified this evidence in his TROC and in evidence. In his TROC he estimated that the fire would have first crossed the Bendora break somewhere between 11pm on 8 January and 3am on 9 January[635]. In his evidence his estimate was some time between midnight and 3am on 9 January, *certainly the early hours of the morning*[636]. Elsewhere in his TROC, Mr Hayes confirmed that it had crossed the Bendora break by the time he had arrived on the morning of 9

January: *it run in fingers, I've put that in there, burning in long fingers*[637]. In any event, as discussed below[638], crews working on the fire during the morning of 9 January were initially successful in controlling the fingers of fire that had crossed the Bendora Break.

3.2.3 STOCKYARD SPUR

3.2.3.1 *Initial Assessment*

373. The Stockyard Spur fire was the first fire reached by Mr Ingram in Firebird 7 in the afternoon of 8 January 2003. At 15:57 hours, Mr Ingram reported to Comcen *Yes Comcen grid reference for that first fire near Corin Dam is 633 651... Further to that the area burnt probably is about 50 square metres at this stage right on the crest of the hill there... At this stage there doesn't seem to be any vehicle access into this fire. We'll go check out the other fire that you requested and then come back and have a look at this one because we may be able to get water onto this one fairly quickly.* In his statement, Mr Ingram then described what he saw at the Bendora fire, that he suggested water bombing on the Bendora fire first, but was instructed by Mr Graham to commence water bombing on the Stockyard Spur fire. [639]

374. The pilot of Firebird 7 then landed in order to prepare the helicopter for water bombing operations, leaving Mr Ingram on the ground for this purpose, because of weight restrictions. The pilot conducted water bombing operations until 16:33 hours when Comcen requested that he cease that operation in order to continue with further aerial observation. After collecting Mr Ingram, Firebird 7 flew back to the Stockyard Spur fire and at 16:46 Mr Ingram reported that: *the fire is increased to about 70 square metres with a flame height between one and one and a half metres. The fire is actually burning in a small hollow and is only moving very slowly...*[640]

3.2.3.2 *Initial Response*

375. At about the same time as Mr Graham arranged for crews to respond to the Bendora fire, he instructed the Comcen operator to respond Dennis Gray (Parks 9) to the Stockyard Spur fire as field incident controller, along with two tankers and a light unit, being Parks 10, Rivers 10 and Parks 20. Mr Graham referred Mr Gray to the Stockyard Spur track as a possible access route to the fire. At the time, he was not aware that the Stockyard Spur track had grown over[641]. The ESB radio transcript confirms that Mr Gray and the other units were responded to the Stockyard Spur fire by Comcen commencing at 16:18 hours[642].

3.2.3.3 *The Attempt to Locate the Fire*

376. It took Mr Gray at least an hour and a half to reach the car park at Mt Ginini. From there, Mr Gray, accompanied by a crew member from Parks 20 (Meg Doepel) set off to try to locate a road that was marked on the map leading through to the Stockyard Spur area. Mr Gray followed the Mt Franklin Road down to the vicinity of Pryor's Hut but could not find the track leading up along Stockyard Spur. He then returned to the Mt Ginini car park and he and other crew members walked down into the Morass Flats area to try and locate an access route to Stockyard Spur. [643]

377. At 18:47 hours, Mr Gray radioed Comcen to ask if Firebird 7 was still in the air near him because he would *like some up to date information on this fire that we're supposed to be looking after. We're not on the fireground as yet.* Firebird 7 was delayed a short time in returning to the Stockyard Spur fire. At 19:05 hours, Mr Ingram radioed Mr Gray directly: *We've just flown over that fire. It's only, the original call was 50 square metres. We've just flown over it, it's now about 100 metres by 75 metres.* Mr Gray responded, indicating that he was on foot walking towards the fire. There was then an exchange, also involving Comcen, in which Firebird 7 attempted to locate Mr Gray, *so we can have some idea how far away he is and how the fire is going.* [644]

3.2.3.4 The Decision to Withdraw

378. At 19:12 hours, Comcen sent Mr Ingram the following message: *Firebird 7 from the CFCO. Would you be able to water bomb that fire sufficiently to contain it to allow ground crews to come back in tomorrow.* The substance of the response from Mr Ingram was there would be no water bombing. Further exchanges between Ingram and Mr Gray confirmed that Mr Gray was still some distance from the location of the fire. At 19:14 hours, Comcen contacted Mr Gray and asked him to estimate his time of arrival at the fire. Mr Gray responded: *Comcen I don't think we'll make it tonight. When I get back the vehicle and turn around and go back over.* Comcen responded: *Parks 9 copy that. CFCO also believes you should not go to the fire tonight and return to your vehicles.* [645]

379. A few moments later, Mr Ingram in Firebird 7 contacted Comcen and reported: *We've just had another look at that fire and the pilot said he's happy now to put the bucket on and [indecipherable] away that fire and see if he can contain a little if you require that over.* Comcen responded: *Firebird 7 the CFCO would like you to check out the fire south of you at Mr Gingera, do you copy?* Firebird 7 responded: *Mt Gingera, we're on our way. Firebird 7 out.* Comcen responded: *Firebird 7, further to that we've also directed Parks 9 to walk back to the vehicles and leave that fire* [646].

380. In his statement, Mr Gray says that he was surprised that he was given instructions to withdraw from the Stockyard Spur area and thought he would be walking in to fight that fire: *all the crews had seen the smoke going up and assumed that we were going to be out there all night. We all had back packs with enough food to sustain us for the first 12 hours* [647]. Mr Gray qualified that assessment during his TROC [648]. In his evidence, Mr Gray explained, in effect, that the comment in his statement was intended to refer to being relocated to other fires: *Being firefighters, we all felt that if there is a fire burning, we should do something. But that day I know I initiated the call to abandon that night shift. That was my own decision and now I still believe that.* He still believed the decision was correct [649].

381. The fitness levels of the crews present with Mr Gray was one thing that factored into his decision to leave the fire ground that night, as was the quantity of provisions available to the crews [650]. Mr Gray also gave evidence that he would have been in a position to request that the helicopter come down and pick him up from Mt Ginini so he could have undertaken a proper assessment of the fire [651].

3.2.3.5 Preparations for the Following Day

382. At 19:44, Mr Gray called Comcen to advise that he had located a track leading down from the Mt Ginini car park, *we can drive vehicles to about 1 kilometre and a half from that fire. Quite an easy trail down through the car park down through tree plants.* Comcen asked for an estimate on how long it would take to cover that one and a half kilometres to the fire. Mr Gray estimated one hour or possibly longer[652].
383. On his way back to the depot, Mr Gray spoke to Mr McNamara by radio, advising him of where Mr Gray had been while searching for an access route to the Stockyard Spur fire. Mr McNamara was going to bring in a RAFT crew the next day[653].
384. Mr Graham believed that he spoke to Mr Gray about resources required for the following day[654]. However, according to Mr Gray, he did not have any discussions either before or after he left the fire ground with any one at ESB about what kind of crews were required for either a night shift or the next morning shift. He could have made some suggestions but he did not. Asked what he might have suggested if he had been asked, Mr Gray responded: *RAFT teams. Maybe get a machine up there to re-open that road or whatever.* Mr Gray also recognised in evidence, in the context of a discussion about what resources were appropriate for the following day, that *I would have been in the position to request that the chopper come down on the ground and pick me up.* Although he had a discussion at 20:56 hours with Mr McNamara, this essentially concerned the location of the fire. They did not discuss resources[655]. The resources ultimately despatched to the fire for the morning of 9 January 2003 comprised a RAFT crew of 12 under the command of Brett McNamara as field incident controller[656].

3.2.3.6 Expert Evidence on the Decision to Withdraw From the Stockyard Fire

385. Mr Cheney did not comment in his report on the decision to withdraw from the Stockyard fire, other than to note that: *Although the fire was detected at 15:25 hours and the location confirmed by helicopter at 15:57 hours it appears that [no] crews were despatched until around 17:00 hours.* The evidence indicates that although there was a delay between when the Stockyard Spur fire was first located by the helicopter and the despatch of crews to the fire, it was not as long as suggested by Mr Cheney[657]. Mr Cheney confirmed that, after travelling for an hour, the crews found that they did not have vehicular access to the fire and commented that: *Not only should the Stockyard Spur fire have been maintained in a trafficable condition but the fire trail should be linked to the Corin Dam Road. There is a spur with reasonable gradient about 1km north of the Corin Dam and I believe that this connection should be constructed in the future. This link would provide a rapid access to the mountain country west of Corin Dam via the Corin Dam Road*[658].
386. Mr Roche, while not criticising the decision of the Mr Gray to withdraw because of his inability to locate the fire, he considered that this difficulty might have been resolved had the helicopter landed and taken Mr Gray on a reconnaissance of the fire. *The value of the mission would have been in adequate planning and resourcing for the subsequent operational period.* Mr Roche goes on to suggest that, on the evening of 8 January, a request should have been made for the deployment of a bulldozer at first light to assist with access and construction of a containment line. Mr Roche also considered that the fire lent itself to alternative response strategies, including *air attack with long term retardant and crew deployment by medium helicopter*[659]. Although not referred to by Mr

Roche in his report, his comments in relation to crew deployment by medium helicopter are consistent with the concern expressed in the context of the preparation of the Namadgi National Park Pre-Suppression Plan that *some areas of the Park are so far from vehicle access tracks that RAFT members would have to walk for many hours before undertaking any attack on a fire such a slow moving, low intensity fire resulting from a lightning strike. Re-identifying remote helicopter landing sites in strategic areas should be undertaken and those sites should be assessed for any maintenance work that may be required*[660].

387. Mr Roche concluded his analysis of the initial response to the Stockyard Spur fire by expressing the opinion that: *Had access been more readily gained and resources despatched in accordance with SOP7, there was in my judgment an excellent chance that this fire could have been contained overnight. At 24:00 hours on 8 January, the Stockyard Spur fire was probably no more than 300 meters x 200 metres in dimension. Even with the crew that was available, good overnight progress could have been made to contain that fire. By the time the Field IC arrived at the fire the following morning, it had doubled in size and by 14:56 was approximately 35 hectares with a perimeter of 2.2km*[661]. In evidence, Mr Roche accepted that, contrary to his Report, Mr Gray had not given evidence that he could have driven to the site of the Stockyard and that his recollection of the evidence was *obviously wrong*. However, Mr Roche did not resile from his view that the Stockyard fire could have been contained[662].

3.2.3.7 Fire Development Overnight

388. Mr Cheney estimated that at 24:00 hours the fire was probably no more than 300 by 200 metres in dimensions. He would have expected that the fire development overnight was so mild that it died out in the light fuels but was sustained overnight by smouldering in the deeper litter beds or large log material.[663]

3.2.4 MT GINGERA

3.2.4.1 Initial Assessment

389. At 17:56 hours Mr Ingram in Firebird 7 reported two more smoke sightings to the south of Corin Dam. At 18:01 hours Firebird 7 flew over the first of these and Mr Ingram reported to Comcen a grid reference of 617 606 (the Mt Gingera fire). The transmission continues: *area burned about 20 square metres. Appears to be a lightning strike. Flame height about one two one and a half metres burning in the under storey. Um no easy access into this one [indecipherable]. Rocky out crop, over*[664].

390. Firebird 7 returned to the location of the Mt Gingera fire at 19:20 hours when Mr Ingram reported to Comcen that: *we're at that fire now at Mt Gingera. Grown very little in size, probably only about another 5 square metres if that. Flame height is still only about half a metre to one metre and it's burning very slowly at the top of the ridge line, over*[665].

3.2.4.2 Decision Not to Resource the Fire

391. In his statement, Mr Graham says: *the SMT (less David Ingram) discussed the Gingera fire and agreed not to put crew 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*[666]. It is not clear how the SMT were aware of these particular difficulties of the terrain around the

perimeter of the fire on the evening of 8 January 2003. In evidence, Mr Graham said that, in a general sense, the SMT discussed that the Gingera fire was a further distance out than the Stockyard Spur fire so the travel time to the fire would have been much greater: *It was a relatively small fire based on the information that we had received on several occasions from Firebird 7. And I think it was a decision that by not resourcing it what were the implications, and it was thought that they would be minimal*[\[667\]](#).

392. Reports from the crews responding to the Mt Gingera fire a little after midday on 9 January 2003, suggest that the trip from the Tidbinbilla Nature Reserve to the point on the Mt Franklin Road adjacent to the fire would have taken two to two and a half hours. However, unlike the difficulties encountered in reaching the Stockyard Spur fire, the walk from the Mt Franklin Road along existing walking tracks to the fire edge would have taken about 20 minutes[\[668\]](#). One of the crew members responding to the Mt Gingera fire on 9 January estimated that the fire *was only 300 metres west of the Mt Franklin Road*[\[669\]](#).

393. Mr Roche confirmed in his report that the Gingera fire was located approximately 300 to 400 metres west of the Mt Franklin Road. *No ground crews attended this fire on 8 January. There was no ground or detailed aerial reconnaissance of the fire and, accordingly, no estimate of the resources required to achieve containment was undertaken. In my opinion, this fire could have been attacked overnight on 8 January had resources in accordance with SOP No.7 and RAF Teams been despatched shortly after it was detected and the location confirmed. The fire was located in sub-alpine country and, while there may have been an amount of downed material due to snow damage and snow grass, the substantial length of the perimeter could have been contained with hand tools hot trailing the fire edge. Direct attack using tankers and extended hose lays in combination with the hand crews was an option, particularly given the reasonably close proximity of the Mt Franklin Road*[\[670\]](#). Mr Roche's evidence in relation to the initial response to the Mt Gingera fire was unchallenged.

3.2.4.3 Preparations for the Following Day

394. There is no evidence that any arrangements were made on the evening of 8 January 2003 for crews to respond to the Mt Gingera fire on the morning of 9 January. Crews were first responded on 9 January at 12 noon[\[671\]](#).

3.2.5 MCINTYRE'S HUT

3.2.5.1 Initial Assessment

395. Julie Crawford was in January 2003 the area manager for the Queanbeyan area for the NSW National Parks & Wildlife Service. She was the incident controller in charge of the McIntyre's Hut fire from the time of initial ignition until 13:00 hours on Thursday 9 January 2003[\[672\]](#). Shortly after 16:00 hours on 8 January, Ms Crawford heard the Mt Coree fire tower calling in the McIntyre's Hut fire and she asked the field supervisor, Graham Todkill, to dispatch a category 9 tanker to the area. A category 9 tanker is a light unit carrying 400 litres of water. Ms Crawford also dispatched a divisional commander, Rob Hunt in a separate vehicle to accompany the tanker. At about 17:10 hours, Ms Crawford also instructed Scott Seymour, the NSW Parks & Wildlife Service Ranger for Tablelands to contact Brindabella Airlines and arrange a surveillance

flight[673]. Ms Crawford could not speak to Mr Seymour while he was in the plane. He reported to her when he returned[674].

396. The Mt Coree fire tower continued to provide reports to Ms Crawford on the development of the McIntyre's Hut fire. At 17:24 hours the Mt Coree fire tower commented on the column of thick smoke[675]. Ms Crawford did not have a report on the actual size of the fire at this time, but the comments from the Mt Coree fire tower made it clear to her that it was a big fire[676]. At about the same time, Ms Crawford was receiving reports from the deputy captain of the RFS Fairlight Brigade and the land holder at Brookvale of a fire on the west side of the Baldy Range and embers and ash flying over the Brookvale property[677].

397. The original plan had been for Mr Hunt to make some observations on the ground as close as he could get to the McIntyre's Hut fire. Ms Crawford had hoped he would be able to get right into it, but from the time of sending him to the time he got near to the Brindabella National Park, it was looking highly unlikely. When Ms Crawford was speaking to Mr Hunt on the phone, he was reporting on how big the fire was and they were discussing an appropriate safe area. They knew that the Mt Coree fire tower operator was still in the tower and things were safer around there. It was a good vantage point and also a safe area to go. The distance from the Mt Coree fire tower to the fire was 6 to 7 kilometres in a straight line. [678]

398. In evidence, Mr Hunt explained that on the way to the Mt Coree fire tower, he could see a lot of smoke and *the smoke was lying over*. He later explained that: *En route to any fire...something you take consideration of is what is the smoke doing?* The volume of smoke suggested to Mr Hunt that he should progress with a large amount of caution[679]. Mr Hunt arrived at the Mt Coree fire tower shortly after 18:06 hours. From the Mt Coree fire tower, Mr Hunt could see that there was still significant wind pushing the smoke column over. The fire was at around the vicinity of Webb's Ridge. He could also see the Baldy Range ignition. According to Mr Hunt, if the Baldy Range ignition was a spot fire, there was a high likelihood that there might be other fires in the area behind the Dingi Ridge, which Mr Hunt could not see from the Mt Coree fire tower.[680]

399. At approximately 17:40 hours, Mr Seymour noted during his aerial reconnaissance that the McIntyre's Hut fire was approximately 200 hectares in size. He reported this to Ms Crawford after his return from the aerial reconnaissance flight at about 19:30 hours[681].

400. During her evidence, Ms Crawford referred to a number of factors that she took into account in deciding not to send personnel closer to the fire than the Mt Coree fire tower. These included her familiarity with the very steep terrain in the Brindabella National Park and the area of the fires, knowledge of a number of other fires in the area including the fire east on Baldy Range which had been reported from the tower as being started by embers from the main fire, which suggested the possibility of lots of other fires in the area. She also referred to a phone call from a person living to the east reporting embers and smoke over their house, gale force winds and the risk of falling trees blocking tracks, with the result that she could not guarantee her personnel a safe refuge area and an escape route. *You have to weigh up, even if you do get in, what are*

you going to do?... You are going to be far more effective the next day when you know exactly what you have got[682].

401. Ms Crawford agreed that photographs included in Mr Cheney's PowerPoint presentation of the smoke column from the McIntyre's Hut fire showed that the fire to the west (being the main run of the McIntyre's Hut fire) is a less active fire at 18:37 hours from that which was obvious at 17:30 hours. However, according to Ms Crawford, by the time of the meeting at which the strategy for the fire was determined, she also had information from the land holders at Dingo Dell and Fairlight who were much closer to the Baldy Range spot fire than where photographs were taken. They had reported embers going over their house and significant fire on Baldy Range[683]. Ms Crawford had arranged to get dozers in as soon as they got fire in the Brindabella National Park to undertake property protection work around the properties in the Dingo Dell area[684]. Ms Crawford also obtained information from ACT Forests personnel via Mr Neil Cooper concerning the Baldy Range spot fire, as discussed further below[685].

402. According to Mr Cheney, by 20:00 hours, shortly before the meeting to discuss strategies for the McIntyre's Hut fire commenced: *the fire behaviour had subsided as the weather conditions became milder with lower wind speeds and increased relative humidity on the western slopes of the Goodradigbee River. The fire had burnt out the entire catchment of the creek up to Webb's Ridge and the flank fires were burning quietly. On the eastern side of Webb's Ridge the fire behaviour was very mild and there were several small spot fires close to the Dingi Dingi trail that were burning quietly. At 21:30 hours the spot fire in the Baldy Range appeared to be burning quietly on the southern aspects of a knoll on both sides of the track with very low flame heights mostly less than 0.3m.* [686]

403. At 20:00 hours, Mr Blundell, the deputy captain of the RFS Fairlight Brigade and a land holder at Brookvale again telephoned the Queanbeyan NPWS office and reported a fire at approximately 630 998 on Baldy Range, wind change 30-40 kilometres south, fire heading towards Dingo Dell[687].

3.2.5.2 *Queanbeyan Meeting*

404. The meeting was attended by Ms Crawford, Mr Hunt, Mr Seymour and Tony Flemming from the NSW Parks & Wildlife Service, Bruce Arthur and Jim Lomas from the NSW Rural Fire Service and Mr Lucas-Smith, Mr McRae, Mr Cooper and Mr Bartlett from the ACT. Ms Crawford chaired the meeting[688]. It appears that the ACT representatives arrived at approximately 20:00 hours and the meeting commenced about half an hour later[689].

405. A brief description of the matters discussed during the meeting is included in the NSW Submission to the NSW Coroner[690]. Broadly, Mr Hunt briefed the meeting on his observations of the fire from Mt Coree and Mr Seymour briefed the meeting on his observations from the fire during his aerial reconnaissance. Mr Lucas-Smith briefed the meeting on the fires in the ACT. The meeting was not a formal meeting, it was more in the nature of a brainstorm meeting, where everyone was saying what they knew and contributing to a discussion on tactics[691]. The strategy devised and accepted at the meeting involved a broad area containment using the Goodradigbee River to the west, the power line fire trail to the south, the fire break on

the eastern perimeter of the Brindabella National Park to the east and Doctor's Flat Road and Webb's Ridge trail to the north[692]. It was recognised that tracks would need to be cut to complete some of the containment lines, particularly from the end of the power line trail down to the Goodradigbee River in the south-west corner.

3.2.5.3 *The Baldy Range Trail as the Eastern Containment Line*

406. Either shortly before the meeting commenced or in the earlier stages of the meeting, Mr Cooper telephoned Simon Bretherton. Mr Cooper had earlier sent Mr Bretherton with Tony Mennen to gather field information on the exact location of the fire front of the McIntyre's Hut fire. Mr Cooper's statement records the time of the telephone call as 20:23 hours[693]. According to Ms Crawford the ACT representatives arrived at Queanbeyan at 20:00 hours and Mr Cooper had *just received a phone call from some crews he had on the ground who were in the Brindabella*. Ms Crawford's evidence continued: *He [Mr Cooper] said they were on the Baldy fire trail and heading out. I said, "has it crossed the trail? Tell me what is happening". He said they didn't go that far down. I asked, "could he send them down to the Baldy spot fire, confirm it was over the trail". We believed it was. "Confirm that". He rang them back. He came and told me, "No it is across the trail and they are getting out of there". I said, "Isn't there something they can do". He said, "No, they are not even in a fire unit". [694]*

407. Ms Crawford took from that that there was nothing they could do and that she had lost the Baldy trail as a containment line[695]. Ms Crawford didn't remember at the meeting anyone saying that the fire on the Baldy Range was containable. Her memory of the meeting was that: *they are there, it is across the track and we are getting out*. The Baldy Range track was not considered as a containment line because, from Ms Crawford's point of view, it was lost. That was the information that had been provided to her[696].

408. Mr Cooper's evidence was that, when he spoke to Mr Bretherton, he was sitting down at Queanbeyan discussing the McIntyre's fire. Mr Bretherton basically gave Mr Cooper a field description of the Baldy Range spot fire. Mr Bretherton said it had burned across the track, exhibiting low flame height. He had gone out and walked for a short distance, could not walk around it, so he didn't know the size of the spot fire. It was burning both sides of the Baldy track. It was burning back against itself on the eastern side. Mr Bretherton was going to keep going down through the track but it was burning both sides and he couldn't see the end. Mr Cooper suggested to him not to proceed down the track. Mr Cooper made that suggestion because Mr Bretherton had no firefighting equipment and he was only on reconnaissance. Ms Crawford asked Mr Cooper if there was anything they could do and Mr Cooper replied that there was nothing they could do because they didn't have firefighting capacity. That information was passed around the room[697].

409. Ms Crawford's version of what Mr Cooper told her and her interpretation of that information was put to Mr Cooper. His evidence was: *Julie's interpretation may have been we had lost that. It certainly wasn't meant to be that way when I delivered that information. It was always my perception that we might be able to contain that spot fire with rake hoe crews the next day*. On the information from Mr Bretherton as Mr Cooper described it, the fire was controllable[698]. Mr Cooper also did not

recall Mr Bretherton providing some information and then Mr Cooper ringing back to get more information[699].

410. Mr Bartlett's recollection of the effect of the information provided by Mr Bretherton was that: *the fire behaviour on the Baldy Range was sufficiently intense that he did not feel confident of driving through the fire*[700]. Mr Hunt also referred in evidence to the information from Mr Cooper's crew to the effect that the Baldy Range fire was across the track and they were getting out. He was not sure why they were getting out but he thought they were getting out for safety reasons. Mr Hunt had himself seen Mr Bretherton and Mr Mennen going up to the Baldy Range spot fire and knew that they were not carrying any water[701].
411. Mr Arthur had no distinct recollection of looking at the Baldy Range trail, but was sure it would have been discussed because it was a potential north-south containment line. However information back from ACT sources indicated that possibly it wasn't a realistic option at that point[702]. On being shown the video tape of the Baldy spot fire at 21:00 hours on the night of 8 January, Mr Arthur agreed that the fire shown in the piece of film was eminently suppressible. He also considered that the first night of a fire is often the best opportunity you get at some kind of direct suppression. Mr Arthur considered that to be *a generally accepted principle*[703].
412. There is some conflict in the evidence as to whether or not it was agreed at the meeting that using the Baldy Range track as the eastern containment line would be reconsidered first thing the following morning. Mr Cooper's memory was that they were going to try for the Baldy Range trail as the first option, with the fallback option being the Dingo Dell Road. He certainly did not convey any opinion at any stage that, based on the information he had from Mr Bretherton, the Baldy Range trail was out of the question because of the intensity of the fire[704]. Ms Crawford's recollection of the meeting was that Baldy Range was *just wiped* as even consideration for an eastern containment line[705].
413. In any event, in the mind of the incident controller Ms Crawford, when the meeting concluded the Baldy Range fire trail was not a viable eastern containment line. Ms Crawford agreed that if the fire on Baldy Range could have been controlled, then the Baldy Range track would have become an eastern control containment line, reducing quite significantly the area they had to burn and also moving it back away from the assets[706]. There is no evidence that arrangements were made that evening for personnel to visit the site of the Baldy Range spot fire later that evening or at first light the following day to assess whether the fire to the east of the Baldy Range fire trail could be controlled, thus enabling the use of the Baldy Range fire trail as the eastern containment line for the McIntyre's Hut fire.

3.2.5.4 Expert Evidence on the Eastern Containment Line

414. On the general issue of the decision to implement an indirect attack strategy in respect of the McIntyre's Hut fire, Mr Cheney notes in his report that: *The decision to take indirect action on the fire seemed to be based on the observations taken by the helicopter pilot when the fire was making its upslope run, the observations from Mr Hunt from Mt Coree at 18:30 hours and Mr Arthur's observation of the convection column from Queanbeyan some 55km from the fire that afternoon. No evidence was presented that anyone from*

NSW Rural Fire Service reached the fire anywhere on the ground that night or reported the fire behaviour after 18:30 to the incident controller. Although Mr Cooper reported that Simon Bretherton had inspected the Baldy Range spot fire and that it was on both sides of the trail and containable by ground crews, no arrangements were made to assemble crews to attack the spot fire on the first night or at first light the next morning. Two long-standing axioms of firefighting are that: "fires always look worse from a distance" and that "fires always look worse at night". The point of these is that fires must be inspected on the ground to plan the most appropriate suppression strategy. Another general principle is to treat spot fires as separate fires and, wherever possible, suppress them while they are small, even if it is possible that they will be overrun by subsequent events. Ms Crawford said in evidence that gale force winds could have brought down trees, blocked roads and made it unsafe for firefighters. However, by 20:30 hours the area was under the influence of light variable winds and the research team going to the fire did not feel under any threat and were not obstructed by fallen timber on the way along Two Sticks Road and Dingi Dingi trail.[\[707\]](#)

415. In relation to the Baldy Range spot fire, Mr Cheney stated in his report that: *The spot fire on Baldy range was burning mildly at 21:30 hours and could also have been contained by hand crews working at night. Had this been done it would have been possible to use the Baldy Range fire trail as the eastern perimeter rather than having to construct a new fire break on the eastern perimeter of the Park. These fires would have been very mild overnight with most of the perimeter dying out in light fuels and reigniting from heavy log material the following day when the fuel moisture dropped.* In this section of his report, in relation to the Baldy Range spot fire and the section of fire to the west of the Lowell fire trail (discussed further below[\[708\]](#)), Mr Cheney concluded: *Securing these two small sections of the fire perimeter on the first night would have reduced the planned operation to around 7200 hectares but more importantly the fire could have then been contained within trafficable fire trails giving the burning-out operation a much higher chance of success.*[\[709\]](#) Mr Cheney confirmed in evidence his view that the fire controllers at Queanbeyan should have themselves or a team directly reporting to them gone out and inspected the area of the McIntyre's fire on 8 January. He added that, having not been inspected that night, they should have immediately had some resources out there to attempt initial attack at first light on 9 January.[\[710\]](#)

416. In cross-examination, Mr Cheney was referred to the report from Mr Blundell at 20:00 hours concerning a fire in the region of the Baldy Range spot fire. Mr Cheney agreed that 30-40kmh winds are *pretty strong*[\[711\]](#). However, he later queried where that record of 30-40kmh winds was from. *That was not the wind speed that other people who went to the site recorded on site, which is the point of my comment*[\[712\]](#). Later in cross-examination Mr Cheney was specifically asked whether in light of the information available to those present at Queanbeyan at least as disclosed by the evidence of Ms Crawford and Mr Bartlett, the strategy adopted that night (including treating the Baldy Range spot fire as lost but that there was to be an inspection of the Baldy Range spot fire at first light the following day) was a reasonable strategy. Mr Cheney disagreed. *I disagree because they should have known that they were on falling fire danger and that the early reports would be expected to be of higher intensity fire than you would get later on at night. The other reports were from people remote from the fire. I don't even know whether Mr Bretherton actually got to the fire. He didn't have a firefighting vehicle and he didn't do a thorough assessment of the spot fire at the time he was there. So they needed more information. I believe they should have known they were going into a falling fire danger, that the fire behaviour would decrease in that country at night and that they needed to get a proper assessment of what it is doing and where it was on the ground*[\[713\]](#).

417. Mr Roche discusses in his report the issue of setting the timeframe for the completion of the McIntyre's Hut fire indirect strategy and this is referred to below[714]. Having analysed the significance of the issue of calculating a timeframe, Mr Roche concludes: *Had a calculation of that kind been undertaken on the night of 8 January or, at the latest, during the day on 9 January, the IMT could have estimated how long the strategy as determined at the meeting would realistically have taken to complete. In my assessment, given the typical 4-5 day weather cycle at that time of year as acknowledged by the IC, it is likely that it would have then been evident that there was a real possibility that the strategy would not be completed in time. This should then have prompted urgent reconsideration of all the elements of the strategy. Such reconsideration should have included an immediate assessment and resourcing of the Baldy Range trail as the eastern containment line and options for speeding up the consolidation of the other containment line...Had a thorough ground reconnaissance been undertaken as the weather abated on the afternoon and early evening of 8 January, it would have been evident that a direct attack on the section of the fire west of the McIntyre's Hut trail and on the part of the fire east of the Baldy Range trail would have been successful... taking into account the vegetation and terrain in the area of the McIntyre's main fire and the Baldy spot fire, a RAF team using the appropriate tools should have been able to construct a line around a fire at a minimum rate of 100 metres per hour. Given the location of the sections of the fire, support could have also been provided by tankers. I estimate that the section of the McIntyre's fire west of the McIntyre's Hut trail and the area of the Baldy Spot fire east of the Baldy trail, could have been contained and probably mopped up overnight on 8 January with the deployment of 3 or 4 RAF teams and 5 or 6 tankers*[715].

418. In cross-examination, Mr Roche conceded that he had not included in his report a reference to the conversation between Mr Cooper and Ms Crawford[716]. Mr Roche agreed there was nothing in the conversation as he understood it to have occurred that he would point to as showing that the Baldy range spot fire was in a fit state to attack there and then[717]. Mr Roche also agreed that, in his experience, you depend on people to relate to you information of different sources and qualities and weighing it up to make strategic decisions. However, he described the situation as not black and white. In Mr Roche's experience, you do not rely on a single piece of information. *To make a major decision like was made that night you look for a corroboration before you make the decision*[718]. He suggested that planning can be done on and interim strategy. *But depending on when the commitment was to occur, not to make that commitment necessarily until corroborating information was received*[719]. Mr Roche conceded that he did not have an explanation as to why he did not refer in his report to the importance of obtaining corroborative information[720]. Mr Roche later repeated that he did not believe there was sufficient information from the meeting of 8 January for those managing the fire to set about devising and beginning to implement a strategy. *They should have got further information before they commenced the attack.... for instance, the people I would have sent to take a look at the fire would have taken firefighting equipment with them. I would have expected, had they arrived there with that firefighting equipment, reviewed the position and saw "we can do something here", at the same time as sending back the information they would commence the attack then*[721].

419. Mr Roche agreed that he did not include in his report an analysis of the time it would have taken to contain the fires to the east of the Baldy Range trail and to the west of the Lowell's trail. *It is not a detailed calculation. We are talking about a very, very small distance here in both cases... the information I needed, or is needed to perform that calculation is before the court*[722]. Mr Roche explained that the reference in his report to not being able to complete the task in two shifts was a

reference to: *the overall strategy of the full containment line and the removal of all material within the containment line for the four fires. Not the Baldy Range fire – not the eastern part of the Baldy fire. Not the western part of the McIntyre’s fire. We are talking about there the whole fire*[\[723\]](#).

3.2.5.5 *The Western Containment Line*

420. There is some evidence that there was a reference during the meeting to the Lowell’s track or the McIntyre’s track being used as the western containment line[\[724\]](#). However, the weight of the evidence would suggest that this possibility was not discussed at the meeting[\[725\]](#). On the other hand, the use of the Goodradigbee River as the western containment line was discussed. Mr Lucas-Smith broadly agreed with the strategies determined for the McIntyre’s Hut fire[\[726\]](#). Mr Bartlett’s view about using the Goodradigbee River as the western control line was that he was following the advice from the local people. He didn’t know the Goodradigbee River well himself[\[727\]](#). Mr Cooper’s recollection was that there was some concern about the river because of the obviously low water levels and a lot of weed growth along the river. In his mind, it was always a less than secure containment edge but there was no other option[\[728\]](#).
421. Mr Crawford considered the Goodradigbee River a suitable eastern control line. It was there without any work needing to be done on it. According to Ms Crawford, they could control anything that spotted over the Goodradigbee River using aircraft. They were allowing the fire to burn slowly downhill, rather than burning from the river up[\[729\]](#). The Goodradigbee River gave them the option of letting the fire burn slowly down to it. They had to have less resources to monitor it and they had plenty of aircraft monitoring it from the air. Ms Crawford agreed that using the Lowell’s trail would have made a reasonably significant contribution to reducing the total area to be contained, but considered that it would have taken more resources to manage it. According to Ms Crawford, the Goodradigbee River had trails at either end and in the middle section. They were patrolling it by aircraft. Ms Crawford felt that it would be possible to have winched ground crews into that area to deal with spot overs[\[730\]](#). Ms Crawford did not think anyone had any problems with using the Goodradigbee River as the western containment line[\[731\]](#).
422. Ms Crawford acknowledged that it could have been possible to put a hand line around the portion of the fire west of the Lowell’s trail and consideration given to using that road as a western containment line, but it was not her preferred option[\[732\]](#). Ms Crawford considered that there were problems with the Lowell’s fire trail as a western containment line. She considered that it would have been necessary to time the burning off of that trail very critically because as soon as burning off the trail commenced, the northern containment line would come under pressure. Further, the river was easier to patrol[\[733\]](#). Mr Arthur considered that they could have dealt with spot fires on the western side of the Goodradigbee River with the use of helicopters and they had the Ericsson sky crane which carries 9,000 litres. That was available from 10 or 11 January. There were also resources available from the Brindabella Valley, Tumut and Yass[\[734\]](#). In Mr Arthur’s view, the Goodradigbee River was the most practical choice for the western containment line[\[735\]](#).

423. Mr Arthur also gave evidence that using the Goodradigbee River as the western containment line was never rethought and he did not see why it needed rethinking. He did not agree that the river was not controllable. It was completely controllable by air and crews could have been winched in as well as coming from the Tumut side^[736]. Mr Arthur did not agree that the area where the hand line would be constructed was easy terrain. He had flown over that spot several times. He added that the fact that on the NSW Parks & Wildlife Service map part of the track is marked “No Tankers” would mean that you would not be able to put heavy or medium tankers up there, although you may be able to get a light unit onto that part of the track^[737].
424. The question of whether the terrain in the area of the point of origin of the McIntyre’s Hut fire to the west of Lowell’s trail would have precluded the construction of a hand line around that part of the fire was addressed in later evidence from Mr Smith and Mr Cheney. By reference to a video of the area, Mr Smith described the soil type in the area as a *shaly type soil* which makes it probably easier than a lot of situations. More generally, he gave evidence that the conditions were good for rake hoe work^[738].
425. In his statement, Mr Smith said he was *surprised the Brindabella Brigade was not responded to any fire on the afternoon of the 8th January 2003. By the evening of the 8th the prevailing weather conditions were very mild. I believe an opportunity was lost by not attacking the fires on the evening of 8th January. In my opinion it could have been done safely because of the low flame height, high humidity, cooler temperatures and calm wind conditions. I could observe from my property the fire activity on the McIntyre’s Hut and Baldy Range Fires had abated*^[739].
426. Later in his statement Mr Smith said that *I believe a Category 7 Tanker or Category 9 Tanker would have been capable of reaching the ignition area and base of the McIntyre’s Hut Fire located near or at grid reference 588 964. It would take around 30 minutes to reach Lowell’s Flat from the Brindabella Fire Station. I believe a rake hoe team would have been capable of putting in up to a 300 metre hand line trail on either the evening of the 8th January 2003 or early on the morning of 9th January 2003 to the western side of the McIntyre’s Hut ignition point to link the two sections of the McIntyre’s Hut trail. The trail would have been put in to contain the fire to the eastern side of the McIntyre’s Hut and Lowell’s trail. Brindabella Brigade members were involved on the Dingi Dingi Range Fire on 1st January 2000 where members put in 1 kilometre of rake hoe line in country that is considerably steeper than the McIntyre Hut trail/Lowell’s trail*^[740]. In his evidence, Mr Smith said that having been out in the area again since making his statement about putting in the 300 metre hand line trail, it was perhaps somewhat easier than he would have anticipated. Any crew having gone in on that day would have been confronted with the conditions Mr Smith saw when he returned to the area^[741].

3.2.5.6 Expert Evidence on the Western Control Line

427. Mr Cheney, who accompanied Mr Smith when he returned to the area with a category 7 tanker, agreed with Mr Smith’s observations. He added that, as far as he knew, in respect of the steepness and general accessibility of the trail, it was the same at the time of the fire as when he and Mr Smith returned to the area. He agreed that he did not know whether there were sufficient resources to patrol the Lowell’s trail if that had been used as the western containment line. However, in his opinion, resources should have been gathered to do that task. He pointed out

that for some time the fire which was spreading above both Lowell's trail and the McIntyre's trail proceeded in advance of the fire below and so the fire actually was not crossing that trail in those sections unassisted. Mr Cheney's evidence was that, looking at that in retrospect, it really would not have taken much manpower at all. Perhaps a light unit, once the lower part had been contained, could work along there and keep pace with the fire and watch for any spots or rolling debris coming across the road[742].

428. Although questions were put to witnesses suggesting the ready availability of resources was a factor that should be taken into account in considering alternative options[743], in the course of cross-examining Mr Roche, senior counsel for the NSW Rural Fire Service said: *I have not asserted, nor does NSW submit, that it had inadequate resources*[744].

429. In response to the evidence of Mr Arthur and Ms Crawford about using aerial support and winching crews into control spot overs along the Goodradigbee River, Mr Cheney gave evidence that, at the time, he knew that there were sections of the Goodradigbee River that ran through quite inaccessible gorges. He had fished there in years gone by and knew that in parts there was no access directly along the river. He did not know exactly what the fuels were like, but he suspected that, like most river banks, there were probably blackberries that had spread in those areas and the fuels were probably what you would expect for an area that hadn't been burnt for, he would say, 10 years[745].

430. Mr Cheney also gave evidence about difficulties with the use of helicopters to deal with spot overs along the river. *The problem there is that if you allow a fire to burn down into a river and there is a spot over across the river, there is only one direction for the spot to go and that is upslope – and it will do it pretty rapidly as happened subsequently on the 17th. It is far easier if you are, as the McIntyre's trail was, located partially on the slope that any spot over is going to burn upslope and burn back into the trail. So the suppression problem of controlling it just below the trail is far easier than an independent spot fire which goes across the river and then makes a run of 500 to 600 meters upslope; and it will do that very rapidly. The problem that the firefighters faced in the river was considerable because they were wandering along in quite dense blackberries, up to 2 metres, falling in the river which was boulder strewn and very unstable under foot. In fact, that was an extremely dangerous place to put volunteers or any firefighters into that point. While it would have been possible to winch firefighters in, I don't think a prudent fire controller would have done that, because of the dangers of winching someone in in a fire and then having the potential to run upslope very rapidly. And that's when people get killed, when they get put in a position when there is a fire underneath them*[746].

431. In his report, Mr Roche noted that: *Unlike the change of strategy involving the move of the eastern containment line to the Baldy Range trail, at no time was direct attack contemplated on the western flank of the McIntyre's fire west of the McIntyre's Hut trail. A thorough ground reconnaissance on the morning of 9 January should have identified both the difficulties and delays likely to be encountered in completing the western section of the southern containment line down to the Goodradigbee River, as well as the advantages of a direct attack on the west of the McIntyre's Hut trail and east of the Baldy Range trail discussed above. The failure to identify these matters early and revise the strategy accordingly, added another negative dimension to what was already difficult task to accomplish*[747]. In evidence, Mr Roche expressed the belief that: *The fire west of the trail could have been contained quite readily that night. As I understand, there would only have been perhaps 500 or 600*

metres or thereabouts of trail. It wasn't overly steep as a point of origin. It was a backing fire. The FDI as I recall it, had fallen significantly and was in the low category. There wasn't a problem with getting access to that part of the fire at Lowell's fire trail[\[748\]](#).

3.2.5.7 Time to Complete the Strategy

432. It was acknowledged by a number of people present at the Queanbeyan meeting that the strategy decided upon at the meeting involved a very large burning-out operation. Mr Lucas-Smith described it as a *huge burn*[\[749\]](#). Ms Crawford did not demur from the suggestion that the area was 10,000 hectares and agreed that *it was a very large area. That's what we were always concerned about. It was a huge area*[\[750\]](#). Mr Arthur agreed that it was a large area and accepted that it was about 10,000 hectares[\[751\]](#).
433. However, there appears to have been little or no serious attempt made that night to estimate how long the burning-out operation would take. Mr Cooper thought that the issue of how much work would need to be done on the containment lines was discussed, but his impression was that it wasn't a huge amount of work. But by 10 January this had become an issue[\[752\]](#). Ms Crawford had no recollection at the meeting of talking about timeframes for putting in containment lines. *No-one asked how long it would take. I think we were all coming from the point of view we needed to move on this quickly; we needed to getting it going as quickly as possible. There was no specific time frames put down*[\[753\]](#).
434. Mr Arthur realised there was a degree of urgency about the broad containment strategy and it would be preferable to have the containment area the smaller the better[\[754\]](#). However, he did not recall any discussion at the meeting on 8 January about how long the containment strategy was going to take to implement: *We set objectives and in those objectives we set, if you will, provisional times in it. They were objective driven, not time driven...so firefighting is objective driven, not time driven. There is a time penalty on it. If you don't do things in certain times, the situation may well get worse but you have to achieve the objectives. Now we tried to do that within a set time but a whole range of factors will alter that – bulldozers that can't do tasks, men who can't complete the task in enough time, different issues*[\[755\]](#). On the other hand, both Ms Crawford and Mr Arthur agreed that at that time of year, inevitably at some point the weather was going to become difficult again and certainly over the next week the chances were that hot north-westerly winds were likely to occur[\[756\]](#). Mr Hunt could not remember any discussion about the time it would take to establish the containment lines and do the back-burning[\[757\]](#).
435. Mr Bartlett considered that the size of the burning-out operation and the likely changes in weather were factors that heightened the importance of commencing the burning-out operation as quickly as possible[\[758\]](#). Mr Smith would have recommended a much smaller containment area, *but given the judgment was made for the bigger one, it would have been absolutely imperative in my opinion to begin back-burning on the 9th*[\[759\]](#).
436. The NSW Submission to the NSW Coroner indicated that, following the meeting, NSW Parks & Wildlife Service officers completed aircraft request forms requesting aircraft for 9 January (for reconnaissance and water bucketing) and forwarded these at 23:26 hours to RFS State Operations (which allocates aircraft resources for fire across the state). It continues: *a*

Situation Report was prepared at midnight. In that report, the strategy is to “complete control lines dayshift 9/03 and back-burn from them in the evening of 9/03. Back-burn to be consolidated with Aerial Incendiaries 10/03”[\[760\]](#).

437. Ms Crawford was asked about the situation report, which had been prepared by Scott Seymour for the period between 6am and 6pm on 9 January, signed by Mr Seymour at 02:45 on 9 January 2003 and signed off by Mr Arthur at 6am on 9 January[\[761\]](#). Ms Crawford’s evidence was that the timeframes set out in the situation report were not set at the meeting that she chaired on the evening of 8 January 2003[\[762\]](#). Ms Crawford agreed that the equivalent times in the related incident action plan, also prepared by Mr Seymour in the early hours of 9 January 2003, were unrealistic[\[763\]](#). Mr Arthur also agreed that the strategy as set out in the situation report did not reflect what was discussed and settled upon at the meeting. He considered that the timeframe referred to in the situation report may have been *a little ambitious*[\[764\]](#).
438. Mr Cheney considered the timeframe stated in the situation report for the suppression action to be unrealistic, *because of the area of the planned containment, the time required to construct fire lines and the time required to burn out the fuel inside the containment lines*[\[765\]](#). Mr Cheney was not critical of the tactic of remote indirect firefighting in itself, but considered that *it had to be formulated within the framework of the time and space that you have to do it in*[\[766\]](#). Similarly, Mr Roche’s view was that: *you cannot have an objective without an associated timeframe, because otherwise you are not going to be able to monitor your performance and gains towards achieving that objective. If you do not achieve the objective within the timeframe, that should cause you to re-evaluate the objective, re-establish whether in fact you need to alter some of the strategies and tactics or resources or in fact change the objective...Without the timeframe, there is no way of measuring whether the objective is going to be successful or not*[\[767\]](#).
439. Mr Roche discussed in his report at some length the importance of setting a timeframe for completing a strategy. After referring to the evidence of Ms Crawford that she did not recall any agreement on timeframes and the fire situation report suggesting that the strategy adopted was to complete the containment lines on 9 January and to backburn from them overnight, Mr Roche expressed the opinion that: *It should have been apparent to the IMT personnel familiar with the area and present that time, and certainly during the course of the following day after on-ground reconnaissance of the containment area, that this was an unrealistic timeframe for completion of the strategies. The resources required and the length of containment line that needed to be prepared and then consolidated by burning prior to the commencement of the aerial ignition, were such that completion of those tasks in two shifts was practically impossible. It should also have been apparent that the decision by the IC not to commence burning-out operations until trail construction was complete, added significantly to the time needed to complete the strategy. On the other hand, if the recollection of the IC is accurate and there was indeed no timeframe discussed for completion of the strategies other than getting it done “as quickly as possible and hopefully it would be the next day”, this is also a matter of concern. The likely timeframe for completing the strategy (particularly one as ambitious as the strategy resolve that night) is a critical factor in determining the viability of the strategy. A strategy is only viable if it can be completed in the time available. If, on a realistic assessment of the time it will take to complete a strategy, it is apparent that the time available is not sufficient, is incumbent on the IMT to urgently re-examine every possible option for reducing the time for completion of the strategy or to make arrangements to increase the available resources. Either way, the first step in the process is to calculate how long it is likely to take to complete the strategy. The process of*

estimating the likely time for completing a containment strategy is well known to experienced planning and operations personnel.[\[768\]](#)

440. Mr Roche was asked in evidence what difference it would have made had the eastern containment line been the Baldy trail and the western containment line at Lowell's trail. In relation to the Baldy Range trail, Mr Roche's evidence was that: *Had the Baldy Range trail been adopted as the eastern containment line, it would have significantly reduced the area that had to be burnt out and therefore should have contributed to an earlier establishment of containment lines around the eastern side of the fire.* Dealing with both the eastern and western containment lines, Mr Roche gave evidence that: *If those containment lines had been established early enough and the burning out and consolidation of the containment lines occurred 2 or 3 days before the 17th and 18th, then the chances of that fire escaping the containment lines would have been significantly reduced.*[\[769\]](#)

441. In re-examination, Mr Roche added that the reason he did not undertake himself an assessment of how long the entire control strategy would take was: *I just didn't think it was even necessary to try and work that out. It was so out of what I considered to be the ball park.* Mr Roche also gave evidence that he was not familiar with the approach referred to by Mr Arthur that firefighting is driven by objectives not driven by time constraints. According to Mr Roche all objectives have to have some time associated with them because, in effect, if you can't achieve an objective within the time available, the objective will fail. Further, *if you don't have time against the objective then you can't continually assess or measure the organisation's capacity as to how they are going or whether you need to adjust the objective or put in some more resources or take some out or take some other alternative steps.*[\[770\]](#)

3.3 9 JANUARY 2003

3.3.1 ACT FIRES

3.3.1.1 Initial Assessment

442. 06:00 hours on 9 January 2003 was the planned resumption time for direct attack on the Bendora and Stockyard Spur fires[\[771\]](#). The ESB radio transcript shows crews departing for the fires from 4.33am[\[772\]](#). The radio transcript also confirms that crews responding to each of the Bendora and Stockyard Spur fires arrived at Bulls Head shortly after 06:00 hours and then headed towards the sites of the two fires[\[773\]](#). At 06:37 hours, while the crews were en route to the fires, Mr Ingram in Firebird 7 commenced a reconnaissance flight over all three ACT fires[\[774\]](#).

443. Mr Ingram first visited the site of the Bendora fire and provided his report to Comcen commencing at 06:52 hours. He provided a grid reference for each corner of the fire and then reported: *Southern end of the fire is burning very, very slowly. The most active points are on the north-west and north-east corner where the flame height is about one and a half to two metres in places... the size of the fire approximately 750 square metres at this stage over... the two most active parts of the fire on the north-west and north-east corners. If the wind continues the way it is the fire will continue to burn towards the north-west over*[\[775\]](#).

444. Mr Ingram then flew south to the Stockyard Spur fire, reaching the area of that fire at 07:05 hours. He again provided grid references for the corners of the fire and reported: *Area burnt*

approximately 500 square metres most active part is on the north-western corner. If it continues to burn like this it will continue to burn around the ridge line over[\[776\]](#). Finally, Mr Ingram reported on the fire at Mt Gingera at 07:13 hours. After once again providing a grid reference for each corner of the fire, Mr Ingram continued: *Area burnt is approximately 300 square metres and the fire is working its way very very slowly up the ridge line. The fire is burnt in a horseshoe shape due to the rocks in the area over*[\[777\]](#).

445. Mr Ingram gave evidence that his estimate of the size of the Bendora fire the previous evening of 500 square metres was an error and his clear recollection of what he could see of the fire at 19:31 hours on 8 January 2003 was 5,000 square metres, *the size of a football field which is 100 by 50*[\[778\]](#). It was put to him that, based on what he had seen the previous evening, his estimate at 06:52 hours on the morning of 9 January could not be correct. Mr Ingram's evidence was: *That's all the fire I could see at the time...so that's all I could call it. That's why I provided the grid references. 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 agreed that he did not qualify the information he was giving to Comcen about his estimate of the size of the fire. Similarly, in connection with the Stockyard Spur fire, it was put to Mr Ingram that if he reported the Stockyard Spur fire on the evening of 8 January 2003 as 7,500 square metres, his report on the morning of 9 January of the fire being 500 square metres was incorrect. Mr Ingram again referred to difficulties caused by the smoke and cloud and said: *That's all I could see*[\[779\]](#).

3.3.1.2 Adequacy of Firefighting Resources at the Bendora Fire

446. Shortly before Mr Ingram provided his report concerning the Stockyard fire, Mr Hayes with the crews responding to the Bendora fire arrived at the fire ground[\[780\]](#). Despite some initial conflict in the evidence concerning the numbers of vehicles and crew attending the Bendora fire on the morning of 9 January with Mr Hayes[\[781\]](#), this was clarified in the evidence of Mr Hayes. He confirmed that his crews comprised the Rivers command unit, which was a twin cab unit that didn't carry water, with three crew members, the Rivers 21 light unit with two crew members and the Guises Creek 10 tanker with three crew members and Mr Hayes in his own vehicle. In terms of firefighting capacity, this amounted to one tanker, one light unit, eight crew members plus Mr Hayes[\[782\]](#).

447. Mr Hayes' evidence both in his statement and during the hearing was that the Guises Creek 10 tanker had three crew members[\[783\]](#) and Mr Graham's evidence was that he knew nothing to the contrary[\[784\]](#). The ESB radio transcript, on the other hand, suggested that the Guises Creek tanker had a crew of six on board when it set off that morning[\[785\]](#). Based on the evidence of Mr Hayes and Mr Graham, it would appear that this report was either incorrect or some of the crew members on the Guises Creek 10 tanker left the tanker at some point on the journey, perhaps to join crews attending other fires.

448. The ESB radio transcript indicates that the Guises Creek 10 tanker had difficulty locating the fire and did not arrive at the fire ground until some time after 8.16am[\[786\]](#). Mr Graham had clearly intended the previous evening that Mr Hayes would have two teams of six crew members plus Mr Hayes[\[787\]](#). However, Mr Hayes' evidence was that he did not receive his full allocation for 9 January. His evidence was that in an allocation of two rake hoe teams, he would have

expected a total of twelve people. With a large single cab tanker and a crew of three, this would bring the total to pretty close to fifteen personnel.

449. With the crews he had: *The light unit worked as a light unit suppressing any spots on the edge of Wombat Road for me. But then to form a rake hoe crew I had to stand my tanker down and my light unit down. So I had no suppression availability at all while they burnt themselves out doing rake hoe work for me. So it was a matter of jiggling.* As a result of that jiggling, Mr Hayes was able to come up with one rake hoe team[788]. It would appear that, even if there had been an additional three personnel on the Guises Creek 10 tanker, Mr Hayes would have been required to stand down both the tanker and the light unit in order to come up with two rake hoe teams comprising six personnel in each team.

450. In evidence, Mr Graham confirmed that there would be anything between three and seven crew members on a heavy tanker so that, based on Ms Arman's request for at least two rake hoe teams and at least one heavy tanker, this could involve anything from fourteen to eighteen personnel[789].

451. At 10:09 hours, Mr Hayes contacted Comcen and asked to check with the duty co-ordinator (Mr Graham) because he was having trouble locating the water supply identified by crews the previous evening. A few minutes later, Comcen contacted Mr Hayes, provided him with a grid reference for the water supply and suggested that if he had further trouble he could liaise with Parks 1 (Ms Arman) about where they had found the water the previous evening[790]. Mr Hayes spoke to Ms Arman at 10:17 hours. During the course of that discussion, Ms Arman asked Mr Hayes whether the resources she had asked for were adequate and he responded: *I could probably do with further water, being so far away now. I might pull in another heavy if I can. I'll think about it*[791]. Apart from this brief conversation with Ms Arman concerning resources, it appears that at no time during the day did Mr Hayes make a request by radio for additional resources.

452. Mr Hayes did have a number of telephone conversations with personnel at ESB headquarters including Mr Graham during the day[792]. During his evidence, Mr Hayes first said that he had numerous conversations with Mr Graham concerning additional personnel but that: *I knew the cupboard was bare. If I asked I wouldn't have got.* However, Mr Hayes agreed that this was not something that Mr Graham actually said to him, it was just an assumption that he made[793]. He did not ask for more personnel, he just assumed that they wouldn't be available[794].

3.3.1.3 Attempts to Control the Bendora Fire

453. Mr Hayes described in his witness statement the firefighting activities undertaken on the Bendora fire under his command on 9 January 2003. He did not know the size of the fire when he arrived. Since the fire, he has tried to work out the approximate size of the fire on the morning, and he has estimated that it was between 7 and 10 hectares. At about 10:00 hours, he thought the fire was between 15 and 20 hectares[795]. Mr Hayes' main objective on arriving at the fire was to ensure that the fire would not cross Wombat Road. He instructed crews accordingly and set them up along Wombat Road, while he undertook a further investigation of the scene. *When I drove up Wombat Road a bit I could see that the fire was burning out from its main*

perimeter in fingers and that the quieter end was the southern end. I therefore decided to work on fire suppression on the southern end of the fire front, to get it right under control. The crews worked on constructing a rake hoe line to a bare mineral earth break on the southern side of the fire up from Wombat Road for 2 to 3 hours[796].

454. According to Mr Hayes' statement, the decision to abandon the southern side of the fire and move to the northern side in the area of the Bendora break was made following a discussion with Mr McRae who was at the time flying over the fire in Firebird 7[797]. The ESB radio transcript confirms that this exchange between Mr Hayes and Mr McRae in Firebird 7 commenced at 10:45 hours. Mr Hayes asked: *Rick is there any chance of a fly around that fire below you at Bendora please and tell the boys how they're going up on that southern flank.* A short time later, Mr McRae spoke directly to Guises Creek 5 and reported: *the flank you are on is very hot. The flames are racing up the slope over 2 metres. Flames starting to get up into the trees over.* Guises Creek 5 (the crew leader on the Guises Creek 10 tanker) asked Mr McRae for a recommendation as to whether it was worth carrying on a rake hoe trail up over the hill. Mr McRae responded: *I would say that a direct attack would fail. You'll need to monitor this one very closely to go off the road and yeah a rake hoe line would fail over.* After a further discussion between Mr McRae and Mr Hayes, Mr Hayes withdrew his crew from the southern side of the fire and decided instead to attempt to rake hoe line around the northern side[798].

455. Mr Hayes went on to describe in his statement the attack on the northern side as commencing with the crews walking up what was the Bendora break, making a rake hoe line which was sufficiently clear to permit a tanker to back up the break to the fire ground. They then ran a canvass hose out onto the fire and started direct attack. Mr Hayes instructed his crews to continue direct attack while he undertook further surveillance.

456. At 13:29 hours, Comcen requested a situation report. Mr Hayes reported that they were working on a rake hoe trail on the northern flank and it was going along very well. He further reported that they were going to try to get around the head of the fire while it was doing very little. Comcen then asked Mr Hayes if he could let them know what was going on with the rest of the flanks. Mr Hayes responded: *Well I haven't been on the western flank all day Coms. I've been working on the southern, the northern and the eastern flanks but the most activity is definitely on the northern flank.* After acknowledging that message, Comcen radioed Mr Hayes: *Compliments of Tony Graham. If we brought in a dozer would that be able to help you with the containment line over.* Mr Hayes responded: *That's very pleasing news. Anything with a D in front would be great... Fairly good idea because I've only got a small crew here today and a fairly long rake hoe trail at the moment and we could run the dozer up and down there and I could call these units in a lot further if they had a dozer here... further to that Coms, it's treacherous up here. There's large very large trees coming across this fire trail and a dozer would probably be handy in skipping them out of the road because there is going to be dozens more come down over[799].* At 15:37 hours, Comcen followed up that transmission concerning the dozer to report to Mr Hayes that at that stage they didn't expect the dozer till first light in the morning[800].

457. Mr Hayes further stated that, as the afternoon progressed, it became increasingly apparent to him that: *they were fighting a losing battle, as with the number of people available it was impossible to undertake the attack required to suppress the fire at that time[801].* Mr Hayes goes on to describe the deteriorating

conditions and the difficulties encountered by his crews in constructing and maintaining control lines as the afternoon progressed[802].

458. The state of deterioration of the conditions is reflected in the exchanges between Mr Hayes and Comcen concerning crews for the night of 9 January 2003. At 16:42 hours, Comcen radioed Mr Hayes and informed him that: *We will support your request for crews for tonight*. Mr Hayes responded: *Thank you Coms. Just let me know when they are on their way and I'll meet them and guide them in*[803]. In evidence, Mr Hayes confirmed that he spoke to Mr Graham on a number of occasions during the day by telephone and it is likely that he made the request for overnight crews by telephone earlier in the day[804]. However, at 17:54, Mr Hayes radioed Comcen as follows: *Coms for the duty co-ordinator but I can't ring. Those crews that are coming in tonight I would say no to them now. The fire has crossed Warks Road. There's trees hanging. It is far too dangerous. He can call me by radio if he'd like to talk it over. Parks 6 out*. Coms responded: *Received Parks 6. He agrees with your assessment over*[805].

459. In evidence, Mr Hayes explained the reasons for his decision to reverse his earlier suggestion about overnight crews: *Conditions from probably 16:00 on were not pretty in there. It was horrendous. There were numerous trees falling. The fire condition had upped the ante. It had crossed Wombat Road. The fire in there was atrocious. I would not put crews in there overnight*[806]. Mr Hayes agreed that given the situation where he was not able to do anything on the north or the west or the south, it would be fair to say that, even with further crews, he would not have been able to bring that fire under control that day[807]. In his statement, Mr Hayes commented that more effective firefighting could have been undertaken if a dozer had been available. According to Mr Hayes, a dozer early on the morning of 9 January 2003, would have been able to undertake better clearing of Wombat Road. This would have provided a better line for protection from the fire jumping that road. It could also have cleared Bendora break and perhaps got up around the fingers that he described earlier which were running up the hill from the northern end of the fire. He concluded that it was very difficult to say what could have been achieved during the day, especially as the difference in fire activity between the morning and afternoon of 9 January 2003 was *quite extraordinary*[808].

3.3.1.4 Arrival at the Stockyard Spur Fire and Initial Assessment

460. Mr McNamara (Parks 5) reported to Comcen his arrival at the Bulls Head staging area at 05:58 hours. He reported leaving the staging area and heading towards Mt Ginini car park at 06:23 hours[809]. En route to the Mt Ginini car park, Comcen asked Mr McNamara for a list of the units he had with him. He said he would report this when he reached the Mt Ginini car park. He did this at 06:59 hours and reported that he had with him Gungahlin 20, Gungahlin Command and the Parks & Conservation Raft Crew in their own vehicle. In his statement, Mr McNamara said that he had with him a remote area firefighting team consisting of about 12 people: *the crew consisted of a range of people from within the Parks Brigade and the Gungahlin volunteers*[810].

461. A short time later, Mr McNamara received via Comcen the substance of the situation report from Mr Ingram in Firebird 7, which had been transmitted by Mr Ingram to Comcen commencing at 07:05 hours, including that the fire was: *approximately 500 square metres burn out. It is still a little active on the north-west side and if it continues to burn at this rate... it will burn around the ridge line*[811].

462. At 07:41, Mr McNamara reported that he and his crew had reached the turn off to the Stockyard Spur fire trail and estimated that it would probably be another half an hour or so till they got down to the fire ground[812]. Mr McNamara updated his report at 07:58 hours to the effect that their original intention was to drive as far as they could along the Stockyard Spur trail. However, it was heavily overgrown so they were leaving the vehicles and walking to the fire which he estimated to be a 2km walk[813]. Mr McNamara reported having reached the fire at 08:59 hours and that: *I think it is pretty right to report we're going to get around it with our equipment over.*

463. The travel times and time for arrival at the fire apparent from the ESB radio transcript are not entirely consistent with Mr McNamara's estimates in his statement. In particular, in his statement he estimated arriving at the site of the fire at about 10:00 hours. The ESB radio transcript referred to above would suggest he arrived there and provided his initial situation report shortly before 09:00 hours[814].

464. Mr McNamara asked his crew to rest while he undertook a reconnaissance of the fire. *I recall that upon arrival I observed the fire as being low in general intensity, as it was just trickling along with what I later determined to be a size of approximately 3 hectares, (best estimate and recollection) with a flame height of approximately 0.5 to 1 metres. The fire was burning in a heavily forested snow and mountain gum woodland on a saddle between two knolls. Fuel loads in the area were quite variable. There was a gully with heavy tea tree and ribbon gum to the south with fuel loads around 30-40 tonnes per hectare. Some of the other more open areas would probably have been around 20-30 tones per hectare. The fuel was also extraordinarily dry and had what I call the "cornflake crunch" factor[815].*

465. Mr McNamara estimated the reconnaissance would have taken about 20 minutes to half an hour. He then determined that his best course of action was to commence the construction of a bare earth mineral containment line to the north-west flank of the fire. Mr McNamara described the process of constructing the containment line and the difficulties he and his crew encountered in his statement[816].

3.3.1.5 Adequacy of Firefighting Resources at the Stockyard Spur Fire

466. Mr McNamara provided a further situation report commencing at 10:05 hours. He described the fire as *currently burning in a mountain gum and gum woodland in a scrubby understorey.* He then provided grid references for various points around the fire and described the wind direction. He concluded his situation report as follows: *Roger. Just the crew with me at the moment - we haven't got enough crew to get the whole way... on the western and north-western point of the fire over.... I've got a satellite phone here. I'll try and get it up and running and give you a call[817].* At a little after 11:00 hours, Comcen again contacted Mr McNamara by radio and requested that he contact the fire brigade communications on his satellite phone[818].

467. Mr McNamara refers to his conversations by satellite phone with Mr Graham. In particular, Mr McNamara: *indicated to Tony Graham that we would have major difficulty in establishing a containment line around the entire perimeter of the Stockyard fire and requested additional crews and helicopter support. In my opinion we required additional RAFT crews with remote area firefighting resources. I recall Tony indicating that they had multiple fires in the area and that he would get back to me with the response. He instructed me to do our*

best. During the various conversations I had with Tony Graham I remember discussing with him the use of heavy plant. I recall that Tony asked me what the access availability was for having a dozer get to the fire, perhaps along the Stockyard fire trail. I remember indicating to him that I thought the access would be very good and that a dozer would be able to make progress along the Stockyard fire trail and get right to the fire. The fire was actually right on the Stockyard fire trail. Had a dozer been able to get up along that road and clear it, there would have been fire tanker access right to the seat of the fire[\[819\]](#).

468. In his conversation with Mr Graham, Mr McNamara believed that he estimated that it would take around 2 or 3 hours to get a dozer from Canberra to the intersection of Mt Franklin Road and the Stockyard fire trail and then an hour or two to doze the Stockyard fire trail to the seat of the fire[\[820\]](#). Mr Graham did not have a recollection of the discussion with Mr McNamara concerning the need for additional raft crews with remote area firefighting resources and Mr Graham's response to the effect that they had multiple fires in the area and that he would get back to Mr McNamara. However, he believed that Mr McNamara's comments about discussing heavy plant and that Mr McNamara thought access along the Stockyard fire trail for a dozer would be good, is right[\[821\]](#).

469. As with Mr Hayes on the Bendora fire, Mr McNamara also had a brief exchange with Mr McRae in Firebird 7. This occurred at 10:35 hours. Mr McNamara asked how the Stockyard fire was looking from Mr McRae's point of view. Mr McRae responded: *We've flown a couple of times. It's looking to be about 8 hectares. It looks like it's a backing fire... outside perimeter with the western part just south of where you're standing is most likely to make a run to the south-west ridge line. Is that like what you're seeing, over.* Mr McNamara indicated he was a bit concerned about the northern flank. Mr McRae continued: *Yeah, it's a backing fire just where we're at now. It's fairly, it's fairly hot and it's early in the day, probably not going to self extinguish, I think you've got an awful lot of work to wrap this one up over.* Mr McNamara responded: *Affirmative ... especially with the crews we have on deck at the moment.* Mr McNamara then raised the possibility of water bombing and Mr McRae agreed that aerial bombing would be essential to slow the fire down[\[822\]](#).

470. Mr McNamara confirmed in his evidence that he thought he indicated to ESB that, given the size of the crew he had with him, it was going to be very, very difficult to get all the way around the fire. He also confirmed in his evidence his request for additional crews and the discussion with Mr Graham about opening up the Stockyard Spur track with the dozer[\[823\]](#).

3.3.1.6 *Attempts to Control the Stockyard Spur Fire*

471. Mr McNamara described both in his statement and in his evidence the progress of the firefighting activities by his crews in the early afternoon. He considered that all up his crews constructed approximately 400 metres of containment line and that, early in the afternoon, helicopters Southcare 1 and Firebird 7 were providing valuable assistance in water bombing. However, both helicopters were withdrawn at 14:30 hours. A little while later the wind picked up and Mr McNamara began to become concerned about the safety of his crews. He spoke to Mr Graham and, in general terms, said that he had a couple of crew members who were suffering fatigue and the fire was jumping the containment line. They had no helicopter support and there was a significant change in the fire behaviour[\[824\]](#). The ESB radio transcript confirms that at

16:10 hours Mr McNamara reported to Comcen that the fire *has now jumped the containment line that we had in place*[\[825\]](#).

472. Mr McNamara summarised the actions in response to his concerns in his statement as follows: *I therefore brought the entire RAFT crew together and had discussions with the more senior fire fighters. I also conferred with Tony Graham back at ESB. I expressed concern as to the safety of my crew who had been working in extremely difficult circumstances, with at least two crew members showing signs of fatigue and exhaustion. Without air support and additional resources we would have extreme difficulty in containing the fire in that sector. I therefore indicated to Tony that we would fall back to a role of observing the fire due to the safety and welfare of my crew. It was agreed that my crew would drop back to a safe distance from the fire and observe for a period. We dropped back to about 1km from the fire front to a rocky knoll. Mr McNamara then describes that some water bombing operations occurred while they were observing the fire but by this time the fire, had increased markedly in its intensity with a very large column of smoke now evident. The water bombing by this stage was unfortunately of limited effect. We pulled out and biked back to the vehicles.* [\[826\]](#) The ESB radio transcript confirms that Mr McNamara reported to Comcen at 17:53 hours that: *We're leaving our current location and heading back to the visual on the intersection of the Mt Franklin Road and the Stockyard Spur*[\[827\]](#).

473. Mr Graham summarised the position in relation to the Stockyard fire on 9 January as follows: *Without any vehicle access to the Stockyard Spur fire there was little that could be done in terms of direct firefighting. Other than water bombing, crews could establish containment lines, however without any means of applying water to the fire they could not be actively engaged in direct fire suppression. Following discussions between the SMT and Parks and Conservations Service who are the land managers responsible for this area, it was agreed to use heavy machinery to open up the Stockyard Spur track as this would then allow vehicle access to the fire. To establish this track required some considerable effort so that it could carry the weight of a heavy tanker. Without appropriate machinery being readily available, this work could not commence until 11th January 2003*[\[828\]](#).

474. Mr Lucas-Smith was asked whether there was any reason why the crew that was too fatigued and had withdrawn from the Stockyard Spur fire could not be replaced. He said there was no reason. *It was a decision that was made earlier in that day to move from direct attack to indirect attack for all of 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 thirteen personnel on a 80 hectare fire was not a real reasonable strategy. In any event, Mr Lucas-Smith agreed that the crews were withdrawn and the fire was left overnight. He considered that: the people resources for a direct attack on 80 hectare fire whether daytime or night-time was far in excess of what I could have marshalled that night.*[\[829\]](#)

3.3.1.7 Mt Gingera Fire.

475. Crews were first responded to the Mt Gingera fire a little after 12:00 hours on 9 January. The crews dispatched were 2 light units (Parks 20 and Parks 23) under the command of Mr Callan (Parks 7)[\[830\]](#). At 14:32 hours, Comcen radioed Mr Callan and asked for a situation report. Mr Callan responded that they had not reached the fire line at that time and were trying to find better access[\[831\]](#). The crews reached the point on the Mt Franklin Road adjacent to the Mt Gingera fire at approximately 15:00 hours and Mr Callan reported that he and another crew member were walking through to the fire line to make an assessment of what they might

need[832]. In his statement, Mr Callan described how from 15:05 hours, they walked to the fire line along a walking track, which led to another old and existing track that could be followed. They reached the first edge of the line at about 15:25 hours and then proceeded to different parts of the fire to assess the fire behaviour and terrain[833].

476. Mr Callan provided his situation report to Comcen commencing at 17:20 hours. Although the sitrep is interspersed with other messages, it appears that Mr Callan first provided the grid reference and then estimated the size of the fire as 5 hectares with flame size about half a metre and *fuel on the ground medium to light, heavy in places also*. Mr Callan continued: *We have two options. One is bulldozer as soon as possible over*. Comcen asked *what's the other option?* Mr Callan responded: *Other is helicopter bombing, probably... bombing at this stage*. Mr Callan reported a short time later that *the units are Parks 23 and Parks 20. I might have to keep them to keep it from crossing the road into... creek. If it crosses there, there is no way we can stop it over*. Comcen said they would get back to Mr Callan[834]. At 17:28 hours, Mr Callan reported that there was an old NSW/ACT boundary break running directly beside the fire. Mr Callan later provided a grid reference for that boundary break[835]. The water bombing requested by Mr Callan commenced at approximately 18:00 hours[836].

477. At about 18:45 hours an exchange between Parks 7 and Comcen occurred during which Comcen was seeking to ascertain whether Parks 7 were serving any purpose in remaining at the fire and whether Comcen could remove them or whether they could remain until Comcen pulled out the helicopters. Mr Callan asked whether there would be anyone taking over from them and Comcen responded: *that's a negative, there will be no relief crews over*. Mr Callan suggested, in substance, that they let the fire burn down to the road to create a break off the road, with the light units patrolling that break: *If it crosses that road tonight, the border to the coast is the next one, over*. Comcen asked how long it would take to trickle down to the road and Mr Callan responded that it could be well into the night before it gets down there. Comcen responded: *Yeab Roger, given that and our thoughts are still to pull you out and wait and see what happens overnight with the trickling down to the road, over*. There was then some further discussion about continuing water bombing[837].

478. At 19:45, Comcen notified Mr Callan that they had reassessed their intention and that they would like Mr Callan and his crews to remain overnight and protect the fire from crossing the fire trail[838]. In his statement Mr Callan confirmed that he and his crews remained at the site of the Mt Gingera fire as it came gently down the hill and worked its way down to the road. Although he was not sure, he thought that they put out some fire along the road edge along the Mt Franklin Road. They were relieved the following morning and he finished at 10:00 hours on 10 January 2003[839].

479. In his report, Mr Cheney considered that if the crew that attended the Mt Gingera fire on the afternoon of 9 January, *were properly equipped with rake-boes and chain saw and a slasher, I believe they could have done some useful hand-line construction from the Mt Franklin Road to the southern edge of the fire where it was burning downhill in the 6 or 7 hours of daylight available to them. This could have been held overnight and would have provided a useful start for the RAFT team that arrived the following day*[840]. Similarly Mr Roche in his report expressed the view that: *Although in my opinion the fire was significantly under-resourced throughout the day on 9 January, and notwithstanding that the terrain and vegetation*

may have presented some difficulties to the crew, I do not understand why they did not undertake some hand trail work off the Mt Franklin Road. I believe they could have achieved some useful progress before being relieved the following morning. In my opinion, the resources committed to the fire on 9 January should have comprised at least two RAF teams, a medium dozer supported by 2 or 3 tankers and a similar number of light units. These resources should have been despatched to the fire at first light, not 12:00 hours as occurred. Had these resources been in place, coupled with the deployment of the helicopters for water bombing supported by the ground crews, in my view, the fire could have been contained within the operational period (day shift on 9 January) and secured before the onset of adverse fire weather conditions.[\[841\]](#) Again, Mr Roche and Mr Cheney's evidence on these matters was unchallenged.

3.3.2 ACTIONS OF THE SMT

3.3.2.1 Mr Lucas-Smith's Radio Interview

480. Shortly before 9am on 9 January 2003, Mr Lucas-Smith participated in a radio interview with ABC 666. In response to a question as to what the situation was at the moment Mr Lucas-Smith responded: *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 those fires, as we speak, and we expect to have them rounded up fairly early this morning.* Mr Lucas-Smith went on to explain that their biggest concern was the McIntyre's Hut fire. He was asked whether any ACT crews were likely to attend that fire to which he responded: *We'll certainly assist them once we've got our fires got out of the way, as best we possibly can, because it is a large fire which is threatening the ACT.* [\[842\]](#)

481. Mr Lucas-Smith agreed that anyone hearing that interview would understand his comment to mean that the problem is just about over. His state of mind at the time was that any problem from the fires was just about solved[\[843\]](#).

3.3.2.2 Mr Bartlett and the ACT Forests Crews

482. Mr Bartlett returned to the ESB offices at Curtin on the morning of 9 January to get an update on the fires and to find out what role he would be given. *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 Coordinator 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 standby 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 plantation*[\[844\]](#).

483. In evidence, Mr Bartlett explained that ACT Forests had effectively the same crews on 9 January that had been available on the afternoon of 8 January and the same equipment. They

were kept on standby as a standard approach but they were not being deployed, but ESB was saying they may need to deploy them and was asking Mr Bartlett to keep them on standby. Mr Bartlett said that the advice that he could source bulldozers was given at the same time, probably some time before 09:00 hours. He said he was reasonably certain that the duty coordinator he spoke to about dozers was Mr Graham[845].

484. Mr Lucas-Smith could not recall telling Mr Bartlett on the morning of 9 January that his services were not required but it *may have occurred*. He did not regard himself as at all under resourced on the morning of 9 January[846]. Mr Graham thought that he was probably not the person that Mr Bartlett was referring to and that it could have been Mr Ingram: *I'm not sure whether Mr Bartlett had a phone call with whoever was the duty coordinator – a discussion the previous day with myself or with Dave Ingram on that day. I just don't know*. Mr Graham agreed that it was a true statement that on the morning of the 9 January no ACT Forest crews had been deployed within the ACT. He could not recall whether or not any had been deployed into the McIntyre's Hut fire at that time. Asked whether there was any reason why those crews were not being deployed at that time Mr Graham responded: *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*[847].

485. Mr Graham did not believe Mr Lucas-Smith or he discussed having someone of Mr Bartlett's experience involved either at SMT level or as an incident controller in the field. In his view, they had competent capable officers out on the incident ground, who by all accounts were managing the incidents they had at the time. He believed the SMT was performing well. There wasn't at that time any need for Mr Bartlett's assistance. He did not recall having any dealings with Mr Bartlett that morning[848].

486. The question of the possible use of ACT Forests crews came up later in Mr Graham's evidence. He did recall that ACT Forests crews were not used on Bendora on 9 January and he accepted that there were a number of crews who were available. He did not believe that he enquired of ACT Forests about who was available[849].

3.3.2.3 *Aerial Reconnaissance by Mr McRae and Mr Castle*

487. A little after 09:00 hours on 9 January, Mr Castle told Mr McRae that Mr Lucas-Smith needed to attend a meeting in Queanbeyan and that Mr McRae was to take the place of Mr Lucas-Smith on a reconnaissance flight over the fires that were soon to depart. *Mike Castle and I therefore immediately left for the Weston Police Services Complex at Weston Creek where we met up with the pilot, Mr Matt O'Brien and boarded the Bushfire Service helicopter, Firebird 7. We conducted a one and a half hour reconnaissance flight over all the fires, and I took the role of the aerial observer in the front seat of the helicopter beside the pilot, Mike Castle travelled in the back. The helicopter was fitted with a GPS receiver that enabled me to plot the coordinates of the fires on laminated maps in the air observer kit that I took with me. I also made notes about the fires, the nature of the terrain, the size of the fires at the time, access routes to the fires, fire behaviour and any assets that might come under threat. On return from the reconnaissance flight, I typed up the notes that I had taken during the flight and placed that information on the ESB website*[850]. The ESB radio transcript confirms that the flight left Weston Creek at 9.44am[851].

488. In notes taken by Mr McRae during the reconnaissance flight, Mr McRae recorded the size of the Bendora fire as *20 ha, growing*. He notes fire behaviour as: *hot and growing on SW, 2m+, backing, 1.5m on NW, NE, out on road to SE*. His notes of the Gingera fire are of a 2 hectare fire, growing. He notes access to the fire by a 4 wheel drive trail 200 metres down slope to the east and behaviour *0.5m backing on flanks and hill*. Finally, for the Stockyard Spur fire, Mr McRae notes the size as 8 hectares access as *dormant trail by foot* and the behaviour as *backing, 0.5m flames, 1m on W flank, escalating*. He also noted *lots of large logs – difficult for rake hoe*[\[852\]](#). As indicated in his statement, Mr McRae entered this information on the ESB website at approximately 11am on 9 January 2003[\[853\]](#).
489. The evidence of both Mr McRae and Mr Hayes was that, while Mr McRae was undertaking the reconnaissance flight and speaking by radio with Mr Hayes, he did not mention that he estimated the size of the fire as 20 hectares. Mr McRae agreed that he was in a better position being in an aircraft to identify the total dimension of the fire than Mr Hayes. He did not believe at the time it would assist Mr Hayes to tell him the size of the fire. Mr McRae considered that: *a lot of our fire controllers prefer brevity rather than detailed travel log from air observers*[\[854\]](#). Mr Hayes considered that it would have assisted him greatly for Mr McRae to have told him that the fire was 20 hectares[\[855\]](#). The ESB radio transcript confirms that, during the reconnaissance flight Mr McRae communicated to Mr McNamara that he estimated the size of the Stockyard Spur fire as 8 hectares[\[856\]](#).
490. According to Mr McRae's statement, on return to the ESB, his first priority *was to make available the notes of my observations during the helicopter flight. I therefore made multiple copies 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. On returning to ESB, it was becoming clear to me and to the rest of the SMT 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 to assist with that function*[\[857\]](#).
491. Mr Lucas-Smith records in his statement that *by 10.30hrs reports from the Incident Controllers and from the SMT Planning Officer, Rick McRae, who had also returned from a detailed reconnaissance flight in Firebird 7, suggested substantial fire growth was occurring already*[\[858\]](#). Mr Lucas-Smith then sets out in his statement the substance of Mr McRae's notes on each of the fires he observed. Later in his statement, Mr Lucas-Smith also refers to it becoming evident by the afternoon of 9 January that the strategy of direct attack on the Bendora fire was not going to be successful because the fire edge could not be readily accessed with adequate water resources. *Our strategy... was to continue with direct attack using the ground based resources and aerial firefighting support to at least suppress the spread of the fire as much as possible, giving us more time to implement indirect attack strategies, which included the use of heavy plant to construct containment lines. As such, on the afternoon of 9 January, we started to organise heavy plant to be brought in for operations commencing the following day on 10 January, primarily to open up access tracks and to start working on building containment lines for indirect attack*[\[859\]](#).

492. Mr Graham does not refer in his statement to receiving a copy of Mr McRae's notes of the reconnaissance. In his evidence, he said that he remembered that Mr McRae undertook a reconnaissance flight during the morning of 9 January but he did not specifically recall Mr McRae reporting to him what he observed. He believed that a discussion would have taken place. He did not particularly recall being given Mr McRae's notes but agreed that the distribution of notes was certainly the kind of thing that Mr McRae would do. Mr Graham agreed that if he was given the notes by Mr McRae, he certainly would have read them. He did not recall being surprised at the assessment by Mr McRae that the Bendora fire was 20 hectares or having an understanding at about midday on 9 January that the Bendora fire was a 20 hectare fire[860].

3.3.2.4 Bendora Fire "Severely Under-resourced"

493. Mr Cheney considered that on 9 January 2003 the Bendora fire was *severely under-resourced*[861]. Mr Lucas-Smith agreed with Mr Cheney's assessment[862]. Mr McRae did not have an understanding of what level of resourcing was on the Bendora fire that morning. He was not considering whether resourcing was sufficient or not[863]. He did not know what resources Mr Hayes had available to him or what resources were en route to him. He did not conclude from his conversation with Mr Hayes that Mr Hayes did not have sufficient resources to deal with other than a part of one flank of the fire. He merely thought Mr Hayes did not know which would be the quiet flank to focus on. Mr McRae would not agree with Mr Cheney's use of the word *severely* but, given the fact that Mr Hayes appeared to be continuing to pursue a tactic of direct attack throughout the day on 9 January, he would agree that the fire was under resourced[864].

494. Mr Graham agreed that the SMT should have been alerting Mr Hayes to the size of the fire and discussing issues about that with him. That information should have come through the communications centre, either from Mr McRae, Mr Graham or Mr Lucas-Smith[865]. On the other hand, Mr Graham considered that it was Mr Hayes' responsibility to tell Mr Graham that he needed more crews. It appears that Mr Hayes did not come back and ask Mr Graham for additional crews. However, Mr Graham accepted that it is *possibly right* that people in the SMT are armed with information that would suggest he had underestimated the extent of the job he had in front of him. That is a situation where the person with responsibility to make those decisions is not given all the information that is available. They should be given all the information available[866].

495. Mr Graham also agreed that Mr Hayes could not make decisions about what resources he really should have with him if he did not have the information that the fire has an area of 20 hectares. It is the role of the SMT to support those in the field with information, resources and what they need to do the job. Mr Graham agreed that: *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.* Mr Graham agreed that he was not suggesting that the SMT relies on that information exclusively. [867]

3.3.3 MCINTYRE'S HUT

3.3.3.1 *The Baldy Range Spot Fire*

496. On 9 January 2003 members of the NSW incident management team gathered in the nominated control centre at the NSW Parks & Wildlife Service Queanbeyan area depot. At about the same time, a NSW Parks & Wildlife Service crew leader was dispatched to reconnoitre the area from the power line trail down to the Goodradigbee River in the south-west corner of the McIntyre's Hut burnout area (known as the "Charlie Sector") for hand line construction. The crew leader later reported back to the IMT that he had insufficient resources to construct a rake hoe line and recommended the use of a dozer to push the line in. The crew leader was accompanied by crew from the Michelago Rural Fire Brigade giving him a total of 3 RFS category 7 vehicles (light units). [\[868\]](#)
497. According to Ms Crawford, having wipied consideration of the Baldy Range fire trail as an eastern containment line on the evening of 8 January [\[869\]](#), *we decided on the 9th to give it a go. We thought it was certainly worth a try. We were quite confident we would be able to hold it to Baldy* [\[870\]](#). Ms Crawford's recollection was that Mr Arthur organised some group officers from the NSW Rural Fire Service to attend the Baldy fire first thing in the morning. Ms Crawford thought they were probably dispatched from Queanbeyan at about 06:00 hours [\[871\]](#). The NSW Submission to the NSW Coroner gives the time of the departure of the two group officers as *early am* [\[872\]](#). The two group officers that were checking the Baldy fire reported that they considered it was worth attempting to construct a control line around that part of the fire on the eastern side of the Baldy Range fire trail. Arrangements were then made for the three RFS category 7 vehicles to be diverted from the Charlie Sector to the Baldy Range fire [\[873\]](#).
498. However, at approximately 11.45 hours, a reconnaissance flight over the NSW fires with Mr Hunt on board flew over the Baldy Range fire. *The Baldy Range fire to the east of the trail was far bigger than could be seen from the ground. This information was conveyed to the RFS Group Captains at the Baldy fire. The three cat 7 vehicles were withdrawn* [\[874\]](#).
499. The two aircraft at the McIntyre's Hut fire continued water bombing on the Baldy Range fire on the afternoon of 9 January. There were no ground crews there at that stage. The purpose of the water bombing was to dampen the area in front of the fire to stop the easterly spread until crews could be sent onto the fire [\[875\]](#). According to Ms Crawford they did not have the crews on the 9 January to work on the Baldy fire. On the morning of 10 January, about 30 people commenced work putting a rake hoe line around the edge of the eastern side of the Baldy Range fire [\[876\]](#).
500. Mr Arthur did not have a recollection as to whether it was thought necessary to put crews on the Baldy Range fire on the night of 9 January for direct attack. He was asked whether there would be any reason why the IMT would not have put crews on that fire that night. He said there would not be a reason and he didn't know why it was not done [\[877\]](#). Mr Hunt was not a party to the decision concerning having crews on the Baldy Range fire overnight. *It was quite steep country. I presume it may have been a safety consideration* [\[878\]](#).

501. Mr Cheney considered that some advantage would have been lost by delaying work on the Baldy fire until the morning of 9 January. However, if crews had gone in there at first light on 9 January the fire edge would have been somewhat broken up and would have gone out in parts. The job would have been easier early on the 9 January than early on the 10 January, with the fire moving further away from the access trail and into more difficult terrain^[879]. By the time crews were put into the Baldy Range fire, it had become a question of the size of the fire and steepness of the terrain that it had got into, which presented those crews with a difficult task to hold that fire^[880].

502. In his report, Mr Roche expressed the opinion that the failure to deploy adequate resources to the task of containing the Baldy Range fire during the afternoon and overnight on 9 January when it was determined that the Baldy Range trail should be substituted as the eastern containment line was: *a significant strategic error. It made what had already become a difficult task by the morning of 9 January, far more problematic as the fire continued to move downhill in an easterly direction, into increasingly steep and difficult terrain*^[881]. Mr Roche conceded in cross-examination that there was nothing in his report comparing what he considered to be preferable resourcing of the Baldy Range spot fire on 9 January to what actually occurred on that day. He agreed that he did not do a comparison^[882]. Mr Roche also conceded that his discussion of events on 9 January was not a fair picture of what was done both by way of planning and execution on 9 January in relation to the Baldy Range spot fire^[883].

503. Crews continued to work on the Baldy Range fire on 11 and 12 January. However, considerable difficulty was experienced with continued fire escape over the perimeter edge. By mid afternoon on 13 January *it was decided that the Baldy Range fire trail fire could not be contained by direct attack and it was agreed by the IMT that eastern containment line would now become the Firebreak trail further to the east, which runs north through Dingo Dell*^[884].

3.3.3.2 Commencing the Power Line Trail Burning-out Operation.

504. On the evening of 8 January 2003 Mr Lucas-Smith appointed Neil Cooper as the ACT liaison officer located with the IMT at Queanbeyan. In his statement, Mr Cooper noted that on the morning of 9 January, the forecast was for reasonably good weather over the next few days: *cooler conditions with predominantly E to SE winds with high humidity – conducive to achieving good results from backburning. However the NSW authorities were concerned about the southerly winds pushing the fire north towards Yass before northerly containment lines were established. Therefore burning-out operations were not commenced while the trails were upgraded. In my role as Liaison Officer I vigorously voiced my concerns and strongly opposed the decision to not commence this backburning*^[885].

505. According to Ms Crawford, it was not the northern containment lines that NSW were worried about; it was the southern containment lines. The northern containment lines were not under as much pressure of the fire reaching them. They had to get the southern containment line in. The biggest issue with the southern containment line was the far western part of it, pushing the dozer down to the river. A dozer was organised on Friday (10 January), came in on Friday night, pushed the line down on Saturday morning and the burn commenced on the Saturday morning^[886].

506. The debate concerning the commencement of the burning-out operation along the power line trail continued during 9 January and into 10 January. Mr Lucas-Smith knew that the burning out on the McIntyre's fire appeared to be a bit slower than Mr Cooper would have liked. He recalled speaking to Mr Cooper on 9 and 10 January and discussing the slowness of their decisions regarding the burning-out operation. Mr Lucas-Smith emphasised to Mr Cooper that it was the southern boundary and eastern boundary which were the most crucial as far as Mr Lucas-Smith was concerned. The fact that NSW were *dragging the chain a bit* in getting on with the burning-out operation was a matter of concern to Mr Lucas-Smith because the McIntyre's Hut fire was the one about which he was most concerned[887].

507. Mr Bartlett received a telephone call from Mr Cooper in the mid afternoon on 9 January. Mr Cooper advised Mr Bartlett that: *he had been informed by the NSW Planning Team that they were not going to conduct any backburning that night. I was a bit perturbed by that because it seemed that they were wasting a good opportunity when the wind was blowing in the right direction and there was little danger of fire escaping outside any control lines. I suggested to Neil that he continue to offer suggestions to the NSW team about strategies and the potential to use ACT resources to assist with the operations*[888]. The NSW Submission to the NSW Coroner refers to a meeting at approximately 15:00 hours on 9 January attended by (among others) Mr Arthur, Mr Cooper, Ms Crawford and Mr Hunt: *The meeting discussed inter alia, the timing of burning off containment lines. There was a suggestion for immediate ignition of the south-east parts of the containment line. This was not supported. It was noted that the fire behaviour experienced both that season and the previous season, made it necessary to consolidate containment lines before lighting back burns and also to light small sections of containment lines at a time and contain that prior to further ignition, in order to control the fire. Observation of the active fire edge during the reconnaissance flight had indicated that no proposed control line was under imminent pressure from the active fire edge and thus there was sufficient time to complete the containment lines and back burn before the fire approached. The IMT confirmed that all containment lines should be completed before lighting of the back burns*[889].

508. Ms Crawford agreed that the weather on 9 January was conducive to back burning but the containment lines were not ready[890]. Similarly, Mr Arthur agreed that the weather may have been conducive to back burning, *but the ground situation wasn't ready...in the sense that the trails weren't ready for that*. According to Mr Arthur, there were risks with the power line trail: *But to place men along that trail, it is a serpentine trail on and extremely steep set of hills. Any fire above them or below them could be tantamount to a death sentence*. Unless he had resources to back the men, he was not prepared to start any back burning along the trail[891].

3.4 10 TO 14 JANUARY 2003

3.4.1 FIRE DEVELOPMENT AND SUPPRESSION ACTIVITIES

509. The fire development and suppression activities in respect of the three fires in the ACT and the McIntyre's Hut fire is summarised in general terms in the report by Mr Cheney[892], supplemented by his evidence and PowerPoint slide show.

3.4.1.1 McIntyre's Hut Fire Burning-out Operations

510. On the morning of 10 January 2003, Mr Bartlett as Deputy CFCO in the ACT had dual concerns: *that my expertise and experience were not being utilised in assisting with the ACT firefighting effort and that not enough effort was being undertaken by the NSW Fire Agencies to implement the indirect suppression strategies that they had agreed on the McIntyre fire, which then compromised my ability to protect our own pine plantation assets.* Mr Bartlett requested an urgent appointment with his chief executive Mr Thompson which was arranged for 14:00 hours on 10 January^[893]. Following that meeting with Mr Thompson, Mr Bartlett attended a meeting with the Queanbeyan IMT at about 18:30 hours, accompanied by Mr Castle. Mr Bartlett recalls *some vigorous debate during that meeting about the implementation of the previously agreed control strategy and in particular the commencement of the back burning operations*^[894].

511. In evidence, Mr Bartlett explained that the point he kept making at the meeting was that there were places along the power line trail which went for a distance of eight or ten kilometres where there was already sufficient work done and a fire could have been lit under the influence of a south-easterly wind with very little danger of that fire escaping. It would be burning back into the wildfire. Initially, the response to Mr Bartlett's comments were negative. However, during the meeting Mr Arthur went out and took a call which Mr Bartlett understood to have been either with Mr Koperberg or someone senior in RFS and he was assured that more resources would be available^[895]. From that point on, the meeting progressed in a more positive manner. Mr Arthur told the meeting that the burning-out operations would be done along the southern control lines the following day (11 January)^[896].

512. Mr Arthur did recall a discussion with RFS headquarters as described by Mr Bartlett. He actually spoke to Mr Fitzsimmons who confirmed Mr Arthur's request for additional resources, including the Ericsson sky crane^[897].

3.4.1.2 *A Threat to Urban Assets*

513. In his evidence, Mr Bartlett confirmed the appointment he had with Mr Thompson was arranged primarily in view of the frustration he had about the New South Wales issue. He showed Mr Thompson the map from his report on the Byadbo fires in 1998 and the report which clearly showed that the fire had moved 15km in one day under the influence of strong north-westerly winds. He pulled out the map of Canberra. He showed him where the McIntyre's Hut fire was and how far away it was from Canberra. The threat he was describing was the fact that the fire could run across that amount of distance and threaten the edge of the suburbs. According to Mr Bartlett, Mr Thompson was *immediately concerned*. Mr Thompson then made a telephone call to Mr Castle. The call was on the speaker phone and Mr Bartlett was able to hear both sides of the conversation. Mr Bartlett recalled that Mr Thompson informed Mr Castle that: *it appeared that not enough action was being taken to implement the agreed strategies in New South Wales, and that it was ACT assets which were ultimately under threat if those strategies weren't implemented, and therefore perhaps we needed to try and raise the issue at a higher political level, you know political in the broad sense, to try and bring some pressure to bear to get the required resources and the right sense of urgency.* ^[898]

514. Mr Thompson agreed in evidence that Mr Bartlett outlined his concern over the potential of the McIntyre's Hut fire to affect the pine plantations and that not enough was being done to

suppress the fire[899]. The suburbs may have been referred to – he could not specifically recall. Mr Thompson also agreed that he telephoned Mr Castle and told Mr Castle that Mr Bartlett was present during the call. He passed on Mr Bartlett’s concerns. He could not recall a reference to the urban edge but that was not to say that it was not mentioned. Mr Castle said to Mr Thompson that he was going to be attending the meeting in Queanbeyan later that afternoon and suggested that Mr Bartlett attend[900].

515. These matters were not put directly to Mr Castle in evidence. He did say that nothing sticks in his mind about discussions he had with Mr Bartlett[901]. Mr Bartlett agreed that if it was Mr Castle’s recollection that Mr Bartlett made no comments that Mr Castle could hear, he would not challenge that. Further, Mr Bartlett could not be absolutely sure that at the conclusion of the meeting it was agreed that Mr Castle would attend the IMT meeting at Queanbeyan that night. Some time during the afternoon that was agreed[902]. Mr Bartlett agreed that it may be the case that Mr Castle went to the meeting because Mr Lucas-Smith asked him to go at the last minute[903]. On the other hand, Mr Bartlett considered that the purpose of the telephone call between Mr Thompson and Mr Castle was to make sure that somebody in a high place from the ACT went to the meeting in Queanbeyan to raise the ACT’s concerns[904].

516. At the later meeting in Queanbeyan, the essence of what Mr Bartlett said was that: *it appeared to me, at least, that in their decisions about what was under threat they were considering what was under threat in New South Wales. And I was making the strong point that there was significant assets, both plantations, urban and rural lands, that were directly down wind of the fire they didn’t seem to be factoring high in any of the discussions that were being held*[905]. In expressing a concern about the possible threat to urban assets in the ACT, no-one accused Mr Bartlett of exaggerating the threat or saying that it was a bit far fetched[906].

3.4.1.3 Move to Indirect Attack on the ACT Fires

517. There is some conflict in the evidence as to precisely when a formal decision was made to move from direct attack to indirect attack in respect of the Bendora and Stockyard Spur Fires. However, by the end of 10 January 2003 at the latest, the strategies being considered and implemented on all fires involved the identification and construction of containment lines and burning-out operations from those containment lines[907]. Although direct attack was continuing on some parts of the fires on and after 10 January 2003, the purpose of the direct attack was for the most part to suppress the growth of the fires to give as much time as possible to construct indirect attack containment lines[908].

3.4.1.4 The Mt Gingera Fire

518. On the morning of 10 January Mr Cooper flew over the Bendora, Mt Gingera and Stockyard Spur fires with Mr Ingram to map the fire boundaries and report on fire behaviour. At approximately 07:30 hours, the helicopter flew up to the Mt Gingera fire and landed so that Mr Cooper could liaise with Mr Greep and Mr Callan. Mr Cooper recalled it being very cold and the fire behaviour was more inactive than at Bendora. *In some places the fire had actually burnt itself out. The vegetation cover was a thick alpine shrub, heath and poa type grasses that became extremely difficult to get*

through with hand tools. This was further shown to be true when we tried to land the helicopter; it actually sank about half a metre into the heath until the tail rotor was almost touching the vegetation. We were expecting the hand crews could cut tracks into this area but seeing as the heath was probably half a metre deep, I radioed to Comcen (at 7:46am) that a small dozer would be best to cut a trail directly alongside the fire edge (direct attack), right in around the top of the spur, causing minimal damage and therefore contain the fire. I received an immediate reply from Tony Graham at Comcen that this would not be an option. In later discussions with Tony Graham I believe the reason that this was not an option is that it was a national park and it was deemed inappropriate to have heavy machinery in this particular environment. However, I remained very confident that we could have contained the Gingera fire at that time with the use of a small dozer[909].

519. In evidence, Mr Graham recalled having a discussion with Mr Cooper on the morning of 10 January about using the bulldozer at Gingera. He agreed that he raised environmental concerns[910]. The ESB radio transcript confirms that at 07:46 hours, Mr Cooper spoke by radio with Mr Graham among other things, Mr Cooper informed Mr Graham during that radio transmission that *the terrain is fairly suitable for a dozer. And there is a track on the eastern side which... which is a good containment line... the vegetation up here should be conducive to the dozer doing virtually a direct attack line. It shouldn't have to work very far off the fire edge.* Mr Graham responded *Yeah Roger. Our preference was that we did not put a bulldozer into that area. Over.* Mr Cooper responded *Bummer. Yeah received that[911].*

520. Mr Graham confirmed in evidence that nothing was done to satisfy the request by Mr Cooper for a bulldozer at the Gingera fire[912]. Mr Lucas-Smith was not aware of the issue and did not discuss it with Mr Graham. He was aware generally of an issue about the use of heavy machinery in that area, but he agreed with Mr Cooper. He thought that the refusal by Mr Graham to provide the dozer was probably more to do with the fact that there were not any machines available to do the work[913]. Mr Lucas-Smith went on to explain that a meeting he had with representatives of Environment ACT later in the morning was to tell them what he was planning to do and to get information from them so he could minimise environmental damage where possible[914]. Mr Lucas-Smith agreed that on the morning of 10 January the Gingera fire was certainly the smallest fire. *It was probably going to be a difficult fire 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[915].*

3.4.1.5 Lack of Maps, LAPs and Overnight Planning

521. A number of witnesses raised issues in statements or during their evidence about aspects of the suppression activities during this period. For example, on 10 January, Ms Arman was at the Bendora fire operating in a local operations managing role with Mr Murphy as incident controller. Even at that stage, they still did not have any maps provided by ESB. Problems were also created by having no overnight incident planning so there was no exchange of information for the incoming local incident controller. Shift changes were difficult with crews waiting around while the local incident controllers were briefed[916].

522. Mr Lucas-Smith suggested that on 10 January, problems with getting heavy plant into the ACT fires became apparent. This meant that on 10, 11 and 12 January there was little firefighting

resources could do except continue with direct attack where possible until the containment lines were in place[917].

523. In the period 10 to 12 January 2003, Hilton Taylor was preparing situation plans for Bendora, producing maps and other graphical presentations. According to Mr Taylor, it was up to Mr McRae to determine what option to take and to disseminate that information accordingly. Mr Taylor did not get an understanding of how the information got out into the field[918].

524. On 11 January, Mr Murphy went out to the fire with only poor maps and issued some of these to sector leaders. However, when Mr Lucas-Smith came out to the fire with Mr Taylor at 13:00 hours, they used an excellent map[919]. Mr Taylor said that when he took maps out to the field on the afternoon of 11 January, field officers told him that that was the first time they had maps or anyone from the planning office had gone into the field and briefed them[920].

525. At about 17:30pm on 11 January 2003, Mr Cooper who had been nominated as the incident controller for the Bendora fire went to the fire without any maps or incident action plan. He had to develop his own strategies. He said that he had no idea where Bendora fitted in with the other fires and how his actions may affect others. The lack of any overnight planning also meant that there were insufficient resources allocated to the fire for the shift changeover on the morning of 12 January[921].

526. When Mr Bartlett arrived at Bulls Head early on 12 January 2003 for the morning briefing on Bendora, he had no briefing material including forecasts, updated fire maps or incident action plan and there was no planning section or other SMT input to the strategies to be employed on the Bendora fire that day. Mr Bartlett radioed Comcen to find out what resources he would have for Bendora. It took him time to work out which vehicles were to return with crews. According to Mr Bartlett, the failure to establish a forward control point led to numerous delays and inefficiencies. Almost 90 minutes were lost before crews moved into their allocated sectors. If the changeover had been well planned before crews arrived, it should have been completed within 30 minutes. Mr Bartlett raised his concerns about lack of operational planning with Mr Graham, arguing that they needed a forward control point with some planning and logistical capability in order to record resource movement. Mr Graham later allocated some support staff to go to Bulls Head but indicated that they would only be there to assist with crew changeovers and the main planning function would remain at Curtin[922].

3.4.1.6 ACT Fires Continue to Expand

527. At 16:00 hours on 12 January, there was a planning meeting. Mr McRae said that at the meeting there was general discussion about the significant escalation of the fires and the large burn-out areas that were involved by reason of the limited containment options. The meeting also recognised that resources were required beyond what the ACT could provide[923]. Mr Lucas-Smith considered that they were not making progress by the end of 12 January. He thought their chances of success were probably less than 50% at that time. That was why he went to alternative arrangements[924]. By 19:00 hours on the night of the 12 January, they had not reduced the growth of any of the fires[925].

528. In his statement, Mr Lucas-Smith described the fire development during the afternoon of 12 January 2003 as follows: *During the afternoon, the Bendora fire crossed the main containment lines to the west and later that day crossed the border into NSW. With the fire now on both sides of Mt Franklin Road, being the only north-south access road, significant safety concerns were now evident. Later at about 16:00 hrs, the Stockyard Spur fire also crossed Mt Franklin Road north of the Pryor's Hut area. This posed additional safety concerns for crews working south of Pryor's Hut on the Mt Gingera fire as their escape route was now compromised*[\[926\]](#). In his evidence, Mr Lucas-Smith agreed that this paragraph as well as similar paragraphs in Mr Graham's statement[\[927\]](#), were completely at odds with a media release issued by the ESB at 6.30pm on 12 January 2003, which referred to firefighters managing to *reduce the rate of spread* and being *successful in reducing the growth rate* of the three fires[\[928\]](#).

529. Mr Castle agreed that the media update for 18:30 hours on Sunday 12 2003 reflected an overly optimistic view of the state of the fires that afternoon[\[929\]](#). Mr Castle also conceded that the opening paragraph in an earlier draft of the media release stating that; *the three fires in the Namadgi National Park have continued to grow during the day today*, would appear to be directly at odds with the final version of the media release referring to firefighters being successful in reducing the growth of the fires[\[930\]](#). However, Mr Castle did not think there was a conscious concern at that stage to provide both a summary of what was going on but also some slightly more optimistic outlooks, except to recognise the individual efforts of firefighters[\[931\]](#).

530. Mr Castle was asked about the reference in the media release to the ESB *keeping informed about two New South Wales fires that are close to the ACT borders, one at McIntyre's Hut to the north and the other at Mt Morgan to the south-west of the ACT*. Mr Castle agreed that anyone reading the media release would form a view or have an expectation that if there was something about one of those fires (including the NSW fires) that the community needed to know, the ESB would let them know about it.[\[932\]](#)

3.4.2 13 JANUARY 2003

3.4.2.1 Fire Development

531. Mr Cheney estimated that by the end of Sunday, 12 January 2003, the area burned by the Bendora fire was 878 hectares, the area burned by the Stockyard Spur fire was 979 hectares and the area burned by the Mt Gingera fire was 346 hectares. There was effectively no suppression action on either of the Stockyard Spur or Mt Gingera fires so those fires continued to expand on all perimeters during Monday 13 January[\[933\]](#).

532. In the case of the Bendora fire, during the morning and early afternoon, crews attempted to hold the fire on Parrot Road by back-burning and trying to stay ahead of the flank of the fire as it spread south of Little Collins Creek. Parrot Road was overgrown and crews experienced considerable difficulty with smoke and heat blowing across the area where they were working. Around 15:00 hours a head fire burned up the spur between Little Collins Creek and Collins Creek and spotted across Parrot Road forcing the firefighters to withdraw. Around 15:00 hours, back-burning was commenced along the Bendora Break east from Warks Road down towards the Bendora Dam. Later in the evening, back-backing was carried out along Mt Franklin Road

from the southern intersection with Chalet Road north towards Bulls Head. By the end of 13 January, the area burned by the Bendora fire was estimated by Mr Cheney to be 1,212 hectares.[\[934\]](#)

533. When Mr McRae commenced work on the morning of Monday, 13 January and was updated by Comcen, about the developments overnight on each of the fires, *the detail that struck me as being of most significance was that the fires from Bendora and Stockyard Spur had become established to the west of the Mt Franklin Road meaning a significant escalation in the probable size and seriousness of these fires to the west and so the possibility of the fires looping round to re-enter the ACT outside established or proposed containment lines. The escalation in the fires caused me to decide that much more technical infrastructure was required particularly in areas of meteorology, geographical information systems and fire behaviour analysis*[\[935\]](#).

534. At 10.30 am on 13 January 2003, it had crossed Mr Lucas-Smith's mind that the ACT fires in combination with the McIntyre's fire might reach a point where urban Canberra was at risk. He did not know how long before that time it had crossed his mind. *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.* Mr Lucas-Smith had certainly considered whether there was a realistic prospect that people on the western edge of Canberra would be affected by the fires. *I did not believe it was a realistic prospect.*[\[936\]](#)

3.4.2.2 First Request for Commonwealth Assistance

535. At 10:55 hours, Mr Castle sent the first of what was to become a number of formal requests for Commonwealth physical assistance. This request was for helicopters and dozers and followed up a verbal request made at approximately 20:30 hours on Sunday, 12 January 2003. Mr Castle explained in evidence that, in order to justify to the Commonwealth why they should provide assistance, you provide a frank assessment of the current state of the emergency, *as best it can be put to justify the resources*[\[937\]](#). Mr Castle later explained that he was generally assisted in preparing these requests for Commonwealth assistance by Kate Keane. But, as he signed the requests, he must have been comfortable with their contents[\[938\]](#). In this first request, Mr Castle described the *situation* as follows: *There are currently three 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 New South Wales 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.* Later in the document, referring to the McIntyre's Hut fire, Mr Castle states: *this fire is very large and with a wind change and no containment poses a substantial threat to the ACT*[\[939\]](#).

3.4.2.3 Castle Interview

536. At 11:55 hours on 13 January 2003 Mr Castle participated in an interview with radio ABC 666 having *stepped out from a briefing he's giving to the Chief Minister*[\[940\]](#). In introducing the interview, the interviewer says: *Anyone who was driving around Canberra over the weekend would have been shocked and appalled to see the plumes of smoke rising up over the Brindabellas and it apparently is the case that two*

bushfires in the Namadgi National Park have spread across the border into New South Wales and fires, at least, some of these fires are burning out of control at the moment. The interviewer asks whether that means there are larger catastrophes ahead. Mr Castle responds: *Well, not to be too alarmed Kerry, but they are serious. They're uncontained, so "out of control" sounds a little bit more dramatic perhaps than the terminology we use.*

537. Later Mr Castle refers to the fires being susceptible to wind changes and continues: *but out most prevailing winds 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 in the interview that the ACT Emergency Services do not have enough resources to handle the fires. He then explained that the very large fire that was responsible for a lot of the smoke initially that people were concerned about in the Belconnen area was actually burning north-west of the ACT border. And, *with prevailing winds from that direction, [that fire] would come back on a very large front.* In evidence, Mr Castle confirmed that in making these comments, he was talking about the McIntyre's Hut fire and that he was not having any difficulty providing information about the McIntyre's Hut fire based on what information he had^[941].

538. Mr Castle is then asked directly: *If that wind does swing around to the north-west, could it come as far as Canberra? Could it threaten Canberra?* Mr Castle responded: *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.* In evidence, Mr Castle did not agree that the answer he gave was down playing the threat. He thought he was trying to give a realistic balance^[942].

3.4.2.4 Briefing of Mr Stanhope

539. The briefing to Mr Stanhope referred to by the interviewer was a briefing being given by Mr Castle and Mr Lucas-Smith shortly before Mr Lucas-Smith and Mr Stanhope left on a helicopter flight to view the fires^[943]. During that briefing, Mr Lucas-Smith told Mr Stanhope where the fires were at that particular time and what the ESB was doing to contain them. He showed him very roughly on the maps and they took the maps with them and left. He did not remember Mr Stanhope asking about the prospects of success in controlling the fires. He did not recall Mr Stanhope raising with him any prospect of Canberra itself being affected by the fires. Mr Lucas-Smith agreed that he was certainly thinking about a much larger fire event and a whole range of different fall back options, but he was not thinking about property in urban Canberra^[944].

540. During the reconnaissance flight by Mr Lucas-Smith and Mr Stanhope, a firefighting helicopter ditched in the Bendora Dam and Mr Lucas-Smith and Mr Stanhope assisted with the rescue of the helicopter pilot.

3.4.2.5 Telephone call from Mr Cheney to Mr Lucas-Smith

541. On Sunday 12 January 2003, Mr Cheney had travelled around the fires in the ACT and the McIntyre's Hut fire and looked at their position and the extent of the fires. He thought it would

not be possible to get the fires under control within the next five to six days. He was contacted by the CSIRO press liaison officer on Monday 13 January, who was handling enquiries from the media and had arranged that Mr Cheney would talk to WIN Television. *I then rang Mr Lucas-Smith on the Monday afternoon, towards the evening, 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.* Upon expressing that view to Mr Lucas-Smith, Mr Lucas-Smith responded that they had formed the same opinion. Mr Cheney took it that, by *they* Mr Lucas-Smith meant people in the ESB.[\[945\]](#)

542. When cross-examined about his conversation with Mr Lucas-Smith during the first phase of the evidence, Mr Cheney thought his words to Mr Lucas-Smith were that: *if we get westerly winds, the fire could burn into Canberra.* According to Mr Cheney, it was the case that a westerly wind was going to happen, it was just a matter of when. It was unlikely that the fires would be under control before that change would come through. Mr Cheney did not qualify his comments to Mr Lucas-Smith by reference to when the weather was likely to arise and how severe it might be: *I expressed it as an unqualified statement that if we got strong westerly winds we would get the fire into Canberra.*[\[946\]](#)

543. Mr Cheney was further cross-examined about the telephone conversation during the second phase of the evidence. His evidence was that he said to Mr Lucas-Smith that if the fire swung to the north-west the fire could burn into Canberra. *I believe I would have said that if we got an extreme day with winds from the north-west the fires would come into Canberra.* It was a serious conversation, *because I had been approached by the press and I wanted Mr Lucas-Smith to know what my opinion was*[\[947\]](#). In re-examination, Mr Cheney confirmed that Mr Lucas-Smith's response was, *that's fine, Phil. That's our opinion too.* Mr Cheney carried the belief that the ESB was fully aware of that potential[\[948\]](#).

544. When the matter was first raised with Mr Lucas-Smith during his evidence, he agreed that he had had the conversation with Mr Cheney and that Mr Cheney said that he would say to WIN Television that the situation was very dangerous. He did not agree that Mr Cheney said that it was likely that the fires would burn into Canberra[\[949\]](#). By that time, Mr Lucas-Smith had formed the opinion that the fires were dangerous and that the potential existed for a growth of the fires to the east. But Mr Lucas-Smith did not accept that there was a realistic risk that the fires would burn into Canberra. Mr Lucas-Smith confirmed that he advised the planning meeting of his discussion with Mr Cheney[\[950\]](#).

545. Mr Lucas-Smith was pressed on whether he could recall Mr Cheney saying anything about the fires burning into urban Canberra. Before answering, Mr Lucas-Smith located among the papers he had in the witness box the minutes of the planning meeting at 4.00pm on 14 January 2003 recording his report to the meeting of his conversation with Mr Cheney[\[951\]](#). The minutes recorded that: *Mr Cheney stated that any strong westerly gusts of wind could turn the fire towards urban areas.* This was read to Mr Lucas-Smith, who then agreed that Mr Cheney had said something about the fire and the urban area, *but he said, as it said there, "towards the urban area". That is to the east. There is 20 kilometres or more between where the fires were and the urban areas*[\[952\]](#). A similar formulation was used by Mr Lucas-Smith in describing the discussion in his statement: *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^[953].

546. However, the handwritten notes of the planning meeting^[954] confirmed that the words Mr Lucas-Smith had used about the conversation were to the effect that Mr Cheney had said strong gusts of wind from the west would bring the fire *into Canberra city*. When these notes were later put to Mr Lucas-Smith, he conceded that he was *told by Mr Cheney that he [Mr Cheney] held the view that, given the particular weather conditions, north-westerly wind, that the fire could burn into Canberra*^[955]. Earlier in his evidence, Mr Lucas-Smith had said that he had the utmost respect for Mr Cheney as a fire behaviour expert and that the expression of an opinion by Mr Cheney on this subject was not something that he would do lightly^[956]. As to whether Mr Cheney's comments caused Mr Lucas-Smith to reflect on the prospects of the fires burning into Canberra, Mr Lucas-Smith *added Mr Cheney's comments to my own thinking anyway... 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*^[957].

3.4.3 14 JANUARY

3.4.3.1 Interview with Mike Castle

547. Mr Castle was again interviewed during the morning by radio ABC 666 concerning the current status of the fires in the ACT and NSW. The interviewer refers to Mr Castle having said that: *there's a concern the wind change could see new outbreaks from fires burning over the border in New South Wales*. This is followed by a *grab* of Mr Castle's comment in response: *Unfortunately, it could. And we are meeting again this morning – our planning teams are meeting, to work out the joint strategy particularly for the fire northwest of us in the Brindabella National Park, and that was the largest fire in the particular region, and growing at the same relative rates that our fires have grown*^[958]. Mr Castle confirmed in evidence that his reference to the fire in the Brindabella National Park was to the McIntyre's Hut fire. He agreed that he was not having any difficulty providing information about the McIntyre's Hut fire, *within the information we have*^[959].

3.4.3.2 Morning Planning Meeting

548. The planning meeting at 09:30 hours on 14 January 2003 was the first at which formal minutes were taken^[960]. Kate Keane and Jillian Ferry both attended the planning meetings and made notes of what was discussed at the meetings. In taking the notes, Ms Keane and Ms Ferry's approach was to attempt to write down what was said at the meeting, sometimes using their own abbreviations or shorthand^[961]. Once the meetings had finished, they went to Ms Ferry's workstation, consulted their notes and developed sentences for the typed minutes. When they had come up with a draft that reflected the conversations at the planning meetings, they provided drafts to the operations and planning cells for comment. The final draft went to Mr Lucas-Smith for authorisation^[962].

549. During the planning meeting, Mr McRae stated that they may need a Bureau of Meteorology liaison office working in the planning cell full time. He also stated that the winds that day would flow in a north-west direction, changing to an easterly in the evening^[963]. Later

that day Mr McRae contacted Mr Mason of the Bureau of Meteorology and requested that he attend the ESB at 9.00 am the following morning to provide a face to face briefing on weather conditions and then to attend the planning meeting^[964]. Mr McRae was particularly interested in the extended outlook to 7 days or so in advance^[965]. Mr Mason agreed to this and attended the morning planning meetings on 15, 16 and 17 January. Clem Davis of the Bureau of Meteorology attended the meeting on the morning of 18 January^[966].

550. Consistently with the forecast discussed at the morning planning meeting, Mr Castle noted in his statement that it was the first time they had a north westerly or westerly in the afternoon and Belconnen was engulfed in smoke. *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*^[967].

3.4.3.3 Afternoon Planning Meeting

551. The planning meeting at 16:00 hours on 14 January 2003 is the meeting at which Mr Lucas-Smith referred to his telephone conversation the previous evening with Mr Cheney, as discussed above. However, before that matter was raised, there were reports to the meeting on fire operations and planning. Mr Graham reported in relation to Bendora that: *Fire breaks cover 50-60% of the total fire...the current area of concern is the north-western part of the fire...Operations are unsure of the western edge of area of the fire, as aircraft have been unable to undertake reconnaissance due to weather conditions*^[968]. This is somewhat at odds with Mr Lucas-Smith's statement, which referred to their being *pretty close to having our containment lines established around the Bendora Fire* by late afternoon on 14 January. In evidence, Mr Lucas-Smith was more precise: *Certainly the eastern and southern edges of the Bendora fires were contained, yes, or getting close to being contained. If I remember correctly, there were some areas that our back-burning had not been deep enough, and that needed more work, but as far as the plant operations were concerned, it was primarily complete*^[969].

552. Mr Graham also reported to the meeting on the progress with the Stockyard Spur and Mt Gingera fires. In his statement, Mr McRae referred to having concerns about holding containment lines around the Stockyard Spur fire, even if they could be established in time^[970]. Although not referred to in the minutes of the planning meeting, Mr McRae described in his statement drawing the attention of those present at the meeting to a wall map and discussing various alternatives as to where the fire might run in the event that it crossed the Cotter River: *At the planning meeting, I also spoke about possible expansion of the Mt Gingera and Stockyard Spur fires. Everybody including me thought that the Mt Gingera and Stockyard Spur fires would join later that day or overnight because both fires were burning towards each other on the western side of the Mount Franklin Road. There were general discussions about fallback containment lines to the south of the Mt Gingera fire*^[971].

553. The minutes do, however, record Mr McRae's report to the meeting on forecast weather conditions. *The inversion layer today made fire behaviour hard to predict. Long term weather outlook details the temperature for Saturday at 35°, 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*^[972]. Mr McRae's prediction concerning the joining of the Stockyard and Gingera fires proved correct. This occurred at approximately 02:00 hours on 15 January 2003^[973].

3.4.3.4 Mr Lucas-Smith's Report of His Telephone Conversation With Mr Cheney

554. The discussion telephone discussion with Mr Cheney is reported in the minutes under the heading *Media*. 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.^[974] The two sets of handwritten notes of the meeting provide further insight into the matters discussed in response to Mr Lucas-Smith's report of his telephone conversation with Mr Cheney. The notes prepared by Ms Ferry^[975] are as follows:

*Win TV Phil F. Beh. expert CSIRO (cons expert in Aust)
any strong gusts from W bring fire into city
B of M W wind into city-upset not forecasting W winds
MC [Mike Castle] - If fire not ctd, what wind changes risk the urban city?
ESB source of rea adv of threat to public
Acknow W winds will make harder, things in place*

555. The notes by Ms Keane^[976] are as follows:

*WIN Phil Cheney Fire Beh expert interview
told any strong winds from W
into Canb city
Media attention on this aspect. Marika
fielding questions
Not forecasting W winds
MC [Mike Castle] If fires not contained what wind Δ 's will
bring fires into the city
ESB to be reasonable advice re threat
MC. Which are more threatening winds?
Tim K. W Δ would make things diff.
putting in place measures to control*

556. The recollection of those present at the meeting about the detail of the discussion reflected in the handwritten notes was generally very poor. In particular, despite being referred to in the minutes and notes as participating in the discussion about the response to Mr Cheney, Mr Keady had no memory of the discussion. But Mr Keady was nevertheless prepared to question the accuracy of the minutes in recorded him suggesting and operational response. *I think it is more likely that I queried what would have been or what was the response to the suggestion that there is a problem emerging, and the notetakers possibly documented it in the way that may not have been accurate. But I don't have a recollection of it, I am sorry*^[977]. There is a reference in the notes by Ms Keane to Marika Harvey *fielding questions*, but Ms Harvey had no recollection of whether she attended the meeting^[978].

557. Mr Graham knew about the telephone conversation between Mr Lucas-Smith and Mr Cheney because he had spoken to Mr Lucas-Smith about it on the afternoon of 13 January^[979],

but had also had no recollection of the part of the planning meeting when the conversation was discussed. He may have left the meeting before that discussion, to attend to other things[980]. Mr Ingram could recall mention that Mr Cheney was going to do a media release, but did not recall what anyone said about Mr Cheney's prediction[981]. The note takers Ms Keane and Ms Ferry were able to assist in interpreting some of the short hand used, but could recall little or nothing of the discussion in relation to Mr Cheney's prediction[982].

558. Mr Lucas-Smith was asked whether there was a discussion generally about the level or prospect that the fire might affect the urban area. He responded: *Certainly. And that was the whole reason for raising it within the planning meeting*[983]. It was then suggested to him that the reference in the minutes in the context of the Cheney conversation to there being *no westerly winds forecast*, was at odds with the reference earlier in the minutes to the long term weather outlook including stronger north-westerly winds. In his answer, Mr Lucas-Smith sought to draw a distinction between the outlook forecast for Friday and Saturday, on the one hand, and the *forecast for our immediate planning responses*, on the other, asserting that the planning meetings were primarily focussed on the next 24 hour period. However, he agreed that the planning process is not so inflexible that you do not think beyond the next 24 hour period. The minutes state what the forecasts are going to be: *We have already given that advice. There's no doubt that that sentence appears to be inconsistent that advice the way it is written. That does not mean it is wrong*[984].

559. Mr Lucas-Smith had no idea who might have expressed upset. He did not recall Mr Keady expressing upset about the issue of westerly winds being forecast and Mr Cheney's comments generally[985]. Finally, Mr Lucas-Smith agreed that it would have been a fair comment for Mr Cheney to say that if the wind changes to the west or north-west, the fires are now a sufficient size and danger that there is a significant risk at least to the western side of the metropolitan area of Canberra. If Mr Lucas-Smith had been asked a question along those lines, he might have responded: *Well, if those things happen, we agree that is a risk*[986].

560. Mr Castle had a memory of a discussion about an intended interview. He could not recall what was said about Mr Cheney's expertise, if anything[987]. Mr Castle himself understood that Mr Cheney was *a renowned researcher who has published quite a number of articles*. Mr Castle knew Mr Cheney and had had discussions with him over the years. He knew his expertise[988]. He *supposed* that it concerned him that Mr Cheney was saying that if winds go to the west the fire is going to turn around and come into Canberra City, but he did not directly remember being concerned about it: *I don't think it changed the level of understanding that I already had*[989]. As with other witnesses, Mr Castle gave evidence that he did not have a strong recollection about the discussion at the meeting. The interchange in the handwritten notes triggered memory about the winds, *because that does make a significant difference as to what direction and what the impact on potential fires are*. He did not specifically recall any reference being made to the city[990].

561. Nor was Mr Castle able to recall what the note *upset not forecasting west winds* was referring to. He did not directly recall someone making the comment that there are currently no westerly winds forecast, but agreed that the comment would be inconsistent with what Mr McRae had reported earlier in the meeting about forecast stronger north-westerly winds[991]. Mr Castle also

had no recollection of what the note *ESB to be reasonable advice re threat* was about but, *I don't think it would surprise me to be trying to ensure that the advice is co-ordinated, if there is advice going*[\[992\]](#). Ms Ferry thought this note meant that the ESB should be the source of advice to the public[\[993\]](#).

562. Concerning Mr Keady's contribution to the discussion, Mr Castle could recall Mr Keady making a comment but he did not specifically recall whether it was to the effect referred to in the minutes[\[994\]](#). Mr Castle agreed that the minutes reflect that Mr Keady appeared to suggest a form of response to Mr Cheney's interview[\[995\]](#). Shortly after this evidence there was an objection followed by a series of submissions. During those submissions, counsel assisting commented that Mr Castle was the *officer ultimately responsible for keeping the public informed about threats to the public*[\[996\]](#). In response to that comment, apparently applying a *whole of government* approach, Mr Castle gave evidence as follows: *You have indicated that the ESB is ultimately responsible for advice to the community. I am part of a government department and I report to people. I report to Mr Keady as well, who reports to ministerial level. Therefore, I take counsel and advice from somebody who is more senior to me as part of that process. That person was here as well. I am part of a government department that has a variety of functions. I am just making the point that that all forms part of the process.*[\[997\]](#)

563. Mr Castle accepted that it *could be the case* that the response suggested by Mr Keady as recorded in the minutes was being formulated to counter what Mr Cheney was going to be saying in the press. He thought that what was being countered was the direction of the wind and whether that is actually likely to bring the fire into the city. Mr Castle then went on to say that he did not think it would be necessary for ESB to counter Mr Cheney's remarks. The fire could, uncontained, depending on the strength of the winds, the vegetation in between and all those caveats, come into the city[\[998\]](#).

564. Mr McRae also had difficulty recalling the detail of the discussion at the meeting[\[999\]](#). However, he did recall that the gist of Mr Cheney's comment to Mr Lucas-Smith was that he would say in the interview with WIN TV that any strong gusts of wind from the west would bring the fire into the city. His recollection was that there was a reference to the fire coming into Canberra city[\[1000\]](#). Asked about his reaction to Mr Cheney's comment, Mr McRae was critical of Mr Cheney: *My reaction was that 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 Mr Cheney 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.*[\[1001\]](#)

565. Mr McRae assented to the proposition that Mr Lucas-Smith was reporting that Mr Cheney had telephoned him to notify him about the interview, but dismissed Mr Cheney's opinion that strong gusts of wind from the west would bring the fire into the city as unhelpful: *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...as a one-line throwaway statement, I couldn't disagree with it, but as I said, it is of no value to us.* According to Mr McRae: *we weren't anticipating strong gusts of wind from the west. We were expecting varying weather and challenges for the people trying to suppress the fires before they caused damage anywhere. Very complex matter. As I say, a simple throw-away line is of not value to us*[\[1002\]](#). Mr McRae *did not see a risk of westerly winds driving the fires anywhere at that point in time.* In his

opinion, westerly winds arose from a totally different pressure system from the forecast weather of, *something in the area from north to north-west which may or may not lead to escalating fire behaviour*[\[1003\]](#).

566. Mr McRae was reminded of his own reference to the weather outlook at the planning meeting, including his assessment that the forecast strong north-westerly winds *indicated that strategies will be harder to complete and hold after Friday evening*. However, Mr McRae did not identify that hot conditions with north-westerly winds posed a threat to urban Canberra: *Well, what you said is incomplete. Without knowing the moisture content of the air mass, you can't calculate the fire danger. Therefore, you can't calculate the fire behaviour and you can't work out where the fire is going to go and cause trouble*[\[1004\]](#). Essentially for this reason, Mr McRae did not identify on the afternoon of 14 January with or without the benefit of Mr Cheney's remarks, the possibility that under a north-westerly wind and hot conditions, the McIntyre's fire could burn over the border and impact on the city of Canberra[\[1005\]](#).

567. Mr McRae accepted that one possibility was that the north-westerly winds referred to in the minutes would carry with it a dry air mass with a low dew point. However: *If that eventuated, as I have said before, that would have been the cause of the fire entering the ACT. That was as far as I felt it was prudent to take the planning at that point in time. There was no basis for expecting the fire to make a run of that magnitude*. In Mr McRae's opinion: *There wasn't a risk to the city of Canberra* [\[1006\]](#). Mr McRae did not revisit his planning having heard that Mr Cheney considered that there was a threat to the city of Canberra. He did not know the basis for Mr Cheney's opinion. He knew Mr Cheney was an expert in fire behaviour of some standing. But Mr McRae needed other than being told that Mr Cheney had expressed this view. *I was interested in developing the capability to do a quantitative analysis of the future growth of the fire situation that we were facing. And in order to do that, we needed to be able to do a range of different approaches to modelling, and I had brought in people to assist me with doing that. And that was sufficient. I had a lot of technical expertise in the capability available to me. Now, I didn't see addition to that from Mr Cheney going to the press*[\[1007\]](#).

568. It did not occur to Mr McRae to call Mr Cheney and ask him to give Mr McRae that additional information that might have assisted Mr McRae's own planning. He had enough capability already. That capability was not suggesting to Mr McRae on 14 January that there was a risk to the urban area of Canberra. Mr Cheney was of a different view and that was something that Mr McRae was aware of on 14 January. But Mr McRae already had at least three alternative ways of doing that work in his unit and that was enough.[\[1008\]](#)

569. Mr McRae said that his goal was not to be critical of Mr Cheney. But he added: *I wouldn't recommend the way he did it. From the shoes I was in at the time, I was the manager trying to run a capability and I made a decision at the time based on the information I had at hand*. The decision he was referring to was the decision not to take any further action regarding Mr Cheney's forecast of how the fire might evolve. Whether Mr Cheney should have done more was not up to Mr McRae: *All I'm saying is I made the management call I had to make at the time. I will stand by that call*[\[1009\]](#).

570. Mr McRae's references to Mr Cheney *going to the press* and *wouldn't recommend the way he* [Mr Cheney] *did it* and earlier criticising Mr Cheney for not bringing information he had to the

ESB[1010], appear to overlook, first, that it was WIN TV that approached Mr Cheney for comment, not the other way around and, second, that by warning Mr Lucas-Smith in advance of what he would say to the press, he was indeed bringing the information about his opinions to the ESB before responding to an enquiry from the press.

3.5 15 TO 16 JANUARY 2003

3.5.1 15 JANUARY 2003

3.5.1.1 Morning Planning Meeting

571. Mr Graham reported on the progress of construction of containment lines around the Bendora fire. He also confirmed that the Stockyard Spur and Mt Gingera fires had joined overnight, and were thereafter to be managed as a single fire, referred to as the Stockyard fire.

3.5.1.2 Bureau Weather Forecast

572. Mr Mason from the Bureau of Meteorology was present to provide a briefing on the weather conditions. Mr Mason's forecast for Friday to Monday 17 to 20 January were as follows:

Friday. *A cold front from Melbourne is expected late Friday afternoon. Stronger winds from the north, north-west are expected with mid afternoon winds reaching 30-40 kms, gusting to 50 kms. Humidity is expected to drop with the dew point 2° possibly lower. A Fire Weather Warning is expected.*

Saturday. *The front is expected to continue. Winds will be from the north, north-west freshening to 30-40 kms per hour, with hot dry air coming from NSW and QLD. Temperature expected to be 35° plus. A change will potentially move through late Friday/Saturday, which will weaken as it moves east.*

Sunday. *Based on a computer simulation, the forecast will not offer much respite from current weather conditions.*

Monday. *A front is expected to arrive from Victoria bringing hot dry north-west winds late Monday evening. The front could possibly hold off until Tuesday. Low humidity and dew point of 0°. Temperature is expected to be in the high 30's with wind speeds 35-45 kms per hour, gusting to 60 kms plus.*

Under the heading Planning Issues, the minutes record: *The weather briefing would indicate that Monday is the operational deadline to secure operational strategies.* [1011]

573. According to Mr Lucas-Smith, the reference in the minutes to Monday being the operational deadline did not represent shift from the position reflected in the minutes of the planning meeting the previous afternoon, in which Mr McRae is recorded as informing the meeting that the weather forecast would indicate that strategies will be harder to complete and hold after Friday: *I think it is just recognising at this particular stage that Monday was looking like it was going to be the worst day.* Mr Lucas-Smith agreed that the forecast for Saturday of 35° plus with 30 to 40 km winds from the north-west is *absolutely* a bad day. They were still working to the Friday evening. Mr Lucas-Smith did not have a problem with the proposition that on the evidence the clear deadline was Friday night or some time Friday. [1012]

574. Mr Castle noted in his statement that the weather briefing at the morning planning meeting indicated that Saturday would be a bad bushfire day, but that Monday 20 January would be even more extreme[1013].

575. Mr McRae summarised Mr Mason's forecast in his statement in these terms: *However, he forecast that sometime after that Friday morning, conditions would change. He forecast much higher temperatures into the high 30's, winds instead coming from the northwest and very low humidity. These features combined to create a forecast of extreme fire danger*[1014]. Mr McRae agreed in evidence that Mr Mason's forecast provided one other piece of the puzzle that had been missing from the weather information available to him the day before, namely, that the weather conditions for Friday afternoon and beyond involved very low humidity[1015].

576. Mr McRae thought it is likely that the statement in the minutes about Monday being the operational deadline to complete operational strategies was made by him, but he did not recall saying it. Like Mr Lucas-Smith, Mr McRae did not see this comment as necessarily inconsistent with his remark the previous afternoon about strategies being harder to complete and hold after Friday. It was still his view on the morning of 15 January that strategies would be harder to hold after Friday: *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.* He wasn't revising what he had said the previous day.[1016]

577. Similarly, Mr Graham recognised that that the forecast weather conditions on Friday and Saturday would put pressure on containment lines. He did not recall a shift in emphasis from the Friday to the Monday. He believed that they continued to work to the Friday as being their imperative to get containment lines established[1017].

3.5.1.3 Positive Aspects to Be Made Public

578. The minutes of the morning planning meeting under the *Media* heading refer to Mr Castle stating that *some positive aspects should now be made public*[1018]. In this context, the handwritten notes of the meeting written by Ms Ferry attribute to Mr Castle the remark *positive spin*[1019]. Mr Castle explained in evidence that that he was concerned to make positive aspects public, *to give some indication of some of some of the successes we'd had.* However, he agreed that the potential bad news about the threat to the ACT and in particular the Canberra urban area had not been receiving a great deal of attention. Mr Castle did not recall using the expression positive spin: *But the context in which it was actually said is to try and put, as I understand, the corroboree frogs and all those sorts of positive aspects in there*[1020]. Ms Ferry was able to recall Mr Castle using the expression *positive spin*. She believed it may have related to Pryor's Hut and the arboretum being saved[1021].

3.5.1.4 Meetings at Queanbeyan

579. Mr Koperberg travelled to Queanbeyan on 15 January 2003 to be briefed by his officers there on the fires burning in the Yarrowlumla Shire[1022]. At about 11:30 hours, Tony Corrigan, who was ACT's liaison officer at Queanbeyan, telephoned Mr Lucas-Smith and informed him that Mr Koperberg and Brian Gilligan, the Director General of the NSW National Parks &

Wildlife Service, were at Queanbeyan to meet with Mr Arthur. Mr Lucas-Smith arranged to travel to Queanbeyan to meet with Mr Koperberg. *I drove over there immediately and provided a briefing on the situation in the ACT. I then asked him [Mr Koperberg] what his level of confidence was in relation to the McIntyre's Hut fire, and he, Mr Gilligan and Mr Arthur expressed great confidence they had the fire contained and this it was not going to be an issue for the ACT*[\[1023\]](#).

580. It was put to Mr Lucas-Smith that, according to him, the significant feature in the conversation with Mr Koperberg was that Mr Koperberg was telling him that the McIntyre's Hut fire was contained and that it would not be an issue to the ACT. Mr Lucas-Smith responded: *McIntyre's Hut fire was contained on the southern and eastern boundaries. The south-east corner was the area that was of concern to us for the ACT.* It was pointed out that this qualification did not appear in Mr Lucas-Smith's statement. Mr Lucas-Smith confirmed that he knew it was not contained totally; it was contained on the eastern and southern boundaries. Mr Lucas-Smith felt that, as a consequence of that, he did not forget about the McIntyre's Hut fire as any sort of threat to the ACT, but he did not need to resource to combat an escape from that fire.[\[1024\]](#)

581. On the question whether Mr Koperberg expressed concern for the western suburbs of Canberra during their meeting, Mr Lucas-Smith first said he didn't recall that, and he had a reasonably clear recollection of the discussion. Mr Lucas-Smith confirmed that he had read Mr Koperberg's statement, incorporating Mr Koperberg's summary of the meeting with Mr Lucas-Smith including the following, which was read to Mr Lucas-Smith: *Upon Mr Lucas-Smith's arrival we discussed the progress being made on the containment of fire on both sides of the ACT-NSW border. Advice provided 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 18th January, and I subsequently expressed this concern both at the briefing and during the course of media interviews on the same afternoon.*[\[1025\]](#)

582. Mr Lucas-Smith was asked whether he agreed that Mr Koperberg expressed those concerns to him and he said he did not recall it. Asked if he allowed for the possibility that he Mr Koperberg did express those concerns, Mr Lucas-Smith responded: *Well, what I will say is that, when he made that statement to the media in the afternoon, I was surprised...I don't think he said it*[\[1026\]](#). The following passages of Mr Koperberg's statement were then read to Mr Lucas-Smith: *I told 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". I went on to tell the journalist "Given the fact that the weather is going to deteriorate at the weekend, and possibly quite severely, the job is still ahead of them". Given the scope and nature of the fires burning to the west of Canberra I considered it unlikely that despite the best efforts of firefighters, the fires would be suppressed prior to the onset of extremely adverse weather. In discussion with Peter Lucas-Smith he said that the ACT's resources would be insufficient in the event of the fire impacting upon Canberra and its suburbs. As a result I offered, during the meeting, NSW resources for deployment within the ACT, to the ACT Chief Fire Control Officer. The ACT Chief Fire Control Officer stated he would consider the*

offer and would contact NSW State Operations Centre specifying the extent of firefighting support considered necessary. The meeting ended at about 1300 hours.[\[1027\]](#)

583. It was pointed out to Mr Lucas-Smith that in Mr Koperberg's account of the conversation, he makes no reference to saying that the McIntyre's Hut was contained or at least contained on the eastern and southern boundaries. In response, Mr Lucas-Smith raised the possibility that Mr Arthur made these remarks: *I am not saying that it was not Koperberg; I am just saying that it could very well have been Bruce Arthur who said it, but I do not know for sure.* He agreed that it was certainly said while all persons were present and he was absolutely confident that it was what he was told.[\[1028\]](#)

584. The passage from Mr Koperberg's statement referring to *potentially serious implications for the western suburbs of Canberra* was again put to Mr Lucas-Smith, and the following exchange occurred:

Q: What do you say about that? Do you say that was said or not?

A. It could very well have been said, and I would have expressed the same concern if they were not to be contained.

Q. As at 15 January, it was no sure thing that the fires were going to be contained, was it?

A. The very reason I was requesting additional resources.

Q. So are you saying this: that if Mr Koperberg expressed concerns about the implications for the western suburbs of Canberra if the fires were not contained, they were concerns you would have agreed with?

A. If the fires were not contained.

Q. Yes. That is what he is saying.

A. Yes. If the fires were not contained, definitely that is the direction the fires would run in.

...

Q. It seems to me he is saying, and you can take issue with this if you wish, that he has told you, "If by Saturday you have not got complete containment of these fires, there will be serious implications for the western suburbs of Canberra"?

A. He didn't say that.

Q. Did he refer to the western suburbs of Canberra?

A. I don't recall any reference to the western suburbs of Canberra.

Q. Do you accept that he may well have said, "Uncontained these fires carry serious implications for the western suburbs of Canberra"?

A. I believe that that is what he said to the media later in the day, and that is why I said, that was why I was surprised.

Q. You are saying he did not say that to you in the meeting?

A. I certainly do not recall that being discussed in the meeting.[\[1029\]](#)

585. Later in his evidence, Mr Lucas-Smith said that there was no reference to the suburbs during the meeting that he could recall: *We certainly talked about if the fires escaped and impacted into the ACT, the pine plantation area was an area of discussion, but we did not get outside of that area[\[1030\]](#).* When Mr Koperberg's May 2003 Stateline interview was read to Mr Lucas-Smith, he again took issue with whether or not there was concern expressed about a threat to Canberra, as opposed to a threat to the ACT. He certainly did not recall someone saying *Canberra is going to get hammered* and he would have recalled a statement like that[\[1031\]](#). Finally, when Mr Lucas-Smith was being examined on

his report to the planning meeting that afternoon about his discussions with Mr Koperberg, he (incorrectly) thought he had been asked again by counsel whether a threat to the urban areas of the ACT was discussed at the meeting with Mr Koperberg. His answer was: *I didn't convey to the planning meeting my full discussions or anything with Mr Koperberg and the fact that I don't know that that was actually even mentioned at the meeting, so I was not going to repeat it.* The *that* that he did not know was mentioned, was a threat to the urban areas of the ACT[1032].

586. Thus, Mr Lucas-Smith's final position on whether Mr Koperberg referred to a threat to the suburbs of Canberra during the meeting is unclear. At first he could not recall, then he denied the reference, then he seemed to accept that it *could very well have been said*, before again denying any reference to suburbs. His final reference appears to fall short of the earlier denial. In any event, it is clear that Mr Lucas-Smith's himself would have expressed the same concern as that referred to in Mr Koperberg's statement, namely, about the potentially serious implications for the western suburbs of Canberra were the fires not contained before the onset of the predicted weather.

587. Further, Mr Lucas-Smith appeared to interpret Mr Koperberg's 15 January 2003 media statement, as referring to a threat to the Canberra suburbs. Mr Lucas-Smith's evidence was that he learnt of Mr Koperberg's media statement later in the afternoon on 15 January from someone in his media team. He did not ring Mr Koperberg to question his remarks to the media because others had agreed to do that. He understood Mr Keady intended to talk to Mr Koperberg. Mr Lucas-Smith gave evidence that he believed Mr Keady did speak to Mr Koperberg but he did not know the outcome of that conversation[1033].

588. Concerning the request by Mr Lucas-Smith during the meeting for resources, Mr Lucas-Smith's evidence was that, when he made his request for resources, Mr Koperberg *very willingly provided those in a very co-operative sort of way, but he did not express any opinion as to whether or not he thought it was adequate or inadequate.* According to Mr Lucas-Smith, if Mr Koperberg had been of the view that what Mr Lucas-Smith had requested was not sufficient, Mr Lucas-Smith would have liked Mr Koperberg to say so and he was not aware of any impediment to Mr Koperberg expressing that view.[1034]

589. Mr Corrigan was involved with the briefing of Mr Koperberg by Mr Arthur, before Mr Lucas-Smith arrived. Mr Koperberg spent some time alone with Mr Arthur, but Mr Corrigan was with him in a group when they were in the operations room discussing strategies. People were being pretty positive and confident about the progress of back-burning operations: *I think the IMT was quite confident of containing the fire within the containment lines, especially if they could get some depth to burnings before the bad weather which was forecast on the weekend... There was two niggling issues in relation to containing the fire... There was an area that was proving hard to contain to the south of the fire, and there had been a spot over containment lines which had burnt a number of hectares to the east of the eastern containment lines, and was continuing to not be completely contained.* The area to the south that Mr Corrigan was referring to was in the south-west, known as the Charlie sector.[1035]

590. Mr Corrigan did not participate in or overhear the meeting between Mr Lucas-Smith, Mr Koperberg and others. He spoke to Mr Lucas-Smith after the meeting. It appeared to Mr

Corrigan that Mr Lucas-Smith was quite positive about the meeting. He did not recall Mr Lucas-Smith being positive about the McIntyre's Hut fire, only about the increased availability of NSW resources. Mr Corrigan did not recall Mr Lucas-Smith saying anything about what he had been told about the progress of suppression of the McIntyre's Hut fire. He asked Mr Lucas-Smith when he thought the state of emergency was going to be invoked. Mr Lucas-Smith's response was something like: *maybe the weekend...but he also said there were a lot of issues that had to be worked through in relation to a state of emergency*. He did not recall any reference to the urban area of Canberra being part of his discussion with Mr Lucas-Smith.[\[1036\]](#)

591. Mr Corrigan first heard reference to threats to Canberra as distinct from the ACT discussed at Queanbeyan when he raised it on about 12 January 2003. He was concerned that the ACT fires were going to break containment lines and burn out a lot of the ACT and through to NSW again. His concern included the possibility of damage to the Canberra urban area. His evidence was that probably the only person he spoke to about it at Curtin was Peter Galvin[\[1037\]](#). In discussions during the period Mr Corrigan was at Queanbeyan, it was more assumed that: *if we had a decent north-westerly influence which hadn't had for some days, then the threat [to Canberra as distinct from the ACT] was clear and present*. The assumption was based on *informal discussions that we had during periods*. Mr Corrigan recalled one particular discussion in one planning meeting led by Mr Arthur about the most likely suburbs to be impacted on from the McIntyre's Hut fire. He thought it was somewhere around 15 or 16 January and Mr Arthur mentioned the suburb of West Belconnen. Mr Corrigan could not clearly recall any other suburbs mentioned.[\[1038\]](#)

592. Mr Koperberg agreed with Mr Lucas-Smith that, during their meeting, confidence was expressed about the fact that the fire was contained, *because it was*. That meant it was in containment lines, but not by any means suppressed or controlled. In regard to Mr Lucas-Smith's statement that: *he [Mr Koperberg], Mr Gilligan and Mr Arthur expressed great confidence they had the fire contained and that it was not going to be an issue for the ACT*, Mr Koperberg said: *I don't accept that in as much as we did express concern for Canberra. That was evidenced by my more public statement shortly thereafter, and our offer of resources to the ACT was predicated upon our concern not so much for the fires as they then were but rather based on concern being expressed by the Bureau of Meteorology for the coming days*. Mr Koperberg did not accept that the words *McIntyre's Hut fire not being an issue for the ACT* was the kind of language that was used in the discussion. *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*.[\[1039\]](#)

593. According to Mr Koperberg, a number of hypotheses were being discussed at that meeting with Mr Lucas Smith, not the least being a range of worst case scenarios. Mr Koperberg described himself as being *characteristically pessimistic*. *I have some difficulty understanding why Mr Lucas Smith would ascribe to us a higher level of confidence about the McIntyre's Hut fire in a worst case scenario than we had, because most of our considerations were predicated not on the present, that is Wednesday the 15th, but rather on the forecast of the Bureau of Meteorology for Saturday the 18th. We during the course of that meeting discussed a number of potential scenarios, amongst them a worst case scenario for Canberra...As I said, we painted a number of scenarios, one of them being the eventuality of the forecast for Saturday the 18th, which included very high temperatures, very strong winds and very low humidities, and the probability of the McIntyre's*

Hut fire particularly breaching its containment lines. It was conceded that not only was that possible but it was more than likely. In fact, as far as back as Sunday the 12th or thereabouts in a brief discussion with Superintendent Bruce Arthur I raised the prospect of what might occur were the weather in a week's time to so materialise and the fires not be suppressed. It was generally conceded that the fire would reach the suburbs of Canberra.[\[1040\]](#)

594. Later in his evidence, Mr Koperberg appeared to withdraw from the assertion in his statement that he *expressed concern during this briefing about potentially serious implications for the western suburbs of Canberra*. Asked whether it was a discussion about a possible impact on the suburbs, Mr Koperberg said: *Well, on Canberra, not on any particular side of it. The fact remained that there were a number of fires lying to the west and north-west of Canberra city. It is obvious that if there were to be strong prevailing winds from the north-west, high temperatures and low humidities, those fires would move in a south-easterly direction and as a consequence, would have the potential to impact upon Canberra.*[\[1041\]](#)

595. Mr Koperberg was then asked whether what was being discussed was a fire that would do damage to the suburbs as opposed to rural areas, and Mr Koperberg responded: *The suburbs were not specifically mentioned. Canberra was mentioned in a generic sense, and it did not descend, as you said, to the level of detail which embraced nominating time, geography, or date*. However, when the passage from his statement referring to the western suburbs of Canberra was read to Mr Koperberg, he confirmed that what appeared in his statement was an accurate description of what he said, *in as much as understanding the physics of fire and their potential under a range of circumstances to spot, for argument's sake, many kilometres, to travel vast distances in relatively short time, that possibility ought not to have been precluded*[\[1042\]](#). Thus, as with Mr Lucas-Smith, Mr Koperberg's position on whether the suburbs of Canberra were mentioned during their discussion is unclear.

596. However, there is little doubt about Mr Koperberg's own views on the issue: *I formed the opinion that if the forecast weather conditions were to materialise then the fires, not any specific fires, would have the potential for moving in such a way and over such a distance as to constitute a threat to the suburbs of Canberra. But that was an opinion, and an opinion may not necessarily be shared by other quarters*. Mr Koperberg gleaned by Mr Lucas-Smith's response to his concerns that the sense of pessimism harboured by Mr Koperberg was not shared by Mr Lucas-Smith. *At no stage did he reject the contention outright, but nor did he accept it as a distinct possibility*[\[1043\]](#). As a matter of course, Mr Koperberg tended to approach these things bearing in mind a worst case scenario rather than a best case scenario: *I am required to do that and that is what the New South Wales community expects of me, as does the government*[\[1044\]](#).

597. The interview given by Mr Koperberg to the ABC later that day is broadly consistent with his evidence concerning the level of the threat as perceived by him. Mr Koperberg was asked about Mr Lucas-Smith's evidence that arrangements were made for Mr Keady to telephone Mr Koperberg to discuss the views expressed by him during that interview. He did not believe there was a phone call from Mr Keady to him as a result of the interview and he had more recently discussed the matter with Mr Keady and neither of them have any recollection of such a phone call[\[1045\]](#). Mr Keady also could not recall anyone taking up with him the problem that at least it

appeared that Mr Koperberg had said one thing to Mr Lucas-Smith and something different to the media. He could not remember whether he was asked to do anything about it[1046].

598. The question of what (if anything) was said about a potential threat to Canberra was revisited later in Mr Koperberg's evidence. Mr Koperberg was asked whether he expressed his opinion about a threat to Canberra referred to above in those terms to Mr Lucas-Smith at the meeting. His answer was: *In as much as I did suggest that if the weather were to eventuate there would be a real threat to Canberra, yes.* In subsequent answers, he appeared to confirm that while the discussion did include reference to a real possibility that, if the fire broke containment lines, it would make a major run into Canberra, the threat was not expressed by reference to the suburbs of Canberra. *I expressed my concern about the very real threat that these fires could impact upon Canberra, and it was that concern which led me to make the offer of resources. Were I not so concerned, I would not have made the offer*[1047].
599. Mr Koperberg was asked about his reference during the Stateline interview with him in May 2003 to the *colourful language* used during the meeting. Mr Koperberg explained that: *there was during the course of the meeting a lot of discussion about worst case scenarios, hypotheticals – what ifs, in other words. I certainly did pose the question: what if the fires are not suppressed? What if the forecast weather materialises? What will happen then? Someone in the room said, "Canberra is going to get hammered".* Mr Koperberg gleaned Mr Lucas-Smith's response to this sort of talk to be a little offended by the fact that his NSW counterparts were painting such a picture: *I formed the opinion that Peter did not share our belief or my belief, if you like, about the potential seriousness.*[1048]
600. In his statement, Mr Koperberg refers to part of his discussion with Mr Lucas-Smith during which Mr Lucas-Smith *said that the ACT's resources would be insufficient in the event of the fire impacting upon Canberra and its suburbs*[1049]. Asked about this during his evidence, Mr Koperberg explained that this topic arose in the context of general discussions about worst-case scenarios. *And Mr Lucas-Smith acknowledged, if my memory serves me, that if there was to be a large scale impact on the western peripheries of Canberra then there would be insufficient resources to deal with it, which again was one of the factors which led to our offer of support to augment those resources.* Mr Koperberg was clear about a specific reference to resources being insufficient in the event of a fire impacting upon Canberra and its suburbs, *in as much as my assistant commissioner Shane Fitzsimmons recalls an attempt to actually calculate the number of appliances that might be required on any given interface*[1050].
601. In cross-examination, Mr Koperberg allowed for the possibility that there was some confusion between those present about the topics that were discussed. For example, that Mr Lucas-Smith may have considered that the resources he was wanting were for the purpose of dealing with current fires in the ACT[1051]. Under cross-examination by counsel for Mr Lucas-Smith, Mr Koperberg excluded the possibility that the discussion about the fires possibly having an impact on the western suburbs of Canberra, occurred before Mr Lucas-Smith arrived at the meeting. However, when asked whether there might have been the possibility that Mr Koperberg spoke of Canberra and the ACT, but not the western suburbs of Canberra, Mr Koperberg conceded *that may well have been the case.* He accepted that he had used the terms *Canberra and the*

ACT interchangeably in his interview with the ABC, but suspected he did not do so when talking to Mr Lucas-Smith on 15 January^[1052].

602. Later in cross-examination by counsel for Mr Lucas-Smith, the following exchange occurred:

Q. Can you tell us what caused you to - to use your words - glean from your conversation that Mr Lucas-Smith was not as pessimistic as you were?

A. Yes, I can with some reluctance. However, since you draw me to this matter, I was told that Peter Lucas-Smith didn't need me to come from Sydney to tell him what the threat to Canberra was.

Q. Who said that?

A. Peter Lucas-Smith.

Q. It is not something that you have put in any statement?

A. No, why should I? I am not here to be critical of my colleague.

Q. Did you attempt to tell him how to do his job?

A. No, I did not.

Q. Then why would such a statement be made, to your knowledge?

A. You must ask Peter Lucas-Smith.^[1053]

603. Mr Koperberg gave evidence that he was not *second guessing* what Mr Lucas-Smith did in relation to the disposition of resources on 16 and 17 September, but he reiterated his opinion that: *If the Bureau of Meteorology was correct in its prediction, then no matter what was done between Wednesday the 15th and Saturday the 18th it was inevitable that containment lines would be breached and that the fires would end in Canberra – and they did.*

604. Mr Koperberg postulated that it may have eventuated that the Bureau of Meteorology was wrong – that the bad weather didn't arrive until Monday, Tuesday or Wednesday and that has happened on many occasions before. However, he would not accept that if the expected weather materialised and containment lines were breached then the outcome of 18 January was something very close to inevitable: *I can accept that the impact on Canberra was inevitable. The outcome however, is a different proposition in terms of loss. The outcome would be determined by the extent to which the community was effectively informed, the amount of appliances and other resources available in and around the point of impact. What was inevitable was probably the destruction of houses right on the interface. What was probably not inevitable was the destruction of houses further afield.^[1054]*

605. At the conclusion of his cross-examination the following day, counsel for Mr Lucas-Smith put directly to Mr Koperberg that Mr Lucas-Smith did not actually say that *he didn't need you to come from Sydney to tell him what the threat to Canberra was*. Mr Koperberg disagreed, *because I remember my response being, "I know you don't need me to come from Sydney to tell you this"*. Mr Koperberg went on to explain that he had never suggested that offers of assistance were not welcome. It was put to Mr Koperberg that a statement by Mr Lucas-Smith to the effect that he didn't need Mr Koperberg to come from Sydney to tell him what the threat to Canberra was, was at variance with Mr Lucas-Smith having travelled on his own volition from Canberra to Queanbeyan to see Mr Koperberg to indicate that the ACT's resources would be insufficient in the event fire impacted on Canberra

and it suburbs. Mr Koperberg responded: *You may well interpret his statement as meaning that he was already aware of the potential without my having said so.*[\[1055\]](#)

606. Late in his evidence, it was put to Mr Koperberg that he was not suggesting that his views formed on 15 January 2003 were that there was inevitably going to be destruction of houses on the interface. He answered: *I was not familiar with the nature of the interface. What I am trying to suggest perhaps clumsily is this: that given what we know now about the nature of fire behaviour and did not know then suggests that damage to property on the interface could not have been avoided.* Mr Koperberg was then shown some photographs of some of the interface areas around Duffy. He agreed that the distance between the houses that were damaged on the interface and the first real available fuel load was quite significant: *they are very good set backs.* Based on his experience he would have had some confidence that, given those set backs, it may have been possible to hold any break outs, *save of course for the ember attack phenomena, and most of our warnings relate as much to the potential for flame impact, which in this particular circumstance would have appeared unlikely... as it is about the very real possibility of damage being occasioned by ember attack. History shows that by far the majority of property in Australia during major conflagration such as this constituted are the consequence of ember attack and not flame contact. So even though flame contact would have been regarded as unlikely in this particular scenario, the very real possibility of severe ember attack could not have been discounted.* Mr Koperberg could not have predicted the degree of ember attack that occurred, but ember attack in any interface with suburbia in any bushfire is always going to be a very major concern, *which is, of course, one of the reasons why we solicit the aid of the community affected, because they can play a major part in dealing with the consequence of ember attack as opposed to direct flame contact.*[\[1056\]](#)

607. Mr Koperberg was further cross-examined on whether or not he expressed to anyone within the ACT his opinion that if the forecast weather conditions occurred, no matter what was done between Wednesday the 15 and Saturday the 18 January, it was inevitable that containment lines would be breached and the fires would end up in Canberra, this time by counsel for Mr Castle. Mr Koperberg agreed that he did not express that view to Mr Castle because at no stage did he speak to Mr Castle, *but it was most certainly expressed in, as I have said before, quite emotive terms on the morning or early afternoon of Wednesday, the 15 January at a meeting held in the OEC Queanbeyan at which Mr Peter Lucas-Smith was present. It could not otherwise have been so, because if it had not been so then the offer of assistance to protect Canberra on Saturday the 18th would not have been made – or for that matter accepted... I said to the media on the 15th inter-alia that the weather was likely to deteriorate and deteriorate severely, and that would constitute a threat or a risk to a number of areas. I referred to pine forests, I referred to border issues and I referred to Canberra. It was certainly not competent for me to start speculating on degrees of risk to the interface at that particular point – or for that matter at any other point – because I did not have the jurisdiction to do so. Because I was not cognisant with measures that may or may not have been able to be taken by the ACT authorities in terms of communicating the risk to the community or dealing with the threat mitigation.*[\[1057\]](#)

608. Asked whether the opinions he had expressed in his evidence were coloured to some significant degree by hindsight, Mr Koperberg responded: *Well, we know that what I feared occurred. My assumptions were not based on any magical formula or particular technical or scientific data. If you like, it was a gut feeling. I knew the weather was going to be bad or at least the MET Bureau thought the weather was going to be bad. I knew there was a lot of fire to the west of Canberra. I knew if you put two and two together you got*

four, and that meant that the tenuous containment lines – which incidentally only surrounded the McIntyre’s Hut fire, a number of other fires were not so contained – that there was nothing impeding the eastward spread of those fires. Since the ACT and Canberra lay to east, I could draw no other conclusion.[\[1058\]](#)

609. In re-examination, Mr Koperberg was asked again about the statement by Mr Lucas-Smith at the meeting on 15 January that he did not need Mr Koperberg to come from Sydney to tell him what the threat to Canberra was. He said the discussion remained cordial, and he took Mr Lucas-Smith’s statement to mean one of two things: *either it was simply a statement of fact, that he had already acknowledged what I was telling him and didn’t require my telling him that; or that he didn’t accept or that perhaps I was out of my territory in suggesting such a thing.* Mr Koperberg did not establish which of those alternatives were the reason for Mr Lucas-Smith’s statement. He didn’t put it in his written statement because he didn’t consider it relevant: *I responded in the way I did because I was asked to validate my supposition that my pessimism was not shared, and that is the only reason I mentioned it. I still believe, rightly or wrongly, that the degree of its relevance didn’t warrant me including it in the statement.*[\[1059\]](#)

610. Ms Crawford was present during the process of briefing Mr Koperberg on 15 January 2003. She could not remember discussion about whether the fire would be contained and controlled. *I think it was more on what we were doing, what the current situation was and what we were doing.* By the late morning of 15 January the IMT *were still working hard and optimistic that, if we could get those containment lines deep enough...that we would be able to hold it.*[\[1060\]](#) Ms Crawford’s recollection was that concern for the western suburbs of Canberra was not a subject of discussion in the briefing session Mr Koperberg had at Queanbeyan, *but he may have had that with other people... Canberra, as in the pine plantation assets, the rural residents, but I don’t remember it being the suburbs.*[\[1061\]](#)

611. Ms Crawford described how the briefing had moved into the incident controller’s office when Mr Lucas-Smith arrived. In the course of the conference that followed Ms Crawford could not remember clearly a reference to the western suburbs of Canberra. *There was general discussion, the meeting started off and it got straight to the point where Peter had come to ask for resources...then it got down to very much a conversation between the Commissioner and the Chief Fire Control Officer about the actual nitty-gritty details. I suppose for part of it I wasn’t listening all that closely as to what was being said.* Ms Crawford did not recall hearing at any stage in the discussion while Mr Koperberg and Mr Lucas-Smith were present, Mr Koperberg expressing his view that there was a very real threat to the Canberra suburbs: *I do remember the threat if the fire left its containment lines of burning into the ACT, and I think Canberra is often used. But what I understood “Canberra” to be was the pine plantations and the rural assets*[\[1062\]](#). Ms Crawford did not remember it being said while everybody was present, either by Mr Koperberg or by somebody else, that escape from containment lines was inevitable. *I don’t remember that being said, but that doesn’t mean it wasn’t said.* Ms Crawford did not remember the word “inevitable” being used.[\[1063\]](#) Ms Crawford also did not recall anyone present saying that they were confident that the McIntyre’s Hut fire had been contained and that it would not be an issue for the ACT. She never had that confidence[\[1064\]](#). Later, the relevant passage from Mr Lucas-Smith’s statement was directly put to Mr Crawford. She agreed that the fire was within containment lines, *but I don’t agree with that it was not going to be an issue, because it always depended on the weather and whether it broke containment lines.* Ms Crawford did not remember that being said to Mr Lucas-Smith.[\[1065\]](#)

612. Ms Crawford had a very clear recollection of someone saying *Canberra 's going to get hammered*. She couldn't remember where she heard the comment or who said it but, *I do definitely remember that comment because it was said very forcefully. It was very different to any of the normal language used in any of the fire control rooms that I have been in. I remember the way it was said it sort of gave me a shudder... I do remember the comment being said but I cannot where it was said...it was said very forcefully and very seriously*. Ms Crawford was sure it was definitely someone on the New South Wales side of the discussion.[\[1066\]](#)

613. Mr Arthur was familiar with the evidence that Mr Koperberg had given about the meeting at Queanbeyan on 15 January, including the discussion with Mr Lucas-Smith. In general, he agreed with Mr Koperberg's description of what happened at that meeting: *Mr Lucas-Smith came in. It was predominantly a meeting between Mr Lucas-Smith and Mr Koperberg. It was conducted in my office, and I was present. I would point out that I was also the incident controller so I was dealing with issues at the same time*[\[1067\]](#). However, Mr Arthur did not consider it inevitable that the fires would break their containment lines and make a major run into Canberra: *I considered it possible. I made a statement earlier and I will stand by it that I didn't go into this to lose, and therefore we had a plan in place and it was coming the way we wanted. I believed on the 15th that we would achieve containment and we were going to work very hard to try and contain it. It was possible that it could come out*. Mr Arthur did not have a recollection of the type of language that Mr Koperberg recalled[\[1068\]](#).

614. Mr Arthur's recollection was of general discussions of what possible outcomes could be, and that included if the fire breached containment lines, what may happen thereafter. He did not have a specific recollection of what possible outcomes were identified, *other than we knew that, if it did breach, it would be into the pine forests and a threat would step up from there*. Mr Arthur had discussed the pine forests with Mr Lucas-Smith a number of times and may well have discussed it on that day. However, Mr Arthur could not agree with Mr Lucas-Smith's account of being told that the McIntyre's Hut fire was contained and that it wouldn't be an issue for the ACT[\[1069\]](#). Mr Arthur was present when Mr Koperberg was interviewed by the ABC: *He expressed a view that there was a potential for Canberra, yes. Did I agree with that? There was a potential, yes*[\[1070\]](#). Mr Arthur had no recollection of someone saying *Canberra is going to hammered*[\[1071\]](#).

3.5.1.5 Further ACT Requests for Commonwealth Assistance.

615. On 15 January 2003, Mr Castle sent two further Requests for Commonwealth Physical Assistance, both timed at 13:00 hours[\[1072\]](#). The first of the two requests was for a 30,000 litre or larger water tanker required to fill portable water reservoirs. The second request was to extend the defence force resources already assisting the fire operations comprising helicopters, bulldozers and an aviation fuel tanker, from 20 January 2003 until 27 January 2003. Both requests include a description of the *Situation* as follows: *Two of the three fires have now joined, forming two large fires. The weather forecast for the weekend and early next predicts temperatures in the high 30°'s 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 firefighting capability*.

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

616. Mr Castle accepted in evidence that, with the potential for the wind change referred to in the documents, his degree of concern for the ACT urban environment was no longer small: *I think it has probably increased with a prospect of winds coming.* Mr Castle agreed that the words: *the current inversion layer has reduced visibility*, is not the sort of language he would normally use. He confirmed that somebody drafted it for him, and the person who drafted it for him was generally Ms Keane. Mr Castle presumed Ms Keane obtained information about the strong winds gusting and causing concern for the ACT urban environment from the briefings at the planning meetings. Mr Castle could not recall himself inserting those words but he agreed that, since he signed the document, he must have been comfortable that the words indicated his concern at the time^[1073]. According to Mr Castle, Mr Lucas-Smith was not giving him the impression that he was less concerned than Mr Castle about the urban environment^[1074].

617. Ms Keane did not remember where she obtained an understanding that there was a threat to the urban environment. She accepted that it was possible that those were words that Mr Castle added. She had not been able to find anything in her notes that made reference to the urban environment, apart from the discussion in the planning meeting on the afternoon of 14 January 2003 concerning the telephone conversation between Mr Lucas-Smith and Mr Cheney. Ms Keane thought it was possible that the reference to the urban environment in the Request for Commonwealth Physical Assistance was sourced from Ms Keane's notes of that meeting^[1075]. Ms Keane had explained earlier in her evidence that it was her practise with these documents to prepare them in draft and provided the draft to Mr Castle for comment^[1076]. Once she incorporated Mr Castle's comments, she handed the document back to Mr Castle for signature. From her observation and the process she went through with Mr Castle to prepare these documents, he read the contents at least in draft form or in the final form before he signed them^[1077].

618. Mr Lucas-Smith was asked about the *Situation* description appearing in the Requests for Commonwealth Physical Assistance referred to above and was asked whether the description of the situation was one that he agreed with. He responded: *That was his description that he chose to use for that request... They are not the words that I would have used... I would not have used the words "causing concern to the ACT urban environment"... at that particular time, I felt that we still had potential for intervention if we got the resources that we needed*^[1078]. It was put to Mr Lucas Smith that a risk to the Canberra urban area was not simply theoretical on Wednesday 15 January; *it was a distinct possibility if certain things happened.* Mr Lucas-Smith responded: *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.*^[1079]

619. Mr Lucas-Smith was then asked whether warnings were being issued to the people who lived in the rural properties in that vicinity. Mr Lucas-Smith gave evidence that 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. The following exchange then occurred:

Q. You would not rely on that. You would want to have a coordinated process by which people were being informed that at a senior or planning level it was obvious to the people involved in planning that there was now a distinct risk to particular areas where there were people living?

A. I am not aware of any warnings that were issued.

Q. Shouldn't there have been warnings at this stage?

A. I think there should, yes.

Q. And there weren't any?

A. There weren't any.

Q. Whose responsibility is the lack of warning at that stage?

A. I assume it is mine.

Q. Alright. Who else in the ordinary course of – you cannot do everything obviously – the procedures at ESB should be in charge of issuing warnings such as that?

A. As I have said before, our media section, which is media and information awareness, is a part of our planning section. They get their information from that and they produce the media advice.

Q. I take it you are accepting that in that area and at least to this extent as at the 15th there was a serious deficiency?

A. I think our media arrangements and our advice to the community was sadly lacking.[\[1080\]](#)

3.5.1.6 Afternoon Planning Meeting.

620. The minutes of the planning meeting at 16:00 hours on 15 January 2003 commence with a reference to Mr Lucas-Smith reporting that the request for NSW Rural Fire Service assistance had been accepted. There is no reference in the minutes to Mr Lucas-Smith reporting that he was told by Mr Koperberg that the McIntyre's Hut fire would not be an issue for the ACT[\[1081\]](#). Equally, the minutes do not record Mr Lucas-Smith reporting that he was told by Mr Koperberg that, if the forecast weather eventuated, it was inevitable that the McIntyre's Hut fire would break containment lines and impact upon Canberra or its suburbs.

621. Mr Graham then provided a situation report on operations. The briefing paper attached to the minutes noted that burning out was continuing on the Bendora fire and the depth of the burn from the containment lines around the south and east was between 30m and 50m. It also noted the advice from Mr Sayer that there was about 48 hours of work to do before any back burning operations could commence on the Stockyard fire[\[1082\]](#). The minutes of the meeting record that Mr Graham reported *in addition to the briefing paper* that there was a need to construct a link between Leura Gap to the Goodradigbee River. *This is potentially two days of new work.* The minutes also record that: *Mr Lucas-Smith stated that fire growth to the west will be limited, however the fires may grow rapidly to the east over the next few days... Mr Lucas-Smith stated that crews should be mindful of dangerous fire behaviour as the fire had the potential to accelerate tomorrow. He stressed the need for reinforcing safety messages and measures in the field*[\[1083\]](#).

622. Under the heading *Planning*, Mr McRae's report on the weather conditions is minuted as follows: *Mr McRae stated that 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. Mr McRae stated we need to be as ready as possible for these extraordinary conditions^[1084]. The handwritten notes of the planning meeting provide further detail of Mr McRae's weather report. In substance, they record that Mr McRae informed the meeting that they were facing the *worst fires of careers*. He identified that Monday had the worst weather potential, with a 1 in 20 year fire and a 1 in 40 year fire weather forecast. A fire danger index of 110 to 140 was *not good*. The fire danger index for Ash Wednesday was 103^[1085].

623. In his statement, although incorrectly identifying that he had made these remarks at the morning planning meeting^[1086], Mr McRae described his report to the meeting in the following terms: *After Mr Mason had presented his forecast, I commented on what should be understood by it. In particular I said words to the effect of:*

Gentlemen, we currently have the worst fire 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^[1087]. The minutes also record under the hearing *Planning Issues* 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. The main focus is where we are currently working, and to keep in mind future impacts if conditions worsen.*^[1088] In evidence, Mr McRae said that his reference to *do the maths* was a somewhat rhetorical point. *Having talked about the 1:20-year fire and the 1:40-year fire weather forecast, I wanted to bring home to those at the meeting that the combination of the two was a fairly rare event and that we should be doing everything we could to be ready for it.**

624. Mr McRae's evidence was that, in referring to *large fire runs from any of the fires*, he was talking about the fires they were looking after and he was not thinking about the McIntyre's Hut fire. Mr McRae agreed that if you did encounter a large fire run from the McIntyre's Hut fire in a south-east direction under the conditions he was referring to, it might be in the ACT in less than an hour. He also agreed that, at least in theory, it would then become a real concern for the ACT and those involved in managing the fires in the ACT^[1089]. However, Mr McRae also gave evidence that, outside the planning meeting, the planning team including Mr McRae were including in their planning considerations the effect of the conditions he had described at the meeting on the McIntyre's Hut fire^[1090]. Mr McRae described how he included in his planning the possibility that the McIntyre's Hut fire would break out at various points around the containment lines. In the course of his answer, Mr McRae referred to a break out where *the primary problem is going to be with the ACT pine plantations, and steps were being taken to stop the fire getting into those pine plantations*. Asked whether the possibility of work being done by ACT Forests to prevent the McIntyre's Hut fire travelling into the pine plantation was being included in Mr McRae's planning, he responded: *well, it is a qualified "yes, I was"*. He agreed that under extreme fire weather conditions with a strong north-westerly wind gusting to 60kmh, it would have been difficult to stop the run of the fire regardless of the work that ACT Forests was doing in

endeavouring to strengthen containment lines between the forests and the pine plantations. Mr McRae agreed that he was factoring that into his planning[1091].

625. Asked whether he was identifying at that time the possibility of the McIntyre's Hut fire reaching the containment lines, running through the ACT pine plantations and ultimately threatening the urban area of Canberra, Mr McRae answered: *My projections didn't go that far...my expectation, and I would expect others would have similar expectations, was that at some point in the sequence of forecast "bad weather" that we had in front of us that one or more of the fires in the area would break containment. And breaking containment, that weather would lead to fires making runs. Now, those runs would run across the landscape. They would cause some damage. The day would end. You would have milder conditions overnight and then that would be the starting point for assessing where problems would arise the next day. In an unstable dynamic situation like that, you really can't predict what your starting point will be beyond the first day that you are analysing for because it literally is too dynamic. I would not have expected a run when it was first made to reach anywhere near the city.*

626. Mr McRae was then asked whether, on the afternoon or evening of 15 January, he thought that there was any possibility that any of the fires, including the McIntyre's Hut fire, might impact upon the Canberra urban area. His response was: *My feeling was that by Monday there would be a likelihood of that.* Mr McRae agreed that, as at Wednesday 15 January, he felt that by Monday an impact on the Canberra urban area was a likely scenario. Asked if he expressed that view to anyone in those terms, Mr McRae said he believed that he did not use those explicit words. *But the general terms I was using in the planning meeting were telling people that Monday was when things would be most dangerous.* Mr McRae believed that he did have discussions with people along the lines that he thought it was likely that the fires would impact on the urban area by Monday, but he could not recall exactly when they occurred. [1092]

627. Mr Graham could not recall Mr McRae saying at the afternoon planning meeting words to the effect that this was the worst fire situation they would see in their careers. He did recall references to 1 in 20 year fire and 1 in 40 years fire weather forecast. Mr Graham agreed that the prediction at the time of the afternoon planning meeting was one of dire conditions approaching. However, at that point, he was still satisfied that the fires would be contained within the time frame that they had left[1093].

628. The minutes record that the advice that Mr Graham had in relation to the McIntyre's Hut fire was that the south and eastern flanks of the fire had been contained but that NSW were having some trouble holding the fire on the north-eastern side of Doctors Flat Road. Mr Graham gave evidence that he still had confidence that NSW would be holding that fire. He knew that NSW had significant resources on the fire and it was being managed by an IMT that he had confidence in. Mr Graham explained that he was getting his reports from the ACT Liaison Officer working with the NSW IMT[1094]. Mr Graham did not believe that anybody from NSW used language to him such as *it was inevitable that the McIntyre's Hut fire would break containment lines and make a run towards Canberra.* Further, according to Mr Graham, no-one in the NSW Rural Fire Service or NSW Parks & Wildlife Service ever suggested to him that it was inevitable that the

fires would impact upon the urban area of Canberra. He did not believe that the ACT Liaison Officer ever said anything to him about that either[1095].

3.5.1.7 NSW Media Release.

629. During the afternoon of 15 January 2003, the NSW Rural Fire Service issued a media release headlined *RFS Crew Seen to Assist with ACT Fires*. [1096] The copy of the media release provided to the inquiry appears to have been faxed to NSW Rural Fire Service State Operations at 19:11 hours on 15 January. The media release incorporates statements attributed to Mr Koperberg including the following: *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.*
630. Mr Castle did not see that press release on the evening of 15 January. However, he agreed that the statements attributed to Mr Koperberg in the press release did not sit comfortably with the suggestion that Mr Koperberg had told Mr Lucas-Smith earlier in the day that the McIntyre's Hut fire would not be a problem for the ACT [1097]. Mr Graham also did not recall seeing the media release on 15 January. He considered that it would have been useful [1098]. Mr Castle was asked during his evidence whether there was a system for monitoring press releases coming out of the NSW Rural Fire Service. He said that he believed Ms Lowe *at stages would talk to Cameron Wade*. He *would presume* that it would be important to keep track of what the NSW Rural Fire Service was saying about the fires, particularly the ones closer to the border [1099].
631. Mr McRae did not recall seeing the media release by the NSW RFS on the afternoon of 15 January. Mr McRae also gave evidence that he did not monitor the media releases that were coming out of the NSW Rural Fire Service. He did not recall seeing any during that period. He was getting information about the status of the efforts to contain the McIntyre's Hut fire during this period, through operations. This was largely at planning meetings but supplemented by other meetings [1100]. Mr Graham did not recall seeing the NSW Rural Fire Service media release issued on 15 January. He considered that it would have been useful [1101].
632. The question of what, if any arrangements were in place at ESB for monitoring media releases from the NSW Rural Fire Service was also raised in evidence with Mr Corrigan, Ms Harvey and Ms Lowe. Mr Corrigan's evidence was that he was receiving media releases that were being generated by the NSW Rural Fire Service and *was ensuring that they were either faxed or I was personally faxing them to planning... at Curtin*. Mr Corrigan's memory was that about once a day he would be forwarding a NSW Rural Fire Service media release [1102]. Ms Harvey explained that: *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... I am afraid I don't recall whether we got the NSW 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*. However, Ms Harvey was not aware of any formal process *at that stage* by which all NSW media releases would be collected by someone and distributed to people in planning or elsewhere. She thought that a process was set up at some stage where media releases that came in on the media fax were copied to give to her and to Mike Castle but she was not sure when that process was put in place [1103].

633. For her part, Ms Lowe *would have probably assumed* that the NSW Rural Fire Service would be issuing media releases. As to whether there was a process of which she was aware or involved in under which those releases were collected and monitored by anyone at ESB, her evidence was that: *When I spoke to Cameron Wade on the telephone about NSW Rural Fire Service personnel coming to Canberra, I asked him if they were going to do a media release about it and naturally they were. I think I requested a copy of that at the time for them to fax it through to us so we could have a record of what they were saying about the ACT at that time. But there was no process established at that time to receive all releases that New South Wales was releasing.*[\[1104\]](#)

3.5.1.8 Val Jeffrey Situation Update and Warning.

634. During the afternoon of 15 January 2003, Mr Val Jeffrey, the Captain of the Southern Districts Bushfire Brigade mailed a letter to residents in his local area. In his statement, Mr Jeffrey describes what he did as follows: *On Wednesday 15 January 2003 under my own initiative I mailed a letter I composed to every resident in the Naas, Tharwa, Tidbinbilla, Lanyon as well as the Smith's Road area in New South Wales.* Mr Jeffrey goes on to explain in his statement why he sent the letter and the concerns he held at the time.[\[1105\]](#)

635. In his evidence, Mr Jeffrey explained in more detail what it was that decided him to take that step: *I'd been concerned about the progress on 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.*[\[1106\]](#)

636. The text of Mr Jeffrey's letter includes the following: *Out of control wildfires are burning in the ranges west of us. These fires stretch from Wee Jasper to the north of us through to the Victorian border. Even if these fires are brought under control before the inevitable windy west to north-west change arrives it will be almost impossible to hold them within containment lines. The only thing that can prevent this occurring is good rain. I must say that there is no indication that this rainfall may arrive.*

In short, I am writing to warn you that 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. Here are a few suggestions;

- . Ensure your buildings are well clear of flammable material.*
- . Be prepared to stay at home on the expected bad fire days.*
- . Do not evacuate unless you are scared or invalided. If you do leave, leave well ahead of the fire.*
- . If you have a few able bodied friends who can be with you, invite them along.*
- . Make sure that you have any weed spray units or pumps etc., set up and filled with water ready to go.*
- . Do not rely on electric pressure pumps as you can expect to lose power.*
- . Keep filled buckets around your buildings, complete with a mop if possible.*

- . *Muster stock into bare paddocks or yards well ahead of the fire.*
 - . *DON'T PANIC this is not the Blue Mountains, with a bit of common sense everyone should be safe and no property should be lost.*
- I don't want to alarm people, just to forewarn you.*[\[1107\]](#)

637. As a result of sending the letter, Mr Jeffrey alerted some residents who were down at the coast or intended to travel on the weekend, to change their plans and stay at their property or return from the coast. From the 80 or so households that Mr Jeffrey was targeting with the letter, he estimated that: *probably about half a dozen* were in that category.[\[1108\]](#)

638. Mr Graham had seen the letter from Mr Jeffrey since the fires. He agreed that at some point a windy west to north-west change would be expected. Asked if Mr Graham shared Mr Jeffrey's views about what might happen, Mr Graham responded: *At this point I was still fairly confident that we would be able to contain or hold these fires within our containment line.* He gave evidence that the consequence of failing to do that would be that: *the fires would start moving toward Canberra City, and my expectation was that once they moved out of the mountains – if they indeed got through the mountains – that containment would then be made with grasslands, in the grasslands.* He considered that containment would be achieved by plant and machinery creating breaks. The possibility that the fires would move into Canberra City at that point was out of Mr Graham's reckoning.[\[1109\]](#)

3.5.1.9 Telephone Call Graham to Byrnes.

639. At 17:34 hours on 15 January 2003, Mr Graham received a telephone call from Mr Jason Byrnes of the AFP[\[1110\]](#). 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.*

640. 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 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.*

641. 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.*[\[1111\]](#)

642. Later in his evidence, Mr Graham indicated that if Mr Byrne's 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 in 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 impact[\[1112\]](#). 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 burning[\[1113\]](#).

643. 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.[\[1114\]](#)

644. 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.*[\[1115\]](#)

645. 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.[\[1116\]](#)

3.5.1.10 Cabinet Briefing Paper

646. At some time probably in the late afternoon or early evening on 15 January 2003, Mr Castle spoke with Mr Keady in connection with preparing a briefing paper to be given to the ACT Cabinet the following morning[1117]. Mr Keady's best recollection was that he asked for the Cabinet briefing paper to be prepared and he would have left Mr Castle to prepare it[1118].

647. Ms Keane recalled that the briefing paper was prepared *in the evening before Mr Castle did the Cabinet briefing, and I sat in his office and he pretty much dictated what he would like to put into the Cabinet brief and I typed it up for him*. Her memory was that it was just Mr Castle and herself in the office. She did not remember Mr Keady being in the office that night, but she thought that *it's possible that the document was then forwarded to Mr Keady but I don't remember Mr Keady being in the office that night*. Ms Keane did not remember Mr Castle asking her to source information from anywhere else. *We just sat in the office and I typed it up, and then the next morning Mr Castle did the briefing*. [1119]

648. The Cabinet briefing paper is headed *Cabinet Briefing – January 2003 Bushfires* and is 4 pages long. It has attached to it a map of each of the fires, including the McIntyre's Hut fire and a depiction of containment lines around each of the Bendora and Stockyard Spur fires. It also has attached to it a page headed *Bushfire Estimated Costs as at 15 January 2003*[1120]. After a brief summary of the history of the fires, the briefing paper continues: *The general wind direction since the start of the fires has had easterly components each day except for some afternoon slight north-westerlies over the last two days. The prevailing winds are from north through to westerlies and these are generally hot, dry and can be very strong. A weather summary is attached.*

649. The Bendora fire is described as being 2,100 hectares in size with *21km of control lines in place. Backburning has been successful around three sides*. The Stockyard fire is said to be approximately 3,500 hectares in size with *15km of control lines in place. Anticipate backburning operations to commence today*. Under the heading *NSW Fires*, the McIntyre's Hut fire is described as follows: *McIntyre's fire to the north-west has secure containment lines to the south and east following backburning 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.*

650. Under *Planning Contingencies*, the briefing paper indicates that: *the weather summary would indicate that Friday is the first operational deadline to secure operational strategies due to the likely wind change. A series of contingent control lines are being planned to the east*. The next section of the briefing paper lists *Assets under potential threat*. These include, as the seventh bullet point: *urban edge*, and eighth bullet point:

- *Saved*
 - *protection of Pryor's Hut and a number of arboretums*
 - *protection of Corroboree Frogs at Ginini and Snowy Flats*
 - *protection of civil aviation communications equipment at Mt Ginini*

651. The weather summary constituting page 4 of the briefing paper includes the following:

Friday. *A cold front through Melbourne is expected late Friday afternoon which has an influence on the wind directions in our region. Stronger winds from the north, north-west are expected with mid afternoon winds reaching 30-40kms, gusting to 50kms per hour. Humidity is expected to drop. A Fire Weather Warning is expected, which automatically results in a Total Fire Ban declaration by the Chief Fire Control Officer.*

Saturday. *Winds will be from the north, north-west freshening to 30-40kms per hour, with hot dry air coming from NSW and Qld. Temperature expected to be 35° plus. The change will potentially move through late Friday/Saturday, which will weaken as it moves east.*

Sunday. *Normal type cooler easterlies ranging from south-east to north-east.*

Monday. *Hot dry north-west winds ahead of a change late Monday evening. The front could possibly hold off until Tuesday. Low humidity. Temperature is expected to be in the high 30's, with wind speeds 30-45kms per hour, gusting 60kms plus. This is very unusual and severe hot dry weather currently being described as a 1 in 40 year event.*

652. The map attached to the briefing paper gives a clear indication of the location of the McIntyre's Hut fire relative to Canberra. It also shows that there are very large areas of unburned country between the containment lines around the Bendora and Stockyard Spur fires and the fires themselves, particularly in relation to the Stockyard Spur fire.
653. Mr Castle thought that the Cabinet briefing paper may have been started before the afternoon planning meeting and was probably finished some time later. Mr Castle presumed he was conscious of Mr McRae's words during the planning meeting when the briefing paper was being prepared^[1121]. Ms Keane's evidence was that, as best she could recall, the words in the briefing paper referring to *potential serious impact to ACT forest pines and subsequently to the ACT urban area* were dictated to her by Mr Castle. Likewise, as best she could recall, the reference to the urban edge in the list of assets under potential threat was dictated to her by Mr Castle. She could not recall having any discussion with Mr Cast at that time about the document or about the references in it to threats to the urban edge^[1122].
654. Mr Keady did not think the Cabinet briefing paper had been provided to him in draft form for comment. He said the purpose of the briefing paper and the discussion that followed was to provide Cabinet with an assessment not only of what was occurring but a range of possibilities beyond that, including the possibility of a serious impact on the ACT suburban area. According to Mr Keady, the potential serious possibility that the ACT forest pines and the urban area might be affected did not mis-state Mr Keady's state of mind and he recognised it as a serious possibility.^[1123]

3.5.2 16 JANUARY 2003

3.5.2.1 Progress of Firefighting Operations

655. In his statement, Mr Lucas-Smith refers to finishing his shift for 15 January 2003 at 21:30 hours. In the immediately following paragraph he refers to a number of factors which delayed crews' ability to establish containment lines the way they wanted. *With the eastern side of Stockyard*

fire, we had a situation where heavy plant had gone in and we were about to deepen our containment lines through backburning operations that night. This didn't occur because a tanker fell through a bridge on Lick Hole Road during the early evening of the 16th, blocking the road completely. With the track blocked and the need to bring in a dozer to create a side track around the bridge, it meant that we were 24 hours behind in our burning operations, knowing full well that we were heading into wind shift conditions that were likely to push the fire in a south-easterly direction[1124].

656. A little later in the statement, Mr Lucas-Smith refers to progress in relation to the containment of the Bendora fire on 16 January: *It was now even more vital for us to ensure that our perimeter on the eastern side of the Bendora fire was secure and so we deployed our resources to continue to deepen up that backburn as much as possible. The practise is that we establish containment lines and then put in a backburn. When there is sufficient depth we can then burn out the area between the backburn and the approaching fire, selecting the appropriate time for this sort of operation and not waiting for the fire to approach when fire behaviour may not be controllable. Unfortunately, our backburns were not deep enough and we were only 30-50 metres deep in some places meaning we needed to deepen our backburning line to between 100 and 200 metres on that southern side, conscious of the fact that when the wind swung around to the north or north-west or the west as they were predicted, that would put the wind directly onto our containment line. So once again we were finding ourselves in a situation where time had the potential to beat us. The construction of our existing lines had been achieved quicker than expected, which was a major credit to the crews working those operations. However, we didn't have any other strategy because we had no fall back from Bendora Road being our eastern boundary, and we had nowhere else to go as we couldn't cross the Cotter River at that location[1125].*

3.5.2.2 Total Fire Ban

657. Before describing the progress of containment lines on the Bendora fire, Mr Lucas-Smith refers in his statement to the circumstances in which he declared the total fire ban: *On the morning of the 16th, I started at 07:30 at ESB. The Bureau of Meteorology had issued a severe fire weather warning. On that basis and after further discussion with the Met Bureau, I declared a total fire ban for 5 days through to the 21st. We were now starting to focus our attention on what was going to happen over the next few days as far as bushfire behaviour and weather conditions were concerned. At that stage there was still no direct threat to the city, however, we were concerned that 100% of the ACT Bushfire Service resources were committed and therefore any other fire that we may have in the ACT would cause a significant concern because we would not have the capability to be able to respond to it.[1126]*

658. Although Mr Lucas-Smith's statement gives the impression that the total fire ban was declared early on the morning of 16 January, it appears that the further discussion that Mr Lucas-Smith had with the Bureau of Meteorology on 16 January in fact took place at about 15:30 hours that day and it was as a consequence of that conversation that Mr Lucas-Smith decided to impose a total fire ban for the following 5 days.[1127]

3.5.2.3 Cabinet Briefing

659. On the morning of 16 January 2003, Mr Castle, Mr Lucas-Smith and Mr Keady briefed the ACT Cabinet. *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 New South Wales. 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[\[1128\]](#). The Cabinet briefing was scheduled for 09:00 hours. Mr Castle thought the briefing may have lasted 45 minutes to an hour[\[1129\]](#).

660. In addition to the evidence of those present at the briefing, there are six other sources of information about what was discussed at the meeting. They are:
- a. the Cabinet briefing paper prepared by Mr Castle the previous evening (“*the Cabinet briefing paper*”)[\[1130\]](#);
 - b. notes of the meeting taken by the Cabinet Secretary Mark Kwaitkowski (“*Kwaitkowski notes*”)[\[1131\]](#);
 - c. notes taken at the Cabinet briefing by Claire Wall of the Cabinet Secretariat (“*Wall notes*”)[\[1132\]](#);
 - d. brief notes typed by Mr Tonkin during the Cabinet briefing (“*Tonkin note*”)[\[1133\]](#);
 - e. the formal ACT Government Cabinet Minute decision No.0516 brief on fire situation (“*Cabinet minute*”)[\[1134\]](#); and
 - f. ABC news footage and audio of parts of the Cabinet briefing (“*ABC new footage*”)[\[1135\]](#).
661. According to Mr Castle, the people in the Cabinet briefing shown in the ABC news footage are Mr Tonkin, Chief Executive of the Chief Minister’s Department, Mr Mark Kwaitkowski, the Cabinet Secretary, Mr Ted Quinlan, Treasurer and a number of other portfolios, Mr Keady, *a lady from the Cabinet Secretariat* (Claire Wall), John Stanhope, the Chief Minister, Simon Corbell, Minister for Health and Bill Wood, Minister for Police and Emergency Services.[\[1136\]](#)
662. Mr Lucas-Smith in his statement does not refer to the Cabinet briefing or, indeed, any of the briefings in which he participated during the course of the day on 16 January 2005. At the time Mr Lucas-Smith gave his evidence, the inquest did not have the benefit of the ABC news footage or the Kwaitkowski notes or Wall notes. The ABC news footage became available at about the time Mr Castle commenced to give evidence and the two sets of notes were provided shortly before Mr Castle completed his evidence.
663. Mr Lucas-Smith thought that they took the Cabinet briefing paper with them and distributed it at the commencement of the Cabinet briefing. Mr Keady did a very brief introduction, Mr Castle spoke about emergency management matters in a broader context and Mr Lucas-Smith talked about the actual fire and what it was doing. Mr Lucas-Smith saw the briefing paper before it was handed over and accepted that it was an appropriate briefing paper.[\[1137\]](#)

664. Mr Lucas-Smith agreed that it was apparent from the briefing paper that by 09:30 hours on 16 January or, indeed when the briefing paper was finalised, it was recognised that there was potential serious impact to the urban area of the ACT, assuming certain things. *I am painting a worst case scenario to the best of my ability.* Mr Lucas-Smith agreed that the potential existed for serious impact for the urban area if things went wrong in the weather and in a containment line and a resource set of circumstances. He also agreed that the members of the ACT Cabinet were very interested in it. [\[1138\]](#)
665. Mr Lucas-Smith could not recall in evidence a great deal of questioning during the briefing. He could not recall the paragraph of the briefing paper referring to the serious impact to the urban area being discussed [\[1139\]](#). Mr Lucas-Smith could not recall any questions about warning people of the existence of the potential serious impact on the urban area or the assets under potential threat being the urban edge, as referred to in the briefing paper. *There was certainly questions asked and things were pursued as the presentation was being given. From what I can recall, the majority of them were around whether we had adequate resources, how we were going with resources and things like that, and whether or not there was more that could be done from a government perspective.* Mr Lucas-Smith was unsure about the reference in the Cabinet Minute to the public information system, *but I assume they were referring to the fact that the media liaison person from the Chief Minister's Department had moved in there to assist and also arrangements had been finalised and established and put in place in relation to being able to put information on the Canberra Connect Government website* [\[1140\]](#). Mr Lucas-Smith did not recall the circumstances in which that public information might be activated by the ESB being a topic of discussion at the briefing. He was not asked about it [\[1141\]](#).
666. Mr Lucas-Smith agreed that anyone reading the briefing paper, from the Chief Minister down, would understand that ESB were of the view that there was a potential serious impact, among other things, not only to the ACT forest pines but also, if things went wrong, to the urban area. He agreed that the government was on notice that people within the ESB and the ESB as a corporate group thought that the *potential existed* [\[1142\]](#). Later in his evidence, Mr Lucas-Smith made the point that the threat to the Canberra suburban area in the briefing paper is in the context of: *This is a potential, this is a worst case area. This is where the fire has the potential to extend to – and now I am primarily talking about the Bendora and Stockyard fires and the southern suburbs of Canberra... I would have thought that if I was making a statement to Cabinet, and I thought that the most serious potential for impact on 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 primarily included rural assets of some sort. However, we can't deny the fact that it could reach the urban edge* [\[1143\]](#).
667. In his evidence, Mr Castle confirmed that paragraph 100 of his statement was true. Mr Castle agreed that in the course of speaking to the briefing paper the issue of the risk to the urban area was discussed in general terms. Mr Castle also agreed that the sentence in the briefing paper dealing with the urban area would be read as referring to potential serious impact to the urban area. Mr Castle was not aware that during the general discussion of the potential of serious impact to the urban area there were any qualifications put on that sentence in the briefing paper or any sense in which the sentence was down played. [\[1144\]](#)

668. After identifying each of the persons present at the Cabinet briefing as shown on the ABC news footage, Mr Castle confirmed that he heard himself referring a 1 in 40 year weather event and a 1 in 20 year fire event. Mr Castle agreed that what he said sounded very like what Mr McRae was saying to Mr Castle at the planning meeting the night before^[1145]. However, later in his evidence, Mr Castle was *not too sure* whether he left everyone present with the impression that what was being faced now was a worse fire event than the year before. *All I said was, yes, it was a bad day last year. I didn't say that this was worse... but I had actually already referred to, as you pointed out, Mr McRae's phraseology.* Mr Castle agreed that anyone hearing that would know that they were potentially in a worse situation than they were with the fires in December 2001^[1146].
669. Mr Castle was later referred to the Cabinet Minute and asked he could elaborate on what was being asked at the Cabinet briefing about the public information system referred to in the Cabinet Minute. He explained that it was a reference to the Canberra Connect arrangements that Mr Castle had put in place. There was no discussion as to when that would be activated. *I think we were more talking about the system and how it would actually work.* According to Mr Castle, the process by which a state of emergency could be declared as referred to in the Cabinet Minute was discussed in the context of *what ifs*. Mr Castle briefed the Cabinet on the process of the declaration of a state of emergency. Mr Castle thought he *gave a truthful indication that it was always a possibility in an emergency.* Mr Castle did not think there was any discussion at all, apart from talking about Canberra Connect and the processes associated with that, about the need to warn the public. Mr Castle was not given any advice or instructions during the meeting about the process of alerting the public to the forthcoming potential danger.^[1147]
670. By the time of Mr Castle's re-examination, the Kwaitkowski notes and Wall notes had become available and he was asked further questions concerning the Cabinet briefing. At the time of the Cabinet briefing on 16 January, in Mr Castle's mind, the circumstances that would have given rise to the need to have a state of emergency were *widespread impact, widespread disruption on a very large scale.* Mr Castle was asked: *Can I assume when you say "widespread" does that mean including impact on the urban edge or the urban community of Canberra in some way?* Mr Castle answered: *I mean predominantly.* Mr Castle went on to say that he didn't think he could have envisaged a circumstance in which a declaration of emergency might be necessary if there had not been impact on the urban area. He agreed that, as a general proposition, he was equating a declaration of emergency with impact on the urban area predominantly.^[1148]
671. Mr Castle was then taken to the Kwiatkowski notes. He agreed that the notes appeared to contain a reference to *discussing with New South Wales yesterday* and the number of fire fighters coming from New South Wales, but he could not recall what Mr Lucas-Smith said about his meeting with Mr Koperberg. Mr Castle agreed that the minutes of the Cabinet briefing did not make any reference to Mr Lucas-Smith being told that the New South Wales fires would not be an issue for the ACT and he had no recollection of Mr Lucas-Smith saying something to that effect.^[1149]
672. Mr Castle was unable to assist the Coroner as to the substance of the discussion recorded in the notes as Mr Keady making comments concerning the urban periphery and urban firefighting.

He agreed that the notes referred to *principal threat for major infrastructure and urban is McIntyre*[\[1150\]](#). Mr Castle agreed that the notes confirmed that the issue of the possibility of an effect or impact on the urban area was part of the discussion and it was more than something that appeared in the briefing paper. That was his recollection[\[1151\]](#). Mr Castle thought the reference in the notes to *MFP- question re SES capacity could seek assistance, if necessary, around urban areas* may have been a reference to the fact that there had been assistance by the SES at various aspects in the 2001 fires and SES people had been trained to assist with road blocks. Mr Castle agreed that you would not need assistance around the urban area unless there was some effect on the urban area[\[1152\]](#).

673. Mr Castle was asked about the reference in the Kwaitkowski notes to him providing an overview of the Emergency Management Act and *S of E would be called when getting major infrastructure loss*. Mr Castle agreed that major infrastructure loss could be another way of saying an effect on the urban area. But he added that it could also be a reference to other infrastructure that had been discussed earlier. Mr Castle agreed that you would not need a declaration of a state of emergency if there was a problem with the Tidbinbilla tracking station but you may need a state of emergency if there was a problem with the MacGregor power station[\[1153\]](#).

674. Mr Castle was then asked questions about the Wall notes. He thought the reference in those notes to: *note that if necessary Cabinet may need to be recalled to make quick advice on properties, which assets to save*, was a reference to the pine forests. He was then asked about the note: *now significant. The chance that as SOE [state of emergency] will have to be declared 40-60%*. Mr Castle's response was: *I think that may have been my estimate. I don't recall using 60. I think I said 40. It could have then been a range. I think I looked at Mr Lucas-Smith at that stage to try and get some indication*. Mr Castle then indicated that Mr Lucas-Smith's expression suggested: *I don't know*. Mr Castle again said he remembered the 40 but did not recall the 60. However, he accepted that it was a contemporaneous note and the note taker was not likely to have written down something he didn't say[\[1154\]](#). The next reference in the Wall notes that Mr Castle was asked about was the reference to *suburbs of greatest risk being Dunlop, Weston Creek*. Mr Castle did not recall that being said. He accepted that *it was said because somebody has written it down*. He did not know who said it and he did not recall saying it himself[\[1155\]](#).

675. During the course of Mr Castle's evidence in re-examination, he raised a concern about one aspect of his evidence in the context of the declaration of a state of emergency. After a short adjournment when this issue was discussed between counsel assisting and counsel for the ACT, Mr Castle was asked one final question concerning that matter. Mr Castle was reminded of his earlier evidence that he was equating the declaration of emergency with impact on urban area predominantly. He was asked: *Is that still your evidence?* He answered: *Yes*.[\[1156\]](#)

676. Mr Keady thought that the Cabinet briefing had been his suggestion and that he assumed the decision to brief Cabinet had already been made by the morning of 15 January 2003. Mr Keady thought the briefing was a good idea, *because of the nature of the event, the magnitude of it and the expenditure that we were investing in the event...a very significant bushfire. At that stage it had been going for well over a week. It was a source of speculation, concern*[\[1157\]](#). Mr Keady thought he probably proposed to the then head of the Chief Minister's Department, Mr Tonkin, that it would be appropriate to

give Cabinet a direct brief at what had occurred at that time and what was known about what was likely to follow[1158]. In the context of being asked about his lack of recollection of the remarks by Mr McRae at the planning meeting on the evening of 15 February 2003 about a 1:20 year fire event and 1:40 year weather event, Mr Keady gave evidence that: *the reason the Cabinet briefing was occurring was 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.*[1159]

677. Mr Keady did not recall the comment by Mr Castle recorded in the ABC news footage that *We are describing this fire event as 1:20 years because it's probably equalling or surpassing 1983* and Mr Wood's response: *...better than the fires a year ago. That was a pretty bad day*[1160]. Mr Keady could recall a discussion about the potential impact on transmission lines and the MacGregor power station but he could not recall what he was referring to where the Kwaitkowski notes record him discussing the urban periphery and urban firefighting, *other than what they apparently mean*[1161]. Mr Keady also could not recall the reference in the Tonkin note to the Uriarra forest being 70% at risk.
678. Mr Keady agreed that the question of when a state of emergency would be declared was discussed, but he did not remember the detail. *Part of that discussion included the possibility of the ACT's power supply being lost as well.* Mr Keady was asked about Mr Castle's evidence that Mr Castle was equating the declaration of a state of emergency with an impact by the fires on the suburban area. Mr Keady was sure they discussed the possibility of fires impacting on the urban area[1162]. Mr Keady could not recall any discussion about a percentage chance of the need for a declaration of a state of emergency[1163].
679. When Mr Keady was asked about the reference in the Wall notes to the suburbs of greatest risk being Dunlop and Weston Creek, he agreed that the distance from Dunlop to Weston Creek in a straight line on the map is about 10-15km. He was asked if he could recall those suburbs being described as the suburbs of greatest risk. He answered: *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*[1164].
680. Asked if he agreed that apart from item (c) in the Cabinet Minute there was no evidence to indicate that warnings to the Canberra public were discussed. He responded: *Well, given the state of my recollection, I'm not going to contest the comment, but the reference to Canberra Connect I think was in the context of a discussion about how to keep the community informed.* Mr Keady could not recall any of the details of that discussion. Mr Keady could not recall any Minister or the Chief Minister asking for information about the probability of the impact on the suburbs or some assessment of what the nature of the impact on the suburbs might have been[1165].
681. Later in his evidence, Mr Keady was asked whether there was any reason why on 16 January after the Cabinet briefing, the people in the suburbs of Canberra could not have been told that there was a potential for serious impact for the urban area as a result of the New South Wales fire. He responded: *There is no reason why not. I guesst the more relevant issue is any reason why. I think at*

that stage the level of risk didn't appear sufficiently high enough. Mr Keady accepted there was no disadvantage in giving people on the western edge of Canberra the same information about the potential serious impact that was given to the ACT Cabinet, but added: *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.* Mr Keady accepted that it possibly would have enabled people to begin preparations, but: *I think the kind of impact Cabinet was being told of was a worse case scenario. It wasn't really at that stage within the realm of the 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*[\[1166\]](#).

682. The issue of Mr Keady's recollection of the Cabinet briefing and, in particular, the context of the discussion of the declaration of a state of emergency was revisited in cross-examination. He described a technical discussion about the problem of thick smoke and what than can do to cause power arcs. *I think that was speculated about as something which might cause interruption or cessation of power supply, and of course there was the MacGregor power station itself. That was part of the infrastructure issues that was raised in the course of the meeting.* Mr Keady was then asked if it was his recollection that it would be in the context of such power disruption that the need for a state of emergency might arise. He answered: *Yes. Had a significant power outage occurred or some damage caused to either the lines or the power station, that would have had a very severe and immediate community impact.* The question was then raised by counsel assisting, having regard to Mr Keady's earlier lack of recall, whether this evidence by Mr Keady in response to question on cross-examination was based on reconstruction or recollection, and Mr Keady said: *Well, it is perhaps a bit eccentric but a couple of things that stand out from that meeting – they are the islands [in a sea of lack of recollection] that counsel assisting has mentioned – is I remember some discussion about corroborree frogs as one of those things that stuck in my mind when it was mentioned. The other thing I recall about the power lines was the discussion – prompted by somebody about the possibility of thick smoke causing power arcs or something of the kind. It was just one of those things that stuck in my mind. I can't take it beyond that.* Mr Keady agreed that a disruption to the particular power lines or that particular substation would result in a serious impact on the Canberra community.[\[1167\]](#)

683. The next witness to give evidence concerning the Cabinet briefing was the Chief Minister, Mr Stanhope. Mr Stanhope was first asked about the circumstances in which the Cabinet briefing was arranged and whether the fact of the Cabinet briefing indicated that Mr Stanhope and members of his government were beginning to recognise the situation was getting very serious. Mr Stanhope *did not believe that the state of my concern and the concern of any of his colleagues on Thursday was materially different than the level of concern or alarm that we would have felt or held on Monday.* According to Mr Stanhope, as at 16 January he did not have a heightened awareness of the seriousness of the fires or the risk of the fires as at the time of the Cabinet briefing. Further, his evidence was that his awareness of the risk of the fires was not changed by the briefing.[\[1168\]](#)

684. According to his statement, Mr Stanhope had no specific recollection of particular words used and only a general recollection of the briefing. He summarised the substance of what the briefing comprised including: *Mr Lucas-Smith made it clear to us that the fires presented a serious*

situation... He presented a range of theoretical possibilities about development of the fires, but I do not recall details... We were informed that Monday was seen to be a "bad" day in terms of fire danger... My memory is that the issue of a state of emergency arose out of a discussion about the possibility of damage to the electricity infrastructure, more notably the implications for power supply to Canberra if the fire caused "arcing" to the powerlines crossing the mountains. Mr Stanhope referred in his statement to everyone being provided with a 4 page briefing paper including a map identifying the fire area and said that matters listed on the briefing paper were referred to from time to time in the course of the meeting. His statement continued:

There was general comment about the possibility of the fires reaching urban Canberra. In this context, it was mentioned that the Weston Creek and Dunlop would as a result of their location be the suburbs towards which the fires might travel in the event that they did spread. 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 at risk. Comments were more to inform us of current firefighting efforts, and that if the fire conditions deteriorated and the fires were not contained, Government might need to be involved in consequential decisions. 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.[\[1169\]](#)

685. Mr Stanhope gave evidence that he did not specifically remember reading the sentence in the briefing paper that referred to the potential for the McIntyre's Hut fire spotting over containment lines which had *potential serious impact to the ACT forests pines and subsequently the urban area*, but he assumed that he did read it. It was put to him that the description of a potential serious impact to the Uriarra pine forest and subsequently the urban area would have concerned him. Mr Stanhope responded: *Certainly it was a concerning fire. It was a serious fire and it was being treated seriously by the Emergency Services Bureau. I had a level of concern in relation to the fire from my initial briefing on Monday the 13th. At no stage did I regard the fire as anything other than serious.* Mr Stanhope then referred to the statement in the dot point being consistent with advice available to him and the Minister for Emergency Services and generally available to the community that a fire was not particularly distant from the Uriarra forest that it was a serious fire and that there was a potential for the fire to impact on ACT forest pines. *And, as a theoretical possibility were it not contained in the Goodradigbee valley, were it not contained by the subsequent or the fallback containment lines that existed or were being prepared, if the backburning were not successful, if the fire wasn't subsequently halted on the large area of urban-rural grassland west of the Murrumbidgee that yes, there was a theoretical possibility that the fire would advance to the urban edge[\[1170\]](#).* Mr Stanhope agreed that the word *theoretical* is not the word used in the document but it had to be understood in the context that *had been set by previous briefings on Monday, a context reinforced by discussions with Mr Lucas-Smith on Wednesday, and a briefing on Thursday that was essentially consistent with the nature of the conversations that I had – that yes, the fire is serious, there are some potentially serious impacts from this fire if a range of circumstances result[\[1171\]](#).*

686. It was suggested to Mr Stanhope that the briefing paper was the first time that anyone had raised with him that there was a potential serious impact on the ACT forest pines and subsequently the urban area. Mr Stanhope believed the possibility of the McIntyre's Hut fire

reaching the Uriarra forest under certain circumstances had been raised with him on Monday by Mr Lucas-Smith. He had no memory of anyone raising with him specifically the prospect of the fire reaching the suburbs of Canberra. *I do believe, however, that it is important that when we talk about the urban area is a distinction drawn in the language used between the suburbs and that area of land immediately before the start of the suburbs... The interface. I think there is a distinction in language that is used between houses and the urban edge... There are a range of assets at the urban edge that one might refer to as assets that aren't part of suburban Canberra – or that there were at least preceding the fire. There were assets such as Mt Stromlo forest; there were assets such as the Stromlo Observatory that are not part of the suburbs.*[\[1172\]](#)

687. Mt Stanhope was asked whether he recalled being told by Mr Castle that Monday would be a 1:40-year weather event and that the fire was already a 1:20-year event. Mr Stanhope answered: *Yes, I do recall a discussion about the weather conditions.* He was then asked whether he recalled being told that the circumstances were equalling or surpassing the conditions that prevailed in 1983 and he answered: *I remember the broad discussion in relation to the weather conditions and the fact that the weather conditions were extreme*[\[1173\]](#). Mr Stanhope did remember discussion about a reference in the notes to the MacGregor substation and powerlines leaking. However, he did not recall discussion reflected in the notes of comments including reference to the urban periphery and urban fire fighters[\[1174\]](#).

688. In relation to the note *principal threat to major infrastructure and urban is McIntyre's. Bendora – Tidbinbilla tracking station threats.* Mr Stanhope said he did remember Mr Lucas-Smith giving an explanation of his understanding of the anticipated behaviour of certain fires. *I do recall Mr Lucas-Smith explaining that the Bendora and Stockyard fires were potentially of significant threat to the catchment and to the southern area of Namadgi; and that under some scenarios it would be the McIntyre's Hut fire being, as it was, the northern-most fire, that would potentially impact on Uriarra forest; and if it were to fulfil some of the scenarios or some of the potentials that have been expressed, it was the fire that was in direct line with the City of Canberra.* Mr Stanhope did not ask a question like: *Look, what are the changes of this fire actually burning into the Canberra suburbs.* His answer (in part) was: *I had a certain mindset which had developed as a result of the briefing that I received on the Monday, conversations I had on the Wednesday, and 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 don't think that 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.*[\[1175\]](#)

689. Mr Stanhope could not remember a reference during the Cabinet briefing to Uriarra forest being at 70% risk, as recorded in the Tonkin note. He had no memory of numbers such as percentage of assessment of risk being used at all.[\[1176\]](#)

690. On the subject of state of emergency, Mr Stanhope was asked whether it was a significant concern to him that one of the things that he was being briefed about was the possibility of a declaration of a state of emergency. His evidence was that it wasn't a particular concern to him. He was not aware that there had been no state of emergency in the ACT prior to this one. He repeated that the context of the discussions around the state of emergency, as he recalled it, was

the possibility of the ACT losing all of its power. It was Mr Stanhope's position that the discussion about the declaration of a state of emergency had nothing to do with the prospect of the fires hitting the suburban area.[\[1177\]](#)

691. In relation to the note in the Wall notes to the effect that Cabinet may need to be recalled to provide quick advice on priorities for which assets to save, Mr Stanhope did remember a discussion about the need to keep Cabinet involved and the need for Cabinet to be recalled if the circumstances changed to a degree where it was felt to be appropriate. He did not remember the subsequent discussion about the need for decisions to be made around the protection of particular infrastructure, nor did he recall the chances of a state of emergency being discussed in terms of percentages[\[1178\]](#). In connection with the note *suburbs of greatest risk Dunlop Weston Creek*, Mr Stanhope did not remember a specific discussion around suburbs being at particular risk. Mr Stanhope agreed that when there was discussion about the possible threat to urban Canberra, it wasn't being suggested that such a threat as there was, was imminent and then added: *It wasn't discussed as a real possibility*. According to Mr Stanhope, the references to risk to Dunlop and Weston Creek were not more than a theoretical possibility[\[1179\]](#). Mr Stanhope did not believe anyone asked what the chances were of the suburbs of Dunlop and Weston Creek being affected by the fires.[\[1180\]](#)

692. Mr Stanhope was not aware that there was discussion around how specific information might be provided to the public. He agreed that there was a discussion, which is reflected in the Cabinet Minute, in relation to enhancing avenues of providing information to the public through the engagement of Canberra Connect. According to Mr Stanhope no-one asked a question along the lines *given that the suburbs of Dunlop and Weston Creek by virtue of their position were the most vulnerable to any potential threat, what arrangements were in place to inform or warn occupants of those areas of the potential danger?*[\[1181\]](#) Further, Mr Stanhope did not believe it was raised by anyone at that time that there was a need to advise the community about potential interruption of the power supply[\[1182\]](#).

693. The last witness to give evidence concerning the Cabinet briefing was Mr Robert Tonkin. Mr Tonkin recalled being provided with the briefing paper. He did not recall reading it, but he accepted that he would have done so. He did recall reading the reference in the briefing paper to *potential serious impact to ACT forests pines and subsequently the urban area*. He did not recall being particularly concerned about the reference, *because of the overall context in which it was presented. It wasn't stressed as an area – as an issue of significant concern in the presentation*. The reference in the list of assets under potential threat to the urban edge also did not concern Mr Tonkin. *I was concerned in a sense about all those areas but, if you go to the particular aspect of the urban, the urban edge is in my definition the area from the back fence to the open area rather than the built environment. So that's an occurrence which occurs and occurred in 2001*. Mr Tonkin agreed that the reference earlier in the briefing paper to the *urban area*, went beyond the back fence but *within the context of the overall briefing*, that did not raise in his mind whether or not there was a need at least to warn people in the relevant urban areas that this was a potential threat.[\[1183\]](#)

694. Mr Tonkin did recall the reference to the following Monday being a 1:40-year weather event and the fire event was already a 1:20-year fire event. He did not recall the reference to conditions

being worse than or equal in 1983[1184]. Mr Tonkin included in his note a reference to the 1:40-year weather and *already a 1:20-year fire event*. He also recalled making the note that the Uriarra forest was at 70% risk but did not remember who told him about that. The forest being at risk was a concern to Mr Tonkin but he didn't recognise at the time that if the Uriarra forest was at 70% risk there was a risk to areas much closer to the suburban area including the Stromlo forest. Mr Tonkin did not recall anyone asking what the consequence of a 70% risk to Uriarra forest would be[1185]. Mr Tonkin did not recall Mr Stanhope asking a question about how close the McIntyre's fire was to the nearest forest but had every confidence in Mr Kwaitkowski's note taking. He did recall discussion about concern for the MacGregor substation and the powerlines that supply them. However, he had no recollection of a discussion noted by Mr Kwaitkowski where Mr Keady raised other important potential affects including references to urban periphery and urban fire fighters[1186].

695. According to Mr Tonkin, *the potential impact of the fire coming closer to the city certainly was discussed*. He did not recall anyone raising the issue as to whether or not it was appropriate to warn people who lived in affected areas about that potential. He did recall discussion about public information systems. The discussion was *simply about having in place a system whereby you can provide more information to the public should the need arise*. Mr Tonkin did not recall anyone asking about the circumstances in which that public information system might be activated[1187].

696. On the discussion concerning the declaration of a state of emergency, Mr Tonkin's general recollection was that Mr Castle said he was raising the question of a declaration of a state of emergency *just in the general run of contingencies that the most extreme contingency could occur that you would require a state of emergency. It is as simple as that: a description of process*. According to Mr Tonkin, the relevant extreme situation was not defined. According to Mr Tonkin, Mr Castle was not saying that there is a realistic chance of these fires would hit the suburbs and in those circumstances there would need to be a declaration. It was simply a discussion of process. Mr Tonkin was clear that no particular reason for a state of emergency was discussed to his recollection. He was quite confident about that. He did not recall anyone asking why they would need a state of emergency. Mr Tonkin agreed that there hadn't been a state of emergency declared in the ACT possibly ever and that it would be a dramatic response, but his recollection was that nobody asked Mr Castle why the situation might get to a point where such a declaration might be required[1188]. Mr Tonkin did not recall a discussion that the chances that a state of emergency would have to be declared were 40-60% as referred to in the Wall notes, but he did recall discussion prompting the reference in the Wall notes to *significant arson activity*.

697. In relation to the note referring to Dunlop and Weston Creek as the suburbs of greatest risk, Mr Tonkin gave evidence that: *I recall a general discussion about the whole western extremity of the territory which runs from Dunlop to Southern Tuggeranong...what I am suggesting to you is whether that is a complete list of what was discussed – it was more a western extremity of the city*. He did not recall a specific reference to Dunlop or Weston Creek nor to any discussion about the potential need to warn people in Dunlop or Weston Creek or the areas in between. There was no discussion that Mr Tonkin could recall about the circumstances in which a warning could or should be issued to the suburban occupants of the western edge of Canberra. According to Mr Tonkin, the discussion was to the

fact that a mechanism would be put in place to enable such warning to be given, but there was no discussion about the circumstances in which they would occur.[\[1189\]](#)

3.5.2.4 Morning Planning Meeting

698. The planning meeting minutes for the morning of 16 January 2003 confirm that Mr Graham opened the meeting on behalf of Mr Lucas-Smith[\[1190\]](#). Mr Castle and Mr Lucas-Smith were at the Cabinet briefing and did not attend the planning meeting[\[1191\]](#). Mr Graham provided a report on fire operations. Under the heading *ACT Fire Brigade Operations*, the minutes record that: *the ACT Fire Brigade is focusing on outlying structures and there will be a planning meeting this afternoon to discuss the potential for a Structural Rural Task Force. ACT Fire Brigade and the ACT Ambulance Service are to meet to discuss urban contingencies*[\[1192\]](#).

699. Mr McRae was asked whether he could recall what contingencies were being referred to. He answered: *both of those 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 the management of the bushfire.* Mr McRae did not have a recollection whether there was any discussion as to when those impacts were anticipated to occur. *My expectation would be we were still telling them Monday was a likely day for the impact*[\[1193\]](#). Mr McRae was then asked about what if anything was being planned in terms of warning the Canberra community, which was followed by a lengthy passage of evidence when Mr McRae discussed his role initiating the trigger for messages to the Canberra community. This evidence is referred to below under the heading *The McRae Trigger*.

700. Mr Graham was asked about references in the Cabinet briefing paper to potential serious impact to the ACT forests pines and subsequently to the urban area and to the urban edge being an asset at risk. He did not believe that anyone spoke to him about the potential serious impact to the urban area late on Wednesday or on Thursday morning and he reiterated earlier evidence that it wasn't a potential that he identified at that time. Mr Graham confirmed that the weather reports of the morning planning meeting did not indicate any significant change in the outlook for the weekend and the following week. So far as he was concerned, Saturday was still going to be a bad day and Friday was probably the deadline for completing containment strategies. Mr Graham felt that completing the containment strategies for Bendora by that time *was a very real possibility. With Stockyard, I felt that that was achievable too as long as we moved quickly...it was certainly I think for Stockyard becoming a little tight.*[\[1194\]](#)

701. Concerning the reference in the minutes of the planning meeting to the ACT Fire Brigade and ACT Ambulance Services meeting to discuss urban contingencies, Mr Graham remembered the discussion regarding the formation of the Structural Rural Task Force but could not remember what was being discussed about *urban contingencies*. He did not know why the ACT Fire Brigade and ACT Ambulance Service would be talking about discussing urban contingencies on the morning of 16 January. However, he agreed that the reference in the minute would indicate that it was recognised that there was some potential threat to the urban area.[\[1195\]](#)

702. Mr Bennett had an actual recollection of attending the morning planning meeting on 16 January. Mr Bennet explained that the extent of his *verbal input at the meeting* was in relation to reporting on what the intended activities of the ACT Fire Brigade would be in the near future. *I had approached Mr Lucas-Smith on the Wednesday in order to establish an appropriate time to provide an overview and briefing to additional fire service officers. In fact, what I was reporting to...that planning meeting was that this meeting was to occur that afternoon and that following on from that meeting we would be looking at what plans we needed to put in place, subject to requests for further involvement.* The sentence including reference to the Structural Rural Task Force was encapsulating that, following from the briefing Mr Lucas-Smith was to give, the ACT Fire Brigade would be looking at a potential increased involvement outside the urban area. According to Mr Bennett, the information he had on 16 January that led him to believe that the ACT Fire Brigade would have to have an increased participation in the rural areas outside of Canberra was, *essentially... the weather that had been predicted, and the fact that it was evident that the bulk of the resources of the ACT Bushfire Service were engaged, and that collectively we would need to be able to cope with any further escalation*[\[1196\]](#).

703. Mr Bennett's reading of the sentence referring to discussing urban contingencies was that *during that meeting, I think probably at the time, I told the meeting that we would be having this planning meeting that afternoon.* The planning meeting was to involve representatives of the ACT Ambulance Service. The urban contingencies that were to be discussed were essentially *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.* Mr Bennett could not recall any discussion at the planning meeting about contingencies needing to be looked at in the context of a threat to the urban environment.[\[1197\]](#)

704. According to Mr Bennett, the weather was the thing that stuck in his mind from that planning meeting. Nobody said to him before that meeting or during that meeting that there was any threat to the urban environment of Canberra from the fires that were burning in the mountains. His understanding when he left the meeting was *essentially that the work that was currently being conducted in those western areas in and around the ACT would be of particular importance over the next couple of days; that the window for continued containment or successful containment had somehow narrowed; and, as I mentioned before, it was probably the time at which we looked – or I was considering that we would go from an essentially passive role outside these fires to needing to be in some way, shape or form prepared should we be called upon.*[\[1198\]](#)

3.5.2.5 Midday Press Conference

705. At approximately 12:00 hours on 16 January 2003, Mr Lucas-Smith and Mr Castle gave the first of a series of daily press conferences concerning the progress of the fires. A transcript of the press conference on 16 January 2003 was provided by the ACT Government Solicitor's Office during the evidence of Mr Castle[\[1199\]](#). The transcript discloses that Mr Castle commenced the press conference by discussing the assistance to be provided by the NSW Rural Fire Service and resources already made available by the Commonwealth. Mr Castle then handed over to Mr Lucas-Smith *to talk about developments and issues and our strategies on the fire and anything you want to ask.* Mr Lucas-Smith commences his part of the press conference by describing the progress of

containment of each of the Bendora and Stockyard fires, before referring to the anticipated deteriorating weather conditions: *The Bureau of Meteorology indicating to us very clearly that Friday and Saturday are going to be difficult fire management days and certainly Monday and possibly Tuesday could also be days that will be worse than Friday and Saturday. So we are gearing up for some very difficult times in front of us for the next 5 days. Whether we can hold our fires on the lines that we prepared will be an interesting thing to watch but we're 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 the strong winds and very hot temperatures start to come forward*^[1200].

706. Later in the press conference Mr Lucas-Smith is asked about evacuation of residents in the Brindabella region, and he answers: *I can't answer that question you need to ask NSW that, we do have jurisdiction line between the ACT and NSW, we're cooperating very very closely in our, all our efforts and we are operating to similar objectives and we are operating on a basis of coordination and resource deployment. The NSW, what happens in NSW as far as evacuations and those other things you need to be talking to the Queanbeyan Fire Management Centre.* Discussion then returns to the Bendora and Stockyard fires, before Mr Lucas-Smith is asked question that commences: *how far.* The balance of the question is indecipherable. Mr Lucas-Smith answers: *There is still a long way, over 20km away if you talk about Canberra it's the urban development areas, they're over 20km away from the urban areas. At the moment I don't think there's any threat to the urban areas, certainly see a lot more smoke than what they've seen in the last few days and even the smoke haze that we've had for the last two days, they'll see a lot more thicker smoke over the next few days but the fire's got a long way before it starts to threatening the ACT community* (emphasis added).

707. The next question Mr Lucas-Smith is asked is: *The more concerns about the McIntyre's Hut fire could come down and threaten the ACT pine plantation, what's the latest development?* Mr Lucas-Smith responds: *Certainly, that's always been a concern to us. That was the very reason why the ACT insisted that Yarrowlunla Shire in the first instance wanted resources to McIntyre because we had fires of our own, it had potential to significantly impact on Uriarra pine plantation, and so we wanted to protect that. Their eastern and southern boundaries of the McIntyre's fires have been backburned and appear to be holding well and they're feeling very confident about those. There was some spectacular fire on the hills last night if anybody went out in the dark and had a look they would've seen quite a number of major runs running up in the Brindabella areas, but they were well inside the control lines and that the McIntyre fire, inside the McIntyre fire burning out.* Mr Lucas-Smith is asked whether there are any houses under threat at the moment and he answers: *No there's no houses under threat. The closest property that I am aware of that's under threat is more in the Brindabella valley than it is here, you need to talk NSW about that.*

708. Later in the press conference, in response to another indecipherable question, Mr Lucas-Smith says: *I think the next 5 days will be a critical period for us.* He is then asked how the fires compare to previous fires in the ACT. Mr Lucas-Smith queries how far they want to go back and, most of the question in response is indecipherable, except that it appears to be directed to whether the fires are the worst experienced by the ACT. Mr Lucas-Smith proceeds to describe the 1928 fires in the Brindabella valley burning into the ACT and burning across to Woden. *It burnt right in actually burnt the Woden homestead down in those fires in 1952 that's how far they came across, that's where the Woden township is now. In 1950, 39 and 1920's they didn't have any and our job is to keep the*

fire, we are not going to put these fires out by squirting water on them and we're going to have to ... In 1983 there was the Gudgenby fire in the ACT which burned about 33,000 hectares. That didn't threaten any community.

709. It is not clear whether any of this press conference was broadcast in news bulletins later that day. However, in an article appearing in the Canberra Times the following morning, there are a number of statements attributed to Mr Lucas-Smith which appear to be those made during the press conference^[1201]. In particular, the reporter Megan Doherty commences the article by identifying that the weather conditions facing fire fighters in the ACT and surrounding NSW were worse than those that preceded the 1983 Ash Wednesday disaster in South Australia and Victoria. She refers to the arrival of volunteer fire fighters from New South Wales and includes a comment by Mr Lucas-Smith concerning the *desperate need* for the New South Wales resources in terms identical to his remarks during the press conference. Ms Doherty then paraphrases Mr Lucas-Smith's comments during the press conference to the effect that while the Bendora and Stockyard Spur fires are running uncontrolled towards containment lines in the Namadgi, the nearest flames are still more than 20km on the outskirts of Canberra. The next paragraph of the article continues with reference to firefighting on the Bendora and Stockyard fires and concludes: *The fires have destroyed 6920ha of the Namadgi. The McIntyre's Hut fire in New South Wales has burnt out 6650ha.* This reference is immediately followed by a quote from Mr Lucas-Smith in the press conference that *"At the moment I don't think there is any threat to the urban edge [of Canberra],". Mr Lucas-Smith said. "We'll certainly see a lot more smoke than what we've seen in the last few days"*.

710. Although Mr Lucas-Smith was not asked in evidence about these comments in the context of the midday press conference (the transcript of the press conference was not then available to counsel assisting), he was asked about the comments attributed to him by the article in the Canberra Times, in particular the reference to the absence of threat to the urban edge. Mr Lucas-Smith was asked, in substance, whether the quotes in the article came from a discussion between he and Megan Doherty the night before and he answered: *I believe it is reasonably correct, yes.* The particular quote where Mr Lucas-Smith says: *At the moment I don't think there's any threat to the urban edge of Canberra* was put to him and he was asked whether that was genuinely his state of mind on the night of 16 January. Mr Lucas-Smith answered: *Yes, because I am still concerned about the rural areas. I am talking about the urban edge there. I am not referring to rural areas of the ACT. What I am saying is that I don't, at that stage – it says "at the moment", I think, whatever the words are... at the moment I don't there is.*^[1202]

711. Mr Castle was first asked about the references in the Canberra Times article on 17 January before the transcript of the press conference became available. It was put to Mr Castle that what Mr Lucas-Smith had said apparently some time on 16 January and reported in the Canberra Times that he didn't think there was any threat to the urban edge of Canberra was just wrong. Mr Castle answered: *On the face of the words that are written, it appears so*^[1203]. Later in his evidence, Mr Castle was referred to that earlier reference and then taken to the transcript of the press conference and agreed that it may well be that the Canberra Times was quoting from the press conference. He was asked: *We now have a precise transcript of what he said at the media conference: "At the moment I don't think there is any threat to urban areas." That too would appear to be wrong, wouldn't it?* Mr Castle answered: *That is what he is thinking.* Mr Castle was then asked whether he could explain

why Mr Lucas-Smith would be saying something to the Canberra public in a media conference that was different from what, on Mr Castle's evidence, was said 2 hours later to representatives of the ACT Fire Brigade and later still to the Australian Federal Police. Mr Castle answered: *No, I can't, other than he may have been thinking starts to threaten the community. He may have been thinking about immediate; in other words, the time frame. But that's – I don't know.*[\[1204\]](#)

3.5.2.6 Val Jeffrey E-mail.

712. At about the same time that Mr Lucas-Smith and Mr Castle were conducting the press conference, Mr Val Jeffrey sent an e-mail as a consequence of a conversation he had had with Mr Lucas-Smith[\[1205\]](#). In his statement, Mr Jeffrey described that on either 15 or 16 January 2003, Mr Lucas-Smith contacted him by telephone. *He rang to ask me to pass on his thanks to our members for their efforts over the past week's efforts. I told Peter I would pass on his thanks and in conversation I suggested that even if they got the containment lines in, that they wouldn't be deep enough to hold the fires when the bad weather came. Peter replied saying, "I agree with you 100%". That ended the conversation*[\[1206\]](#). The e-mail was sent to all of the operational members of Mr Jeffrey's brigade[\[1207\]](#). The text of the e-mail 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 is 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 CFCO 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...*[\[1208\]](#).

713. Mr Jeffrey confirmed in evidence that the reference in the e-mail to the prospect of holding containment lines was something that he and Mr Lucas-Smith *definitely discussed...* *I suggested to him that the containment lines, even if they were completed before the bad weather came, they wouldn't be deep enough to hold the fires when that bad weather came. And Peter said he agreed with me 100% on that*[\[1209\]](#). It was put to Mr Jeffrey in cross-examination by counsel on behalf of Mr Lucas-Smith that Mr Lucas-Smith did not express agreement with Mr Jeffrey's proposition that the fires would definitely breach their containment lines but Mr Jeffrey repeated that his recollection of the conversation is as it is in the statement. Counsel later put to Mr Jeffrey that what Mr Lucas-Smith might have said was that there would be difficulty in keeping fires behind the containment lines if the weather turned bad. Mr Jeffrey's position remained that his recollection of the conversation was as appears in his statement[\[1210\]](#).

714. Mr Lucas-Smith's evidence was that the e-mail did not entirely reflect the conversation he had with Mr Jeffrey. He agreed that he rang each volunteer brigade captain in the ACT and asked them to convey his thanks and appreciation for their continued strong efforts, however he took issue with the suggestion in the e-mail that he agreed with Mr Jeffrey's assessment of the likelihood of the fires escaping the mountains. *No, I certainly didn't put it in those sort of terms. I think they are Mr Jeffrey's words. There is no doubt whatsoever I would give him a very accurate assessment as to what was going 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. He did not put the position as plainly as suggested by Mr Jeffrey. I said I would believe that we would have difficulty holding our lines. I didn't say it would happen.[\[1211\]](#)

3.5.2.7 *The McRae Trigger*

715. In order to attempt to understand what would be required, at least in Mr McRae's mind, before a public warning was issued, it is necessary to endeavour to understand Mr McRae's evidence about the *triggers* for such a warning.

716. In the context of the reference in the minutes of the morning planning meeting on 16 January to the ACT Fire Brigade and ACT Ambulance Service meeting *to discuss urban contingencies*[\[1212\]](#), Mr McRae affirmed his earlier evidence that *we were still telling them Monday was a likely day for the impact*. He added that: *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 the management of the bushfire*. Asked whether he was aware of what, if anything was being planned in terms of warning the Canberra community about that impact, Mr McRae gave evidence that: *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. We had brought Canberra Connect in to be a key stake holder in the liaison between emergency managers and the community because they have quite considerable capability for disseminating messages and taking phone call from the community. They were seen as a key part of any strategy for dealing with the community in the city, should the city come under threat. There were also people planning the likely wordings for things and how to structure messages, that sort of general content*[\[1213\]](#).

717. Mr McRae did not recall any discussions at any time on 16 January about getting a message to the Canberra community in words or in substance to the effect that it was likely that the fire would impact on the Canberra urban community on Monday. Asked if any work was being done at all to deliver that message at about this time Mr McRae responded: *My understanding is that there was work going on behind the scenes. 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 for when they would need to start producing such messages*[\[1214\]](#) (emphasis added).

718. Mr McRae explained that the media people or others who may have been involved in that work were waiting to be told by Mr McRae or his unit that it was time to get the message out. He did not tell them that the time had come on 16 January because he didn't believe that it had[\[1215\]](#). Given the importance of Mr McRae's evidence to the effect that the media people or others who may be involved in the work of producing warning messages were waiting for Mr McRae or his planning unit to *activate the trigger* for the media people to start getting that message out, it is appropriate to set out in full the exchange that followed that evidence.

Q. You've already agreed, I think, that you thought it was likely that there would be an impact on the urban area on Monday. Why wouldn't, you having identified that, it be appropriate to take steps to alert the urban community to that likelihood

A. There wasn't a need to alert the entire urban community. As I said before, 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 breakouts, 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

Q. Why wouldn't, Mr McRae, you'd be at least identifying to the community even generally – or more specifically on the western side of Canberra – that it was likely that on Monday the fire would impact on them or may impact on them? Why wouldn't you give them as much warning as possible?

A. We were telling the community an awful lot of things that we would make them aware that there was a bad fire situation in the ACT and that the community needed to be careful. Now, we were telling people that there were road closures and that certain lands were being closed. We were telling people not to do certain things. We felt that that was an appropriate first level of advice to the community, which would be escalated as the situation evolved.

Q. If you have identified by the 16th, the Thursday, that it was likely that the urban community would be impacted on the Monday, why wasn't the urban community been told that as soon as that was being identified?

A. We didn't know which part of the urban community to work with.

Q. Does it matter, Mr McRae? Why can't you just tell the whole urban community, "Look, these fires will impact or are likely to impact on urban Canberra on Monday"?

A. My view of the matter was that we shouldn't be giving a 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. [\[1216\]](#)

719. Mr McRae agreed that the way the ESB was communicating with the community at that stage about the fires was via interviews and media releases and gave evidence that he wasn't directly involved in the interviews or media releases. According to Mr McRae, he did not have direct discussions with Mr Lucas-Smith or Mr Castle about what should be said and how the threat should be identified. There were briefings during planning meetings and on other occasions but no direct discussion on the exact content of the media material [\[1217\]](#). After a series of objections concerning the form and repetition of questions, the following exchange occurred:

Q. Just to make it clear, I will slightly rephrase it. I understand, Mr McRae, that you weren't involved directly in the interviews or media releases so I will ask you: can you explain why it wasn't thought appropriate for the ESB to take the opportunity to identify to the Canberra community that it's likely that the fires will impact on Canberra by Monday?

A. I don't have an ability to explain why the decision was made the way it was, except to say that there is a fairly complex and detailed area of expertise involved in liaising with the community and there were people involved in doing that job who were aware of those complexities; and I am not.

Q. Do you think, Mr McRae, that someone, whoever was responsible for communicating and had those skills, should have been saying to the Canberra community that the ESB or personnel within the ESB expected that it was – felt – or considered that it was likely that the fires would impact on the Canberra urban area by Monday; do you think that is something that should have been done on the 16th?

A. I am not aware of the complexities of dealing with the community in terms of emergency warnings, so I don't know.

Q. You don't have a view one way or the other as to whether that is something that should have occurred on the

16th?

A. No. I don't.[\[1218\]](#)

720. The inquest then adjourned for the day, but the theme of triggers for warnings to the community was returned to when Mr McRae recommenced his evidence the following morning. Mr McRae was again asked why was it not appropriate on 15 or 16 January to be telling the media people that *our planning is suggesting that there is likely to be some impact on the western side of urban Canberra on Monday and people should be told about this so they can begin to prepare*. Mr McRae responded: *At the time we made certain decisions on the levels of fire activity and the triggers that they cause for activating warnings to the community. And these were based on what was currently going on and what was forecast to go on. The decision that was made was that we hadn't yet reached the point where we needed to do that. What we forecast was the critical thing.*[\[1219\]](#)

721. According to Mr McRae, the discussions that he was referring to where the topic of providing some kind of warning to the urban community was discussed would be primarily the planning meetings as minuted. *My recollection is the discussion that went on in these meetings was aiming to give people a full appraisal of what we thought would be happening*. Mr McRae was reminded that at the planning meeting on the afternoon of 15 January he had given some clear and dire warnings to those present and that at the meeting on the morning of 16 January there was reference to urban contingencies. He was asked whether it was in that sort of context that the issue of warnings and messages to the community was being discussed. He gave the following answer: *Well, there are a number of different things which have been confounded in that. When going through those items, the way I viewed it is the way that I am required to view it as a risk management strategy looking at the risk. The professional definition under Australian Standard 4360 that allows you to assess a risk and then to look at the possible risk treatment options. In terms of risk treatment options, there are a number of avenues open to us, and the activation of those risk treatment options weren't necessarily to happen at the same time. The first thing that we do in the Emergency Services Bureau, and in fact in emergency management, is to make sure that the emergency response agencies are fully up to speed and that their capability is 100% available. In a situation like this, the first risk treatment option is to have emergency response crews trying to intervene to reduce the likelihood of an impact. Once the situation escalates beyond that, then you look at other processes that might be required. Now when it comes to getting the community as another stake holder involved in risk management, there are a number of different levels at which that can be done. A good precedent is the way the Bureau of Meteorology warns the community on severe weather events like thunderstorms. They can issue an advice. The difference between an advice and a warning gets a little problematic, but the general product that is issued is along the lines of "we forecast that there could be thunderstorms in this area this afternoon". The next level of warning is that is issued is "we are currently tracking a thunderstorm going through places x, y and z. People in these areas need to take certain steps to reduce the potential impact of these storms". Now if you take that concept into the bushfire situation, the work that was being done by the media is under that first category. And in the second category, I was looking at being able to tell the media people, "We are tracking a fire that is threatening these people". These are the people that you need to get actively involved in making sure they are safe should the fire actually reach the urban interface. And we were also dealing with the rural community. In fact, the rural community were going through these processes well ahead of the urban community. So the media unit was putting out the first level of product. You could argue about the content, as you seemed to do*

yesterday, but in my view the media products that were going out were achieving that first general level of warning to the community.

Where I talk about the trigger that we were waiting for, that would be the trigger along the lines that we are tracking fires heading towards certain suburbs and we will be dealing with people living in those suburbs making sure they take appropriate and timely actions to make sure they are safe should the fire eventually reach those suburbs.

Q. The sort of actions that people would need to take, Mr McRae, time permitting, would include clearing garden areas, cleaning gutters, getting valuables identified and perhaps moved to a safer area. Those are the sorts of actions that people could expect to take if there was a suggestion of a threat from fire. That is the sort of thing, isn't it?

A. Sorry, "a suggestion of threat" which of the two levels do you mean by that phrase?

Q. Any suggestion. Once there is a risk identified, the sorts of actions that people would be taking would include those sorts of steps wouldn't they?

A. If there is a general threat or a risk, call it what you want, identified then the goal is to have the community at a generally heightened state of awareness that they may need to take some steps. Some people may see that as a need to gather belongings and put them in the boot of the car, for instance.

Q. What about clearing gardens, as people were doing this, I think you would be aware, in other parts of urban Canberra after Saturday the 18th. There were certain people in areas of Canberra spending quite a bit of time clearing out their gardens and taking trailer loads of material to the tip; that kind of thing was going on?

A. Indeed, that did take quite a bit of time. Our preferred strategy is and always was to take the opportunity at the beginning of the fire season to tell people that they would need to make their house and property safe from bushfire. A lot of those actions, it's really too late to consider doing at this stage.

Q. Mr McRae, that's the very point, isn't it? You indicated earlier in your evidence that although you had made certain assumptions about the level of understanding of the urban Canberra community of the risk of fire, no surveys or detailed analysis have been done to indicate to you how well that understanding had penetrated into the urban community. You just didn't know, did you?

A. No, we didn't know but...

Q. In those circumstances, Mr McRae, what I don't understand is why, when the risk was identified, albeit 4 or 5 days off, that wasn't seen as an opportunity to go out to the community at that stage and even in a general sense say to the urban community, "Look, we think it's likely that there will be some impact on the western side of Canberra from these fires by next Monday and you should start preparing", why wasn't that done on the 15th or 16th of January?

A. It's a very long question. I am just trying to work out all the bits in it. Please bear with me. As I have said, in terms of the media products, I wasn't 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.

Q. That doesn't quite answer the question Mr McRae. Is that answer indicating that, at least as you understood it, because you weren't involved in the detail of what was going on, you were assuming that kind of message was being delivered?

A. I was assuming that the people doing the message were professionals and doing their job to the best of their ability. Yes, I was.

Q. On your evidence yesterday, it was the planning unit's responsibility, as I understand it, to provide the trigger for those messages. Is it your evidence that you had provided sufficient information to identify that there was a trigger for at least that kind of general message?

A. There are a number of triggers, as I have said already. Some of those triggers, as I have said already, had been activated. The final trigger that you seem to be referring to we never saw the need to activate. Yes, that's true. We didn't see a need to activate it.[\[1220\]](#)

722. There was then a discussion about whether the questions were referring to the final trigger, which was telling some part of the community that they needed to take active steps to ensure their safety or the one before that, during which Mr McRae indicated that he had no expectation that what happened on Saturday 18 January would happen. *It was totally unexpected that the fires would all evolve into plume driven fires and be driven by totally different drivers than those we anticipated.* He explained that his expectation was that they would have to deal with a number of runs by fires that would make approaches towards the urban interface at different times and different places and the response crews would have varying levels of success in stopping them. He then gave evidence that: *Traditional damage to the urban interface in Canberra, as I said before, indicates the first row of houses and may be another two rows of houses back. There was nothing at all on my radar screen, to use a figurative term to indicate the impacts that did occur. In terms of the impacts that we expected to occur, my belief is that my decision and the information given to me by people for me led to appropriate levels of trigger setting for what we anticipated.* [\[1221\]](#)

723. Mr McRae was referred to earlier evidence he had given concerning what an impact to the urban area Mr McRae might have expected. Ultimately the concept which Mr McRae articulated was that: *We would probably pull up the head fire right on the urban interface. But what a lot of people call the momentum of the fire in terms of embers and fire brands would be likely to cause some damage up to three rows of houses in*[\[1222\]](#). The following exchange then occurred:

Q. Adopting the concept you just articulated, was that an impact that you were contemplating as a level of impact that might occur by Monday?

A. You previously used the word 'precisely'. I can't support the use of the word 'precisely' but in general terms that's what I was anticipating.

Q. Given that, Mr McRae, I am probably repeating myself but I will ask one more time: Why wasn't it thought appropriate to provide a general warning to those who might suffer that kind of impact of that possibility?

A. Well, two parts to that. 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.

Q. I know this may involve jumping ahead of ourselves a bit, but when did you believe the trigger or when did you activate the trigger, to use your terminology, for that kind of warning?

A. Well, it's a complex answer. Do you want a complex answer right now?

Q. No. What I want to know is, you've used the expression it was a matter for your unit, the planning unit, to tell the media people and I think your terminology was to activate...

A. If you don't want the complex answer, the answer is the way the fires evolved, I didn't get the opportunity to do that. We were overrun by circumstances.[\[1223\]](#)

724. Asked whether he would agree with the view that at midday on 16 January there was not any threat to the urban area of Canberra, Mr McRae said he needed to know what was meant by the word *threat*. He was offered a working 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 Mr McRae responded: *you use risk in your*

definition. That doesn't help me, I am afraid... It is a professional problem we have. We always have to struggle with these words. I am not being difficult. Mr McRae agreed that a threat is something that may or may not eventuate and it was put to him that the effect of his evidence, when he identified that it was likely that there would be some impact on the urban area of Canberra by Monday, was that there was a threat of the fire impacting on the urban area of Canberra. He said: *If we use that terminology, I won't disagree with it.*[\[1224\]](#)

725. Mr McRae was then asked about Mr Lucas-Smith's comment at the midday media conference to the effect that he didn't think that there is any threat to the urban areas. After a series of objections and discussion, Mr McRae gave evidence concerning the words he had used and those used by Mr Lucas-Smith at the media briefing as follows: *If you want to compare the words used by Mr Lucas-Smith and myself, it would be my feeling that the discrepancy, at least in part, arises from your requiring us to use a simplistic definition of "threat". If you looked at a more detailed and complex definition of it, then perhaps the differences can be explained. A lot of concepts to do with describing a fire and a fire's behaviour have what we call scaled dependent properties. When you start thinking about things on different scales, it is not just spatial scales across the landscape but also time-frames. You have heard me talk about time frames on a number of occasions in my evidence. That's part of what I do, thinking in different scales professionally.... so if you take a broader scale, which includes a broader time frame, then you are recognising perhaps the threat of something on a big scale occurring. But if you change your scale to a narrower one, then it is quite valid to say there is no threat. So if Mr Lucas-Smith was talking on a narrower time frame than I, we can say different words about the same thing and yet still not be in conflict. I don't know if that assisted you or not, but it's the way I view things.*[\[1225\]](#)

3.5.2.8 Briefing of the ACT Fire Brigade and ACT Ambulance Service

726. At 14:00 hours on 16 January 2003, Mr Lucas-Smith conducted a briefing of representatives of the ACT Fire Brigade and the ACT Ambulance Service. According to Mr Lucas-Smith the idea of 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*[\[1226\]](#). No representative of ESB was present at the briefing apart from Mr Lucas-Smith[\[1227\]](#).

727. Mr Lucas-Smith thought the briefing was shorter than 40 minutes. He accepted that it could have been 40 minutes, *but I think that is a bit unlikely. I was actually trying to keep it brief.* Mr Lucas-Smith agreed that he began the briefing by outlining the weather, including a reference to forecast temperatures in the mid 30's with winds from the west to north-west of 25-40km predicted for Friday. He remembered saying: *Wind speed and temperature would both increase over the coming days until it peaked on Monday with temperatures around 39°. Monday was predicted as the worst fire danger day in Canberra's history.* Mr Lucas-Smith was then asked whether he remembered saying something to the effect that there was a 50-50 chance that the fires would break containment lines driven by the westerly winds, as recorded in the statement of Mr Cartwright[\[1228\]](#). Mr Lucas-Smith accepted that he would have said something to the effect that *there was certainly going to be pressure on our containment lines as a result of these north-westerly winds. Whether I would have put some sort of probability*

percentage on it, I would think it is unlikely. He did not remember saying there was a 50-50 chance[1229].

728. Mr Lucas-Smith confirmed that he had on the wall a simple map of the ACT. He had marked on the map where some of the main lineal features were and where the current fires were burning. He did not have a map that had anything printed on it in relation to fire history. He remembered drawing on the map with a texta to outline what the history was. Mr Lucas-Smith agreed with Mr Cartwright that he made the point that each of the fires in the years 1939, 1952 and 1985 started in the Brindabella Ranges and had a major effect on the ACT. He accepted that he might have said that this fire was doing the same kind of thing. He also remembered discussing the 1952 fire and agreed that: *If I was giving a bit of a potted history of those fires* he would have referred to the 1952 fire coming through to where the Woden Hospital now is[1230]. However, Mr Lucas-Smith did not recall saying: *These fires will do the same as the fires in 1939, 1952 and 1985, that the western suburbs of Weston Creek and Tuggeranong were at risk.* His evidence was that: *I certainly recall talking about areas at risk, but being that specific I certainly don't recall and I think it is doubtful that I would have said such a thing... 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.*[1231]

729. Mr Lucas-Smith was next asked about the reference in Mr Cartwright's statement and his handwritten note of the meeting[1232] to Mr Lucas-Smith saying in the course of the meeting in effect that he did not want the public alarmed and that the information he was imparting at the briefing was not to leave the room. Mr Lucas-Smith answered: *I certainly don't recall making that sort of a statement.* Asked if he denied making it, Mr Lucas-Smith responded: *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*[1233]. Later in his evidence, Mr Lucas-Smith was again asked whether he said any words to the effect that he didn't want to alarm the public or the media. He said he didn't recall saying that and that it did not sound like the sort of thing he would say. *I might have said we were having a coordinated media response and that we needed everybody to be coordinated through the same media response arrangements. But that does not sound like me.* Mr Lucas-Smith did not recall a concern about alarming the public being a thought in his mind. However, he could not as categorical as saying that he never thought there was a problem about alarming the public and he never made any comment about alarming the public. *I might have said something [to that effect], but I certainly don't recall saying that.* Mr Lucas-Smith said it was unlikely that he said in the course of that particular part of the briefing that the information he was imparting was not to leave the room. And it was very unlikely that he said that if it got to the media he would deny it[1234].

730. In the context of being asked as to whether he made reference to suburbs at possible risk, Mr Lucas-Smith reiterated his evidence concerning the reason for the briefing: *The briefing that I was giving to the ACT Fire Brigade and what I was trying to do is engage the ACT Fire Brigade in the protection of rural properties. I was not talking about urban edge of Canberra. I was talking about rural properties, and I was talking about structure protection in the rural environments of the ACT*[1235].

731. Later in his evidence, the statements and taped records of conversation of other personnel present at the briefing were put to Mr Lucas-Smith. In response to a comment by Mr Barr to the effect that Mr Lucas-Smith had said what he was saying in the media was one thing and what he really believed about what was going on was something different, Mr Lucas-Smith's response was: *I don't think that is true. I was certainly speaking in a very frank tone to them. They were fellow fire fighters, and we were talking in the context of firefighting and in relation to command and control issues and general firefighting issues, and we really weren't mincing our words, so to speak. I certainly – I wouldn't talk like that to the media. Maybe I was talking in the context of a fire spread or something and a comment could have even been made to me, "Is that what you would tell the media," and I would have said "No".* According to Mr Lucas-Smith, he was not trying to give the impression in the meeting that he was downplaying in public the prospects of the fires affecting suburban Canberra whereas in fact he believed it was a strong possibility. He did not agree that there was a conscious distinction between what he said in the media about the risks to the urban area of Canberra and what he really believed.[\[1236\]](#)

732. Mr Lucas-Smith also did not accept that Mr McLeary's version of what Mr Lucas-Smith had said at the meeting was accurate[\[1237\]](#). In relation to the taped record of conversation of Mr Hobbs, Mr Lucas-Smith agreed that the potential existed that if the fires did get into the pine plantations there was a likelihood that the fires would reach Mt Stromlo pine plantations and impact on the Stromlo Observatory and settlement and he *could very well have said that*. He also agreed that he *could very well have said that* if the fire reached the base of Mt Stromlo, he was going to withdraw the fire suppression crews because Mt Stromlo was an undefendable position and there would be loss of life if people were left on the mountain. He *may have extended the conversation* to the extent of saying that if the fires did reach the Mt Stromlo pine plantation that they would almost certainly get into the Duffy pines and that if that were the case we could expect fires to get into the suburbs, but he did not recall saying that. Asked if he would allow for the possibility that he did say that, Mr Lucas-Smith responded: *Oh, well, as I have said, our planning is already indicating to us that this is the case.* Mr Lucas-Smith also agreed that Mr Hobbs was correct in his taped record of conversation when he said: *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*[\[1238\]](#).

733. Finally, Mr Lucas-Smith was asked about the taped record of conversation of Mr Ross, including Mr Ross's reference to Mr Lucas-Smith *raising the concern that if the weather conditions did come that they predicted and if the fires jumped their containment lines that they would get into the pine forests around the ACT, and with the strength of winds he sort of mentioned to the effect that Weston Creek area was the area of most vulnerability if it did happen.* It was put to Mr Lucas-Smith that, to that point, Mr Ross's comments were not in contention except perhaps his reference to the area of Weston Creek. Mr Lucas-Smith responded: *It's a statement that I have made for quite a number of years that in the event that a fire was to get into the Stromlo pine plantations, particularly the Narrabundah Hill area, the potential impact on Duffy would be quite high. I've been saying that for a decade or more.*[\[1239\]](#)

734. Like Mr Barr and Mr McLeary, Mr Ross in his taped record of conversation also referred to Mr Lucas-Smith emphasising that none of what he said should leave the room. Once again, Mr

Lucas-Smith's reaction to that was: *No, I don't recall saying that. But there was a fair bit of – as I said, this was discussion amongst fire fighters, there was a fair bit of free discussion, and there was a fair bit of humour, I suppose, added into the discussions towards the end. There is a whole range of different things that may have been said. But I find it extraordinary and I am having great difficulty understanding the logic of me making such a statement when the whole reason for that meeting was to engage the fire brigade into firefighting process and to alert them to the potential for impact on rural properties.* Mr Lucas-Smith did not agree that it was one thing to brief the fire brigade, because they are going to be involved if and when the fire strikes the suburban area, but what he did not want to happen was for the people of the suburbs to be aware of the risk because they would panic. *That certainly hadn't entered my mind at any time*[\[1240\]](#).

735. Much later in his evidence when Mr Lucas-Smith was being asked questions about the nature of the impact he envisaged at 12:00 noon on 18 January 2003, an extract was read to him from the statement of Mr Prince, Acting Superintendent of the ACT Fire Brigade [\[1241\]](#). In that paragraph, Mr Prince referred to a discussion with AFP Superintendent Mr Lines, in which Mr Prince had referred to flame heights 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.* Mr Lucas-Smith was asked: *In your mind's eye, so far as the impact upon Duffy was concerned, when you were thinking about it in the time leading up to that press conference at 12 o'clock, is that what you had in your mind, so far as the description of what the fire was going to look like?* Mr Lucas-Smith responded: *Certainly the fire was going to come through when and if it got into the Stromlo pine plantations, it was going to burn no different than the Uriarra and Pierce's Creek pine plantations. And they had burned very fiercely. Whether it had flame heights of 60-foot, I have got no idea.* After a brief comment concerning measuring flame heights, Mr Lucas-Smith continues: *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*[\[1242\]](#). Thus, according to this evidence of Mr Lucas-Smith, the *very reason* for the meeting with the ACT Fire Brigade involved preparations for an impact on residential structures in the urban area of Duffy and other urban areas abutting pine plantations.

736. In addition to the ACT Fire Brigade officers whose evidence as contained in the taped record of conversations that was put to Mr Lucas-Smith, the briefing was attended by Ian Bennett who was, at the time, the Fire Commissioner of the ACT Fire Brigade. In his evidence, Mr Bennett described that, at the briefing: *Essentially Mr Lucas-Smith provided, with the assistance of maps, initially a bit of a history lesson for urban fire fighters in some significant fires that had occurred within the district over the past 60 or 70 years. Two fires in particular, I believe to be the '39 and '52 fires.* Mr Lucas Smith indicated that the two significant fires *started to the north, north-west or the west of the ACT and I guess in a rough mapping he showed what the extent of the fire travel was in relation to the ACT...I recall Mr Lucas-Smith telling us that that fire had reached what today would be the Canberra Hospital.* Mr Lucas-Smith then discussed what the potential was for the fires in the Namadgi and the Brindabellas. Mr Bennett could not recall Mr Lucas-Smith giving a percentage or probability of containment lines successfully holding the fires. However, according to Mr Bennett, Mr Lucas-Smith did indicate during the briefing that *the overall success of various containment lines would be contingent on what the*

weather conditions would be[\[1243\]](#). As Mr Bennett understood it, the weather that was expected over the weekend, particularly with the winds from the north-west, would put some strain or pressure on containment lines[\[1244\]](#). However, according to Mr Bennett, there was some suggestion that the technology in the fire management strategies that were available in 2003 would make a significant difference in comparison to the outcomes in 1939 and 1952[\[1245\]](#).

737. Mr Bennett *vaguely* recalled Mr Lucas-Smith telling the meeting about how they should 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.* Mr Bennett took that to be a reference to the fact that the information they were being given was the same as had been given to the Cabinet that morning. Mr Bennett did recall words being used like: *Advised didn't want alarm public and media. This info not to leave room. Said he would deny it if it got to the media.* Mr Bennett added: *But I'd like to point out that I took that to be a reference in jest as a bit of a tension breaker and I personally didn't take that either as a threat or anything else.*[\[1246\]](#)

738. Mr Bennett could not recall any words used by Mr Lucas-Smith identifying specific areas of risk, but Mr Cartwright's note: *suburbs at possible risk from Namadgi fires was western suburbs of Tuggeranong and Weston Creek, would accord with the information. I have no reason to doubt the contemporaneous notes that Mr Cartwright would have taken*[\[1247\]](#). Mr Bennett explained in evidence that the information provided at the briefing put the ACT Fire Brigade on alert for the need to *respond outside the interface area...but also in preparation for any potential involvement closer to the city.* Mr Bennett *left the meeting quite clearly believing that Monday the 20th was going to be, at that point in time, a potential day of probably the worst conditions that we'd experienced to date*[\[1248\]](#). Mr Bennett was aware that after the briefing, the ACT Fire Brigade Incident Management Team was established. He immediately accompanied Mr Lucas-Smith into Mr Castle's office for the briefing of Chief Police Officer Murray and Commander Newton and he did not an opportunity to speak to his senior officers before that briefing.[\[1249\]](#)

739. In his statement, Mr Prince broadly summarised the briefing from Mr Lucas-Smith. *Mr Lucas-Smith told us that on Saturday 18th January and Monday 20th January the weather will present an extreme fire danger. Monday was seen as the major problem day at that time. At that time Mr Lucas-Smith stated that the local bushfires were within containment lines. He was hopeful containment measures would control the fires. Mr Lucas-Smith stated that on Saturday 18th January 2003, 45kph north westerly winds gusting up to 60kph were expected. He told us of a fire he was involved in during the early 1980's in Bundanoon that had spotted 15 kilometres in strong winds. The information from Mr Lucas-Smith made me feel gravely concerned. All the factors Mr Lucas-Smith had outlined indicated to me that the fires could well jump containment lines*[\[1250\]](#). In evidence, Mr Prince said that he could recall Mr Lucas-Smith demonstrating on a map where a number of fires had burned in the past. Mr Lucas-Smith showed that the 1939 fire had actually come into Canberra. According to Mr Prince, Mr Lucas-Smith was concerned specifically about Monday, 20 January and that with strong westerly winds, *the possibility of a fire coming from the west into the ACT urban area was there.* Mr Lucas-Smith *advised that he had seen fires in bad conditions spot some considerable distance and that was something we had to be concerned about.* Mr Prince recalled 15km spotting distances being referred to[\[1251\]](#).

740. Mr Prince had been asked during his taped record of conversation whether he could recall anything said about the likelihood of the fires escaping containment lines, Mr answered: *Obviously with fire weather conditions being predicted as extreme for both Saturday and Monday, the concern was that the containment lines that had been made in inaccessible country, in other words firefighting wasn't being conducted as normal, that there was likelihood with high winds that those fires may escape those containment lines.* On the question whether anything was said about impact on the ACT urban infrastructure, Mr Prince referred to Mr Lucas-Smith commenting on comments made by Mr Cheney. *I think that was on the Wednesday there had been a comment by him to say that if we do get a westerly, it was going to impact on the city*[1252]. In evidence, Mr Prince recalled Mr Lucas-Smith telling the meeting about an article from the previous day and that *Mr Lucas-Smith was concerned that Mr Cheney was advising the public that, as soon as the wind had turned west, it was going to impact on the city. Obviously there was going to be some time before that would occur, and again the fire behaviour conditions would have to be assessed on a routine manner before you could make that statement... To say that the fires were going to impact would depend on how firefighting is going to occur and whether or not we could actually keep it within containment lines*[1253].

741. Mr Prince was also asked during his taped record of conversation whether any comments were made as to the sensitivity of the information given out during the briefing, Mr Prince answered: *Certainly Mr Lucas-Smith was concerned and was – realised to every one of us that it was of a sensitive nature. We didn't want to alarm either the media or the public in relation to those fires*[1254]. This too was followed up during Mr Prince's evidence when he was whether that was said by Mr Lucas-Smith in the same context of his references to Mr Cheney's view being an alarmist view. Mr Prince's evidence was that: *I think as the incident controller the release of information to the public was that of Mr Lucas-Smith. In my view it was true and accurate. At that time he wanted to make sure that he was the only person that was going to be authorising the release of information to the public.* Mr Prince was then asked what Mr Lucas-Smith actually said about not alarming the media or the public and Mr Prince responded: *I think something along the lines that he wanted to make sure that the information stayed within the room and that he managed it – I can't remember the exact words*[1255]. In cross examination by counsel for Mr Lucas-Smith, Mr Prince agreed that, when fire fighters come together, there is often *touches of humour*. However, it was not put to him directly that comments Mr Lucas-Smith may have made about the information not leaving the room were made in jest. However, Mr Prince did agree that he did not feel under any constraint to deal with the information in any way that he saw fit[1256].

742. Mr Dutton gave evidence that he understood the purpose of the meeting with Mr Lucas-Smith was to brief the ACT Fire Brigade and ACT Ambulance Service on the current status of the fires and to provide a historical context by briefly summarising the fire history of the ACT. Mr Dutton *left that meeting with the impression that there had been a significant history of bushfires in the Territory and the scale of those had been quite significant in the past.* He understood that the territory was facing a bushfire that *represented a serious threat to the Territory and that the fire didn't respread any particular boundaries and could be widespread at times*[1257]. In his taped record of conversation, Mr Dutton stated that he thought it would be *unfair* to say that at the briefing by Mr Lucas-Smith it was predicted that the fire would impact on Canberra. But he thought *it would be fair to say that that was one of the scenarios that was presented at that time*[1258]. In evidence, Mr Dutton explained that he had the impression that there was a potential for the fires to enter pine forests and rapidly

progress towards Canberra and in particular the urban fringe. He understood that there was also concern for rural communities to the south of Canberra[1259]. Mr Dutton said in evidence that could not recall anything being said in the meeting about restricting the use of the information they were being given[1260]. After the briefing, Mr Dutton did not feel at all constrained about the information given to him at the briefing[1261].

743. Mr Collins in his taped record of conversation described the briefing by Mr Lucas-Smith as a *situation report*. He was able to tell us that he had a full list to command structure in place and that the fires had started on January the 8th, just to the west of the ACT border and 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 a 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. Mr Collins went on to explain that Mr Lucas-Smith provided some degree of comfort concerning the movement of large fires into the urban infrastructure because *today's technology, our awareness of the fires, our planning and the resources we had available [meant] that that was less likely to occur in today's environment as it did back then*. After referring to what Mr Lucas-Smith said about the weather, Mr Collins continued: *he also went on to say that he didn't mean to alarm us in any way or be alarmist but he provided us with quite a good warning that on Monday due to the weather these fires may impinge on the urban infrastructure*[1262].

744. In evidence, Mr Collins said he was not able to recall which fires Mr Lucas-Smith was referring to in his reference to the fires being *largely out of control and uncontained*, nor did he recall Mr Lucas-Smith referring to any particular location when discussing impact on the urban infrastructure. *It was more, we refer to the urban/rural interface and that's where, you know, our jurisdictions sort of like meet. He wasn't referring to any particular suburb, no*[1263]. Mr Collins left the briefing with the impression that there was a low probability of the fires breaking containment lines and making the runs that Mr Lucas-Smith had described[1264]. Mr Collins had a good recollection of what Mr Lucas-Smith said. *He was very clear, very precise and... I thought that I really needed to listen to what he had to say and as such I can still recall what he said today*[1265].

745. On the question of the sensitivity of the information provided at the meeting, Mr Collins noted that Mr Lucas-Smith was *very careful in not leaving any evidence or anything like that that could fall into inappropriate hands. Very careful not to be an alarmist but careful in passing on the situation to us*. Mr Collins could not recall Mr Lucas-Smith advising those present as to how to treat the information he was giving us. *I think he felt with the Fire Commissioner in the room and senior officers that... we would be able to process the information he was giving to us in an appropriate way.*[1266]

746. Mr Newham did not have a clear recollection of discussions concerning earlier fires. On the question of the fires remaining contained, Mr Newham understood from Mr Lucas-Smith's remarks that the prospects of the fire breaking containment lines was a genuine possibility. Mr Newham thought Mr Lucas-Smith *was indicating that intervention by the fire fighters wasn't going to have any real significant impact on the fires*. Mr Newham took that to mean that the fires would continue to

burn until something in the elements changed, such as the advent of rain[1267]. Mr Newham had some recollection of Mr Lucas-Smith referring to an approximately 50/50 chance that fires would break containment lines with strong westerly winds[1268].

747. Mr Newham was initially clear that one of the things that was discussed by Mr Lucas-Smith and others who participated in the discussion was the risk that there would be some impact on the Canberra suburbs. Mr Newham could not recall who raised it[1269]. He did not recall the suburbs from Tuggeranong to Weston Creek being described as being at possible risk[1270]. Later in his evidence he was more qualified in relation to the question of whether an impact on the Canberra suburban area was discussed at the meeting. *It may have come up in the meeting. My recollection and how I saw it was that there was a possibility – a strong possibility that the fire would break out of the Namadgi*[1271]. After a series of objections in the absence of Mr Newham, Mr Newham was asked again whether during the briefing Mr Lucas-Smith or anyone else at the meeting raised the prospects of these fires having an effect or impact on the Canberra suburbs. He answered: *Yes, it must have been raised. In what content and how, I do not know.* However, he could not recall *in specific terms. I can recall it as a topic. I can't recall a specific person saying that information and how it was raised*[1272].

748. Mr Newham could not recall the specific term *advised didn't want to alarm public and media* being raised and did not remember anything like *this information not to leave room* being said. Mr Newham did not say that it was not said, and explained that because of his role at the time, he could not categorically say that he was in the room for the entire briefing[1273].

749. Mr Cartwright (the author of the diary note put to other witnesses)[1274] confirmed in evidence that he took notes as Mr Lucas-Smith was speaking at the briefing and he transferred the notes to his diary later that day. He no longer had the original notes[1275]. Mr Cartwright later confirmed that his notes had been transcribed into his diary by 20 January at the latest because he remembered reading from his diary at a meeting of ACT Fire Brigade crews on that day. The crews were expressing frustration about what had occurred[1276]. Mr Cartwright considered that the original note of the matters discussed at the meeting was transcribed into his diary *I believe within 24 hours, most likely on the evening of the 16th. And I added the names to this later, I would suggest within a few days, realising then the importance as to who was at the meeting.* [1277] Mr Cartwright did not believe that he has made some errors when he took the notes down in his diary. He did not believe the notes inaccurately recorded what was said[1278]. Later in his evidence, Mr Cartwright described his notes as a summary of a 40 minute briefing[1279].

750. According to Mr Cartwright, the meeting took about 40 minutes. Mr Cartwright gave evidence that Mr Lucas-Smith *described the fires and the efforts have been taken by the Rural Fire Service to try to contain the fires...I think he may have described the location of some of the containment lines and the advance of the fires to the west. He then drew on a map on the wall. He drew the extent of the fires that had come into the ACT or were in the ACT and that came into Canberra in 1939, I think, in 1952 and in 1985. From memory, he showed on the map where Woden Hospital is now and one of those fires at least had certainly impacted right through to there. Of course the Woden Hospital wasn't there in 1952. And I think he drew arrows indicating the direction of fire travel and the extent that they reached into the Canberra area.* He believed the

reason Mr Lucas-Smith was doing this *was to inform the members in the room of the potential impact of the fires that were heading west and had been heading west for seven or eight days. And when the winds changed under the conditions that were predicted over the coming days, it was a real possibility that those fires could head east and impact on the urban rural interface.* According to Mr Cartwright, Mr Lucas-Smith said there was a 50/50 chance that the fires might break containment lines[1280].

751. Mr Cartwright had no doubt at all that what was being discussed as a possible consequence of the fires was a risk to urban dwellings[1281]. In relation to the reference in Mr Cartwright's note to *suburbs of possible risk from Namadgi fires were west suburbs of Tuggeranong and Weston Creek*, Mr Cartwright was unable to add much from his recollection. *I can't give you much more information on that. As I said, Mr Lucas-Smith drew the lines on the map and I think he indicated briefly at one time that this is the area that could be impacted by the fires.*[1282] Later in his evidence, Mr Cartwright conceded that Mr Lucas-Smith did not say that the fires in the Namadgi would directly affect Weston Creek.[1283]

752. Mr Cartwright agreed that he could recall Mr Lucas-Smith saying that the Bendora fire was predominantly contained or words to that effect. He could not recall Mr Lucas-Smith saying that the McIntyre's Hut was basically contained[1284]. According to Mr Cartwright, Mr Lucas-Smith spoke predominantly about the ACT fires, but there was reference made to the McIntyre's Hut fire that he had not recorded in his notes[1285]. *Mr Lucas-Smith indicated that there was a threat from four fires, including the McIntyre's Hut fire*[1286].

753. Mr Cartwright confirmed in evidence that the words in his note to the effect that *this information not to leave room and said he would deny it if it got into the media* were, as best he could recall, the words Mr Lucas-Smith used in the briefing. And, according to Mr Cartwright, *this was all very serious, let me assure you.* He went on to say that there was no level of humour in what was being said. *Peter doesn't normally joke*[1287]. Later in his evidence, Mr Cartwright *strongly disagreed* with Mr Bennett's evidence that Mr Lucas-Smith's comments about denying the information if it got to the media was made in jest and as bit of a tension breaker[1288]. Mr Cartwright agreed that he used the information when he spoke to officers in Kambah, Greenway and Phillip later in the day and asked them to check hydrants. *I think I referred to the fact that we had been briefed that afternoon and there was a chance of fires, or possibility or probability that the fires may impact the urban/rural interface and that we needed to do something to try and prepare. I asked them to check access points.* But he explained that he contacted those officers *with some ambivalence*[1289].

3.5.2.9 AFP Briefing

754. According to Mr Lucas Smith, the briefing of the AFP on the afternoon of 16 January was attended by the Chief Police Officer, John Murray, Commander Mandy Newton, Mr Castle, Mr Bennett and Mr Lucas-Smith. Mr Lucas-Smith did not provide the Cabinet briefing paper to Mr Murray or Ms Newton and did not know if it had been provided by someone else[1290]. Mr Lucas-Smith broadly agreed with Mr Murray's statement that, during the briefing, he advised of the developing fire situation to the west, he said there was a possibility of high fire risk in the coming week and described how on 18 and 19 January weather patterns were expected to produce high winds and temperatures. He agreed that he said that this would create a moderate

risk which would escalate to severe on Monday 20 January and that because of the weather being unpredictable, there was a chance conditions might become severe on Sunday. Mr Lucas-Smith said that Mr Murray *could very well* be right in making the point in his statement that there was no reference to the possibility of urban Canberra being under threat[1291]. Mr Lucas-Smith agreed that the police would certainly have a role to play if the fires reached the Canberra suburban area. Mr Lucas-Smith was then asked, *if there was a genuine risk to the urban area, didn't [the AFP] need to be informed that they should be preparing for it?* He responded: *That's Mr Murray's recollection as to what was said. I am not saying he is wrong, but I find it interesting that they went away and did such planning*[1292].

755. According to Mr Castle, he commenced the briefing of Mr Murray and Ms Newton and was later joined by Mr Lucas-Smith and Mr Bennett. He did not think that he gave Mr Murray or Ms Newton a copy of the Cabinet briefing paper, but he had it with him and he believed that he based the briefing on the Cabinet briefing paper, *and would have followed this through in its broad content*. In particular, Mr Castle believed that he would have provided broad information concerning the potential serious impact to the ACT forest pines and subsequently the urban area, as referred to in the Cabinet briefing paper[1293]. Mr Castle could not recall the exact words. *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*[1294]. Mr Castle thought Mr Murray was wrong in saying in his statement that there was no reference at the briefing to the possibility of urban Canberra being under threat. Mr Castle also agreed that it had never been suggested that the weather on Saturday was going to create only a moderate risk and he didn't recall anyone saying at the briefing that Saturday was only a moderate risk[1295].

756. Challenged in cross-examination concerning his recollection of what was said at the briefing, Mr Castle said he thought he had *some recollection*. He recalled saying where the fires were and that he described the fires being in the hills. He could not recall the exact words and there was nothing else he could recall saying[1296]. Later in cross-examination, Mr Castle confirmed that he had no recollection of having the Cabinet briefing paper in front of him during the briefing and that his belief that he made reference to a risk to the urban area *was probably an assumption*. He did not have a recollection of telling Mr Murray and Ms Newton the information contained on page 2 of the Cabinet briefing paper[1297].

757. Mr Bennett confirmed in evidence that when he and Mr Lucas-Smith arrived at the meeting with Mr Murray and Ms Newton, Mr Castle had commenced to brief them. He recalled Mr Lucas-Smith referencing maps during the briefing. Mr Bennett believed that Mr Castle had a copy of the map that was used in the Cabinet briefing. He could not recall if there was any discussion at the briefing about the probability of the fire coming into the urban environment of Canberra. Mr Bennett could not recall any mention of a state of emergency.[1298] Ms Keane confirmed Mr Murray's recollection that she was present during the briefing.

758. Ms Keane thought that she took the Cabinet briefing paper to the meeting and that Mr Castle used the Cabinet briefing paper document to brief Mr Murray and Ms Newton. She also remembered a map on the wall and discussions around the map. She did not recall specifically

any reference to a threat to the urban edge unless it was in the Cabinet briefing paper. *In which case I am sure it would have been discussed.* She did not have a memory of it being discussed.

759. In the context of her evidence concerning the briefing to Mr Murray and Ms Newton, Ms Keane was asked about a draft of an e-mail, the final version of which was sent by her to members of the Emergency Management Committee at approximately 18:26 hours on 16 January 2003[1299]. Ms Keane confirmed that, apart from an e-mail address written on the draft, all of the handwriting on the draft e-mail was Mr Castle's. Ms Keane confirmed that Mr Castle had deleted from her draft of the e-mail *there's currently a low possibility that a state of emergency may need to be declared due to the significant coordination aspects and potential risks posed by Monday's weather and substituted depending on the outcomes of the next 24 hours and the severity of the weather, there may be need for increased coordination into next week.* Ms Keane did not recall Mr Castle saying anything to her about these amendments. She thought it was possible that the state of emergency reference she put in that document was possibly derived from the briefing with Mr Murray and Ms Newton. *It is possible that that was discussed and I put it in that paragraph after I discussed that brief – that's potentially where I got that information from.* Ms Keane thought they did discuss a state of emergency at the meeting with Mr Murray and Ms Newton[1300]. Ms Keane later conceded that it was possible that the discussion of the state of emergency did not take place at the meeting with Mr Murray and Ms Newton[1301].

760. According to Mr Murray, the briefing took around 30-45 minutes. It was clear to him from the briefing that there was a threat to property in rural Canberra. Mr Murray would not agree that, as at the time of the briefing, the fires were an emergency. They were described in terms of being rural fires only and there was no suggestion or emphasis on emergency or high risk[1302]. Mr Murray was certain that nothing was said to him on the afternoon of 16 January along the lines of the passage in the Cabinet briefing paper referring to *potential series impact to ACT forests pines and subsequently the urban area.* According to Mr Murray, that information would have been useful to him. It would have been *critical to know that*, in the opinion of ESB, an asset under potential threat was the urban edge of Canberra[1303]. Information that there was a 70% chance that the McIntyre's Hut fire would burn into the Uriarra pine forest would also have been *critical information.* Mr Murray's evidence was that he was not informed of the discussion in the Cabinet briefing about the suburbs of greatest risk being Dunlop and Weston Creek and the discussion of the state of emergency[1304]. Mr Murray could say categorically that Ms Keane did not get information about a state of emergency from the briefing to him and Ms Newton. There was *definitely not* any discussion about a state of emergency at the briefing. Mr Murray left the meeting with the sense that everything was under control[1305].

761. Mr Murray was asked whether he considered that he should have been informed of a threat to the urban area earlier than when it occurred. He responded: *I find it hard to answer the question in those terms that you have asked them. My expectation would have been, having now seen the documents that are currently before this Inquiry, that some of the details in the Cabinet document would have been known to me... Given the tenor of the information we were receiving, which was essentially this is a rural matter under which we currently have under control, no, it was played down – circumstances relayed to us which suggested everything was*

under control[\[1306\]](#). Mr Murray accepted that the Cabinet briefing may have been mentioned to him but none of the information given at that briefing was mentioned[\[1307\]](#).

762. Ms Newton's evidence was that when she was briefed on the afternoon of 16 January, she was not aware that Cabinet had been briefed in relation to the fires. According to Ms Newton, at no stage during the briefing did anyone refer to the issue of possible impact of the fires in the suburban area. In particular, the information in the Cabinet briefing paper about the potential serious impact to ACT forest pines and subsequently the urban area was not conveyed to Ms Newton at the briefing. *I would have taken a completely different course of action had I been told... I would have escalated our activities from a policing 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.*[\[1308\]](#)

3.5.2.10 ACT Fire Brigade and ACT Ambulance Service Planning

763. Immediately following the briefing from Mr Lucas-Smith, representatives of the ACT Fire Brigade and the ACT Ambulance Service (respectively) met to discuss what arrangements should be made by each of their respective organisations in response to the briefing from Mr Lucas-Smith. In the case of the ACT Fire Brigade, senior officers met and defined specific roles and functions for their officers[\[1309\]](#). Mr Collins proposed that it might be prudent if the ACT Fire Brigade form an incident management team. Mr Newham was appointed operations officer and Mr Cannon logistics officer and Mr Collins the planning officer[\[1310\]](#). By default, Mr Bennett was the incident controller, and that was specified at the meeting[\[1311\]](#). The incident management team was formed as a way of coordinating ACT Fire Brigade resources[\[1312\]](#). According to Mr Collins, *immediately after the meeting with Mr Peter-Lucas-Smith, the senior officers of the ACT FB remained in the executive conference room to plan an ACT FB response to any urban fires that may occur as a result of fires spread from the national parks. Based on the information received from Mr Peter Lucas-Smith, it was felt by the senior officers that there was a possibility of an urban/rural interface fire occurring. Also based on the information received from Mr Peter Lucas-Smith, it was felt that the likely time any wildfire would reach the suburbs would be on Monday 20 January 2003*[\[1313\]](#).

764. Mr Prince gave evidence that at the meeting of senior ACT Fire Brigade personnel, there were differing views on how the ACT Fire Brigade should react to the information received from Mr Lucas-Smith. *Some people thought as part of the current service management team with the bushfire service we should be working more closely with those people, and others thought that the Brigade needed to prepare itself with its own facilities and gear.* The ACT Fire Brigade placed a person in the service management team and had a person in the planning area. The ACT Fire Brigade IMT was set up *to make people aware and to manage the incident if and when that fire in the west came into the urban interface.* Mr Prince agreed that it was a *planning IMT*[\[1314\]](#).

765. After the meeting of senior ACT Fire Brigade officers, Mr Collins arranged a planning meeting of his staff. At that planning meeting, Mr Collins *provided a brief as to what was expected of the planning section prior to and in preparation for a possible bushfires impingement on the urban built-up area*[\[1315\]](#). Mr Collins described the nature of the planning being undertaken at that stage as follows: *We were planning for some type of fire that might have come from up the Murrumbidgee and headed in*

toward the urban rural interface. We had no idea what shape or size or nature of the severity of the fire was. We felt we should do some planning, just in case that fire occurred. We had no idea of the fire, of what it was going to look like. I looked from where we were down to the Murrumbidgee River and all I could basically see was drought-ridden pastures. I felt that was some type of containment line there in itself. I felt that this perhaps could have slowed the fires right down, and that the chance of never coming up anywhere near the urban area was very remote[1316].

766. In his statement, Mr Prince describes how at about 16:30 on 16 January 2003 he and District Officer Hobbs had a brief discussion with Mr Newham, *advising him of our concerns surrounding the fires and that there was a need to be fully prepared for the possible impact*. Mr Newham stated that in his opinion the fires were the responsibility of the ACT Bushfire Service, and that the fire was not impacting on the city and that at this time it was *business as usual*[1317]. In his evidence, Mr Prince described his concerns in more detail and what preparation he considered was required, including in respect of staffing arrangements and equipment. According to Mr Prince, Mr Newham *was very comfortable with the situation and felt that at the moment the fire was 25km away and the Bushfire Service were dealing with it appropriately and, with the extra tankers that we have stood up, he believed that we were prepared*[1318].

767. In the case of the ACT Ambulance Service, senior officers of that service also had a meeting following the briefing by Mr Lucas-Smith. That meeting was at approximately 15:00 hours and, at the meeting, Mr Dutton *conducted a briefing for the ACT AS Management Team*[1319]. Mr Dutton had attended both the ESB planning meeting at 09:30 hours that morning and the briefing by Mr Lucas-Smith at 14:00 hours[1320]. In evidence, Mr Dutton agreed that the 09:30 hours planning meeting and the 14:00 briefing by Mr Lucas-Smith were the two main sources of information used by him to brief the Ambulance Service Management Team. However he had had a number of conversations with a number of people: *What I reflected to the Ambulance Management Team would not be exclusively from the two meetings referred to earlier but a synopsis or a summary of all the information I had to hand at the time I briefed them*[1321]. There are two sets of notes or minutes of the 15:00 hours meeting of ACT Ambulance Service personnel[1322]. Mr Dutton was unable to identify which of the two sets of minutes were the official minutes[1323]. Mr Dutton thought that the contents of the two sets of minutes appeared to be very similar[1324].

768. Mr Dutton was asked, in particular, about the following passage in one of the sets of minutes: *At 14:00 today Peter Lucas-Smith briefed exec and Cabinet on the outlook for the next 5 days. He indicated extremely poor outcomes for the fire. Weather conditions will be worse than for Ash Wednesday fires, with Monday showing potential that the Stockyard and Bendora fires will join. Spot fires will present a huge danger, even for urban areas, and these areas could be under significant threat from spot fires from the pine forests. Peter Lucas-Smith will not deploy fire fighters into the pine forest due to the extreme danger for the fire fighters.*[1325] Mr Dutton agreed that *in generality* that information came from Mr Lucas-Smith's briefing at 14:00 hours that day, *noting the discrepancy between documents and that I am not confident in either of these documents being an exact record of what was said*[1326]. Mr Dutton could not specifically recall where he gained the information about spot fires presenting a huge danger even for urban areas[1327].

3.5.2.11 Afternoon Planning Meeting.

769. The minutes of the planning meeting at 16:00 hours on 16 January 2003 record that Mr Graham provided a report on the progress of operations that day and planned operations for the evening. Mr Graham's briefing paper is attached to the minutes. It records progress on completing containment lines around the Bendora and Stockyard fires. In relation to the McIntyre's fire, the briefing paper records: *There are no real concerns with this fire, NSW RFS is considering using aerial incendiaries on the fire*[\[1328\]](#). In his statement, Mr Graham indicated that his briefing concerning the McIntyre's fire was based on discussions with the ACT Liaison Officer at Yarrowlunla fire control[\[1329\]](#). In evidence, Mr Graham could not remember who provided him with that information. He agreed that it could have been Jeremy Watson. According to Mr Graham, the use of aerial incendiaries concerned him *a little*. He had never seen them used by his understanding from discussions with others is that it is an inherently risky operation to be undertaking, particularly with severe weather[\[1330\]](#). Mr Graham did not recall the specific discussion. However, Mr Graham did not agree that the McIntyre's Hut fire was something that he could effectively put to the back of his mind. *There was still some concern with it. The fact that we had been advised it was being contained was heartening*[\[1331\]](#).

770. The minutes of the planning meeting record that the Bureau of Meteorology had issued a fire weather warning for the following day and that *due to the weather forecast, there will be a total fire ban tomorrow, extending through until midnight Tuesday, 21 January 2003. It was reported that the Fire Danger Rating for tomorrow is expected to be within the range of 46-50 and worse on Saturday*[\[1332\]](#). The decision to impose the total fire ban for the following 5 days was made by Mr Lucas-Smith following his conversation with Mr Mason[\[1333\]](#).

3.5.2.12 Lucas-Smith Radio Interview

771. Shortly before 17:00 hours on 16 January 2003, Mr Lucas-Smith was interviewed by radio ABC 666. The interviewer commenced the interview by asking *What's the situation with the bushfires in Namadgi now?* Mr Lucas-Smith responded *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.* The interviewer then remarked that that allowed 12 hours before *those north-westerlies kick in, which are expected tomorrow afternoon.* Mr Lucas-Smith responded: *That's exactly right, we're – 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, it will hopefully prevent the spotting across into unburned areas outside our containment line.* The interviewer asked whether Mr Lucas-Smith's reference to spotting would be spotting close to the ACT. After correcting the interviewer and confirming that the fire was in the ACT already, the interviewer continues: *Oh, I'm sorry, yes, but closer to the suburbs?* Mr Lucas-Smith responded: *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*[\[1334\]](#). In evidence, Mr Lucas-Smith confirmed that what he had said in the interview was true[\[1335\]](#).

3.5.2.13 NSW Rural Fire Service Media Release.

772. In the afternoon or evening of 16 January 2003, the NSW Rural Fire Service issued a media release^[1336]. In relation to the McIntyre's Hut fire the media release states:

Containment was achieved with the completion of back burning 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 north-eastern area of the fire, east of Baldy Range, has been planned for this afternoon, if weather conditions permit.

West north-west winds expected Saturday and Sunday will pressure lines to the east and south-east and force the fire to the ACT border (emphasis added).

773. When Mr Graham was asked about this media release during his evidence, he agreed that if the McIntyre's fire reached the ACT border, it would have crossed the containment line to the east. Mr Graham also agreed that the media release was not speculating about the matter, it appeared to be saying that it would happen. He also agreed that the media release did not seem entirely consistent with the information that he had received from the ACT Liaison Officer and reported to the planning meeting, to the effect that there were no real concerns with the McIntyre's Hut fire. However, Mr Graham was not informed on the evening of 16 January that the NSW Rural Fire Service were effectively expecting the McIntyre's Hut fire to run to the ACT border. He had not seen the media release before giving evidence and he did not recall any liaison officer contacting him with advice along the lines of the information contained in the press release.^[1337]

3.6 17 TO 18 JANUARY 2003

3.6.1 17 JANUARY 2003

3.6.1.1 Media Reports

774. On the morning of 17 January 2003, the Canberra Times carried the article under the headline *Next Five Days Critical*, quoting extensively from the press conference given by Mr Lucas-Smith at midday on 16 January. In particular, as discussed above, the article includes the quote from Mr Lucas-Smith that *at the moment I don't think there is any threat to the urban edge [of Canberra]*. The article does not identify that the remark attributed to Mr Lucas-Smith remark relates only to the Canberra fires. On the contrary, it appears in the article immediately after a reference to the McIntyre's Hut fire^[1338]. Mr Castle agreed that on Friday, Canberra residents could be thinking about whether or not to go away for the weekend. He presumed it was a pretty common thing for Canberrans at that time of year. He agreed that anyone who read the Canberra Times on the morning of 17 January would have seen Mr Lucas-Smith saying *Don't worry, there is not any threat*^[1339].

775. Mr Nicholson was asked by counsel for Mr Castle about the article in the Canberra Times and, in particular, whether the article appeared to be *increasing the level of these fires in the messages that are getting to the community*. He responded: *That is coming from an authoritative source. It is not, with due*

respect to the media, something that someone has picked up. It is coming from an authoritative source. It has to be viewed as a very effective means of getting the message through to the community in a broad sense, in my view[\[1340\]](#).

776. In re-examination, it was drawn to Mr Nicholson's attention that the same article included the quote from Mr Lucas-Smith that: *at the moment, I don't think there is any threat to the urban edge [of Canberra]*. In reference to Mr Nicholson's earlier evidence that articles of this kind should be a *trigger*, Mr Nicholson was asked what trigger would be created by Mr Lucas-Smith saying on 17 January that he did not think there is any threat to the urban edge of Canberra at the moment. He responded: *I guess it's a matter of how close you are to the issue, but if that sort of thing is happening to the west of you and there is – I can't think of the word – when the wind changes, as the weather pattern moves through and the wind goes around, there is a possibility that the fire might get away. I would expect that people would take some notice of that*. Asked where it said in the article that there was a *possibility that the fire might get away*, Mr Nicholson gave evidence that: *I don't think it needs to be said, your Honour. I think if you live in an environment, you are conscious of what goes around you, and I think the people of Canberra/ACT had the advantage of major fires, the most recent in the Sydney region with fires burning into the back of Lane Cove – quite graphic television – fires in other parts of Australia, that it should have been a trigger. I don't know that it needs to be spelt out chapter and verse. It should be a trigger, "Hey, there's something going on here". There should be some linkage with the bushfire educational material that has been distributed*[\[1341\]](#).

777. Mr Nicholson was again referred to the quote from Mr Lucas-Smith in the Canberra Times that he did not think there was any threat to the urban edge of Canberra, and he responded: *I don't think he is giving a categorical that it will never happen*. Mr Nicholson agreed that people who were living in the suburbs, as opposed to people who were living in the more rural environment around the edge of Canberra, would be entitled to read that quotation from Mr Lucas-Smith, an authoritative source and say: *Well, we don't have anything to be concerned about. The Chief Fire Control Officer says at least at the moment there is no threat to the urban edge*. But Mr Nicholson went on to suggest that *with the experience in other places* it would be a *fairly risky option* for people to look at the quote and decide there is no reason to stay at their houses over the weekend of 18 and 19 January and to go about their business. He suggested that one conclusion you could draw is that people were not supposed to believe the quote. He maintained that the headline *Next 5 days Critical* was a trigger to people that they ought to be thinking about the fire[\[1342\]](#). However, he went on to agree that a reader and resident of Duffy would be entitled to look at the article and say *there is no immediate risk to us*[\[1343\]](#).

3.6.1.2 Morning Planning Meeting.

778. The minutes of the planning meeting at 09:30 hours on the morning of 17 January 2003 indicate that the meeting commenced, as usual, with a report by Mr Graham on the progress of fire operations overnight and planned operations for the day. Mr Graham's briefing paper attached to the minutes records that planned back burning for both the Bendora fire and the Stockyard fire did not take place. In the case of the Bendora fire, *because of the spot over east of Moonlight Hollow Road there wasn't any further back burning along Mt Franklin Road towards Piccadilly Circus as had been planned*. In the case of the Stockyard fire, *there wasn't any work done on the Stockyard*

fire overnight[\[1344\]](#). These were the backburning operations that Mr Lucas-Smith had described in his interview with radio ABC 666 at 17:00 hours the previous evening as critical[\[1345\]](#). In relation to the McIntyre's fire, the minutes record that NSW RFS *will be focussing on commencing incendiary work on the large unburned sector of the north-east section of the fire*[\[1346\]](#).

779. At the planning meeting, Mr Mason provided details of the Bureau of Meteorology forecasts, the substance of which is recorded in the minutes under the heading *Planning*. The forecast for the Friday included *variable winds until 10:00 hours, followed by north north-west winds at 20-25kms, swinging north-west after 13:00 hours. Winds will be freshening this afternoon to 30-40kms, gusting to 50-60kms. The expected temperature will be 36°*. The Saturday forecast is: *North-west winds are expected 20-25kms, gusting 45kms possibly as high as 60kms, pulling back to a westerly direction. An easterly change is expected after 22:00 hours. Maximum temperature expected is 37°, dew point 0-2°*. The forecast for Sunday was milder and for Monday it was: *Light winds are expected early in the morning, tending north-west late morning, 20-30kms, gusting 40kms plus. Temperature 37°, dew point 0° or lower*[\[1347\]](#). In evidence, Mr McRae noted that the weather information being provided that morning suggested that Saturday and Monday were starting to look as though they would be much the same in terms of fire weather[\[1348\]](#).

780. Mr McRae's report followed the weather forecast and is recorded in the minutes as follows: *Rick McRae stated that 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. Peter Lucas-Smith requested information on the potential fire growth without intervention. Due to the varying terrain, there is potential for the fire to run uphill, across creeks, rivers and containment lines. There is the potential for a 10km spot over distance. Rick McRae stated 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. Under the heading Safety, the minutes record that: Peter Lucas-Smith raised concerns regarding the aerial incendiary back burn operations at McIntyre's fire. There is potential for many uphill runs, with spot overs at potentially 10kms, with a north-west wind impacting on the ACT. Peter Lucas-Smith requested a map detailing potential spot distances today for all fires*[\[1349\]](#). In his statement, Mr McRae described the forecast identifying a switch in wind direction from east to winds from the north-west that afternoon as *a serious development*[\[1350\]](#).

781. Mr Castle referred in his statement to concerns over the aerial incendiary operations at the McIntyre's hut fire raised at the morning planning meeting. *Operations, planning and CFCO objected to the aerial ignition under the forecast worsening weather conditions. I believe Operations indicated that our Liaison Officer at Queanbeyan had disagreed with the proposed aerial ignition. After the conclusion of the 09:30 briefing, I specifically recall reinforcing directly to the NSW RFS Liaison Officer that we had objected to the aerial ignition and he should advise NSW RFS centre of Queanbeyan of ACT objections to the aerial ignition*[\[1351\]](#). Mr Castle agreed in evidence that the wind conditions forecast for Monday were less severe than Saturday. His recollection was that based on Mr Mason's forecast, it looked as though Saturday would be a worse day than Monday. However, Mr Castle did not recall that issue being discussed at the planning meeting[\[1352\]](#).

782. Mr Graham agreed that things started to go rapidly downhill as the day progressed on 17 January[1353]. In his statement, Mr Graham records that: *at 10:30 hours I advised the Field Incident Controller at the Stockyard Fire Peter Galvin, that the back burning operations were not to proceed and that all crews were to withdraw to the Orroral Valley and to await further instructions. I also advised that heavy plant was to withdraw from the area by 12:30 hours.* The developments in relation to the Stockyard fire are confirmed in a message form signed by Mr Graham and sent by him to the planning section at 11:12 hours.[1354] Later in his statement, Mr Graham notes that he received advice from the Bendora field incident controller at about 11:15 hours that all back burning operations along Mr Franklin Road had ceased and that work was focusing on strengthening containment lines[1355]. In his evidence, Mr Graham confirmed that this did not mean that the work on the Bendora containment lines had been completed. *There was in fact a little over half of that work that wasn't done*[1356]. At about the same time, Mr Graham received the message: *Report confirmed from NSW PWS that aerial incendiary operations have just commenced in the McIntyre's Hut fire.* Mr Graham appended to the message the note: *Noted, prayer mat out, contact currently making contact with Allab.*[1357] Mr Graham acknowledged in evidence that in making this note he was *recognising that it was a bit of a risky strategy that they were employing*, and that there was some potential for a breach of containment lines either by spot overs or in some other way[1358].

3.6.1.3 Midday Press Conference

783. At approximately 12:00 noon on 17 January 2003, Mr Castle and Mr Lucas-Smith gave a press conference. After a brief introduction from Mr Castle, during which he refers to ESB *trying to improve our communications information to the public, we are using the Canberra Connect number*, Mr Lucas-Smith provided an overview of the current 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 those containment lines but under our current weather conditions the chances of those fires approaching our containment lines in a rapid sort of a 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. Media: given the extreme weather conditions that you are expecting over the coming days, what do you think the chances are of those fires reaching the containment lines? They're well back from the actual fire front and as long as overnight we can 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 within our containment lines.*[1359]

784. Later in the interview, Mr Lucas-Smith is asked whether there was a need to evacuate property. He responded: *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 it is 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.* Mr Lucas-Smith was then asked

questions about threats to the Tidbinbilla Tracking Station and historical sites, the ESB's plan of attack for the next 5 days and the conditions for volunteers and department fire fighters. In response to the latter question, Mr Lucas-Smith referred to the threat from conditions over the next few days being *quite significant for our fire fighters on the fire line*. Mr Lucas-Smith is then asked: *How far are the fires from Canberra and what are the chances it will reach edge?* Mr Lucas-Smith responded: *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 a north-west wind conditions the chances of meeting the urban edge is pretty slim* (emphasis added).[\[1360\]](#)

785. Asked in the interview about his level of anxiety, Mr Lucas-Smith states *I don't think it's that much different than what I've had in the last week and we've been fighting some very difficult fires in difficult terrain and this is just another part of it. We're certainly getting to the point where it's becoming the most critical*. Questions later returned to the threats to people adjacent to the National Park and how they should prepare. In his response Mr Lucas-Smith indicates that: *People who live in the rural areas understand what the impacts or potential impacts of fire is*. *Generally most of them will have some sort of preparation, they will have some sort of a plan... they have probably already made decisions in relation to who should stay and who should go and I will encourage them, that if there are people that are fit and confident they should stay with their property, to protect their property because structures generally burn down as a result of embers which get caught in crevices and so forth or under areas of buildings and start small fires which then burn the property down. If there is somebody around they can generally put that out and if they, and they have left their evacuation too late then the house is the safest place to be anyway* (emphasis added). In response to questions following these remarks about the number of people affected and whether any accommodation has been set up, Mr Lucas-Smith comments: *At this stage we're not suggesting that people should be evacuating, all that we are saying is they need to plan and prepare. I don't at this stage think there is no immediate threat to them, it will be another 24 hours will tell us whether that threat exists or not*.[\[1361\]](#)

786. In his statement, Mr Castle confirms that in commenting that the chances of the fires meeting the urban edge is *pretty slim*, Mr Lucas-Smith is referring to the ACT fires threatening the suburbs under a north-westerly wind. *The agreement and the protocols we had in place with NSW was that we would talk about the ACT fires only. If anyone wanted detail on NSW fires they needed to contact the NSW media staff*. Mr Castle later asserted in his statement that: *ESB press releases consistently only referred to the Bendora and Stockyard fires and stated that information on McIntyre's Hut and Mt Morgan fires in NSW could be obtained from the Rural Fire Service (RFS) Media Unit. It gave a phone number and the RFS website. So, right from the early days we agreed with NSW that they would talk about the fires they were managing and we would talk about the fires we were managing. Cameron Wade, media spokesperson for NSW RFS followed our midday press conference with his own press conference where he expressed optimism about containment of the McIntyre's fire. He briefed the media on the fires in NSW*.[\[1362\]](#)

787. As indicated by Mr Castle in his statement, Mr Cameron Wade of the NSW Rural Fire Service Media Unit commenced briefing the press immediately following the conclusion of the briefing by Mr Lucas-Smith and Mr Castle. His opening words were as follows: *The McIntyre's Hut fire burning to the direct west of Canberra in NSW, now burnt out some 8000 hectares is also burning within containment lines although the containment lines on the south-eastern side are only very small really, they're 500*

metres or so in depth and we are expecting those to be tested fairly extensively today. Already the wind conditions up in that area have strengthened from the north-west, which means fire crews at the moment on the south-eastern side of the McIntyre's Hut fire are working very hard as we speak at the moment to try and contain those containment lines. The fire is about 2kms from pine plantations in the ACT. We do have resources on the edge of the border there and on the edge of the pine plantations. At this stage also some 13 aircraft are working in the area, keeping a very close eye out for spot fires and so forth. At this stage there is not a threat to any property in the area, it is more those pine plantations we are keeping a close eye on... The threat is now to the southern and eastern sides and of course that means its more heading back toward the ACT.[\[1363\]](#)

788. Asked a short time later about the intensity of the fires, Mr Wade responded: *The fire activity is being described to me as fairly intense and fuel loads that they're experiencing there also the wind conditions picking up as we speak are making the situation more desperate as the day goes on. We are expecting this to continue for the next few days. Extra resources have been brought in from all around NSW to those fires. For example, between the ACT and the Hut fire there are at least 200 fire fighters from NSW, other areas of NSW as well as those local crews from Yarrowlumlula. The discussion then moved off to other fires in NSW and threats to areas such as Thredbo. Towards the end of the interview, Mr Wade is asked about the level of the threat to the pine plantations that he had earlier referred to. He responded: Speaking with the incident controllers there is certainly concern for it. It's 2kms or so. We have seen spotting activity up to a kilometre, 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 is holding at the moment.*[\[1364\]](#)

789. According to Mr Lucas-Smith, at midday on 17 January 2003 he was not giving too much attention to the McIntyre's Hut fire. *The McIntyre's Hut fire at that time was not in the forefront of my mind*[\[1365\]](#). Mr Lucas-Smith confirmed in his evidence that in commenting during the midday press conference that the chances of the fires reaching the urban edge of Canberra is *pretty slim*, he was talking about the Bendora and Stockyard fires. His position at midday on Friday 17 January was that there was a very slim chance of the Bendora and Stockyard fires affecting the Canberra urban area, and that he was not thinking about the McIntyre's Hut fire[\[1366\]](#).

790. Mr Castle confirmed in evidence that it was his belief that Mr Lucas-Smith's *pretty slim* was directed to the ACT fires. Asked whether that was made sufficiently clear to the media personnel present, Mr Castle stated that: *Only by – well, we didn't draw it to their attention, but only by the introduction and the discussions that preceded that.* He also agreed that it would be a fair impression for anyone hearing Mr Lucas-Smith's comments during the press conference about threats to people living adjacent to the Namadgi, to understand that Mr Lucas-Smith was talking about people living in rural areas. Mr Castle was asked why there was no reference during the press conference by himself or Mr Lucas-Smith to a threat to the urban area. He responded: *I suppose because a degree of focus on the ACT fires and a degree of confidence still by New South Wales about the McIntyre's.*[\[1367\]](#)

791. Mr Castle confirmed that the press conference by Mr Wade followed immediately after the conclusion of the conference with Mr Castle and Mr Lucas-Smith. Mr Castle thought that he may have stayed behind and listened to part of Mr Wade's press conference[\[1368\]](#). Mr Castle thought he was probably still present when Mr Wade referred to the threat from the McIntyre's Hut fire

now being on the southern and eastern sides *and of course that means it's more heading back toward the ACT*. He could not recall any specific process for checking to see whether that sort of information was being relayed by the media to the Canberra public[1369]. Mr Castle thought he was possibly still there when Mr Wade described the wind conditions making the situation *more desperate as the day goes on*. He did not recall Mr Wade using the word *desperate*. Mr Castle thought the point at which Mr Wade began discussing fires generally in the New South Wales and evacuating Thredbo may well have been when he left[1370]. Mr Castle did not see that day and did not know on 17 January what part of the media conference had been broadcast[1371].

3.6.1.4 Noon Media Updates

792. At the same time as Mr Lucas-Smith and Mr Castle commenced the press conference, the ESB issued a media update timed at 12:00 noon, Friday 17 January 2003[1372]. The media update is broadly consistent with the information provided at the press briefing, except that contrary to Mr Lucas-Smith's repeated assurances during the press conference that the fire was well within containment lines, it identifies some breakouts from containment to the north and south of the Bendora fire. Under the heading *Bendora Fire* the update states: *Due to favourable burning conditions, more than 6kms of back burning was carried out overnight. There is now a containment line in place around the south-eastern sector of the fire, and the ACT firefighting effort in the area continues. However, some breakouts occurred to the north and the south*. The media update indicates that information on the McIntyre's Hut and Mt Morgan fires in NSW can be obtained from the NSW Rural Fire Service Media Unit.

793. The NSW Rural Fire Service also issued a media release at 12:00 noon on 17 January headed *Wind Shifts Pressure Containment Lines on ACT/NSW Border Fires*. The release indicated that *control lines will be tested today with the weather forecast showing strong north-westerly winds, 37° 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... 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 ACT... The 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*. [1373]

794. Mr Castle did not think the ESB had that media release at about noon on Friday 17 January. Mr Castle was asked in evidence how a Canberra resident might go about finding out what was occurring in relation to the McIntyre's Hut fire. He suggested that, apart from going to the web site or following the suggestion in the ESB media release, they could have telephoned Canberra Connect and he presumed they would then be directed to ESB or to Queanbeyan. Mr Castle agreed that this was not a very direct method for finding out how Canberra may be threatened by these fires. Mr Castle had no way of knowing whether or not the ACT media were getting press releases from the NSW Rural Fire Service and he was not aware of anything being published to the Canberra community or the ACT community about threats from the McIntyre's Hut fire. He thought there may have been a system in place in the media cell to check as to whether that was occurring. [1374]

3.6.1.5 Agreements and Protocols With NSW

795. When Mr Lucas-Smith was asked about the reference in Mr Castle's statement to the existence of agreements and protocols with New South Wales he answered: *I don't know if there was anything as formal as a protocol... it was just we were fighting the Bendora and Stockyard fire and New South Wales were fighting the McIntyre's fire, and it was appropriate for them to answer their own questions in relation to those fires.* According to Mr Lucas-Smith, there was nothing that would have stopped him from passing on any information he had about the McIntyre's Hut fire at noon on 17 January.[\[1375\]](#)

796. Mr Castle thought that the agreement and protocols referred to in his statement had been in place from about 16 January, when the NSW Rural Fire Service sent Mr Wade[\[1376\]](#). Mr Castle later conceded that referring to the arrangement as *agreements and protocols* was an overstatement, *it was just an understanding.*[\[1377\]](#) Mr Castle's later evidence was that he didn't think he intentionally elevated the understanding to *agreement and protocols*[\[1378\]](#). Mr Castle also agreed that the assertion in his statement that *ESB press releases consistently only referred to the Bendora and Stockyard fires, and stated that information on McIntyre's Hut and Mt Morgan fires in New South Wales could be obtained from Rural Fire Service (RFS) media unit,* was probably not correct. The ESB press releases did not consistently accord with that assertion. Asked about the comment in his statement that, *right from the early days we agreed with NSW that they would talk about the fires they were managing and we would talk about the fires we were managing,* Mr Castle was not sure that the understanding started on 8 January. He thought it may have been when the ESB no longer had a direct involvement in the McIntyre's Hut fire. *We felt that the media and the information should come from the jurisdictions which were managing those particular fires.* Mr Castle was not sure whether someone discussed that with the media people at the NSW Rural Fire Service. He thought Amy Lowe may have discussed it. He agreed that there was nothing formal to prevent either himself or Mr Lucas-Smith, if asked, or if it was appropriate to do so, at any time up to 18 January to give their assessment, as well as they knew it, of the McIntyre's Hut fire. *I suppose a courtesy in that they are not under our jurisdiction, those fire fighters, and the management of it was not under our jurisdiction. So it was more a courtesy.*[\[1379\]](#)

797. Later in his evidence, Mr Castle added that he didn't think it was a *meeting of minds*. He could not specifically recall actually discussing it and reaching some agreement. *I don't think there was a formal understanding, or a point in time where I could definitely say that there was an understanding*[\[1380\]](#). Mr Castle then speculated that the understanding may have come during the conversation between Mr Koperberg and Mr Keady on 15 January 2003 that he had referred to earlier in his evidence[\[1381\]](#). However, he later said that he could only presume that the understanding was discussed because that was what Mr Keady was going to talk to Mr Koperberg about. Mr Castle considered that the way in which the press conference on 17 January was held contributed to his belief that an understanding existed[\[1382\]](#). It was later put directly to Mr Castle that in drafting paragraphs 107 and 108 of his statement, he was trying to establish an explanation as to why more was not said at the press conference on 17 January. He did not believe that to be the case[\[1383\]](#). He described the arrangement as a *reciprocal courtesy* and again denied that the purpose of elevating the nature of the arrangement in his statement was in order to explain, after the event, why more was not said at the media conference about the threat to the Canberra suburbs[\[1384\]](#). Mr Castle agreed that if a threat to the Canberra suburbs had been perceived there

was no approval or no step that needed to be taken in order to alert the Canberra community that the threat existed[1385].

3.6.1.6 Deployment of Aerial Incendiaries at the McIntyre's Hut Fire

798. The use of aerial incendiaries to assist with the burning-out operation on the McIntyre's fire was probably first discussed on the evening of 8 January[1386]. In the situation report prepared by Mr Seymour and timed at 24:00 hours on 8 January 2003, the section on *objectives* concludes: *Back burning to be consolidated with aerial incendiaries 10/03*[1387]. Mr Arthur agreed that the need for aerial incendiaries had been discussed and formed part of the strategy that was going to be employed either on 8 January or early the next morning. Mr Arthur did not have a recollection of there being a problem with the availability of aerial incendiaries at that early stage. Because containment lines hadn't been completed, it wasn't a factor at that point[1388]. Ms Crawford remembers requesting through logistics to organise aerial incendiaries while she was at the workshop either on Thursday 10 January, or Friday 11 January[1389]. The incident action plan for the McIntyre's Hut fire for the operational period 06:00 to 18:00 hours on 15 January 03 prepared at 03:45 hours on 15 January, contains the next reference to the use of aerial incendiaries as part of the strategy for the control of the McIntyre's fire: *consideration will be given to AI work... to the east of Baldy Range in eastern division once back burns are firmly established to limit fire intensity and reduce risk of spot overs*[1390].

799. In her evidence, Ms Crawford confirmed that to undertake an aerial incendiary operation, in addition to the incendiaries themselves, aircraft are necessary to fly the mission by people who are experienced in locating the incendiaries as well as someone who can write a plan for where they are to be dropped. According to Ms Crawford, they were not ready to use the aerial incendiaries until 16 January and they wanted to use them on 16 January. *They were coming and then they were guaranteed at lunchtime on the 16th. I was in a phone conference after lunch on the 16th. I walked out of the phone conference into the operation room and said, "Right, aerial incendiaries", only to be told they still hadn't arrived. Logistics had got onto the supplier of the aerial incendiaries. They had all been dispatched but there was insufficient to go around. We had been dropped off the list... I then looked at what our options were. Other fires – other people who had incendiaries didn't want to let them go because they needed them. The logistics or planning officer got onto Tumut to say, "We are really desperate, we need them". They said, "Alright, we will give you some." We sent an aircraft to Tumut to pick up aerial incendiaries*[1391]. Later in her evidence, Ms Crawford confirmed that there were no difficulties in obtaining the aircraft or in obtaining the services of people who knew how to locate the incendiaries. That had all been arranged. The problem was simply the incendiaries themselves[1392].

800. Ms Crawford agreed with the report by Mr Cheney that the only option left for the McIntyre's fire on Thursday 16 January *was to undertake judicious aerial ignition late in the evening with the spot fires placed around the westerly aspects so these fires will link up overnight without creating too much convective interaction*. Ms Crawford said: *That's what we wanted to do. That's what we planned to do, what we organised to do, but we couldn't do it... we didn't have any aerial incendiaries*. The aerial incendiary operation ultimately did not proceed on 16 January because the planning section in the IMT advised that by the time the aircraft returned from Tumut with the aerial incendiaries, the

weather would not be suitable and it would be getting too dark.[\[1393\]](#) Ms Crawford agreed that the next and only other alternative that opened itself up was to do the aerial incendiary operation the following day[\[1394\]](#).

801. Ms Crawford described the discussion about whether to proceed with the operation on the morning of 17 January as a *very serious discussion. It was a very hard decision. We knew if we didn't do it, there was a real chance of the fires running up those steep hills, spotting and we would lose the fire. If we did do it, there was a problem of not being able to get it all burnt in the time frame that we had, because you have set where the perimeters to do in as well. If we did do it, what if we lost it then? We looked at all the options.* Ms Crawford considered that they did not have any option. *We had to give a try. It was going to take runs and jump if we didn't do it. So by doing, all we were doing was trying to stop that happening. We weren't going to be any worse off*[\[1395\]](#). In his evidence, Mr Arthur agreed with Ms Crawford that, on the morning of 17 January, they really only had two alternatives left. *There was an option to do nothing and know that it was going to come out; or try something and hope that was successful.* Mr Arthur considered that to do nothing was not an alternative[\[1396\]](#).

802. The aerial incendiary operation itself is described in the incident controller section 44 report as follows: *The IMT again considered aerial incendiary operations and an AI plan was prepared. The aim of the plan being to reduce potential spotting from unburned ridge tops with the containment lines under the extreme fire weather forecast for the 18th of Jan. The AI was commenced at 11:00 hr in accordance with the AI plan and was restricted to the area between the northern containment line and the northern extent of the fire edge. The operation was ceased at 13:45 hr due to the prescribed cut off perimeters (increasing winds, erratic fire behaviour and deteriorating flame conditions) being reached. On return, the AI navigator advised the IMT that he had observed considerable fire activity with rapid upslope runs high flame heights and spotting outside the AI area on the northern and middle areas of the eastern containment line where the back burns had been put in place.*[\[1397\]](#)

803. Mr Cheney explained in his report and in his evidence what he considered to be the appropriate strategy for the aerial incendiary operation, including the need to undertake the operation late in the evening on 16 January 2003[\[1398\]](#). According to Mr Cheney the consequence of not having conducted the aerial ignition operation in the late evening on 16 January was that: *the time is too short and you're still aiming to put sufficient incendiaries in to burn it out. As well as going into the more severe conditions that were forecast for the 17th, if the spacing is too close, then those spot fires will interact with each other and create even under relatively low wind conditions a sufficient convection column to carry fire brands from this area and throw the spot fires down, outside down wind*[\[1399\]](#).

804. Mr Cheney's opinion on the effect of the decision to proceed with the aerial incendiary operation mid-morning on 17 January 2003 is set out in his report: *The operation was delayed due to failure to obtain incendiaries in time and the lack of experience meant that the operation was carried out when the weather conditions were unsuitable and guaranteed the break away of the fire. It is possible that the fire would have still broken away on 17 January but all perimeters of the enclosed area had to burn down slope before making an up slope run and it is also possible that this would have delayed the fire into the evening before it made an up slope run when the spotting would have been less severe... After 13:45 hours severe fire behaviour resulted from the aerial ignition with rapid up slope spread and crown fires on western aspects. This fire behaviour most likely caused spotting to the east of the containment lines in Dingo Dell Flats and the subsequent breakaway along the eastern*

containment line...*In my opinion, aerial ignition commencing in the morning on an increasing hazard is poor practice. Any aerial ignition the day of forecast of very high fire danger was doomed to failure with spot fires of several km likely to occur. However, if the aerial ignition have not been carried it is highly probable that under the weather conditions that prevailed during Friday or Saturday fire would have burned onto a westerly aspect and burned severely up slope somewhere within the area and thrown fire brands beyond the containment lines. In my opinion the aerial ignition caused the fire to break away earlier than if it had not been done, but it still would have broken away on Saturday during extreme fire weather.*[\[1400\]](#)

805. The aerial incendiary operation is also referred to in Mr Roche's report. After describing the decision to undertake the operation and its termination, including the observations by the AI navigator at the time the operation concluded, Mr Roche commented on the decision to undertake the operation: *Given the deteriorating weather conditions, in my view the generation of spot fires and an inability to maintain the fire within containment lines, was inevitable following the commencement of the AI operation. While a breach of the containment lines was more than likely in any event, I would have been loathe to add more fire into a significant unburnt area on a rapidly rising FDI. In my view, the AI operation exposed the IC to the potential for criticism that might otherwise have been avoided... The aerial ignition strategy was an extremely high risk option with little alternative once the delay in executing the overall containment and burning-out operation continued past 15 January. The decision to commence the program on Friday 17 January with a rapidly increasing FDI, in view meant that the most likely outcome was the containment lines would be breached. It must have been obvious that, once this occurred, the fires would commence major runs into the ACT and toward the city of Canberra. Despite the extreme risk posed to the ACT by the decision to carry out the aerial ignitions, the level of coordination between the two agencies was not upgraded. Neither jurisdiction considered the development of individual or joint agency plans to deal with the consequences, which were now imminent.*[\[1401\]](#)

3.6.1.7 Deteriorating Conditions During the Afternoon

806. In his statement, Mr Lucas-Smith described the deterioration in the fires during the afternoon of 17 January as follows: *At about 13:00 hours it was reported from the Bendora fire crews that there was a break out over the containment lines in the north-eastern corner. Despite vigorous water bombing on this break out, the fire could not be contained. Also, by mid afternoon there were various spot overs reported to the east of Corin Dam from the Stockyard fire. Again air operations were used in an attempt to slow the run of the fire, though this proved to unsuccessful. Due to the rapidly deteriorating fire conditions, at about 15:30 hours the Incident Controller at the Bendora fire directed that all crews working that fire withdraw to the staging area at Bulls Head*[\[1402\]](#). Mr Lucas-Smith's statement also refers to reports of several spot fires in the Tidbinbilla Nature Reserve at about 16:00 hours and that crews from the Stockyard fire that had been staged at Orroral Valley were tasked with property protection in the Tidbinbilla Valley and Naas Valley areas[\[1403\]](#).

807. According to Mr McRae's statement: *At about 2.00pm that day, I and others at ESB began receiving reports of problems in the McIntyre's Hut burn-out block. We received reports of an aerial ignition of an unburned patch within the burn-out block that was burning too vigorously. We heard that for this reason, the aerial burn out had ceased because of the risk of embers flying from the burn out to spot outside the containment line. Also at approximately 2.00pm I and others at ESB received reports of spot overs on the northern sector of the Bendora fire near Bulls Head and crews working to contain those spot overs. A little later in the afternoon, at*

15:00 hrs, we received reports of spot fires on the eastern side of Corin Dam which were quickly establishing and running east into Namadgi National Park. At about the same time, we received report of crews being pulled off the Bendora fire generally and pulled back to Bulls Head pending reassessment of spot fires and the uncertainty about fires then burning to the west and the possibility of those fires then looping east towards the ACT.[\[1404\]](#)

808. Mr Graham's statement also refers to the break out from the Bendora fire: *At 13:00 hours I was advised by the Bendora Field Incident Controller that there had been a break out in the north-eastern corner of the Bendora fire and that it could not be contained. At about this time, I believe I was advised by the ACT Bushfire Service Liaison Officer at Yarrawlumla Fire Control Centre that the McIntyre's Hut fire had jumped containment lines at its south-east boundaries. At 15:30 hours and following on from the break of the Bendora fire, the Field Incident Controller (Rick Hayes) withdrew all personnel from that fire back to the Bulls Head staging area. At the same time the SMT directed water bombing operations on the head of the Stockyard fire now to the east of Corin Dam. With the fires now making a run to the east, at about 16:00 hours all crews were directed to leave the Orroral Valley area and to reassemble at the Parks & Conservation Depot at Glendale. From this location they were tasked with property protection duties in the Naas and Tidbinbilla Valleys. At the same time, three spot fires were reported in the Tidbinbilla Nature Reserve and units were deployed to suppress these fires.* [\[1405\]](#)

809. In his statement, Mr McRae describes the actions he took in response to these numerous reports of break outs and spot fires: *I spent time verifying these various reports and discussing options in conjunction 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 that 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 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 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. Mr McRae goes on to refer to personnel from the ambulance and fire brigade coming to him that afternoon and asking for situation reports.* [\[1406\]](#)

810. Mr McRae was asked in evidence his opinions expressed at the meeting of the SMT concerning likely fire spread. Mr McRae considered that his reference to the McIntyre's Hut fire being likely to break containment and run towards the Uriarra pine plantation *don't even imply I felt it was likely that the fire would enter the Uriarra pine plantation.* At that point in time, Mr McRae did not think it was likely that the McIntyre's Hut would fire run into the Uriarra pine plantation: *the reason being the time of day... We had situation with a lot of fires breaking their containment in different ways and starting runs. And my view at that time was we didn't have to fuss too much about McIntyre's. Our priorities were with the fires to the south of that one.* Mr McRae went on to explain that they had spot fires that had started earlier in the afternoon which had the potential to travel across country, *and having got to late in the afternoon, the potential for that happening from McIntyre's, in my assessment, was low. As I said, my assessment was that New South Wales crews would be quite capable of rounding up anything that did occur at that time of day.* [\[1407\]](#)

811. Mr McRae agreed that one of the things the planning officer needs to consider is the possibility that NSW would not succeed in holding the McIntyre's Hut fire. *It depended on where the break out would occur, whether it was on the Doctor's Flat Road or on the northern edge or the southern edge. Each potential place for a break out to occur led to different risks. I had recognised that there were some places where a break-out would certainly directly threaten the Uriarra pine plantation and I had mentioned that I was aware that ACT Forests staff were actively taking steps within that plantation, including a bulldozer fire break that was eventually 20km long. There are also steps being taken in other places. The rural land holders in adjacent lands, as they always do, were taking steps to protect themselves from fire should it enter their holdings.*[\[1408\]](#)

812. Mr Kevin Cooper was present in the operations room in the early afternoon of Friday 17 January. Mr Cooper described in his evidence a conversation he had with Mr Graham at that time: *This conversation occurred at 14:30. I remember it very clearly. I was in the ops room. And by then I mean, as I'd indicated earlier, our crews had been withdrawn from the field. It was clear that the Stockyard fire was now travelling great distances... I certainly can't remember the exact words. But my approach was, when there was a quiet moment in the ops room to actually stand beside him, look at the map on the wall in the ops room and what I outlined was 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 interface. According to Mr Cooper, there was no dissent from Mr Graham about the need to have an overall strategic plan. About an hour or so later, Mr Cooper had a short conversation with Mr McRae. It was in the middle of the ops 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 reaching the urban interface of Canberra?"... It was a pretty short conversation to say, "We don't at the moment".*[\[1409\]](#)

813. Mr Graham accepted that in all likelihood, Mr Cooper was referring to Mr Graham in his taped record of conversation where he referred to *Ops Officer*. Mr Graham accepted that Mr Cooper may have asked him on Friday: *What are you going to do if the fire hits Canberra*. He did not recall a conversation to the effect suggested by Mr Cooper but he accepted that Mr Cooper may have said those things to him. However, he did not think it was likely that he made the responses suggested by Mr Cooper. *We work in a cooperative way with everybody that we've got at fires. I would never see it as an urban fire responsibility on their own.*[\[1410\]](#)

3.6.1.8 ACT Fire Brigade Incident Action Plan

814. At a meeting of the ACT Fire Brigade Incident Management Team immediately following the planning meeting at 09:30 hours on 17 January, Mr Collins met with Mr Nester and Mr Pritchard and assigned to them the task of creating an incident action plan for the ACT Fire Brigade[\[1411\]](#). The planning issues discussed at that meeting included going over what had been done the previous day and talking about *fire hydrants on the western interface*[\[1412\]](#). The incident action plan prepared by Messrs Nester and Pritchard is timed at 16:30 hours on 17 January 2003. The incident action plan describes the *situation* as follows: *Due to prevailing and forecast weather*

conditions fire in the Brindabella Mountains and Namadgi National Park are approaching Canberra, from approximately 20km to the west, with spotting near Tidbinbilla and Corin Dam. Control lines have been established in order to contain the fires to the mountains. At present all Bushfire resources are committed to firefighting operations in the mountains, however if spotting occurs in front of the fire or breaches the fire lines that bring the fire close to Canberra, the ACT Fire Brigade is the primary response agency for the Canberra urban area and some properties east of the mountains close to Canberra. Spot fires may occur up to 10-15km in front of the fires. Predominant NW winds are likely to initially cause grass fires within 5km of Canberra's western boundary, and later to structures and bushland areas within the Canberra urban area[\[1413\]](#).

815. Mr Bennett saw the situation report in the incident action plan *as essentially being a combination of information that was provided to us by Mr Lucas-Smith on the Thursday with, I would imagine, an update from possibly our liaison person we had by that stage working in with the Bushfire Service planning section.* Mr Bennett agreed that the reference in the section of the incident action plan commencing *spot fires may occur up to 10-15km*, was his understanding of the potential. Mr Bennett was handed the incident action plan by Mr Nester as the incident action plan to deal with the situation that he was involved with on 17 January. He read it when it was given to him and he did not ask for anything to be altered.[\[1414\]](#)
816. In the *Response* section the IAP provides for a response to structures in the built up area *as per SOP4 Cottage Fires – two pumpers for first alarm.* Mr Bennett was asked about discussing the incident action plan with senior members of the bushfire service. He explained that the ACT Fire Brigade was still working to their standard operating procedures and he *did not deem it necessary to discuss with Mr Lucas-Smith, nor for that matter with any specific member of his service management team, what our response arrangements specifically were other than the fact that we were in a position to respond.* Mr Bennett agreed that if there was a fire impacting close to the interface area, combating the fire would be a collective effort and he would have expected assistance from the ACT Bushfire Service but he did not see the need to discuss the incident action plan with Mr Lucas-Smith, Mr McRae or Mr Graham. His primary focus at the time was to make sure the ACT Fire Brigade was as ready as they could be.[\[1415\]](#)
817. Mr Roche was critical of the ACT Fire Brigade incident action plan. In particular, he pointed out in his report that *the minimum response outside the “built up area” required two pumpers and one tanker to structure fires and one pumper and two tankers to bush/grass fires. Quite clearly, with the resources available, any threat to or involvement of more than five properties would have seen the Brigade overwhelmed*[\[1416\]](#). Mr Roche was of the opinion that the ACT Fire Brigade *had no real appreciation of the extent to which the urban interface could be impacted. While I consider that the eventual outcome and extent of the impact that occurred on 18 January could not reasonably have been anticipated, what could have been foreseen was that even a lesser impact would require multiple responses, multiple firefighting appliances and pre-arranged, comprehensively briefed incident management personnel... Further, in my opinion, the decision by the ACTFB to establish an IMT independent of the SMT, virtually ensured that the lack of understanding regarding the possible impact of the fires and the diminishing opportunity to implement alternative actions, was entrenched by 17 January*[\[1417\]](#).

3.6.1.9 15:45 Hours Media Update

818. At approximately 15:30 hours a draft of an ESB media update was prepared. Mr Castle was able to confirm that the handwriting on the draft media update was Mr Keady's. However, Mr Castle did not think he saw the draft. The draft media update included the sentence: *Mr Castle said, however, that residents in some areas may see flying embers and XXX but not to be concerned??* Mr Castle had no knowledge of what the media cell were endeavouring to get assistance about where they were saying in the draft *not to be too concerned??*[1418]. Mr Keady's handwritten amendments to the draft include deleting: *residents in some areas may see flying embers and*, and substituting: *because of prevailing wind conditions, ash and burnt material may be deposited in some suburban areas of Canberra*. It was these latter words that were used in the media update issued 15 minutes later[1419]. Mr Castle did not recall the circumstances in which Mr Keady came to be suggesting how the release update should be drafted[1420]. Ms Lowe thought she may have been involved in preparing that draft[1421]. Ms Lowe also could not recall the circumstances in which Mr Keady came to suggest amendments the draft media update.[1422]

819. The ESB media update as issued at 15:45 hours was as follows: *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 material 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 web site.* The media up date concludes with relevant contact details.

820. In evidence, Mr Castle agreed that if the information about the McIntyre's fire being within containment lines had come out of the NSW Rural Fire Service press release at 12 noon or some other information: *It is not stating the whole amount of what New South Wales said.* Mr Castle was not able to say why the more cautionary tone in the NSW Rural Fire Service media release did not appear in the ESB release[1423]. Later in his evidence, Mr Castle agreed that the message in the press release at that particular time was that everything seemed as though it was under control. Mr Castle also agreed that, with hindsight, it would not be unreasonable for someone having looked at the press release to think that, if there was anything to be concerned about, the ESB would be telling them[1424]. It is notable that the media release specifically refers to the McIntyre's Hut fire and does not contain the sentence appearing in the midday media release about contacting the NSW RFS media unit for information on that fire.

821. In his report, Mr Nicholson referred to there being on 17 January, *a direct reference to the danger of spot fires threatening Canberra and the need for protection*[1425]. He later confirmed that this comment was based on a reference in a table of extracts of advice to the Canberra community which included an entry for 17 January 666 ABC Radio 2.55pm referring to Mr Castle saying he is worried about spot fires and that he wants people to prepare their homes immediately. Mr Nicholson was able to confirm that was the reference he relied on in his report because he had highlighted it[1426]. It was later acknowledged by counsel for Mr Castle and accepted by counsel assisting that the entry was wrongly dated and should have been dated 18 January. Mr Nicholson was unaware of the error[1427]. However, later in his evidence, Mr Nicholson was referred to the

press release issued at 15:45pm on 17 January and, in particular, the statement in that press release that: *Because of prevailing winds, ash and burnt material may be deposited in some suburban areas of Canberra.* Mr Nicholson described the reference to ash and burnt material as *otherwise known as spotting.* He considered that it could be seen as a risk of spotting fires into Canberra[1428]. Later still, in response to questions from the Coroner, Mr Nicholson again refers to the media release at 15:45 on Friday 17 January. He describes it as: *providing flow-on of the information and warnings of embers and burning material falling within Canberra itself. So it is providing some warnings*[1429].

3.6.1.10 Request for Commonwealth Assistance

822. At 16:30 hours, Mr Castle arranged for a further request for Commonwealth assistance, the fifth since the fire emergency had commenced. As with the earlier requests, this request included a brief summary of the *situation* as follows: *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 60km/h from the north-west causing concern for the ACT urban environment. Fire operations are currently focusing on strengthening control lines, however, there is the potential for 10m spot fires threatening the containment lines*[1430]. Mr Castle agreed that the reference to 10m spot fires should possibly be 10km. He accepted that it appeared from the request for Commonwealth Assistance that the passage referred to above was his state of mind as at 16:30 hours on 17 January. Mr Castle presumed that he would have read through the request for Commonwealth assistance, *but I might not have been concentrating specifically on every content of it*[1431].

3.6.1.11 Fire Spread Predictions

823. As indicated above, the minutes of the morning planning meeting for 17 January record that Mr Lucas-Smith *requested a map detailing potential spot distances today for all fires*, including the McIntyre's Hut fire[1432]. According to Mr Lhuede, he, Mr Taylor and Mr Gellie looked at potential spot overs of the McIntyre's fire and started modelling potential spotting distances commencing either in the late morning or early afternoon on 17 January 2003, on instructions from either Mr McRae or Mr Lucas-Smith[1433]. Mr Taylor described what occurred as follows: *Some time on the afternoon of the 17th we had a request from Rick McRae into the situation unit where there was a number of us working, particularly Nic Gellie, myself and Nick Lhuede, to urgently look at where the fires were likely to be by Saturday afternoon. And if I recall, the meeting may have even been postponed while we urgently prepared or did some thinking about this. I suspect there were other reasons why the meeting may have been postponed also.* Mr Lhuede was referring to the postponement of the regular afternoon planning meeting, which on Friday 17 January was held 2 hours later than usual at 18:00 hours[1434].

824. Each of Messrs Lhuede, Taylor and Gellie described in their evidence how they worked cooperatively in calculating potential rates of spread for the McIntyre's Hut fire[1435]. The tools they used in making calculations included an up to date weather forecast, knowledge of the fire behaviour experienced up to that point and their own experience and knowledge of earlier fires, supplemented by local knowledge concerning the terrain and fuel types[1436]. The predictions arrived at were based largely on the McArthur fire spread meter. Mr Gellie recalled using both the grassland and forest meters. However, Mr Taylor thought the calculations were largely based on the forest fire danger meter. *The calculation was being undertaken using the fundamentals of the*

McArthur meter, I think version 5. At that stage I suspect we were using largely the forest fire danger meter rather than the grassland fire danger meters, given the rush we were doing this in. That was also corrected by some local knowledge about fuel types, slopes and likely or forecast weather changes during the period. So it is an approximation based on Nick Lhuede, Hilton Taylor and Nic Gellie's experience, combined with the McArthur meter[\[1437\]](#). Mr Gellie was uncertain as to the information received about outbreaks of fire at McIntyre's Hut. *It was very difficult to know the extent of the fire, because if 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.* They were modelling from a single outbreak into the pines near the border in the Uriarra pine forest[\[1438\]](#).

825. Mr Taylor was aware that there were some problems with the McArthur meter, *particularly for large intense fire behaviour and spotting distance, that it may underestimate them.* However, he thought that in their planning that afternoon, they *stuck reasonably well to the model*[\[1439\]](#). Mr Taylor was also aware of the work undertaken by Project Vesta but did not have access to it at the time. *Through discussions with Nic Gellie, Nick Lhuede and myself, we may have subconsciously taken it into account but certainly not actively or pro actively*[\[1440\]](#). Mr Gellie was aware of the work being done in relation to Project Vesta. He could not comment specifically about problems with the McArthur meter, but all through his career as a fire management officer and fire research officer he was aware about the limitations of the McArthur model to a wide range of vegetation types and knew that you had to calibrate the model to suit particular field conditions[\[1441\]](#).

826. Like Mr Taylor, Mr Lhuede did not think that in undertaking the modelling they made adjustments for grasslands. *We may have stayed with the forest prediction. Hilton and Nic Gellie may be able to give you a bit more information on that.* Mr Lhuede also described the preparation of the map. Mr Taylor and Mr Gellie did a lot of work in putting that map together[\[1442\]](#). In addition to assisting the preparation of the map showing predicted rates of spread, Mr Lhuede also prepared a message form from the situations officer to the planning officer, signed by him. Among other things, that message form estimated fire spread from the McIntyre's Hut fire to the Stromlo treatment plant at 18:00 hours on 18 January and to the Narrabundah Hill pines at 20:00 hours on 18 January. Mr Lhuede confirmed that the message form said nothing about the urban edge of Canberra. *Just wasn't specifically identified reaching the urban edge. We just identified the Narrabundah Hill pines, I suppose, as the last eastern most component of the rural land to be affected*[\[1443\]](#).

827. Mr Gellie used a graphical image taken in about 1998 showing the extent of pine forest and grassland in the area and *used that to work out the likely vegetation in the path from the spot fire that we had located on the ACT/NSW border.* Mr Gellie was aware that some of the vegetation the fire would potentially travel through was eaten out grasslands. *I used the McArthur grassland meter mark 3 which doesn't take into account fuel state as much in terms of rate of spread and of my experience of fires up in the Hunter Valley in 1994 where I observed from a helicopter fires burning in very heavily grazed country. I used that knowledge to say to the others, "Well, I think it is actually going to burn through the grazed-out country under the conditions because it is an extreme forecast for tomorrow".* Mr Gellie expected the range of fire danger indices to be somewhere between 50 and 70 based on the information given by the Bureau of Meteorology. Mr Gellie thought the McArthur meters they had in the office were the grassland fire danger meter mark 4 and the McArthur forest danger meter mark 5. Mr Gellie was able to

produce in court each of the meters used and added that they also used the grassland meter mark 3[1444]. According to Mr Gellie, in making their predictions, he, Mr Lhuede and Mr Taylor predicted a rate of spread of somewhere between 3 and 7kmh for the eaten out grasslands and they thought somewhere between 4 and 6kmh for the pine forest. Together they produced a map demonstrating graphically their predicted rates of spread[1445].

828. Mr Gellie confirmed that the estimates of prediction of rate of spread on the map stopped at 20:00 hours. His evidence of the reason for this was as follows: *Generally speaking around 20:00 hours in the evening one tends to get an abatement of fire spread and intensity, and depending on what other field factors are happening – such as change in weather such as you might get a change occur around that time – 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.* Asked whether containment action was going to be possible prior to 20:00 hours, Mr Gellie's evidence was that: *Given the conditions forecast to be extreme from about midday all the way through until about 5 o'clock in the evening, we anticipated that the fire would continue to burn fairly intensely. Although there may have been areas particularly on the flanks where you could have worked as the wind tends to die later in the afternoon. In terms of the head fire and dealing with this, it was considered with the predictions made that it was unlikely that anyone could do direct attack or attack the head fire.* Mr Gellie thought that if an attempt was made to attack the head fire, the likely success was zero. On the question of whether his comment applied even in the eaten out grasslands Mr Gellie said: *I can't exactly comment on the eaten-out grasslands. But in detail of course you need to know the state of the vegetation in the particular part of the landscape where crews might be working. But if the conditions continue to burn as they did, then it would be unlikely that any fire crews would be safe working in paddocks where they had to open up gates and cross through fences and so on and to be able to have good egress; that is, escape routes back out of it*[1446]. The map prepared by Messrs Lhuede, Taylor and Gellie was presented to the planning meeting commencing at 18:00 hours that evening.

3.6.1.12 Evening Planning Meeting

829. The afternoon planning meeting was delayed from its usual time of 16:00 hours to 18:00 hours. As usual, the meeting commenced with Mr Graham providing a report on fire operations. Mr Graham's report concerning the Bendora fire includes a reference to all crews being requested to leave the area at 7:50 hours. His report concerning the Stockyard fire confirms that crews were withdrawn at 16:00 hours that day. In his statement, Mr Graham indicated that the planning meeting was held *to discuss the current situation and to determine strategies for the escalating incident. These included:*

- *Monitoring the fire growth and obtaining situation reports back from the field*
- *Altering the strategy of indirect attack to property protection*
- *To consider ways of stopping the fire reaching ACT pine plantations*

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 within pine plantations.[1447]

830. The minutes next deal with Mr McRae's report under the heading *Planning*. *Rick McRae stated that we need to assess the risks of the new situation, given the weather and fire behaviour conditions. Rick provided an overview of 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 16:00, and Mt Stromlo and potentially Narrabundah Hill by 2000 hours... there is a significant threat to the pine plantations as a result of the McIntyre's fire. Peter Lucas-Smith outlined the objectives for this evening and tomorrow. These include monitoring the fire growth and obtain situation reports from the field, alter the strategy of indirect attack to property protection and perform aerial operations, and to determine the best way of stopping the fire from reaching the pine plantation and beyond. Crews will not be placed near the fire line tomorrow. Liaison to occur with NSW RFS regarding McIntyre fire situation and plan strategies, including spot over and growth predictions and intervention strategies to prevent fire from reaching pine plantation. ACT resources will not be deployed to fight the fire once it is in the pine plantation.

831. In evidence, Mr Lucas-Smith confirmed that Narrabundah Hill is the hill directly to the west of the suburb of Duffy. Mr Lucas-Smith agreed that the potential that Mr McRae was outlining at the planning meeting was meaning that the risk to the Canberra suburban area was then a significant risk. *That is certainly part of our plan and certainly within our strategies.* Mr Lucas-Smith agreed that it was now being recognised in that planning meeting that there is a clear line to the Canberra suburbs[1448]. Mr Lucas-Smith later pointed out that Mr McRae's assessment was fire spread without intervention. *There were a number of things in the way there. Certainly from our point of view 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, gave us very strong control line opportunities to prevent that.*

832. It was suggested to Mr Lucas-Smith in evidence that the situation was serious enough and the potential real enough to require that a plan be implemented so that people could be given as much notice as possible that, if things went wrong, they were at risk. Mr Lucas-Smith accepted the suggestion. Asked whether there was a plan to start letting people within affected areas know that they were exposed to a potential risk, Mr Lucas-Smith replied *not as far as the potential McIntyre's fire outbreaks were concerned, but certainly as far as a Bendora fire was concerned.* He then went on to describe the process by which rural properties were telephoned and spoken to and the deployment of firefighting resources in populated areas threatened by the Bendora and Stockyard fires[1449]. As far as media arrangements were concerned, Mr Lucas-Smith's evidence was that *the media people were part of our planning meeting; they got the information; they went away and prepared the material.* However, he accepted that *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 that message adequately*[1450].

833. Mr Castle agreed that, having heard the report by Mr McRae, he was probably more concerned than he had been up to that point about the urban areas of Canberra[1451]. But Mr Castle was conscious that Mr McRae's predictions were *unattended* fire spread[1452]. He did not have the operational experience to know what Mr Lucas-Smith meant operationally by the reference in the minutes to Mr Lucas-Smith saying crews will not be placed near the fire line tomorrow[1453]. Mr Castle could not recall drawing a connection between what Mr Lucas-Smith was saying about crews not being placed near the fire line and Mr McRae providing an outlook for unattended fire behaviour[1454].

834. Later in his evidence, Mr Castle agreed that he was responsible to ensure that the ESB mission is fulfilled and, among other things, that warnings are issued to the public at the first opportunity. Mr Castle was then asked whether it was part of his responsibility to be asking Mr Lucas-Smith and Mr McRae what the fire spread predictions meant for the urban area of Canberra and whether it meant that the fire was likely to be in the urban area of Canberra by tomorrow night. There was then this exchange:

A. I suppose if you put it that way.

Q. Did you ask that question?

A. I don't recall asking that specific question.

Q. Did you ask any questions about the threat to the urban area at that time?

A. Not that I can specifically recall.

Q. Why not, Mr Castle?

A. I suppose it was an optimistic view of the ability to suppress.

Q. That was the position you were taking, that fingers crossed everything will be OK; is that what it was?

A. No, I don't think it was fingers crossed.

Q. I suggest it is more than optimistic. It is wishful thinking, isn't it Mr Castle?

A. It could be.

Q. It is not the role of the Emergency Services Bureau or any emergency service, I suggest to you, to take the most optimistic outlook of an emergency situation, is it?

A. No.

Q. It is the role of the Emergency Services Bureau and Emergency Services generally to take something much closer to the worst case scenario, isn't it?

A. Yes, it is.

Q. And to warn people who may be affected by that scenario that they may be affected?

A. I think if the extent and the area is specifically known. [\[1455\]](#)

835. Mr Castle was not sure that he could specifically point to anything that was distracting him from thinking about the need to warn the Canberra community at the time of the planning meeting on Friday evening. He accepted that it must have been a priority for him. However, he did not think that there was a specific discussion during the planning meeting about the urban areas. *The focus was on the rural [\[1456\]](#).*

836. There is no mention of the evening planning meeting in Mr McRae's statement. Mr Taylor believed that the information presented to the planning meeting by Mr McRae was possibly augmented with some input from him, presenting the information to the meeting in map form [\[1457\]](#). Mr McRae agreed that it was his view that there was a significant threat to the pine plantation as a result of the McIntyre's Hut fire. Asked whether he thought it was likely that New South Wales would be able to prevent the fire under the forecast conditions running or spotting into the pine plantation, Mr McRae answered: *Late on the 17th, the expectation was that we would be getting some abatement in the fire behaviour. If that was occurring, then there was a good probability that the McIntyre's break-out or break-outs, I wasn't sure, would be contained... I didn't know exactly where the break-outs were. So without knowing the exact situation, that was about the best assessment I could make at that time. [\[1458\]](#)*

837. Mr McRae was then asked about his assessment that there was a potential for the fire to reach Narrabundah Hill by 20:00 hours and, more particularly, whether it followed from that assessment that there was a potential for some impact on the urban area to the east or south-east of Narrabundah Hill. Mr McRae responded: *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 January.* If the fire had got to Narrabundah Hill by 20:00 hours, Mr McRae's assessment was telling him that: *At that time the weather would abate markedly and there was a forecast wind change in the ACT. With the wind change coming through after a north-westerly airflow, there is usually a couple of hours of very mild winds before the wind change actually hits. So if the wind change is forecast for the evening, then by this time the fire drivers would have abated. So even if it had achieved its unattended potential, the drivers that were pushing it towards the urban edge at that time would have gone and, if anything, when the wind change hit, it would push the fire in the other direction.* Mr McRae denied that this was an optimistic assessment of the fire run the next day. *It was a professional assessment based on the best available information and the best available forecast in tools*[\[1459\]](#). According to Mr McRae, the planning team produced a projection which was viewed as a *worst case*, which they presented to the incident controller and the 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*[\[1460\]](#).

838. Mr McRae confirmed that the projection was based on using the McArthur fire danger indices, primarily off the circular slide rule meters. Mr McRae was aware that Project Vesta had indicated that there could be deficiencies with the McArthur indices as a fire rate of spread prediction tool but he did not have a sufficient replacement to use. Neither Mr McRae nor anyone in his team included in their range of projections the Project Vesta correction. However, Mr McRae did not accept that the projections were based *purely* on the McArthur fire danger meter, *because whenever an experienced fire officer applies a McArthur fire danger index using the circular slide rule, they will apply a commonsense element as to whether the predictions are making sense in terms of how the fire is currently and has recently behaved. It is not just pure application of the meters.* Mr McRae reiterated that the consensus view arrived at by the planning team did not incorporate the Project Vesta correction. *We did not apply that. And today I would not apply it*[\[1461\]](#).

839. Mr McRae accepted that the plan for that night and the next day was that all available firefighting resources of the ACT were going to be concentrating on property protection. Mr McRae was not aware of any plan being put in place by the ESB to prevent the potential run of the McIntyre's Hut fire to as far as Narrabundah Hill by 20:00 hours on 18 January[\[1462\]](#). However, Mr McRae was not allowing for the possibility that there would be an unattended fire run to Narrabundah Hill. The prediction of fire spread was used *as a basis for operations to do their work, and I expected operations in both New South Wales and ACT to have some impact on the potential spread of the fire*[\[1463\]](#). However, Mr McRae agreed that the worst case scenario that came from planning was that there would be an unattended fire run from the McIntyre's Hut fire. According to Mr McRae, *the worst case scenario put the head fire at Narrabundah Hill, which is short of the urban area... it is realistic to expect some spotting and that sort of process going on which would be handled by fire crews.* Mr McRae also reiterated his earlier evidence that, when the fire was reaching Narrabundah Hill, he expected that the winds may be abating, in which case spotting would no longer be the issue it was in early to mid afternoon. Mr McRae was not allowing for the possibility that the wind

change may not have come and spotting would occur, *because we had such good liaison with the Bureau of Meteorology*[\[1464\]](#).

840. Mr Graham did not recall specifically Mr McRae providing a report which was suggesting that there was potential for the McIntyre's Hut fire to reach Narrabundah Hill by 20:00 hours. His understanding was that Mr McRae's predictions were of unattended fire spread. However, Mr Graham did not remember what plans were put in place that night to arrest the spread of fire during the following day. He accepted that it was agreed at the planning meeting that crews would not be placed near the fire front the next day. He could not recall what strategy was devised to stop the fire reaching the pine plantations and he agreed that nothing was done on the night of Friday 17 January to prevent that occurring. *The focus of effort that night was to make sure that the properties in the Tharwa and Naas Valleys were protected*[\[1465\]](#). Mr Graham's view at the time of the planning meeting was still that, when the fires left the forested areas, containment may have been possible in the grasslands. He was not suggesting that the fires would stop of their own accord or that the fire would stop at the Murrumbidgee and Mr Graham could not recall what plans were put in place to put crews in a position to contain the fire run. Mr Graham did not realise the significant risk of an impact on the urban area on the night of 17 January, *it was more at the morning of the 18th that I was more concerned by that*[\[1466\]](#). However, Mr Graham later agreed that it *was within his thinking* on the Friday evening that there was a possibility of an impact from the fires on urban Canberra. He did not know when on Friday that entered his thinking[\[1467\]](#). Mr Graham did not believe that he did anything in terms of alerting the urban community to the risk, because *his focus was on the operations that were happening down in the Tidbinbilla Valley, in the Tharwa area and not on community alerts*. According to Mr Graham, the urban community was somebody else's responsibility. *I believe that the incident controller has that responsibility.*[\[1468\]](#)

841. Ms Wheatley had arranged to attend the evening planning meeting after speaking with Ms Keane. In her statement, she described how she arrived at the ESB at 16:00 hours, but the briefing was delayed to 18:00 hours. In the 2 hours before the delayed meeting, Ms Wheatley went to the media area and asked Ms Harvey if there was anything she could do. *Marika asked me to search all media websites to see what information was being disseminated (not just local, but including ABC) concerning the fire around the ACT. I printed the information off and gave it to Marika*[\[1469\]](#). Ms Wheatley was asked in evidence whether she recalled looking at sites that had information from NSW authorities. She explained that *it was the media authorities I was searching the information for. It wasn't fire authorities*. She could not recall going to any NSW media outlets as part of her search.[\[1470\]](#)

842. In her statement, Ms Wheatley notes that during the planning meeting, *there was a discussion, which is referred to in the Planning Minutes, of the concern for the Corin rural area (we called it Southern Tuggeranong) and that they need to be made aware of the fire situation and placed on alert*[\[1471\]](#). In her notes under a heading *Planning – Risk*, Ms Wheatley had made reference to a number of places and times. Her recollection of the discussion that led to her making those notes was *that the maps had been developed, based on the information that was available on the current fire conditions, was that with the expected wind conditions, temperatures etc, there was a potential for the fire by 12 noon on 18 January to reach Uriarra. Reference to the school building obviously because there was a school building there. I worked with the*

Department of Education so that was of interest to me. And then onwards from Uriarra to then reach the Cotter. By 6 pm could potentially reach Mt Stromlo and by 2000 Narrabundah Hill[\[1472\]](#).

3.6.1.13 Cheney Approach to Fire Spread Prediction on 17 January 2003

843. In both his updated report and his evidence, Mr Cheney discusses how he might have approached the task of fire spread prediction on evening of 17 January 2003[\[1473\]](#). *My first assumption on receiving a forecast of extreme fire danger would be to say: "What's the worst we could get?" We know by historical precedent that, at the top end of extreme, we can get rates of spread of 10kmb in forests and 20kmb in standing pastures. So, in terms of being concerned about the fires, that was certainly the first thing that would go through my mind. If it is at the top end of the range, these fires could be here in an hour. As you get better weather forecasts you can then apply the forest fire danger meter, which you have, and the ... grassland fire spread meter*[\[1474\]](#). Mr Cheney then goes on to describe an approach *if you don't like to predict "what is the worst possible"*. If there is a good chance of getting a fire danger index of 80 in extreme weather, his approach would then be to ask what the fires are going to do under an FDI of 80. The examples in his report give the sorts of results that would be arrived at using the forest fire danger meter and the grassland fire spread meter at an FDI of 80. Mr Cheney explained in evidence that, given the fuel types between the McIntyre's Hut fire and the urban edge of Canberra, it is even simpler than doing separate calculations for each of the different fuel types along that path. *They are both around 5kmb. If you've got 15km to go, it is going to cover that distance in 3 hours*[\[1475\]](#).

844. In his report, Mr Cheney describes the process as follows: *It is not necessary to have highly detailed information about the fuel in the path of the fire but rather make a broad assessment of the fuel types along the predicted path of the fire. A general classification of fuel types between the ACT border and Duffy along the path of the McIntyre fire is: 2km forests; 3km grass; 2km pine; 4km grass; 4km pine: total 15km. Applying the above rates of spread for 7km of eaten out grassland and 8km of forest show that the predicted time for a large fire to travel the 15km is 2.8 hours at a forest fire danger index of 80 and 3.9 hours at an index of 60*[\[1476\]](#). In evidence, Mr Cheney explained that the information concerning fuel types is taken off a topographical map *plus knowing that at that time of year, apart from the Murrumbidgee corridor, most of the rural leases were pretty heavily grazed and approaching a condition that you would call "eaten out"* [\[1477\]](#). Mr Cheney also referred in his report to his opinion that in making the predictions he would assume that the fire danger would reach extreme at 10:00 hours and last for at least 8 hours. He acknowledged that, on 18 January, the extreme weather did not arrive until after 12:00 noon but he added, *if you are making a prediction on extreme weather you expect the wind speed to get up early and saying, "Well it is probably going to be in the extreme classification by 10 o'clock". There is no point in being terribly fancy about it. You have got fairly severe conditions. You need to say "Well, you know, what can happen?" This is simply saying, "Well these meters will assist you if you know how far the fire is away from you and what the expected rates of spread could be at those indexes"* [\[1478\]](#).

845. Mr Cheney concluded his report as follows: *On receiving a warning on Friday 17 January of extreme fire danger the following day, the planning unit should have assumed a fire danger index of 80 was possible and that extreme weather would occur after 1000 hours. Applying the rates of spread calculated above*

they could predict that it was possible for the fire to reach the suburban area on 18 January between 13:00 and 14:00 hours.[\[1479\]](#)

3.6.1.14 Ring-Around to Rural Lessees

846. Shortly after the evening planning meeting, Ms Harvey and Mr Prince (among others) were involved in the task of contacting as many rural Lessees as possible to warn them of the threat from the bushfires. Mr Prince described his initial involvement in that task as follows: *I was directed by the Chief Executive Officer of Justice and Community Safety Mr Tim Keady and the Fire Commissioner and tasked to work with Ms Marika Harvey of the Chief Minister's Public relations unit to develop a process for the Media, Canberra Connect and to inform rural lessees. Other personnel that met at 2000 that night in the Fire Safety Section were Mr Jannelle Wheatley from ACT Education, Ms Barbara Baikie from ACT Education, Ms Felicity Way from Canberra Connect and Mr Keirin Stiles from Environment ACT. Contact lists were obtained for the rural Lessees for the areas under threat. A number of rural lessees were contacted and given appropriate warnings of danger. This work went through to about midnight.*[\[1480\]](#)
847. In evidence, Mr Prince explained that he had contacted Keirin Stiles of Environment ACT to get the telephone numbers for the rural Lessees and Mr Stiles produced a list of those numbers. Mr Prince thought they probably didn't get the list until about 10 o'clock that night. The task of contacting the rural lessees was undertaken by personnel arranged by Ms Wheatley. *They continued ringing around to ensure that people were contacted. Of about 96 rural Lessees, I think, 47 were contacted.* Mr Prince could not be sure if the list that they were working off included forestry settlement residents. He saw a list of 96 residents, *but where they actually lived or where they were, I'm was not sure.* There was no discussion that Mr Prince could recall about using other mediums to contact people, such as radio or television. [\[1481\]](#)
848. In her statement, Ms Harvey described that at the evening planning meeting, *the need to contact people in rural areas to apprise them of the threat was discussed; to provide them with the right advice and protective measures to adopt. This became the number one priority for Friday evening and all of our resources were focused on working as hard as we could on this priority.* More specifically, Ms Harvey was involved in putting together *standard advice and information to give to these people and obtain lists of rural residences from Environment ACT so we would be able to ring people in those regions if need be. Later I wrote a script for the staff that would be making the phone calls, a prompt for what to say – just the basics.*[\[1482\]](#)
849. Mr McRae described his involvement in this process as being *to assist operations in knowing where those residents were by producing a catalogue of where the ACT rural residences were and getting that reproduced in large numbers to make sure that every fire truck or as many fire trucks as possible would have a copy of that to assist them in not overlooking anyone. 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.*[\[1483\]](#)
850. Ms Wheatley gave evidence concerning her involvement in the process of contacting rural residents and, in the course of her evidence, produced her notebook maintained by her,[\[1484\]](#) a map identifying the area under threat and a 12 page list of names and addresses, each provided by Ms Stiles from Environment ACT[\[1485\]](#). According to Ms Wheatley, after the planning meeting

there was a discussion involving Mr Prince of the need to form a communications group. *To plan for recovery needs in the event of the situation escalating and requirement for some preparedness for evacuation.* A meeting of that group commenced at 8pm that evening[1486]. Ms Wheatley's notes of the meeting include reference to *Dunlop* and under the heading *Public Information*, references to *Door knock – hard copy* and *Media – TV radio Areas under threat*. Ms Wheatley could not recall what *Dunlop* was a reference to. She explained that the other notes were references to *a brainstorming exercise to identify communications channels and what we could potentially prepare as resources or would be requiring if needed*. There was no discussion whether a door knock would occur or whether it would be something that was feasible[1487]. Ms Wheatley confirmed in her statement that the ring around to the rural Lessees was completed by midnight of 17 January 2003[1488].

851. The crossings on the list of lessees were Ms Wheatley's. She explained in evidence that they indicated leaseholders that were not in the area that they were requested to contact by telephone. Ms Wheatley was unable to say whether it was a list of all rural lessees throughout the ACT in all the areas identified on the map[1489]. However, in later evidence, Ms Wheatley confirmed that the first time that there had been any discussion in which she was involved where the need to contact the forestry settlements at Pearce's Creek and Uriarra was raised, was at 10:50 hours on Saturday, 18 January. A short time after 10:50 on 18 January, Ms Wheatley was sent a fax for the Uriarra, Pearce's Creek and Stromlo settlements which Ms Wheatley faxed on to the Police Operations Centre at Winchester. At 16:10 hours that day, a copy of that list was faxed back to Ms Wheatley with notations suggesting to her that by that time, personnel at the Winchester POC had undertaken a ring around of the residents of the settlements included on that list[1490]. Thus the evidence of Ms Wheatley confirms that the ring around on the night of 17 February was of rural lessees, with the focus on lessees in the Southern Tuggeranong area (the map produced by Ms Wheatley has a notation *priority Coree, Paddy's River, Tennant, Booth*[1491]), and that no attempt was made to contact residents of the forestry settlements at Uriarra, Pearce's Creek and Stromlo until some time between 10:50 and 16:10 hours on Saturday, 18 January 2003.

3.6.1.15 Discussion of Warnings to Urban Canberra

852. None of those present at the evening planning meeting, the subsequent communications meeting or otherwise involved in discussions that evening who gave evidence could recall any discussion or reference to warnings to the urban area[1492]. Mr Keady could not recall whether he was even at the evening planning meeting nor could he recall the contents of a telephone conversation that he had with Mr Castle at 21:51 hours that lasted for 7 minutes[1493]. Mr Castle's recollection of the telephone conversation was that he gave Mr Keady an update on the warnings to the rural communities which was the focus at that particular time, but he could not recall whether they discussed the urban edge[1494].

853. Following the planning meeting on Friday evening Ms Harvey's *sense was that* there was a chance of the fire reaching the suburbs. *My view or understanding of what that might mean was based on my experience in the 2001 bushfires when the fire did reach the suburbs, but no property was destroyed and no lives were lost. I think that is what my understanding was of the potential risk.* Ms Harvey agreed that it would have been appropriate at that stage to have started warning the Canberra community

about a threat of an impact[1495]. Both in her statement and in her evidence, Ms Harvey confirmed that on Friday night she did start working on a broader communication strategy *that included things like how to get information to some of these rural residents if the police had to evacuate them overnight or on Saturday. The strategy I started writing also began to address communicating with the broader Canberra community, but I never got to complete it due to other work that night and events overtaking us*[1496]. Ms Harvey also referred in her statement to discussing that night *giving the community information about evacuation centres and the need to bring together a key group of people to start working on the communications and recovery side of things. David Prince from ESB was to work with me on these issues, and between us, we contacted a range of people to attend a meeting early on the Saturday morning*[1497]. This meeting was arranged for 08:00 hours on 18 January 2003 and was referred to in Ms Harvey's notes and an agenda she later prepared, as the *Evacuation Planning Meeting*.

3.6.1.16 Further Planning by the ACT Fire Brigade and the ACT Ambulance Service

854. Mr Prince referred in his taped record of conversation and evidence to a brief meeting with Mr Gellie in the evening of 17 January, during which Mr Gellie provided to Mr Prince a map showing *where that McIntyre's Hut fire would go, and where it would hit*. Mr Prince thought the meeting would have been late in the evening. He thought the meeting with Mr Gellie would have been a very brief meeting and that Mr McRae may have been there in passing but not staying the whole time. According to Mr Prince, based on that meeting with Mr Gellie and on the map, he knew on Friday evening that there was a potential for the McIntyre's Hut fire to impact on the urban area[1498]. Mr Prince recalled discussing that issue with Mr Bennett but that discussion did not include reference to how the people on the urban edge of Canberra might be warned[1499]. The map provided to Mr Prince by Mr Gellie that evening, was the map Mr Prince showed to Mr Kirby the following morning[1500]. Mr Bennett could not recall Mr Prince showing him a map that had been prepared by Mr Gellie. *I was aware of those rates of spread from the briefing that evening. He may well have. I certainly don't specifically recall that*[1501].

855. Mr Dutton described how he had returned to the ESB at Curtin at 21:00 hours on 17 January 2003 because he had received advice from Louise Smith, the Ambulance Service Duty Manager and he returned to *gain a greater appreciation of what the situation was and where we would be placing our staff and potentially at what risk they might be at*. He had a short conversation with Mr Graham *about the fire and in particular the movement of resources*. Mr Graham said to him that *the staging points previously identified or used at Bulls Head had been closed and that resources were closer to Canberra*. The impression that he had at the conclusion of his conversation with Mr Graham was that *the situation had moved from serious to very serious... in the respect that the fire was spreading and there was a change in the nature of operations that were being undertaken*[1502].

856. After his return to Curtin, Mr Dutton prepared and distributed to staff of the ACT Ambulance Service memorandum updating on the situation with the development of the fires[1503]. Under the heading *Current Situation*, the memorandum identifies that *there is significant concern that the fire could spread to pine forests and rapidly move towards Canberra*. Mr Dutton's forecast for ambulance operations, include: *extreme fire weather conditions are forecast for Saturday 18 January*, and: *expanded ambulance operations directly related to the fires having the potential to impact upon rural communities*

to the south of Canberra and the suburban fringe. In his evidence, Mr Dutton said that he was not anticipating at that stage that ambulance operations relating to the fires would be carried out on the suburban fringe. The reference in the memo was to *draw people's attention to the fact that the circumstances, as I understood it on the evening of 17 January, was that ambulance operations were no longer to remote staging areas to the west of Canberra, that the situation had changed. And that included, as the fire had moved, that it was closer to home for people... I am drawing the attention of our staff to the fact that the fire has moved and grown and appears to be continuing to progress towards Canberra.* Mr Dutton had identified at that stage that the fires had the potential to impact upon the suburban fringe^[1504].

3.6.1.17 20:50 Hours Media Update

857. At 20:30 hours on the evening of 17 January 2003, Mr Castle signed a further request for commonwealth physical assistance in which the *Situation* is described as follows: *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 risk associated with spot fires from the NSW McIntyre's fire.*^[1505]

858. At 20:50 hours on 17 January 2003, the ESB issued its final media update for that day. It was a single page update that differed in format from most of the earlier media updates, in that it did not incorporate headings differentiating between fires or providing details of land and property damaged, the weather and fire ban status and lists of the resources deployed. It also did not direct readers elsewhere for information on the McIntyre's Hut and Mt Morgan fires. The full text of the media update is as follows:

- *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 McIntyre's 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 0418-642-567.*

859. Mr Lucas-Smith agreed that the media release did not include any warnings about risks to particular residents, whether rural or suburban. He referred in evidence to the fact that the media update *does point out that we would be liaising and coordinating with NSW regarding the McIntyre's Hut fire and New South Wales were the people responsible for the media notices in relation to the McIntyre's Hut fire.* However, he accepted that it did not say that New South Wales would be responsible for media notices, *but it does say that we were coordinating with New South Wales in relation to that. I think you will find there were other advice handed out well before that and I think it is attached to a number of the media releases before as to what people should do in the event that a fire should approach their property and that had been done a*

number of times up to that point. I think that media statement is more or less a status report[\[1506\]](#). The evidence is that there were no media releases before a media release issued at 12:00 noon on Saturday 18 January 2003 that contained information about what people should do in the event that a fire should approach their property. There is some evidence that information of this kind appeared on the Canberra Connect website at some point before the afternoon of Saturday 18 January, but it is not clear when that information was first posted on the website. It is likely that that too did not happen before 18 January 2003[\[1507\]](#).

860. Mr Castle thought that he may have assisted with the preparation of this media release. He agreed that the reference in the media release to there already being a spot fire close to the ACT border must have meant a spot fire outside the containment lines. Mr Castle also agreed that there was nothing in the update that identified a threat to the urban area, *but could I say that I recall that one of the primary reasons for putting this out was the indication 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 a media update that went out at 20:50 hours on 17 January could not have included information about the potential threat to the urban area of Canberra. He thought it may not have been done because of *the preoccupation with the rural area*.[\[1508\]](#)

861. Mr McRae was not familiar with the exact content of the material that was going out but he *would have anticipated what we said in the planning meetings would be reflected in that material*. He was not involved in the preparation of the media release at 20:50 hours[\[1509\]](#). Ms Harvey could not recall being involved in the preparation of the media release but she might have been. She could not think of any reason why the issue of that media release was not seen as an opportunity to begin alerting the Canberra community to the threat from the fires[\[1510\]](#). Ms Lowe remembered working on the media release with Mr Castle and Mr Castle saying that it had to look different from the other media releases, *not with the fire status and resources deployed and things like that, that it needed to say something different, in a sense*. According to Ms Lowe, Mr Castle said it needed to look different, *maybe because the fire had spotted and it wasn't contained*. Ms Lowe did not recall discussing with Mr Castle the potential for an impact on the urban area. During her taped record of conversation, Ms Lowe was asked whether she felt the media release adequately portrayed the seriousness of what was happening. She responded: *in hindsight I guess not, but at the time there sort of, despite the guys from planning standing up there and saying, "the fire's going to hit here and here, or it has the potential to if it spots at this rate," you know, there was a certain sense of it's not going to be that bad... so I guess at the time it seems like, you know, it was the right way to be communicating that*[\[1511\]](#). In her evidence, Ms Lowe explained that she could not recall any particular comments that led her to that view, *just an overall feeling after the meeting of not feeling like there was a great sense of urgency*[\[1512\]](#).

862. Mr Nicholson was referred to the media release in the course of his evidence. He agreed that the media release seemed to indicate that the ACT were coordinating with NSW in relation to the management of the spot fire from the McIntyre's Hut fire close to the ACT border. He agreed that if the media release was issued following a meeting an hour or so beforehand at which the opinion had been formed within ESB that the McIntyre's Hut fire was likely to burn to

Narrabundah Hill by 8 o'clock the following night, that would be information which the ESB would be obliged to disseminate to the public[1513].

3.6.1.18 17 January Overnight Operations

863. Mr Robert Gore went into Comcen at ESB at 16:00 hours on Friday 17 January and assisted in the operations area. Mr Gore had been a volunteer with the ACT SES since 1986, and had joined the Jerrabomberra Volunteer Brigade in 1994. At the time of the fires, he was in his third year as Captain of that Brigade, having been Deputy for the preceding two years[1514]. In his statement, Mr Gore describes his involvement overnight on 17 January 2003 as follows: *At about 22:00 hrs, Tony Graham asked if I could stay on overnight and look after supporting operations from inside Comcen while he went home to get some sleep. I had continued there by myself with the two Comcen operators. There was no other Planning Office Incident Management or Service Management left in the headquarters that night.* In evidence, Mr Gore described his role overnight as *slightly ambiguous. I saw my role as a duty coordinator, point of contact, liaison person.* Mr Graham had made it clear before he left that if he needed any assistance, Mr Gore should contact Mr Graham and he did telephone Mr Graham at 01:00 hours on 18 January 2003 to obtain approval for a back burn around Tharwa[1515]. Mr Gore did not have access to Mr Lucas-Smith, Mr McRae or anyone else if he needed it overnight. There was no other activity at the ESB during the night[1516]. Mr Gore agreed in evidence that the primary activity that night was in the Tidbinbilla Valley and he was aware that Mr Murphy was the Field Incident Controller at that location. Mr Gore and Mr Murphy were contacting each other *probably hourly*. He had confidence in what Mr Murphy was doing. Mr Gore might have been assisted by some administrative support at the ESB but generally Mr Murphy was managing the operation from Tidbinbilla[1517].

864. Shortly before handing over to Mr Graham at 06:30 hours on the morning of 18 January, Mr Gore had received a brief or an update from someone within the NSW Rural Fire Service concerning the McIntyre's Hut fire: *At that time the status report from New South Wales was that, whilst there had been spotting over at Mountain Creek Road, McIntyre's Hut was under control and behind containment lines and there had been no additional request for ACT resources throughout that night*[1518]. Mr Gore's recollection was that he received that status report from New South Wales at around 5.00am on 18 January but he could not recall who he spoke to[1519].

3.6.2 18 JANUARY 2003

3.6.2.1 Mr Lucas-Smith's "Heart of Hearts" Prediction

865. Mr Lucas-Smith reached a state of mind where he knew in his heart of hearts that whatever was done could not prevent the fire from burning into Canberra, once the McIntyre's fire had crossed the New South Wales border on the morning of 18 January. *It was on the morning of the 18th that I thought it was inevitable, that the fires would burn into Canberra*[1520]. Later in his evidence, Mr Lucas-Smith confirmed that the McIntyre's Hut fire regained prominence in his thinking on the morning of 18 January when the break out in its north-east corner was heading across the ACT border. That was the point where he realised that the impact on Canberra was inevitable[1521]. At the time of giving that evidence, Mr Lucas-Smith was uncertain when he

became aware that the break out from the north-east corner of the McIntyre's Hut fire was heading across the ACT border. However, after being referred to paragraph 108 of his statement, Mr Lucas-Smith agreed that he was aware by 07.30 hours at the latest that a portion of the McIntyre's Hut fire had crossed the border into the ACT[1522]. However, at the time he formed the view that an impact on the urban area was inevitable, he hadn't clearly formulated a time in his own mind as to when that was likely to happen nor as to what the extent of that impact might be[1523].

866. The issue was revisited during Mr Lucas-Smith's re-examination. He was asked whether at or about 7.30am on the morning of 18 January, his view was that some effect on the urban edge of Canberra was inevitable but he didn't realise when or what the extent of it would be. He declined to give a yes or no answer and continued: *What I am about to say is, from what I can recollect, at about 6.30 we got a report that the McIntyre's Hut had crossed the border into the ACT, into the Uriarra pine plantation. That then meant that our firefighting capabilities in the south were going to be stretched. Whether that impact occurred in the south from the Bendora fire or the McIntyre fire, I thought that the possibility certainly existed that the interface would be affected.* Mr Lucas-Smith accepted that in his previous evidence he had used the word *inevitable*, but *within my heart of hearts to use your terms, the inevitability was not there but the potential certainly was.* Mr Lucas-Smith was pressed on whether he was now saying that at about 7.30am on 18 January it was *not inevitable* that some effect would occur to the urban edge, but there was simply some potential for it to happen. He said: *I saw the potential, and I will stick with my words. I thought that eventually it would be inevitable*[1524].

3.6.2.2 Castle Media Interviews

867. The ABC's Natalie Larkins noted in her statement that, when she started work at 9.00am on Friday, 17 January, she knew she had the responsibility of ensuring there were local news broadcasts before midday on Saturday and Sunday. *Bearing this in mind I figured that the bushfires would feature prominently in the news over the weekend. Fridays at work for me are basically a preparatory day for the weekend news.* At the time, Ms Larkins was living with her partner in a rental property at 29 Darwinia Terrace, Rivett. She explained in her statement that on the Friday she went to great lengths to arrange an interview with either Mr Lucas-Smith or Mr Castle at 6.00am or thereabouts on 18 January. She intended the focus of the interview to be the progress of the fires overnight, any overnight damage and the potential for property damage to the rural areas of the ACT. *When I got home on the Friday evening I didn't have the expectation that the fires were going to affect us personally. I had been mindful of the fires during the week and the weather forecasts, particularly the hot windy conditions. I wasn't overly concerned at that stage because the feeling generated by the authorities, particularly on that Friday, was that the fires were 20km away and moving slowly. We were told that the fires were unlikely to affect Canberra*[1525]. In her evidence, Ms Larkins explained that the expectations referred to in her statement were based on the news stories and the interviews that she had monitored throughout Friday. *Being in the newsroom, I was keeping abreast of what was going on with the fires, knowing that I would have to then carry on the stories the following day*[1526].

868. Shortly after 06:00 hours on 18 January, Mr Castle participated in a phone interview with the Ms Larkins[1527]. Mr Castle was still at home when the interview took place[1528]. Before

commencing the interview, Mr Castle had spoken to Operations at Curtin. Mr Castle was unsure who at Operations he spoke to – it might have been the overnight duty officer or Mr Graham[1529]. Ms Larkins described in her statement that: *During this interview we discussed the fact that the fires at Bendora and Stockyard Spur had broken their containment lines overnight and crews were battling spot fires from the McIntyre's Hut fire. He also discussed the fact that the fires had travelled down Corin Dam Road and had burned three support buildings at the tourist facility. He stated that the buildings had been damaged. He didn't elaborate whether they had been destroyed. We then discussed the fact that 45 residents in the Tidbinbilla area had been placed on alert. He was emphatic but the people hadn't been evacuated, merely warned. We covered road closures and that people should stay east to the Murrumbidgee River... We discussed weather conditions. He admitted the conditions were awful and were placing pressure on all fronts... We spoke of the possibility of the fires entering the Uriarra pine forest. At that stage they hadn't entered the pine plantations... We briefly discussed the McIntyre's Hut fire. He indicated that they'd only focus on that fire once it came into the ACT. I have some notes that would indicate I asked whether the fire was likely to enter Canberra. I don't recall the specifics but he responded that he appreciated community concerns, but gave no indication that there was any risk to Canberra*[1530].

869. Mr Castle could recall very little of his conversation with Ms Larkins. He did not know whether he recalled saying anything about risks to Canberra. He did not recall Ms Larkins asking about risks to Canberra. Mr Castle thought his state of mind at the time *would have been still no immediate threat to Canberra*. He could have said something like that to her but he did not know[1531]. In her evidence, Ms Larkins was confident that the question she would have asked was *whether people should be concerned of any risk to Canberra*. She had made a note *appreciate people's concerns*. She believed that *had he said to me that there was any risk to Canberra, that would have been the story that she would have written. So the indication would be that, from everything I was told, there was no risk to Canberra*[1532].

870. At the end of her interview with Mr Castle, she suggested he contact ABC666 direct and do a live on-air interview. *Mike Castle subsequently participated in a live interview that went to air at 7.30am. This interview largely covered the same information he had given me. In summary he gave the impression that there was no threat east of the Murrumbidgee River*[1533]. Mr Castle denied using the words *no threat* during the on-air interview. The words he believed he used were that people should stay east of the Murrumbidgee. But he agreed that he did not mention that there was a threat east of the Murrumbidgee[1534]. Mr Castle believed that he was still at home at the time of the on-air interview. He had not spoken to Mr Lucas-Smith at any stage before that interview. His recollection was that the interview was at 07:30 hours. He did not know whether it was aired live at that time, but he agreed that the transcript of the interview suggested that it was live[1535].

871. In the interview, after describing events overnight, including minor property losses, Mr Castle was asked whether more property losses were expected that day. The interview continued: *Castle: What we're expecting, of course, is not necessarily property damage.*
Interviewer: No.

Castle: It does then depend on, in some respects, first of all, in the rural areas, how people have actually prepared around their immediate property, people that live in the rural environment do have expertise and understand that they live in that sort of an environment, and, as I have explained to some people it's – the individual property

threats is some way similar to what could happen if it started on their particular property, but of course, with our resources stretched, the precautions that they will have taken around their immediate home will assist in actually surviving that fire.

Interviewer: Right. Which are the greatest areas of concern at this point, Mike?

Castle: The one that are probably closest out in the ranges would be the Paddy River's Road area, which is the road that turns in a great arc around from Tharwa, west and then around near Paddy's River, and comes back in through the top of Cotter and

Interviewer: Right, and are you asking people to prepare to evacuation?

Castle: Really, it is their decision in the first instance, Peter Lucas-Smith said yesterday, the preparation that people can do around their home actually assists. Properties have best chance of success if people stay with their property, however, they need to be confident that they can actually deal with that sort of approach and trauma of having the bushfire come right up to them. Now, some rural people do have that experience and confidence, and, if they've done preparations around their home then having a hose sort of that can put out ember attack, because properties are generally not threatened by the immediate fire front, but from ember attack that gets under eaves, under houses and can then of course - ... the property damage, so, if they're able on-site to extinguish those quickly with a hose that can reach to all components, then that's a greater chance of survival.

Interviewer: With forecast north-west to westerly winds today, turning the fire back towards the city, what will be your main strategy today Mike Castle?

Castle: Our main strategy is to look at property protection, position our resources where we think they can do the maximum protection, we would ask people to basically stay east of the Murrumbidgee River, that is out of, really, the areas, the rural areas, and only need to go into those areas if – really, if there are residents and need to access their property.[\[1536\]](#)

872. In evidence, Mr Castle confirmed that he did not have any expectation at that time on the morning of 18 January that there would be any more property damage. In referring to the experience of people in rural areas, Mr Castle considered that he was saying that rural people have a greater understanding of the threat because they live with it every day. In the case of urban people, *I think they do live with it, but they don't live with it every day.* Mr Castle agreed that he could not have the same degree of confidence that people in urban areas had the experience and had done preparation around their home.[\[1537\]](#)

873. Mr Castle confirmed that while he mentioned Paddy's River Road as one of the areas of greatest concern, he did not mention the forestry settlements at Uriarra. He did not have a sense at the time that they were under any threat. It surprised him that, given the fire was in the Uriarra pines, someone had not told him the Uriarra forestry settlements were an area of significant exposure. Mr Castle did not mention areas such as the Stromlo pine forest and the Stromlo Observatory because his understanding was that, *there was likely to be success when it comes out into the grasslands and there were grassland in between there.* Mr Castle did not know what strategies were in place at that time to try and stop the fire from crossing the grasslands area.[\[1538\]](#)

3.6.2.3 Evacuation Planning Meeting

874. Mr Kirby of the AFP had been contacted the in the evening of 17 January by Mr Prince and advised that the weather conditions were still deteriorating and that a meeting would be held at

ESB the next morning to discuss various aspects of the emergency services response and recovery. Mr Kirby arrived at the ESB on 18 January 2003 at 07:40 hours. He received a briefing from Mr Prince concerning the deterioration of the fires. Mr Prince advised Mr Kirby *that the fires were now predicted to arrive at Duffy by 18:00*[\[1539\]](#). According to Mr Prince, in the course of their discussion, Mr Prince showed Mr Kirby the map that he had been given the previous evening by Mr Gellie. *It was a green bushfire topographic map. It had brown text with onion rings on it. That particular map being produced after 8 o'clock at night was showing it hitting the urban area at about 18:00*[\[1540\]](#). Mr Kirby agreed that Mr Prince showed him a topographic map as described by Mr Prince. *It was the first time I had heard in fact that the fires could progress 2 hours before in advance of what was considered the day before*[\[1541\]](#).

875. Ms Harvey had prepared an agenda for the meeting the previous evening[\[1542\]](#). The agenda items included: *Background on the current situation* and *Evacuations – how are they run and what is already on standby*. Under the heading *Public Information Strategy*, the agenda identifies *Key Aims* as *Alerting the community to heightened risk* and *Alerting the community to immediate evacuation*. The communications mechanisms identified are: *Door knocks/ telephone, media, call centre, internet*.

876. Ms Harvey thought the people present at the meeting were Mr Prince, Mr Tonkin, Lucy Bitmead, a representative from the police, a representative from the Chief Minister's Department and from Canberra Connect. Ms Harvey also identified Mr Manikis, Ms Wheatley and Barbara Baikie as present at the meeting[\[1543\]](#). Mr Kirby described the meeting as *almost split in two in terms of there was one group sitting within a very, very small meeting room or kitchenette type room, and then I think myself and Superintendent Prince, Tim Keady, Mr Tonkin – we sort of were talking outside the meeting... subsequently I did go inside the meeting*[\[1544\]](#). Mr Prince didn't at first realise that Mr Tonkin, Mr Keady and Ms Bitmead would be there, but they did arrive. According to Mr Prince, Mr Tonkin and Mr Keady arrived together. There was no-one specifically chairing the meeting. Either Mr Prince himself or Mr McRae spoke to the group. Like Mr Kirby, Mr Prince described that the room was small and there were a number of people sitting down at the desk. *Mr Tonkin and Mr Keady were semi out of the room and having a discussion out of the room and also trying to listen inside*[\[1545\]](#). Mr Tonkin gave evidence that those present at the meeting were himself, Ms Harvey, Barbara Baikie, Cathy Atkins, Mr Prince, Mr McRae and Lucy Bitmead and a number of other people largely from Barbara Baikie's community services area[\[1546\]](#). In her statement, Ms Wheatley identified a number of the people present at the meeting, including Mr McRae, but does not mention Mr Keady[\[1547\]](#). Mr Keady did not think he was present at the meeting[\[1548\]](#).

877. According to Mr Prince, the purpose of the meeting was to prepare Canberra Connect to take calls from the public and inform the public about the fires. Ms Harvey, who had organised the meeting with the assistance of Mr Prince and Ms Wheatley said the meeting *was on much more broadly public communication and evacuations, the recovery centres and those sorts of things*. Ms Harvey said that although the meeting was referred to as *evacuation planning meeting*, it was a meeting that was also concerned with the broader issue of community warning[\[1549\]](#). Ms Harvey's evidence accords with Mr Prince's in that she explained that during the meeting: *there was a lot of conversation about how we use Canberra Connect and how we would increase the statements, the information going out to the media and to Canberra Connect*. Mr Kirby's understanding of the purpose of the meeting was: *to look*

at the information flow in relation to evacuation protocols, looking at Canberra Connect, possible door knocks. Again, mainly to do with the information flow in relation to possible evacuations[1550]. Mr Tonkin thought the purpose of the meeting was to *inform the people involved in the community recovery aspects of how things were to happen and to set up arrangements whereby we could ensure the information was flowing both to those people and through Canberra Connect, through the web and through the call centre, to make sure that we had current information available to give out to the public through all means that we had. So it was a general coordination interest. We set up a mechanism to ensure that that happened on a regular basis.* Mr Tonkin could not recall much about evacuations[1551].

878. Mr Prince's recollection was that at the start of the meeting, either himself or Mr McRae spoke to the group. He put the map that he had been given by Mr Gellie on the wall and *just gave them an update of the possibility of when the fire may, and this was worst case scenario, may hit the urban interface.* According to Mr Prince, the predicted time of potential impact was *the same opinion I had from the night before – 18:00.* Mr Prince's recollection was that Mr McRae was concerned about the fire weather and that everybody should understand that the fire could do erratic things that day. After Mr McRae and Mr Prince spoke, Mr Prince walked outside with Mr Kirby and had discussions[1552]. Mr Kirby confirmed that Mr Prince's presentation included reference to the map that he had shown him earlier. Mr Kirby also recalled that Mr Prince was talking about the main threat coming from the McIntyre's Hut fire. *Again, I think he was basically re-affirming for all people in the room what we had received the previous day at 6 o'clock in that if fire lines were broken and had got into Stromlo forest, Mr Lucas-Smith had said it wouldn't be fought; it was too dangerous obviously to do that; and the fire would basically come through unchecked from there. I think that's the general text of what he was saying.* Mr Kirby also gave evidence that Mr Prince did mention the likely timing of impact[1553]. Mr Tonkin's recollection was that there was a presentation and he thought it might have been by Rick McRae. As to the content of the presentation by Mr Prince and Mr McRae, Mr Tonkin agreed that Ms Wheatley's recollection of the meeting was a *good recollection*[1554].

879. Ms Wheatley appeared to have the clearest recollection of the presentation by Mr Prince and Mr McRae: *David Prince and Rick McRae gave an overview on the current fire situation. There were updated planning maps on current fire conditions and operations. We were told the operations base had been moved to North Curtin oval. At this time we were preparing for any possible role, not necessarily evacuation, but it might have been personal support, information via a hot line, or the like. We were told, by David Prince and Rick McRae, that the major concern at the time was McIntyre's fire, and the potential for it to push into the forest area. Of concern were Stromlo forest and the possibility of Woden West, Duffy, Holder and the Belconnen suburbs of Dunlop, Holt, Higgins and McGregor. I did not record, but I do recall information was provided, that while there was a concern, the fire fighters were confident. There was comment that coming out of the forest you have a grassland verge and fire can be attacked differently in that area and it can be contained coming out of the forest and that grassland verge*[1555]. Ms Wheatley's notes taken at the meeting include reference to: *McIntyre major concern, push through forests. Stromlo concern – Woden/Weston, Duffy, Holder. Dunlop/Holt/Higgins, McGregor*[1556]. Ms Harvey's notes of the meeting also include reference to: *Duffy, Rivett, Holder don't go west of Murrumbidgee.*[1557] However, Ms Harvey could not recall any discussion that took place that led to her making those notes[1558].

880. According to Ms Wheatley, there was no mention of the timing of the risk to the areas that were identified in her notes and her statement and she could not recall whether there was any mention of the level of risk[1559]. Asked whether there was any discussion during the meeting about what, if anything, should be done to warn the residents in the areas that were identified in her notes, Ms Wheatley said that: *there was some discussion that the Canberra Connect website was up and running providing information to the public on the current fire status. Apart from that, I don't recall any other discussion.* Ms Wheatley went on to explain that it was not a recovery responsibility to provide warnings to the public and her understanding was that the media unit would be responsible for managing that process[1560]. Later in her evidence Ms Wheatley appeared to contradict her earlier evidence that she could not recall any reference to the level of risk, when she accepted the suggestion put to her that, so far as those who were telling her the information concerned, the prospect of the fires affecting the suburbs mentioned was remote[1561]. Ms Wheatley was asked in re-examination whether she recalled someone saying that the prospect of the fire reaching the suburbs was remote or whether it was more in terms of her statement that the fire fighters were confident they could still stop the fire at the grassland area. She answered: *Yes, it was more that there was confidence that the fire could be contained within that grassland verge, yes.* She went on to reiterate that there was no expression used that indicated to her a degree of probability about whether or not the fire might reach the suburbs and reaffirmed her original evidence that there was no category of level of risk or time[1562].

881. Like Mr Tonkin, Ms Harvey gave evidence that a purpose of the meeting was to set up arrangements to keep the information flowing. But Ms Harvey had *grave concerns about our ability to continue to get updated information out; I raised those concerns in the meeting.* Her concern was about obtaining the information. *We had already found, you know, in the days leading up to the Saturday that it was a difficult process getting up-to-date information or confirmations of questions that the media asked, because the fires in the week leading up to the 18th were in quite remote areas and it was very difficult to say where the fires were at any given point. It was also very difficult sometimes for us just to get people who were very busy to be able to give us time when we needed it to update the media statements... Sometimes we struggled to get two updates out a day and the process that was being proposed at the meeting at 8.00am that morning was that we were going to do a written statement every hour. And what I had concerns about was that we would never be able to get information fast enough to be able to update something like that every hour, and that the approval processes that I recollect being proposed were going to take up quite a lot of time, with not a huge amount of benefit that I could see.* Ms Harvey's recollection was that, assuming they had the information, they were going to issue it to the media and to Canberra Connect, who would be placing that up on the website and giving it to the call centre operators[1563]. According to Mr Prince, *the sole purpose of the meeting was to set up Canberra Connect and have it ready as an interface with the public with their Canberra Connect call centre and also having information available on the net.* Any strategy concerning the use of the media or television, *would have been left with the information unit and the media unit with Marika Harvey working closely with Mr Castle and Mr Lucas-Smith.* Mr Prince could not remember discussion about using radio and television[1564].

882. Mr McRae does not refer in his statement to attending the evacuation planning meeting and it was not raised with him during his evidence. However, in his statement, immediately before commencing with his description of the planning meeting at 09:30 hours on the morning of 18

January, Mr McRae states: *I 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 that they should be prepared for that eventuality* (emphasis added)[1565]. In evidence, Mr McRae described the process by which he would identify 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 late 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 later agreed that he would be anticipating getting information as a result of that resourcing of those areas, and if the information was, *Look, we're not succeeding in holding this* then he would conduct an assessment to see what was next down wind and issuing a warning at that point[1566].

883. Asked what would be wrong with taking the view as at Saturday morning that there is a general threat to the western edge of urban Canberra and they should at least let people know about that threat, Mr McRae answered: *I felt we already had that... in the media material that had already gone out.* He accepted that he hadn't seen such material, *but, as I say, I felt we had that*[1567]. In the context of that evidence, Mr McRae was then asked about the sentence in his statement concerning risks to assets or personnel east of the Murrumbidgee River. By *no immediate risk*, he meant that *there was no fire activity which could make an immediate run to threaten assets east of the Murrumbidgee River.* Mr McRae agreed that he was basically saying that there was nothing in the next couple of hours, *but the situation is dynamic and under continual review.* He also explained that his reference to *personnel* was to emergency services personnel. It was Mr McRae's understanding that, having provided that information, the media unit started preparing some kind of release or other warning to the urban community. Asked whether he discussed what form that should take and how the message should be articulated, Mr McRae answered: *That wasn't my job, no*[1568].

3.6.2.4 Morning Planning Meeting

884. At 9.00am on 18 January 2003, Mr Taylor began preparing a message form to operations from planning. Mr Taylor believed that he wrote the first point on the memo as a consequence of the discussion with Mr Bartlett who had been undertaking an aerial reconnaissance of the fires, returning to Curtin at 8.30am. He suspected that he then encountered Mr Graham somewhere in the building and passed the first point to him which Mr Graham noted and initialled. He suspected that he went on to compose the rest of the note after the morning planning meeting.[1569]

885. The planning meeting referred to by Mr Taylor commenced at 09:30 hours with a report on fire operations, including a report by Mr Bartlett on his 1 hour aerial reconnaissance. The briefing from the Bureau of Meteorology was provided that morning by Mr Davis. The typed minutes of the meeting record Mr Davis' forecast for that day as follows: *The temperature at 08:00 hours this morning at Canberra Airport was 29° with the potential for 40° today. This afternoon expected wind speeds of*

35-40kms gusting 55-60 on the ridges. The expected upper fire ground temperature is 31°, with a due point of 3°. A south-east change may be expected this evening at 21:00 hours at the fire ground, with 25-40km winds. Winds easing overnight to 10-20kms with an increase in due point. This forecast is broadly consistent with Mr Davis' evidence, based on his briefing notes. [\[1570\]](#)

886. In evidence, Mr Davis confirmed that Mr McRae asked for a special fire weather forecast for close to Canberra. *We had been issuing one for up in the hills around 1400, 1200 metres. He was requesting one for the height of 800 metres closer in to cover the area in closer to Canberra.* Mr Mason also confirmed in his evidence that, after attending the planning meeting, he spoke with Mr Webb about what had been discussed at the meeting and told him that at the meeting there had been discussion about the significant risk to the western edge of Canberra. According to Mr Davis, *there was considerable discussion about the impact of the fires on western Canberra as a possibility during the day.* Mr Davis could not recall exactly whether anyone ventured an opinion as to when that might happen, but his impression was that *they were looking at it for later in the afternoon.* Mr Davis thought that the request from McRae for the special fire weather forecast for the height of 800 metres was made by Mr McRae after the planning meeting, probably around 10:00 hours. [\[1571\]](#)

887. Later in his evidence, after tapes of Mr Mason's telephone conversations with Mr Webb and Mr Davis on the morning of 18 January had been played, he confirmed that he said to both Mr Webb and Mr Mason that there was a significant risk to the urban interface of Canberra, qualified only by the fires being able to be brought under control. Mr Davis could not recall actually what was said *but there was a discussion about the possible run of the fires in towards western Canberra.* Asked who was speaking, Mr Davis answered: *Rick McRae was one of those that was in the planning room that was discussing the fires.* Apart from the change of direction of the wind to the east Mr Davis could not recall discussion at the meeting of any other means of controlling the fires, except that: *There may have been some discussion on using water bombing but I can't recall the exact words.* Mr Davis could not recall the suggestion that the fire front would actually burn into the housing on the western edge of Canberra as a definite thought discussed at the meeting, *but obviously, if you're going to have a fire front affecting the urban interface, there would have been some effect on urban Canberra.* [\[1572\]](#)

888. The minutes also refer to Barbara Baikie outlining the community recovery strategy including identifying evacuation centres, the involvement of lifeline and the Red Cross and a liaison offer being located at Curtin and an evacuation team located at Winchester Police Centre. The final bullet point under the heading *Planning Considerations* is: *communications and information flow between POC ESB and NSW is considered critical.* The last item in the minutes is the media item, with the matters discussed recorded as follows:

- *Mike Castle to determine regular radio interview times.*
- *Press Conference at 12 noon*
- *A community advice and information strategy is being developed*
- *Canberra Connect is developing scripts and key answers for community questions;*
- *Review of Canberra Connect operating hours being undertaken;*
- *Processes for quick information sharing are being developed;*
- *Focus placed on local radio* [\[1573\]](#).

In the handwritten notes of the planning meeting, the reference to the risk to the suburban areas

is recorded as follows: *High levels of exposure – poten from run from Mt SE W-Creek to Greenaway. More W-W Belconnen and South Belcon – WH drive. W from Tid → Sth parts of Tugg. Ops + planning link paramount. Under threat 1200 Cotter 1500 W side of Mt Str 1800? W winds = smoke across CBR*[\[1574\]](#).

889. In his statement, Mr Bartlett attributes the remarks concerning the potential impact on the Canberra urban area to himself. After referring to his aerial reconnaissance and describing that he went to the planning meeting *already with little doubt in my mind that there was great potential for the northern and central fires to impact on the suburbs of Canberra*, he continues: *I recall expressing my views about the potential for fires to burn to the edge of Canberra during the day. I indicated that the McIntyre's fire could make a run to the urban interface from Weston Creek to Greenaway and possibly even affect western 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 southern-most 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 fire fighters observed the Watchouts. It was also made clear that information flow on the fire would be critical. The situation officer (Hilton Taylor) indicated that the McIntyre's fire could reach the top of Mt Stromlo by 17:00 depending on the time it broke out of containment lines.*[\[1575\]](#)

890. In evidence, Mr Bartlett confirmed that there was no dissent from these views expressed by him at the planning meeting[\[1576\]](#). He also confirmed that it was his recollection that Mr Taylor had suggested that at 17:00 hours the fire might be at Mt Stromlo. Once again, he did not hear any dissent or differing views about that prediction given at the planning meeting that morning[\[1577\]](#). Mr Bartlett was later cross-examined about his recollection of the events at the planning meeting. Mr Bartlett said his recollection of him having made the comments about the threat to the urban area was quite clear. *After Mr McRae gave some broad information on planning, I recall Mr Lucas-Smith asking a question about what suburbs might come under threat during the day. I believe that I then actually gave those words that are paraphrased in the planning meeting simply on the basis of what I had seen in the helicopter, and then how I had worked out in my mind and prior to this planning meeting discussed with Tony Graham the operational strategy I wanted to put in place about the distinct possibility of the fire making three particular runs.*

So those words in the planning meeting are actually me telling the planning meeting about where I thought each of those runs could get to. The other reason that I am very confident about this – there are two other components: the first one is that I distinctly remember adding the bit about whether the wind was from the north-west or had a slight westerly influence. That was on the basis of my actual experience during the 2001 fire when I was the incident controller. The weather was actually forecast to be a north-westerly wind on that day and turned out to be almost due westerly. So I had that very firmly in mind.

The second part, which is recorded sequentially in those planning meeting minutes, after this discussion about which suburbs would come under threat, I then said that I wanted to establish an operational mechanism between the field people and the planning section to get information to and fro so that new information that the planning section

had that was going to be needed to the field people was able to go out; and vice versa, when the field people had new information, it would come back to the planning cell.

...

As they said, I was the eyes of ESB. I had been out and flown around; I had a fairly clear indication. I can in fact say with confidence when I got back that I never got to speak to Mr McRae. I spoke to some of his members in his planning unit. I couldn't find Mr McRae that morning. I don't know how he would have come up with the same conclusion if he hadn't had access to the information I had seen from the helicopter[1578].

891. Mr Bartlett went on to say that he didn't have the capacity to make predictions of unattended spread referred to in the notes of the planning meeting, that the fire will be at Uriarra settlement by 12:00 at the Cotter by 15:00 and the west side of Mt Stromlo by 18:00. He didn't have the capacity to make those detailed predictions about exact times. *I remember some members of the planning unit raising those issues.[1579]*

892. Mr Lucas-Smith directly acknowledged in his statement that: *the possibility of the ACT fires impacting on suburban ACT was discussed at the 09:30 Planning Meeting with the worst case scenario predictions by the Planning Unit being that the fire was likely to be at the west side of Mt Stromlo at about 18:00 hours.* Mr Lucas-Smith then identified in his statement a number of specific issues raised at the planning meeting including the very high to extreme fire weather conditions expected throughout the day, a wind change from the west expected at approximately 20:00 hours and the potential for long distance spotting throughout the day. The typed minutes of the planning meeting also refer to significant potential for long distance spotting and, under the heading *Current Areas of Concern* identified:

- *a potential run from McIntyre's fire impacting on Weston Creek to Greenaway and potential 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.*

893. Mr Castle recalled a reference during the meeting to the fires being very active in the forests, *but greater ability to extinguish when they reached the grassland[1580].* In evidence he identified a reference in the handwritten notes of the planning meeting as confirming this outlook. The note is as follows: *Rick today. Wea from 1000 on fires start making run – E to Forests. G/ lands today may put fire out. In prop prot mode. Spot pot will be huge.* Mr Castle recalled Mr McRae saying that there was an ability to extinguish the fires in the grasslands. However, he was not able to point to anything in the minutes or notes that indicated what the strategy was to hold the fires in the grasslands[1581]. Mr Castle agreed that he was concerned on hearing that there were high levels of exposure arising from the McIntyre's fire. He thought that the discussion about the item in the minutes that: *Mike Castle to determine regular radio interview times* was a discussion about *attempting to provide information on a regular basis as we became aware of it.* Mr Castle was then asked what he was going to do, and the following exchange occurred:

A. I am not too sure – we'll, we were still intending to have the regular briefing at 12 midday.

Q. That is 2½ hours or thereabouts hence, isn't it? So you would want to be telling people before then wouldn't

you?

A. If I had specific information as to where it was and what I could factually say.

Q. I want to ask you about that, Mr Castle. You can provide information about a threat and a high level of exposure where you have been told that the potential area of impact is Weston Creek and Greenaway, can't you?

A. With hindsight I could have. I suppose I regret that I didn't¹⁵⁸².

It was later put to Mr Castle that you can warn people about a threat without having every precise detail of where it was going to occur. He answered: *I think you can, to some extent.* He agreed that you could give a general warning¹⁵⁸³.

894. In his statement, Mr McRae refers to the weather forecast from Mr Davis and then states: *I simply stressed the seriousness of the conditions although that was apparent to all concerned. I briefed the planning meeting upon possible outcomes of the fire, but no longer have an independent recollection of what I said. I can only refer to the Planning Meeting Minutes of that morning¹⁵⁸⁴.* However, in his evidence, Mr McRae was able to comment on a number of the references in the minutes. He confirmed that the *potential run from McIntyre's fire impacting on Weston Creek to Greenaway and potentially west and south Belconnen resulting from a more westerly wind* was a potential he identified as at 9.30 on Saturday morning. He went on to explain that: *Our planning was based on a north-west wind. As you pointed out earlier, there was at least one product that came from the Bureau of Meteorology that discussed westerly wind, although that was quickly replaced to a return to a forecast for a north-westerly. So keeping in mind there had been mention of a westerly wind, we mentioned this potential for the Belconnen impact, although that wasn't a key in our thinking... A potential run from McIntyre's fire impacting on Weston Creek to Greenaway, the purpose of that – it is not necessarily in disagreement with our forecast here – the goal in the planning meeting was to allow the Fire Brigade and the Ambulance Service to effectively coordinate the operations with the operations 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 Greenaway, which if you look at the map on the stand is where the prediction is pointing at.¹⁵⁸⁵*

895. Mr McRae was then asked whether he had in his mind a timeframe as to when that impact might occur, focusing on the Weston Creek/Greenaway prediction. He responded: *For the fire brigade, the impact they should be ready for was immediate. Their goal was to know when they should be deploying units in the urban interface. The planning meeting was saying, "This is where you should go and this is where you should go now." That is not necessarily deviating from the advice going to the Bushfire Service which was, "As you are chasing the fire across the paddock, this is the sort of script that we will be following." In terms of the bushfire side of things, that dot point is perhaps exaggerating what is in our preferred projections, therefore I wasn't implying there would be an impact on it from Weston Creek to Greenaway that afternoon. I 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.¹⁵⁸⁶*

896. Mr McRae agreed that the potential was there for impact on the interface from Weston Creek to Greenaway at some point over the course of the next day or so. *As I mentioned before, there is always the possibility of a spot fire starting ahead of the projected fire front. And that's the goal of the Fire Brigade to be in place ahead of spot fires while they are small events... Also I would still stick to what I had said before that, from the starting point that was reached at the conclusion of events on Saturday, the fire could evolve most likely on the Monday into new runs which still had the potential to impact on the urban area.* Mr McRae

was then asked this question: *Having identified at the planning meeting, as I understand your evidence, for the benefit of particularly the urban fire brigade a potential run impacting from Weston Creek to Greenaway why, Mr McRae, wasn't it at that point immediately appropriate to issue some kind of warning to the residents of those areas of the potential for that impact?* He answered: *My assessment on the balance was that that wasn't needed yet. As I say, I was viewing it as 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 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.* Asked, in effect, why there was not an opportunity, with that part of the urban interface identified, to go out to the community and say there is a risk, Mr McRae responded: *In real terms I can't give you any more than I said in the previous answer that, viewing it as a risk treatment, the level of risk was sufficient for me to feel that having fire brigade crews, if not ambulance crews, deployed appropriately on the basis of what was the areas of concern would be sufficient to manage the then identified risk. If the risk escalated, I would do what I've said previously, assess whether the increase in the risk would necessarily lead to triggers for more risk treatment actions being taken and that those would involve the community directly.*[\[1587\]](#)

897. Asked whether there was any down side in issuing that kind of warning Mr McRae's evidence was that: *If you are issuing warnings to the public, there are a recognised list of issues that need to be taken into account to make sure you engage the community adequately and correctly and that the people involved in those were aware of those, and those were the downside. And I didn't get involved in that because the other people would be doing that.* Mr McRae accepted that he had not activated the trigger and said to the media unit that it was time to issue a warning at least to people in the urban area between Weston Creek and Greenaway. Mr McRae did not activate the trigger during the morning because *eventually the events escalated so rapidly that the process we had, in my view, recently put in place was over-run.* He did not have an expectation that some warning would go out during the morning to identify the possibility of impact in those areas based on what had been said at the planning meeting. *My expectation of the need to activate the trigger to fully engage parts of the urban community was that that would not occur on Saturday.* By the time that position changed, it was too late. *The fire changed its nature, and this new type of fire spread so quickly that we did not have an opportunity to do it, let alone to do it in time.* Mr McRae was conscious of that change basically when the fire was about to impact on Weston Creek, a little before 15:00 in the afternoon. Up to that point, Mr McRae hadn't identified or recognised the need to scale up the warning to the community beyond that that had already been provided[\[1588\]](#). Later in his evidence, Mr McRae explained that the type of impact that he envisaged at the time of the planning meeting, as a risk by the afternoon, was a series of smaller runs towards the urban area, not what actually came out of the forest of Duffy at 15:00 hours that afternoon.

898. Like Mr Lucas-Smith, Mr Graham identified in his statement that *all agencies attending the 09:30 hours planning meeting were advised of the potential for the fires to impact urban ACT. The ACT Fire Brigade agreed to concentrate on intervention and property protection inside the urban area.* In evidence, Mr Graham accepted that *there was a discussion at the planning meeting that there was the likelihood of impact into Weston Creek and other areas of the ACT; that I was part of that meeting and so was privy to those discussions.* He later agreed that he thought the impact referred to was likely, *but I was still, I guess, having some hope that once the fires left the mountain areas, the forested areas, that there would be some*

containment. As the day progressed, that hope diminished[1589]. Mr Bennett did not specifically remember times being mentioned. It is not that I don't recall those times being mentioned; I'd heard them a number of times during the last 24 hours. It was still Mr Bennett's understanding, however, that these times were based on unattended fire spreads as a worst case scenario. However, he accepted that nobody was going to attend the fires if they ran[1590].

899. Ms Harvey had a note from the planning meeting as follows: *Urban edge exposures – McIntyre major run, Weston Creek, Greenaway, West Belconnen, Southern Belconnen, Southern Tuggeranong, Pearce's Creek Settlement.* However, she didn't recall anything about those places being identified in the course of the meeting as areas of exposure. She didn't recall anything of that meeting whatsoever..[1591]

900. In his statement, Mr Taylor refers to attending the planning meeting that morning. *The Service Management Team queried the assessment I had made the previous day about the likely path and timing of the McIntyre's Hut fire. I again provided my prediction if the fire was left unchecked[1592].* In his evidence, Mr Taylor agreed that the minutes of the planning meeting record that the impact of the fire on the suburbs of Canberra was likely to be 18:00 hours[1593]. He later confirmed that he expressed a view at the planning meeting about the unattended rate of spread and where the fire might be at a particular point in time. He suspected that other points of view were not expressed at the meeting. *At the time it was a large meeting, a busy meeting, with a lot of information to get through. I probably made, as I said before a subjective and qualified statement that afternoon and I think in the meeting it is minuted that I said around 18:00 hours. When I had to commit pen to paper and really think about what it was that I wanted to say, I obviously revised that to 15:00 hours perhaps as a worst case scenario[1594].*

3.6.2.5 Post Meeting Predictions.

901. After the planning meeting, Mr Taylor completed the message form to planning containing his prediction that the McIntyre's fire under the influence of westerlies/north-westerly fire weather had the potential to impact on the Canberra rural/urban interface from Hawker to Weston Creek from around 15:00 that afternoon. Mr Taylor described in evidence the work that he did in order reach the conclusion referred to in the memo: *Broadly, I continued to use this map that we had prepared on the Friday afternoon as a base. I re-looked at the issues, where the fire was, how it was travelling and still arrived at the fact that I thought it would be around the Uriarra area around midday. From Uriarra to the western parts of the urban interface were around 12-15ish kilometre distances and largely grasslands in between with some pine forest in the Stromlo area. With grassland rates of spread for the forecast weather conditions and the types of slopes that were involved from the Murrumbidgee up to the edge of Canberra, I guess that rates of spread could be somewhere in the 3-9kmh rate. I picked a middle number around 5 or 6, applied that to a distance of about 15km, worked out there were about 3 hours-ish of travel time from midday to somewhere around 3 o'clock to the western edge of Canberra[1595].* It is notable that this approach to prediction is very similar to that advocated by Mr Cheney as referred to above[1596]. Mr Taylor had been using a computer spreadsheet which was just the McArthur meter taken out of a round slide format into a spreadsheet. He had been using that continuously throughout the fire. Mr Gellie also had a GIS base model that he was drawing likely fire movements on[1597].

902. Mr Taylor did not have any discussions with Mr McRae about the view that he expressed the memorandum. He was *taking counsel* from Mr Bob Wilcox who was *an experienced senior RFS planning officer. On that Saturday and in the time leading up to that, as things became very busy in the Emergency Services Bureau and with the nature of the building, it wasn't always easy to locate Rick. I felt this was fairly urgent and wanted to get it out. I discussed it with Bob Wilcox and got him to sign it in the absence of being able to locate Rick at that time.* The information was for the operations officer, Mr Tony Graham. Mr Taylor walked the memorandum to Operations and it was handed to Mr Graham[1598]. Mr Taylor later went on to confirm that Mr Wilcox was working in the ACT as a quasi-ACT officer at that time. He was not a liaison officer or there in his capacity as a representative of the NSW Rural Fire Service[1599]. Mr Taylor agreed that his prediction was accurate. But he added that it was a prediction of unchecked fire behaviour and he was not considering what the effect of the impact on the suburban edge of Canberra might be, *in the context that I believe the fire progress could be checked on the grasslands*[1600]. Mr Graham confirmed that it was his signature at the bottom left hand side of the message form and accepted that it was most likely that he read the whole document. However, he did not recall having seen it and could not explain why he cannot now recall being seized of that important information on the morning of 18 January[1601].

903. Mr McRae did not recall seeing the message form from Mr Taylor on 18 January. He did not share the view expressed in the memorandum at 9 o'clock on 18 January. As to Weston Creek, Mr McRae would not have had a different view about when there might be impact on that area to the view he held the evening before. He would not have put Hawker under immediate threat on that day at all. Mr McRae agreed that the prediction of impact at 15:00 hours was close to when something impacted, *but I don't believe what he was forecasting what impacted... it was a prediction of impact that was close to the time, but it wasn't within the specifications that I required from the planning section... We had prepared a prediction of the evolution of the fire scenario for the 18th January based on McArthur type predictions, based on fine fuels, fine fuel driven fires burning on the surface. With the weather that was predicted, we came with a single agreed stance which we presented to operations. Those were the requirements that I had from my planning unit.*[1602]

904. Mr Gellie was also updating his assessment of the rate of spread of the fires during the morning of 18 January. In relation to the McIntyre's Hut fire, *I considered that, based on the likely outbreak of a McIntyre's Hut fire, it could enter Holder or Duffy at 16:00. I considered it would reach the urban interface.* Mr Gellie made that updated assessment at around 11:00 hours and he briefed mainly Mr Lhuede and Mr Taylor. He thought Mr Wilcox was present as well[1603].

3.6.2.6 Activation of the POC at Winchester and Predictions by Mr Prince

905. After attending the evacuation planning meeting, at 08:14 hours, Mr Kirby rang Commander Newton and advised of the deterioration of the fires and recommended activation of the Police Operations Centre ("**POC**"). Mr Kirby then spoke to both Mr Keady and Mr Tonkin and advised them that Commander Newton had authorised the activation of the POC and of the arrangements he was making in relation to appointing liaison officers at both the ESB and the POC. Mr Kirby arrived at the POC at 09:00 hours and at 10:00 hours met with Superintendent Lines and Commander Newton.[1604].

906. At the meeting at 10:00 hours between Mr Kirby, Mr Lines and Ms Newton, Mr Kirby was tasked with drawing up contingency plans for the evacuation of Duffy. The process of warning the residents of Duffy in relation to the potential need to evacuate was not discussed at that stage. Mr Kirby's expectation was that the ESB, as the lead agency in relation to the fires, would be responsible for warning people in Duffy about what was expected to happen that afternoon, in consultation with other agencies. The meeting he had attended at 08:00 hours that morning *was talking about the flow of information, door knocks and what have you. So again, I presumed that the process for doing that was already being undertaken*[\[1605\]](#). At 10:30 hours he had a telephone conversation with Mr Prince, requesting that he attend the POC and brief Commander Newton[\[1606\]](#).

907. Before travelling to the Winchester POC to provide that briefing, Mr Prince was concerned to obtain more up to date information on the fires[\[1607\]](#). Mr Prince ran into Mr McRae in the corridor, moving from his office back into the planning area and he asked Mr McRae about the fire. *His expertise is in weather fire behaviour. He told me he was concerned that the fire would not recognise the urban interface. I took this to mean that the fire could travel out of the forest and bush and into the suburbs. The factors that led Mr McRae to this conclusion were the wind speed and direction, the drought factor, and the fire intensity. He also highlighted that the pine forests were very dry in the 2001 fires and they had another 12 months of curing in the drought conditions. I was also concerned about the fire situation but the information from Mr McRae made me feel extremely concerned over the danger posed by the fire*[\[1608\]](#). In evidence, Mr Prince went on to explain that, having been involved in the Sydney bushfires in 1994 and having been at Como and Jannali, *I had seen fires impact on the urban interface to several streets*. In response to a question from the Coroner as to what Mr Prince understood Mr McRae to mean, he responded: *Exactly the same thing, that the fires would probably go past the urban interface area. If you think of a street such as Eucumbene Drive, that it would go into the suburb*[\[1609\]](#). The passage from Mr Prince's statement referred to above was read to Mr McRae in evidence. Mr McRae recalled having a conversation with Mr Prince to the effect described in Mr Prince's statement and believed that Mr Prince accurately recorded what Mr McRae said[\[1610\]](#).

908. Mr Prince attended the Winchester Centre at about 11:30 hours. *I attended a meeting attended by police and public service officers. There were about 10 people present. I gave these people a brief overview of where the fires were. I also gave information about the likelihood of fire travel under the conditions that were present. On the information I had at that time the fire was expected to reach Duffy at about 18:00 that evening. That calculation was made by Mr Nick Gellie – who had significant knowledge on rural fire behaviour. He is an ecological consultant who had volunteered his services to the Emergency Services Bureau. I did advise this meeting that in my opinion once the fire reached Stromlo forest it would take about 5 to 10 minutes to reach the top of Mt Stromlo and about another 30 minutes to an hour to reach Eucumbene Drive. I recall that Superintendent Lines asked me what the fire fighters police 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.* [\[1611\]](#)

909. In evidence, Mr Prince confirmed that the information about the fire being expected to reach Duffy at about 18:00 was from the map he had received from Gellie the night before, *and looking at the possibility of the north-west winds with the brown onion rings that were on it actually touching that western area.* His comments concerning 60 foot flames were based on his own knowledge and experience[1612]. Mr Kirby's statement and evidence concerning the briefing that Mr Prince gave at the POC generally accords with that of Mr Prince. On the question of evacuations, Mr Kirby's recollection was that it was put to Mr Prince that police officers were in the process of preparing evacuation plans and Mr Prince's response was *Look, it's something you consider... He wasn't saying you need to do that. Again, it was more like, "I agree with you, it's something we need to consider as a possibility"* [1613].

910. Mr McRae was asked about the opinions expressed by Mr Prince during this briefing at the police operations centre. Mr McRae did not discuss with Mr Prince the timing of the fire spread from the Stromlo forest to Eucumbene Drive and he would not necessarily have agreed with those projections that morning. *Well, as we saw in the maps, Mr Gellie was producing forecasts that were to some extent at variance with the agreed forecast, and we saw the same in the fax I was shown from Alan Wade of ACTEW earlier. It would appear that Mr Gellie had a conversation with Mr Prince and was passing an alternate view of how the fires might evolve.* They were not views that Mr McRae would have shared in terms of his role as a planning officer. *I would not have agreed with his forecasts. The reason I put that qualifier on was if I had taken the time to sit down with Mr Gellie and get an understanding of his modelling, probably I would have said his modelling was correct but maybe his inputs were incorrect. It's a technical aspect of modelling. You can disagree with models in different ways. From the point of view as 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*[1614].

911. Ms Newton's recollection of the briefing by Mr Prince also accords with that of Mr Prince and Mr Kirby. In particular, Ms Newton recorded in her statement that: *Superintendent Prince warned of the extensive risk to residents and their homes in the Duffy area. He explained that a fire in the pine trees in this area could reach 60 feet and if that happened radiant heat would advance the fire by approximately 500 metres. This situation would place many residents in danger and destroy property, including homes, within the path of the fire. We then discussed the 500 metres of radiant heat. It was explained that this intense heat would impact on homes immediately adjacent to the pine plantation in the Duffy area. We also discussed the need or requirement to evacuate people from that area. Superintendent Prince indicated that if people were well prepared they should be able to stay with their homes and fight the fire. We also discussed the situation regarding people that may not have been prepared or were unable to defend their homes. With all of these issues taken into consideration Superintendent Prince supported my decision to develop evacuation contingency plans for the Duffy area.*[1615]

912. Earlier in her statement, Ms Newton described a number of unsuccessful attempts by her earlier in the day to contact Mr Castle[1616]. According to Ms Newton, *the briefing from Superintendent Prince and the lack of contact with Mr Castle and the management group at ESB, raised my concerns to a high level about the situation we may be facing that day.* She then listed a number of issues that she considered at that point, including the threat to members of the community who were not aware that the fires may enter the urban area and were not prepared or advised adequately.

She later described how, in her view, the level of the threat and the possible level of impact on the ACT would *potentially require the emergency powers of the Territory Controller to manage*. At 11:52am, Ms Newton attempted to contact Sgt Burns, the police liaison officer at ESB *because I was particularly concerned about the fires and the associated issue of declaring a state of emergency if things continued to escalate*[\[1617\]](#).

913. Ms Newton also described in her evidence her attempts during the morning to contact Mr Castle[\[1618\]](#). Ms Newton also confirmed that at about 09:30 hours on Saturday, she *had a level of concern about the community awareness of what was taking place and the level of risk associated with it*. She went on to describe that the police did have an independent capability to advise the community but *our processes would have a media liaison officers or media staff working with the Emergency Services Bureau staff to ensure that we provide consistent messages across the community, particularly when we didn't have the full level of information that the Emergency Services Bureau had at hand to advise the community of where the fires were moving*. Ms Newton went on to explain that if she had suitable information, the police would have been in a position, in liaison with the ESB, *to attend in the suburbs and assist Emergency Services Bureau with fires in the community and provide additional staff to be able to do that*[\[1619\]](#).

3.6.2.7 Ms Larkin's Attempts to Contact Mr Castle

914. In her statement and evidence, Ms Larkins described her efforts during the morning of 18 January to gather fresh information concerning the fires to discuss with Mr Castle. She had arranged with Mr Castle during their discussion earlier that morning to interview him at 11:00 hours to get fresh information on the progress of the fires for the next major bulletin at 12:00 noon. As the time for her 11:00 hours discussion with Mr Castle was approaching, she was attempting to contact him to confirm and then to do the interview. According to Ms Larkins, he was continually unavailable. Eventually, she was informed by Ms Lowe that he was unavailable. She described becoming increasingly frustrated at the lack of information and telling Ms Lowe that she needed fresh information for the midday news. Ms Lowe referred her to the Canberra times. She informed Ms Lowe that the information in the Canberra times was very outdated as the paper had been published the night before. In the end, Ms Larkins did not get any fresh information for the midday news bulletin. Mr Larkins interpreted the lack of information as a sign that the situation was deteriorating.[\[1620\]](#)

3.6.2.8 Midday Media Update

915. As discussed above[\[1621\]](#), based on the time when work started on developing material to be posted to the Canberra Connect website about the precautions residents should take if their property was affected by fire, it is likely that type of information did not first appear on the Canberra Connect website until, at the earliest, late on 17 January 2003 and, more likely, during the morning on 18 January 2003[\[1622\]](#). In any event, apart from what may have been appearing on the Canberra Connect website, there was no formal notification of those precautions before the ESB media update timed at 12:00 noon[\[1623\]](#). Further, despite the discussion at the Evacuation Planning Meeting about the importance of providing regular and timely information, including references to hourly media releases[\[1624\]](#), the that 12:00 noon media update was the first for the day[\[1625\]](#). Ms Harvey was unable to say why it took so long for a media update with

that type of information to be sent out to the Canberra community. She guessed that it may have had something to do with the concern that Mr Lucas-Smith and Mr Castle had about being very careful with that sort of message. But she could not recall why it took so long, *because like I say, I'm surprised that we didn't get any statement out at all until midday when we had the meeting at 8 o'clock. And the idea then had been that there was going to be an hourly update*[1626]. Ms Harvey later gave evidence that she thought the reason for the delay was, as she had predicted at the 8:00 hours evacuation planning meeting, *we struggled to get factual information and it was just so difficult to get people to stop still to give us information*. It was drawn to her attention that at the planning meeting at 9.30 people were talking about threats to various areas including Weston Creek through to Greenaway and that she had that information at that stage, yet it was 12 noon before the media release went out and, when it did go out, it said nothing about those threats. Ms Harvey was unable to explain that[1627].

916. Ms Harvey confirmed that she had no authority herself to send out any warning. Everything she did had to be cleared through others[1628]. Ms Harvey had earlier given evidence that, at the time of the planning meeting, it was the responsibility of Mr Castle and Mr Lucas-Smith to make sure that, where a threat had been identified as it was in the planning meeting, to make sure that people in the areas under threat were notified. *At that stage and throughout all of this, I was simply responsible for coordinating information, as I was asked to do, that went out in media statements that were cleared by Peter and Mike and at the 8.00am meeting we then had another sort of, I guess, level of direction coming from the people who were at that meeting: the head of the public service, Robert Tonkin, and Lucy Bitmead were guiding us as to what we were to do*. It was Ms Harvey's evidence that someone had to make a decision to get a warning out. She had to wait to be told that that was something that needed to happen. Ms Harvey reported to Mr Castle and Mr Lucas-Smith. She did not recall at any stage getting instruction or direction from Mr McRae about how to fulfil her role.[1629]

917. Ms Lowe remembered being involved in the preparation of the media release. *I think you said earlier that the planning meeting or someone today said the planning meeting didn't actually start until 9.30 that morning. And the planning meetings were usually the source of gathering information. So it wasn't until after the planning meeting that I suppose work could begin on updating the media release. After that I remember being in Mike Castle's office with I think Mike, Marika, Robert Tonkin. 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 later that day*. Ms Lowe could not recall any discussion about whether the statement should say something about a threat to any part of the urban area. Ms Lowe also recalled discussion about moving the section dealing with community safety higher up in the release. She did not recall any discussion about the content of that section, just where it was located. On the question of the content of the community safety information about what people should do if they affected by fire, Ms Lowe remembered putting together information like that on the Friday night in preparation for the script that was being used to contact the rural lessees. She thought that she derived that information from the script used the previous evening which, in turn, came from the *Will You Survive* brochure.[1630]

918. The media update itself provides a short summary of the fire status in respect of each of the three fires then threatening the ACT as follows:

- *Northern fire (previously referred to as McIntyre's Hut fire): approximately 8000 hectares in size. A spot fire from the McIntyre's Hut fire in New South Wales, crossed the ACT/NSW border last night. The fire has entered the north-west corner of the Uriarra pine plantation.*
- *Middle fire (previously referred to as Bendora fire): approximately 10,000 hectares in size. A spot fire from the Bendora fire threatened property in the Tidbinbilla and Paddy's River Valley. Rural residents in this area were last night contacted by the ACT Emergency Services Bureau, and advised to prepare for bushfires approaching their property – no residents have been evacuated at this time. However, recovery contingencies have been made in the event of serious threat.*
- *Southern fire (previously referred to as Stockyard fire); approximately 13,500 hectares in size. A spot fire from the Stockyard fire is threatening property in the Nass and Top Nass areas, as well as potential threat to property in Williamsdale and Royalla.*

919. Under the heading *Community Safety* the following appears:

• *Property and Personal Safety*

Members of the public are urged to stay away from the fire areas in the western 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.

INDOOR: IF FIRE APPROACHES YOUR HOUSE:

- *Close all the doors 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 downpipes (ie rags etc) and fill your cutters with water.*
- *Use water to dampen all the areas on the side of the house facing the fire.*

There is then a health warning for asthmatics including reference to *wind conditions being: expected to increase the level of smoke across populated areas of the Canberra (sic)*. The press concludes with contains details of weather and fire ban status, resources deployed and information on road and nature park closures.[\[1631\]](#)

920. Mr McRae agreed that the media release did not have any explicit material to the effect that the fire, and particularly the northern fire, could impact on the area of Weston Creek to Greenaway or otherwise on the urban area of Canberra. According to Mr McRae, *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*[\[1632\]](#). Mr Castle was asked about the media release in his evidence, and, in particular, the community safety information. He agreed that the information on community safety didn't discuss the purpose for filling the bathtub[\[1633\]](#).

3.6.2.9 Midday Press Conference.

921. The press conference foreshadowed during the planning meeting that morning commenced at approximately 12:00 noon. The transcript of the press conference^[1634] discloses that it commenced with Mike Castle providing a brief overview of the status of the fires. During the introduction, he refers to pulling back crews from containment lines, *because the fire had well and truly jumped those and spotted. In some instances the spots were 8-10km.* It also includes a reference to having the fire brigade in the urban area looking at contingencies around the urban edge. He explained that the closest fire as the crow flies was probably 8-10km and that there were rural residences in a lot of the rural grassland areas, *and we asked the residents to be mindful of fire around their property and the protection they can take.* He was asked whether he was referring to down in the suburbs near Tuggeranong and he answered: *No, no that's rural residents I'm talking about, people out in the rural areas, farms.* Mr Castle was then asked directly how close the fires were getting to the suburbs and he answered: *Maybe if I asked Peter to talk specifics about the fires 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.*
922. Mr Lucas-Smith went on to describe the location of the fires and fire spread overnight and some property damage the Corin Ski Resort. He continued: *The fire is still spreading in a westerly direction, sorry in an easterly direction from the west, in an easterly direction and a lot of that is certainly posing some concern to the southern parts of Canberra. As the day warms up and conditions start to become very similar to yesterday's events, we will see some more rapid growth in the fire behaviour, but we're also seeing a change, a significant change in fuel types that the fire's burning as it comes out into the grasslands it becomes a significantly easier fire to contain and it also spreads rapidly but with a lot less intensity and therefore, a lot easier to control even with garden hoses on the back fence. 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.*
923. Mr Lucas-Smith 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 responded: *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 the chance still exists and is certainly not out of our planning arrangements but they're precautionary arrangements at this stage.* Later in the interview, Mr Lucas-Smith was asked about the conditions being faced that day as compared with the December 2001 fires. He responded: *The spreading of the fire is governed by the weather conditions and moisture content. The fires we had in December 2001 were burning in pine plantations and were certainly weather driven but they were in milder conditions than what we are currently facing but the fuels, other than the fires that are in the plantations now, well to the west of*

the ACT nowhere near the urban edge. The fuels are generally in different vegetation types and therefore have different behaviours and will react totally differently to the pine plantations fires we had last year.[\[1635\]](#)

924. Mr Lucas-Smith does not refer to the press conference in his statement. In his evidence, he accepted that, in the media conference, *we didn't emphasise adequately enough the potential risk*. He agreed that the language used to describe the prospects of the fire actually affecting the suburban area was very hesitant, neutral language. He also agreed that 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 justifiably be used in the press conference. He later gave evidence that he would have preferred to express the chance that the fire will reach the urban area *with more emphasis on the level of risk*. *But 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 that you also have to have the other information that the journalists would then follow with where and when*[\[1636\]](#). Mr Lucas-Smith was asked about the reference by Mr Castle during the press conference to a desire not to alarm people and whether he was worried about alarming people if he told them that he was of the view that some affect on the suburbs was inevitable. He responded: *As I said before, 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*. Mr Lucas-Smith agreed that he and Mr Castle underemphasised the risk[\[1637\]](#).

925. Mr Lucas-Smith was asked in cross-examination by counsel for the ACT Government about his expectations as at the morning of 18 January 2003 as to what may happen that day. In an answer that runs essentially uninterrupted for close to six pages of transcript[\[1638\]](#), Mr Lucas-Smith referred to his concern to commit resources to the protection of rural properties in the south. He did not have a clear picture of exactly what resources New South Wales had on the ground to follow the McIntyre's Hut fire. Further, the McIntyre's Hut fire *was still some considerable distance to the west of the ACT urban area and to the west of the Murrumbidgee River. So that was giving us – it was certainly giving me some confidence that we had a little bit more time to get to fully understand exactly what that growth of that fire is going to be and also to finalise our property protection tasks in the south*. He then described his approach the media conference in the following terms: *I went to that media conference at noon and started to convey that sort of information on the belief that at that time I had at least until about 2000 hours, 8 hours from that time, before our prediction had indicated that the fire was likely – if at all – it was likely to come in close to the urban area. So I felt that we still needed to find out exactly what our suppression options and capabilities were and if there were some parts of that fire that could be suppressed that would in fact put pressure on those areas where the fire could not be suppressed. I had to say I had a fair bit of confidence that we could do something*.

926. After referring to his previous experience, including the experience of the December 2001 fires, Mr Lucas-Smith continued: *So I had some, I believe, reasonable expectation that some suppression effort would be successful, and there would be some amelioration of the impact on the ACT. We still needed to evaluate exactly what that was going to be. I think events overtook us quite significantly as things started to accelerate at around 1 o'clock. That was when we started to issue the standard emergency warning signals to the community... As I have said in my evidence, I think we didn't emphasise the warnings adequately enough. I thought we had more time to do that. And I think as the day was going on and we had moved from that noon*

media conference into the standard emergency warning signal, which is the highest level of alert in the ACT, to advise the community, and we did that at around 2 o'clock, I think it was. So we were certainly moving in that sort of direction. May be we should have done it earlier. That will certainly be something for others to judge, 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[1639]. In later cross-examination by counsel for the ACT Government, it was suggested to Mr Lucas-Smith that he had readily acknowledged in his evidence that not enough was done in relation to informing the Canberra community. Mr Lucas-Smith agreed and continued: *I think the information was there. I think what was lacking was the emphasis, which would have added the criticality to the event. There is nothing more I can say about that other than the fact that I recognise now that that needed to be done and wasn't.* Mr Lucas-Smith went on to deny any suggestion that he was ever intentionally seeking to withhold information from the public of Canberra. *I was certainly not in any way shape or form trying to withhold or mislead anybody in the ACT*[1640].

927. In re-examination, Mr Lucas-Smith was asked again why he didn't at midday or 12:30 on 18 January state the position as he genuinely believed it to be. He responded: *Because I didn't know the where and when.* It was put to him that in answer to any question from the media about the where and when, he could have said he didn't know where or when but it will happen and people ought to be prepared. Mr Lucas-Smith accepted that he could have said that and he didn't.[1641] Mr Lucas-Smith was also taken to his earlier evidence to the effect that he was trying to fight the fire. He explained that the message he was trying to get across when saying he was fighting a fire was that he was concentrating on the fire event. He accepted that one of his obligations on 18 January was to keep the community informed[1642].

928. Mr Castle summarised the press conference in his statement. After referring to some of the topics raised during the press conference, he stated: *the tone of the press conference was definitely one of worry about the breakout of the fires from containment lines*[1643]. Mr Castle agreed that people should not have to try and read things into the tone of a press conference. He accepted that they should be given the direct information that they need to ensure their safety. He later accepted that his remarks at the beginning of the press conference understated the risk: *I think what I have said there perhaps understates the risk and that was and I believed it to be. But then Peter went on to give the details. That's what I relied on*[1644].

929. Mr Castle was also asked a series of questions directed at identifying an explanation for he and Mr Lucas-Smith understating the risk to residents of Canberra at the midday press conference. In substance, Mr Castle's evidence was that he was not under any pressure from anyone not to disclose the true level of risk that the fires presented to the urban area of Canberra nor did he think that it might be admitting to some kind of failure if he had acknowledged that the fires were not going to be contained before they hit the Canberra suburbs. Asked whether he could offer any other explanation, he responded: *I think what my impression, what my view was, that it would reach the urban edge. But what the impact would be was perhaps not in my – not to the forefront of my mind. That's partly I think because of the 2001 fires and the success we had in 2001. If that's success. I'm not saying that 2001 was not an impact, but not on the urban edge, as such.*[1645]

930. Ms Harvey could not recall discussing with Mr Lucas-Smith and/or Mr Castle what they would be saying at the midday press conference. She did not recall having any feeling up to midday on Saturday of there being some degree of reticence or concern about disclosing the real threat. *I don't recall any feeling like that. As I've said in my statement, I think sometimes earlier on in the week there were concerns unnecessarily alarming people. But I can't – I can't recall barely anything of the whole day or of the days following.*[\[1646\]](#)

931. At the time of the media briefing Ms Larkins had formed the impression that things were far worse than what she was being told and the fires were a lot closer than what she was being told. Alarm bells were starting to ring and the actions of the emergency services were not instilling a great deal of confidence. *Even though I was concerned and annoyed by the fact that we were getting no information, I still didn't think that the fire was going to hit suburban Canberra*[\[1647\]](#). Ms Larkins' statement sets out her impressions of the media briefing: *From my perspective, the information that was provided was largely contradictory and didn't generate the level of concern that was warranted given the seriousness of the situation. On the one hand, they indicated that they expected the fires to intensify over the coming days, but they expected the fires to be easier to contain over the coming days as they moved out of the forest into grassland. They were also describing how fire crews had been pulled away from containment lines as the fire were spotting 8-10km away. Towards the end of Mike Castle's involvement in the briefing, another journalist pressed him for an answer as to how far from Canberra the fires were. When he answered 8-10km I realised that the spotting they previously referred to was potentially in the vicinity of my home. Mike Castle went on to state that there was some potential threat but wouldn't want to alarm people and they have the resources deployed for maximum property protection. To me, this briefing really hit home that Canberra suburbs were in danger. This was highlighted by the fact that my home, family and possessions were under threat. Even though throughout the briefing, authorities focused on the threat to rural properties, not urban areas*[\[1648\]](#).

932. In her evidence, Ms Larkins said that she would have assumed at that stage that would have been when warnings would have been issued, *it would have been clearly stated, "Yes, there is a risk to Canberra," and certainly that was not indicated.* Ms Larkins did not believe that people in her suburb would have been aware at that stage of what was happening. *I lived there and I had been given no reason to think that I should be keeping an ear out for any warnings.*[\[1649\]](#)

3.6.2.10 Discussions Between Newton and Castle

933. At 12:20 hours on 18 January, Ms Newton telephoned Mr Burns who was at the ESB. She discussed with him the current status of the fires and then asked Mr Byrnes to find Mr Castle as she had not been able to get in contact with him through his normal numbers. In her statement, Ms Newton describes her conversation with Mr Castle as follows: *Sgt Byrnes put me on to Mr Castle and I had a conversation with him. During this conversation I clearly articulated my view that a state of emergency needed to be declared and my reasons for wanting him to support the state of emergency. Mr Castle did not share my opinion. During the conversation we said things to the effect of:*
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."[\[1650\]](#)

934. Ms Newton's version of her telephone conversation with Mr Castle at 12:20 on 18 January 2003 as set out in her statement was put to Mr Castle during his evidence. He said that he was shocked when he read that (in her statement) and it was not his recollection of the words. *I believe that what I answered was that I would stand by the evacuation guidelines.* He said that he could recall her using words to the effect that: *You could answer to the Coroner* but he did not believe he responded in the terms she had suggested[\[1651\]](#).

935. In evidence, Ms Newton confirmed that this was the first conversation she had with Mr Castle that day. Ms Newton made some notes of the conversation[\[1652\]](#). She made the majority of those notes at the time of the conversation with Mr Castle. Her note *didn't see a need to evacuate* and *said could answer to the Coroner if people died*, she took at the time of finding out that the first person had died at around 16:40 hours on the afternoon of 18 January[\[1653\]](#). Mr Castle's evidence that he did not believe he responded in the manner suggested by Ms Newton was put to Ms Newton. She said in that she understood that Mr Castle had given that evidence. She added that she had received a phone call from Mr Castle in January 2004 during which Mr Castle said to her that he did not recall the phone call at 12:20 on 18 January being made. *He is not suggesting that I didn't make it but he had no recollection of it*[\[1654\]](#).

936. Later in her evidence, Ms Newton confirmed that, after Mr Castle had said he didn't think there was a need for a state of emergency, she made the comment that: *If people die you can answer to the Coroner.* She agreed that she didn't record Mr Castle's reply in her note. *It doesn't specifically say that there. My recollection of the conversation was that Mike Castle said that he would reply to the Coroner.* It was put to her that Mr Castle did not make that reply and Ms Newton repeated that her recollection of the conversation were as set out in her statement. Ms Newton would not accept any possibility that she might be mistaken that Mr Castle made that reply at that point in the conversation[\[1655\]](#). Ms Newton did accept that her later conversation with Mr Castle when they discussed what was said at 12:20 on 18 January was on 8 August 2003, not 12 January 2004. Ms Newton agreed that during that conversation there was discussion as to some ambiguity as to who called who at 12:20 or thereabouts on Saturday 18 January. It was not put to Ms Newton that they also discussed her recollection of Mr Castle's remarks about answering to the Coroner[\[1656\]](#).

3.6.2.11 Further Media Update and Canberra Connect

937. A further media update was issued by the ESB at 13:00 hours. However, the sections of the update dealing with fire status and community safety were unchanged from what had appeared in the media update of an hour earlier[\[1657\]](#).

938. Included among the documentation provided to the enquiry is an extract from the Canberra Connect website timed at 1.30pm on Saturday 18 January 2003. As indicated above[\[1658\]](#), it is not clear how long the information contained in this document had been on the website before this time. The information concerning fire status is in essentially the same terms as the

information contained in the media updates timed at 12:00 noon and 13:00 hours. There is also a section similar to the material in the media release under the heading *Community Safety*. On the website, it appeared under the heading *What Do I Do if a Fire is Approaching my Home*, and is as follows:

Personal protection

1. *Protect your exposed skin areas – cover up with natural fibres pants 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 firefront approaches. Take all children and pets with you.

You should only stay if you are confident and fit enough to fight a fire.

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 downpipes, remove leaves and twigs and fill your gutters with water.

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

When the firefront 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 firefront has passed.[\[1659\]](#)

3.6.2.12 Issue of the SEWS

939. In his statement, Mr Castle outlined the events of the early afternoon on 18 January, as follows: *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 1pm and 1.30pm and we decided to put out the standard emergency warning signal (SEWS)... at about 1.45pm we first distributed the SEWS. 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[\[1660\]](#). It was drawn to Mr Castle's attention during his evidence that the earliest Standard Emergency Warning Signal ("SEWS") instruction made available to the Inquiry was signed by him at 14:05 hours. He had thought there*

may have been an earlier one signed by Mr Lucas-Smith but accepted that if there was no other document signed by anyone else, that would appear to suggest that the first time the SEWS went out was some time after 14:05[1661].

940. The form of SEWS[1662] commences with a list of suburbs that *should be on alert*. The list included Duffy, Rivett, Chapman and Holder. The list is followed by instructions that:

Residents in these areas are urged to return to their homes.

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

The SEWS also contains guidelines as to actions residents can take outside their homes, similar to those appearing in the media releases earlier in the day.

941. Mr Castle thought the form of the SEWS had been run past Mr Lucas-Smith before it came to him. The information concerning precautions that residents could take looked to Mr Castle to be in accordance with ESB brochures and publications. According to Mr Castle, with his state of mind at the time he signed the SEWS, he was *probably* satisfied that it contained enough information for people to know what to do if they were threatened by fire. But he considered that, with hindsight, more information could possibly be given.[1663]

942. The process of despatching the SEWS was referred to in Ms Harvey's statement. She was aware before the first SEWS that there had been problems in getting faxes out, *so we decided to target the local radio and TV stations as a priority and fax them individually from different fax machines throughout the building so that media got the announcement as soon as possible. I arranged a team of people to do this, and to ring through to alert each of these media agencies that the fax was coming, then to ring again a few minutes later to confirm it got through*[1664]. Mr McLeod in his report notes: *Inexplicably, ABC radio in Canberra did not receive the fax until 2.31pm*. However, this was in the context of the information provided to Mr McLeod that suggested that the first SEWS was released by the ESB at 1.45pm. Mr Castle's evidence that the first SEWS was in fact not signed until 14:05pm and, presumably, was not faxed out from ESB until some time thereafter, may in part explain the delay referred to by Mr McLeod[1665]. The information contained in later SEWS and appearing on the Canberra Connect website was essentially the same as in the first SEWS for the balance of the afternoon, except for the addition of suburbs to the list of suburbs on alert and an additional suggestion about precautions indoor to *take down curtains, and push furniture away from windows* (emphasis in original)[1666].

3.6.2.13 Declaration of a State of Emergency.

943. Mr Murray describes in his statement arriving at the ESB and then attending a meeting to discuss the declaration of a change of a state of emergency: *At about 2pm Sgt Kirby, Sgt Byrne and I went into Mr Castle's office. Sgt Kirby and I remained there for approximately 45 minutes and Sgt Byrne and Ms*

Purnell came in and out of the room periodically. There was a meeting already in progress involving Mr Stanhope, Mr Castle, Mr Keady, Mr Lucas-Smith, Mr Bennett and Mr Tonkin. There were others in the room but I did not specifically note who they were. Mr Lucas-Smith and Mr Castle described the overall state of the fire. 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 POC, the views expressed to me by Sgt Kirby and Sgt Byrne and from my experiences 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 judgment. 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.[\[1667\]](#)

944. Mr Lucas-Smith agreed in evidence that, in terms of Mr Murray expressing a view, his statement accorded with his recollection[\[1668\]](#). Mr Castle gave evidence that it was his understanding that, at least from Mr Murray's point of view, Mr Murray was pressing for the declaration because it was necessary that there be power for forcible evacuations. Mr Castle described the approach being taken by himself and Mr Lucas-Smith was the position articulated in the Australasian Fire Authorities Council Paper & Guidelines, *and that was that people were best of 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.* That was in substance why Mr Castle was saying that the declaration of a state of emergency was not necessary[\[1669\]](#).

945. In his statement, Mr Castle describes how he produced the paper by the Australasian Fire Authorities Council on *stay or go. Its opinion about evacuating 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. The concern from the Chief Minister was that there would be a perception that if he declared a State of Emergency it would automatically give the control to a police officer in accord with the Act. The concern from a public perception was that the CPO would be controlling a fire event. Given this apparent concern from the Chief Minister about control of the emergency, I offered advice to him that an Alternate Controller could be appointed as provided in the Act. This legislative provision is unique in the ACT. The Chief Minister decided for that option, and agreed that due to the severity of the imminent threat of the fire at the urban edge he would declare an emergency. However, the Chief Minister was clear that on the declaration and the automatic appointment of the Chief Police Officer as the Territory Controller, the Territory Controller would then appoint Peter Lucas-Smith as the Alternate Controller, with the Minister's approval to manage the fire emergency. The declaration was made at 2.45pm. The declaration and appointment of Peter Lucas-Smith for the fire emergency were promulgated by the issuing of another SEWS. The Chief Minister held a press conference sometime soon after 3.00pm.*[\[1670\]](#)

946. According to Mr Castle, the issue about evacuations was not specifically resolved in the sense that that power actually came with the declaration. *I think the reason ultimately the declaration went ahead was I think we may have got additional information from what the fire was doing from Mr McRae.*[\[1671\]](#)

3.7 THE FIRES REACH CANBERRA

3.7.1 FIRE BEHAVIOUR AND SPREAD ON 17 AND 18 JANUARY 2003

947. The evidence concerning the fire behaviour a spread of the McIntyre's Hut and Bendora fires on 17 January and on 18 January is largely uncontentious and is conveniently summarised in the report by Mr Cheney as set out below^[1672] (omitting footnotes and grid references).

3.7.1.1 McIntyre's Hut 17 January 2003

During the morning the fire perimeter in the northern block of unburnt fuel expanded down slope slowly. After 1345 hours severe fire behaviour resulted from the aerial ignition with rapid upslope spread and crown fires on western aspects. This fire behaviour most likely caused spotting to the east of the containment lines in Dingo Dell flats and the subsequent breakaway along the eastern containment line.

The spot fires in the timber country east of Dingo Dell flats developed rapidly and burnt towards the east. By 1825 hours this fire was throwing spot fires into the open grasslands east of the timbered country in the vicinity of the Transgrid power line. After 1900 hours the fire burnt mostly in the timbered country and by the next day had burnt into the ACT and the northern end of the Uriarra pine plantation.

After 1200 hours firebrands from active sections of fire east of the Goodradigbee River were igniting spot fires on the western side of the river. One of these along an inaccessible section of the river west of McIntyre's Hut burnt rapidly upslope under the influence of a lee slope eddy wind.

At some time around 1200 hours the western edge of the fire broke away across the Goodradigbee River where crews were patrolling by foot in the river. The breakaway burnt upslope and crews constructed a hand tool line between the Limestone Creek Trail and the Goodradigbee River to hold the northern spread of the fire. The fire was contained by this hand line and by burning out along the Limestone Creek Trail to a point where it nears limestone Creek.

A second breakaway across the Goodradigbee River occurred in the vicinity of McIntyre's Hut at some time before 2130 hours. The pattern of fire damage to tree canopies west of the river shown on the aerial photography indicates that the fire started across the river near a bend in the river towards the northern end of Tommy's flat. The pattern of scorch and defoliation shown in the photograph indicates that the fire ran upslope in a west-north-westerly direction. The scorched area is surrounded by a horseshoe of green tree crowns that indicate a normal period of mild overnight burning on 17 January.

In my opinion, the breakaways across the river were inevitable as soon as the fire danger reached the very high classification. Under strong winds turbulence in the river valley will carry firebrands originating in the valley floor against the direction of the prevailing wind. Spot fires starting on the opposite slope will be difficult to control because they will burn rapidly upslope assisted by the lee-slope eddy wind. The use of an inaccessible river as a containment line is misleading because the firefighters were never able to carry out the necessary tasks of burning-out, mop-up and patrol to secure it as a control line. Also, placing firefighters in a valley bottom is a considerably more hazardous situation than if they are working either directly on the fire edge or from a constructed fire line located higher on the windward slope.

3.7.1.2 Bendora 17 January 2003

When the wind picked up after 0600 hours the fire behaviour within the containment lines increased. At around 1530 hours burning material from within the containment line started a spot fire east of the junction between Warks and Bendora Road.

The northern perimeter of the fire in NSW had been burning steadily northwards into Brindabella Creek and at some time a late in the afternoon had burnt into the bottom of the Creek and started to make an intense upslope run towards Mount Franklin Road. This increased fire activity forced the evacuation of firefighters from Bulls Head to Uriarra Station at around 1800 hours. At around this time this fire would have spotted into the ACT between Mount Franklin road and the Cotter River.

By 2100 hours a spot fire was well-established on the western slopes of the Tidbinbilla range. This spot fire burnt over the Tidbinbilla range into Oakey Creek and the Pierces Creek pine plantation. By 0600 hours the fire had burnt into the grasslands between Congwarra and Tanners Flat Creek.

On the western side of the Cotter River spot fires resulting from the fire burning up Brindabella Creek and across Mount Franklin road probably coalesced and linked up with the breakaway from Warks Road and burnt down towards the Cotter River but probably did not linkup with spot fires on the Tidbinbilla range.

3.7.1.3 McIntyre's Hut 18 January 2003

During the morning the fire expanded northward in the timber country west of Doctors Flat road and southward in the Uriarra pine plantation and by 1200 hours was burning in the timber country behind Uriarra Station. After 1230 hours, as the weather deteriorated the fire increased in intensity, the northern flank of the fire appears to have broken out first and burnt intensely throwing firebrands down wind that started spot fires in the grasslands near Uriarra Crossing at 1250 hours. As the wind speed increased increasing numbers of spot fire developed and started to spread in areas where the pastures were eaten out.

At around 1340 hours a spot fire started in a pine plantation on the northern side of Mt McDonald and built very rapidly. About this time the mean wind speed over parts of the ACT increased suddenly from 35 km/h to 55 km/h and by 1400 hours the fire burnt to the Murrumbidgee River on several fronts.

By 1430 hours the fire had crossed the Murrumbidgee River into sparse pasture country east of the Murrumbidgee corridor reserve and had thrown a spot fire into the western edge of the Stromlo pine plantation to the west of the Stromlo Observatory. The pasture country between the Murrumbidgee corridor and the Stromlo pine plantation was in an eaten-out condition, which fragmented the head fire into a number of tongues. The average rate of spread in the grassland between 1400 and 1430 hours was 11 km / hr.

The fire behaviour in the grasslands was most intense in the ungrazed pastures of the Murrumbidgee corridor reserve and in the roadside reserve of the Uriarra Crossing Road. The sparse pasture did not light up as readily as the ungrazed fuels on road verges and had the effect of narrowing the head fire before it entered the Stromlo pine plantation. However the high winds and the associated mass of burning embers carried the fire across heavily eaten out pastures at a speed and intensity that surprised experienced firefighters.

At 1445 hours the fire was making a very intense run up the western slopes of Mount Stromlo with high flames that were clearly visible from North Canberra and a spot fire commenced in the forest near the junction of the Uriarra Crossing Road and Cotter Road. The main head fire burnt across on to the eastern side of Mount Stromlo by 1500 hours and was approaching the Cotter Road northwest of Duffy. The rate of spread in the pine plantation was estimated at 6.4 km/hr.

The head of the fire burnt through the Mount Stromlo forestry settlement soon after 1500 hours and first crossed into Duffy just east of the intersection of Warragamba and Eucumbene Drive at 1505 hours. By 1545 hours the fire had entered the suburb of Duffy between Dixon Drive and Hindmarsh Drive.

The fire on the western side of the Goodradigbee River increased in activity and up to 1200 hours this fire was contained on its eastern side by the country burnt out by the McIntyre fire over the previous 10 days. At some time after 1300 hours this fire burnt rapidly in a southerly direction southward up the Brindabella River, burning intensely on the steep slope on the western side of the river. This direction of travel was at right angles to the direction of the prevailing wind aloft and was probably propelled by a local valley wind from north.

Between 1400 and 1500 hours, the fire in the valley came under the influence of the prevailing west north-westerly wind and made a very high intensity run over Webb's Ridge, across Flea Creek and a further run up the western slopes of the Brindabella range west of Mount Coree. By 1500 the southern extremity of this fire had burnt up the river to the junction of the Goodradigbee River with Flea Creek and had crossed the Brindabella range south of Mount Coree and entered the Uriarra pine plantations just south of Blundell's Arboretum.

I believe that this fire was driven by extremely strong surface winds induced by the convective activity of the outbreak of the McIntyre fire to the North and the Bendora fire to the south. By 1530 hours this fire burnt through Pierces Creek settlement and at 1545 hours had crossed the Murrumbidgee River and burnt onto the property of Fairvale.

Shortly after 1445 hours this fire merged with the flank of the McIntyre fire to the North and Bendora fire to the south and all fires burnt into the western perimeter of suburban Canberra over a distance of 12 km from Hindmarsh Drive, Duffy in the North to Woodcock Drive, Gordon in the south. The fire entered the suburbs at many locations more or less simultaneously at 1600 hours although there would be instances when spot fires ahead of the main front started before 1600 hours and in places where pockets between spots filled out after 1600 hours.

The extreme convective activity of this very intense fire combined with the convection from the McIntyre fire and the Bendora fire, generated a tornado which immediately preceded the leading edge of the head of this fire. This tornado (or at least the damage from the tornado) started in the lee of a hill called Sugarloaf in Pierces Creek plantation and cut a swathe through the plantation between 150 and 200 m wide from Sugarloaf to the Bullen range above the Murrumbidgee River. The wind strength in the tornado is estimated to be in excess of 200 km/h, and snapped off large trees two to three metres above the ground. The observation that the freshly snapped ends of the trees were burnt and the crowns of the smashed trees had been more fully consumed than the standing trees on either side indicate that the tornado preceded the fire rather than followed behind it.

The base of the tornado lifted off the ground at the crest of the Bullen range then came back to ground on Fairvale where it uprooted and smashed large mature yellow box trees and snapped off steel fencing pickets at the base. The

tornado then proceeded into the Arawang nature reserve where it removed the roof of a water storage reservoir and then entered the suburb of Chapman at Lincoln close.

Shortly after 1600 hours the tornado crossed Mt Arawang and then moved into Kambah in the vicinity of Colquhoun Street and Subwood Drive and caused damage to the roofs of houses between here and along Inkster Street. The base of the tornado lifted off the ground near the southern slopes of Mount Taylor.

3.7.1.4 Bendora 18 January 2003

At the time of writing, observations of fire behaviour south of Congwarra have not been fully assessed and the pattern of fire spread is still under construction. However the eaten-out pastures in the Paddy's River Valley helped firefighters control spot fires during the morning and early afternoon and when the fire did break out across the valley after 1400 hours the pattern of fire spread was very fragmented. A proportion of the area between the Tidbinbilla Deep Space Tracking station and the Tidbinbilla Road burnt late in the afternoon, after the wind changed to the southeast. Unfortunately this pattern of fire spread was not clearly visible in the aerial photographs taken after the fire.

During the morning the fires on the eastern and western sides of the Cotter River joined together and formed a continuous flank running roughly east-west from Piccadilly Circus to the Tidbinbilla range south of Pierces Creek forest. This flank expanded northwards only slowly as it was backing into the prevailing north-west wind.

At 1345 hours the wind speed at Tidbinbilla increased sharply from 35 km/h to nearly 60 km/h with gusts over 75 km/h. The northern flank of the fire burning in Pierces Creek Forest was blown out as a mass of embers across the eaten-out grasslands of the Paddy's river valley between Flints Crossing Reserve and Congwarra and passed to the south of the Tidbinbilla Deep Space Tracking Station. Despite the strength of the wind the fires spread relatively slowly and were not observed on the eastern side of the Bullen range until around 1530 hours.

Analysis of the spread of the southern flank is incomplete at the time of writing but around 1405 hours a fire front associated with a tornado-strength whirlwind hit Gibraltar Creek homestead from the north-west and destroyed a cottage and blew-in the windows of a utility parked on sparse pasture.

At 1530 hours the wind direction at the Tidbinbilla Deep Space Tracking station changed from north-west to west (the wind recorded at Canberra airport remained steadily from north-west throughout the afternoon). It is possible for this wind change was caused by the convective influence of the intense run of the southern break away from the McIntyre fire, but the overall pattern of fire spread, and particularly the spread of the northern flank of the Broken Cart fire in the Brindabella valley suggests that this may have been a more general shift in wind direction.

Shortly after 1545 hours the Bendora fire coalesced with the McIntyre fire and burnt into the western edge of the southern suburbs of Canberra between Hindmarsh Drive in Duffy and Woodcock Drive Gordon at around 1600 hours.

948. Mr Cheney confirmed in evidence that, although the last slide in his PowerPoint presentation does not show the Bendora fire crossing into Kambah, that is what did occur. His evidence was that the area from the Gleneagles golf club in the south to Gordon was the area impacted by the Bendora fire[1673]. Mr Cheney also confirmed in his evidence his opinion that

both the tornado and the extremely rapid movement of the fire that came between the Bendora fire and what had been the McIntyre's Hut fire, was caused by the fact that it was coming in between those two fires, with the flanks of those fire drawing it through. After referring to similar experiences encountered by him with experimental fires, he concluded that: *So one can't be categoric about it, but in my opinion, it required the interaction of the two convection columns to create the really quite remarkable rate of spread between the two fires – between the two existing fires*[\[1674\]](#).

3.7.2 EXPERT EVIDENCE ON FIRE SPREAD INTO AND IN THE SUBURBS

3.7.2.1 Peter Ellis – The Effect of Garden Types on Spread

949. Dr Ellis of the CSIRO prepared a report[\[1675\]](#) in conjunction with Mr Andrew Sullivan at the request of the ACT Planning & Land Authority[\[1676\]](#). Dr Ellis explained in evidence that the ACT Planning & Land Authority wanted him to investigate likely pathways of fire attack on and within its suburbs and look at the implications for land management at the urban interface[\[1677\]](#). Dr Ellis described in evidence how on 19 January, a team gathered at CSIRO and discussed how to help or assist in the fires of the previous day. They decided that information about house survival, as well as house loss, would probably be most benefit and went on to design a survey sheet. They started gathering information on 20 January. *The aim was to gather information on damage of houses, loss of houses, details about the garden. Ideally we wanted to do every house that was lost or damaged, as well as a large number of houses adjacent to the houses that were lost, so ideally we would have data that would enable us to look at the reasons houses survived as well as the reasons for losses*[\[1678\]](#). Dr Ellis explained that the evidence gathered relied in part on anecdotal accounts from residents as well as their own observations of house damage, garden types, outbuildings and so on[\[1679\]](#).

950. The Ellis Report defined 3 categories of *house condition* being, in essence, (1) no damage, (2) damaged but liveable and (3) destroyed[\[1680\]](#). The report also identifies two different garden types, namely, type 1 gardens (gardens with little or no separation between flammable fuels, heavy surface fuels including mulch and the presence of conifers) and type 2 gardens (gardens having greater separation between fuels and houses, light or discontinuous surface fuels and the absence of conifers) [\[1681\]](#). Allocation of gardens to those two garden types was largely subjective and made difficult where gardens were totally destroyed. For the purposes of the statistical analysis undertaken by Dr Ellis, the researchers working with him assumed that any garden that was totally destroyed was a type 2 garden, with the result that any association indicated by the statistics would be conservative[\[1682\]](#).

951. The Ellis Report contains a statistical analysis of a total of 779 houses allocated into the three categories referred to above[\[1683\]](#). The results of the survey demonstrated that there was a significant statistical association between house loss and garden type, with houses with more unkempt or fuel heavy gardens (type 1) more likely to be destroyed as a result of ember attack from a bushfire[\[1684\]](#). Dr Ellis also gave evidence that the statistical tests pointed out that cypress trees in general and conifers in particular, were a factor in house loss and damage[\[1685\]](#).

952. Dr Ellis confirmed in his evidence that the research team did not find any evidence that residential properties were ignited or damaged by direct flame contact or radiant heat from

flames in the pine forest, bushland or grassland outside the suburban perimeter roads. He outlined in his evidence the indicators of direct flame contact or radiant heat that he would have expected to find if the position had been otherwise^[1686]. The Ellis Report included a number of case studies of individual houses or groups of houses where the actions of residents patrolling the area and controlling many spot fires, led to a number of houses being saved. In the case of the houses at 63-75 Warragamba Avenue and four houses behind those houses, the Ellis Report recorded that: *A neighbouring house that was destroyed was ignited in the eaves, probably directly by a firebrand. A timber garage post of 1 house was ignited by surface fire in mulch. In the absence of residents, this could have led to the destruction of a house. The distribution of destroyed houses in this area suggest that the effect of saving the first row of houses influenced the survival of the second row*^[1687].

953. The Ellis Report includes a general estimate that 50% of the impact of the fires in the suburbs came from ember attack directly out of the neighbouring forests and the other 50% of impact was likely to have been caused by fire spread within the urban area, either ember attack from fuels within other houses or direct house to house flame contact^[1688].

954. Dr Ellis described the significance of the findings of the report in his evidence. Among other things, he concluded that land management agencies cannot stop fire brands reaching residential properties and igniting any ignitable fuel on that property. He suggested that: *Fuels outside the suburbs can be managed relatively easily for the first 50 metres, say, to reduce fine fuels, particularly surface fuels and shrubs, down to very low levels. The fire will travel very quickly through minimal fuels, reach a property. If the property has heavy fuels and those are continuous and there is little space and if the fuels – if the gardens are crowded and the fuels are continuous, the fire will develop quickly into a relatively high intensity fire and, given that its only got a short distance to travel, but heavy fuels will produce a relatively intense fire within private property. So... there's a responsibility on the land managers to do all that is practical to reduce the level of radiant heat to some pre-selected criteria at the private property boundary and, after that, there's a responsibility of the residents for fuels within their home*^[1689]. The setback distances that Dr Ellis identified at the time of his research indicated that the setback distances at the time of the fires should have been sufficient to have prevented significant damage from radiant heat to homes on the urban edge^[1690].

955. Dr Ellis was asked about what sort of options in times of water restrictions residents have to deal with fire risk from garden types and garden maintenance. Dr Ellis indicated that he had heavy mulch fuels around his house and he accepted that risk. *There is no such thing as a zero probability at the bush urban interfaces of not suffering loss or damage. People, when they are aware, can manage their fuels and accept a given probability that the garden will ignite. The options that residents have are several. They can in key areas, perhaps close to the house, put non-combustible mulch like gravel. They could break up the area of mulch so that you don't have 100 or 200 square metres of mulch on the likely upwind side coming right up to the house.* Dr Ellis explained that mulch in that type of location does not only present a high risk of fire attack, it can also deny access to the outside of the house by residents following the passage of the bushfire front.^[1691]

3.7.2.2 Justin Leonard – The Effect of Building Location, Design and Construction on Fire Spread

956. Similar evidence was provided to the Inquest by Mr Justin Leonard who leads the research team in the CSIRO Division of Manufacturing and Infrastructure Technology. That division is recognised as a world leader in understanding bushfire impact on urban and peri-urban areas^[1692].
957. The Leonard Report identifies that the fires on 18 January destroyed a total of 400 houses, including 219 houses in the suburb of Duffy alone. The report confirms that the survey of households undertaken for the purposes of Mr Leonard's research was limited to houses destroyed in Duffy, *as it presented the highest density of damage and destruction following the Canberra fire*^[1693]. The Leonard Report confirms that: *Over 229 Duffy houses were surveyed and were categorised as untouched, damaged or destroyed houses. During the course of the data collection, particular attention was given to gathering information on how the houses might have been ignited, and thus ultimately destroyed. This was done by examining each house, with particular attention given to those that had been damaged but not destroyed and/or had occupants present*^[1694]. The report also explains that the main objective of the work *was to use a social investigation method such as a survey to obtain information that could be useful to describe the degree of damage to houses reached by the effects of the bushfire event, and also to explain population behaviour and mechanisms of attack*^[1695].
958. The Leonard Report includes a general discussion of mechanisms of bushfire impact on urban assets. In particular, the report notes that: *Survey work has revealed that many houses are ignited from radiation and flame contact from adjacent buildings or features such as timber fences. The duration of the radiation and flame exposure from adjacent burning structures may be for a significantly longer period (an hour or more) compared to the exposure to the firefront itself (a few minutes). Embers are the major cause of ignition, as they can attack a building for some time before a firefront arrives, during the passage of the firefront and for many hours after the fire has passed*^[1696]. As with the work undertaken by Dr Ellis and his colleagues, Mr Leonard's research also confirmed that there was no evidence from the survey of houses impacted in the Duffy area of damage caused by direct flame contact or radiant heat out of the forest: *What was very evident when we performed our initial investigation of the area was that the road and clearing zone that formed the perimeter of the Duffy area between the continuous forest fuel and the structures were significant enough to prevent radiation and flame in themselves causing damage to the structures*^[1697].
959. Mr Leonard described in his report and in his evidence the ways in which embers from the main fire and from adjoining properties could lead to house destruction, particularly when the effect of the ember attack is contributed to by radiant heat from the burning of nearby structures. One contributing factor that Mr Leonard identified as particularly significant in urban Canberra was the siting of houses on the suburban blocks. *The proximity of adjoining houses definitely was a contributing factor to the level of loss not only because large houses were placed on relatively or moderately sized blocks but because the houses were all constructed with a similar setback. So that the structures all formed the line at similar distance back from the front of the property. So that the proximity of each house was almost minimised by that strategy.*^[1698]
960. The Leonard Report observed that impacts from house to house spread *endured throughout the afternoon and well into the night. We found many examples of community and agency suppression activities during this time, and examples of many houses being saved. It was highly likely that if no suppression activity occurred during this time, the house loss would have approached 100% in the surveyed area*^[1699]. Mr Leonard

elaborated on this in evidence as follows: *We certainly found examples where occupants were unable to defend against an adjoining house fire due to the magnitude of it and due to the relatively low level of suppression devices an occupant has. Certainly a brigade has quite a lot of capability in limiting house-to-house transfers. But what appeared to be quite evident was that, in looking at the overview of where houses were in fact lost and surviving, the isolated clumps of surviving houses usually were associated with a story of occupant or fire brigade interaction that actually saved those structures. So the reason why that comment was made was that there appeared to be a story behind each surviving house or most surviving houses. Hence you could assume that a loss scenario approaching 100% would occur if absolutely no person was present in the Duffy area for say 12 hours after the impact had occurred*[\[1700\]](#).

961. In the course of discussing further the aspects of house design that make houses more susceptible to ember attack and, therefore destruction, Mr Leonard referred to a *fairly clear statistical verification of the impact of protected versus non-protected vent systems in houses*, with houses with vents that were not protected by a metal mesh with holes smaller than 2mm more likely to be destroyed during bushfire[\[1701\]](#). Mr Leonard also noted a strong statistical bias to show that a destroyed building has a much higher chance of having a destroyed out building associated with it. He concluded that it could be presumed that a component of the statistical bias *was due to the fact that the outbuilding represented a significant additional attack on the main structure through flame radiation and ember source*[\[1702\]](#). He added that an out building is designed with many more gaps due to cheap construction and is therefore more susceptible to ember attack. Sheds and garages often also contain a large number of readily combustible items like stored timber, paint tins and so on[\[1703\]](#). Mr Leonard confirmed that timber fences, because they represent a large component of the dried timber load usually very close to the main structure, and gas lines, were other issues identified in the Leonard Report[\[1704\]](#). However, Mr Leonard did note that, while you can detect some evidence of the effect of a ruptured gas line on a damaged house, *once a house is reduced to rubble, it is virtually impossible to determine that its loss was due to a gas line*[\[1705\]](#).
962. In his report and in his evidence, Mr Leonard also discusses a *time-base study of house loss*. The report includes a photograph taken at 7.09pm on 18 January of a house at 37 Warragamba Avenue. The photograph shows that the fire was well alight at the time the photo was taken, which suggested to Mr Leonard that the contents of that house had only been burning for as long as approximately 45 minutes. The next door house at 39 Warragamba Avenue had been burning for a significant amount of time and had been reduced to rubble. Mr Leonard concluded from the photograph that the aggressive burning of 39 Warragamba Avenue caused sufficient impact on 37 Warragamba Avenue to ignite it. *That was the predominant transfer mechanism some 2 to 3 hours after the fire front had occurred*[\[1706\]](#).
963. In relation to the role of residents, Mr Leonard confirmed in his evidence that *previous survey investigations have highlighted that the presence of occupants have had the single greatest impact on probability of house loss compared to any other single factor*. He concluded that this was likely to be the case in Canberra[\[1707\]](#). Consistent with this, Mr Leonard notes in his report that: *The presence of brigades and resident activity deep within the Duffy area was low compared to previous surveyed bushfires. Traditionally, it has been accepted that suppression activities by agencies and residents are sufficient to mitigate the spread of*

structural fires deep into the urban areas. The house loss in Duffy stands as an isolated example of how this assumption is not always true[\[1708\]](#).

964. Mr Leonard's recommendations are set out in his report. In particular, he recommends the provision of Australian Standard 3959, Construction of Buildings in Bushfire Prone Areas be implemented for the Canberra urban interface. Mr Leonard explained, in effect, that this does not mean that all houses built in urban Canberra in the future will need to comply with the standard. The standard has built into a process for assessing the level of exposure of houses in particular area and then requiring a level of compliance with the building standard based on the level of exposure. Most houses in urban Canberra would fall outside the standard. As for houses on the edge of Canberra Mr Leonard points out in his report and his evidence that because of the degree of the setbacks around the Canberra urban area, the exposure level of houses on the urban edge will be deemed to be *medium* under the standard, requiring the provision of only basic ember protection at little additional cost to construction. Mr Leonard adds: *This zoning may also lead to increased voluntary adoption of these mitigation measures*. Mr Leonard's other recommendations including increase in bushfire awareness, maintaining radiation and flame buffers for urban assets and encouraging the use and positioning of outbuildings around residential structures that reduce their potential ignition and impact on the main structure[\[1709\]](#).

3.7.3 COMMUNITY RESPONSE TO THE GROWING RISK AND IMPACT OF THE FIRES

965. A *representative sample*[\[1710\]](#) of ACT residents were called to give evidence in the Inquest. Most of the witnesses concerned were living in urban Canberra at the time of the fires, although a number were living in rural areas, including in the forestry settlements. Despite a suggestion during the Inquest that the residents who gave evidence were *hand-picked*[\[1711\]](#), there was nothing in the demeanour or the evidence of the witnesses concerned, or in the evidence before the Inquest as a whole, to suggest that the experiences of these particular witnesses about which they gave evidence, were in any way unusual. Nor could it be said that the views and concerns they expressed in the course of their evidence were extreme or unfounded.

3.7.3.1 Natalie Larkins

966. Although Ms Larkins gave evidence primarily in her capacity as an ABC journalist, at the time of the fires she and her partner lived in a rented property in Rivett which was destroyed by the fires on 18 January 2003[\[1712\]](#). Ms Larkins' experience was unusual because, unlike most other residents, she had had direct contact with representatives of the ESB concerning the progress of the fires and, by her presence at press conferences, also had the benefit of all of the information being disseminated by the ESB, not just selected extracts which the media chose to broadcast or publish[\[1713\]](#). Ms Larkins had previously been involved in reporting on fires and other emergencies and had done training with the Country Fire Service in South Australia[\[1714\]](#).

967. Ms Larkins attended the midday media conference on 18 January 2003 and left that conference with the impression that the Canberra suburbs were under distinct threat even though, according to Ms Larkins, that was not clearly stated at any stage during the press

conference[1715]. Ms Larkins participated in a live to air bulletin at 1:00 pm and advised listeners of precautions and preparations that should be taken around the home, despite the fact that she had not been told officially to do this. At about 1:30 pm, her husband rang her because he did not have a car at home and was a little concerned[1716]. Ms Larkins arrived home at about 2:00 pm. She described in evidence that when she arrived in Rivett she saw people going about their normal business and that concerned her. Her impression was that that there was obviously no awareness amongst the general public as far as she could tell of what was potentially about to happen. She also mentioned in evidence that, while living in Rivett, she had never received any mail or correspondence or information about how local residents should cope with a fire that might affect the area. She never received any official notification that the area was vulnerable to damage from a bushfire[1717].

968. While Ms Larkins was collecting valuables to leave the house, she became aware that the emergency warning siren was transmitting[1718]. As she drove away, she had the car radio on and could hear lists of suburbs that should be on alert. She recalled hearing on the radio 5 or 10 minutes later that people who lived in Rivett should go back to their houses. She had a very strong feeling at that stage that there were houses in Rivett that were on fire. According to Ms Larkins, the information she was hearing on the radio did not reflect the fact that the fires had already hit the suburbs[1719].

969. Ms Larkins considered that if at the 12:00 noon press conference journalists had been given a clear idea of what was going on, specifically that there was a potential risk to Canberra suburbs, even that extra hour or two could have made a difference to people. She considered that there should not be a concern about alarming people as people have a right to be alarmed. She described the information flowing from the ESB to the media as *woefully inadequate and bordering on non-existent*.

970. After the fires, Ms Larkins harboured concerns that she could have done more to prepare the Canberra community and described that it took her *a lot of counselling and a lot of time* for her to come to the conclusion that she did everything she could with the information she was given at the time[1720]. When she and her husband left their house on Saturday afternoon, she was only able to save a few possessions, including a few files, photos, camera and the cat. All her and her partner's other possessions were burnt in the fire. She said in evidence that she and her partner could not physically have done more to save the house. *But had we been given more warning, we may have been able to get more things out of the house; we may have been able to ensure that our neighbours were alerted and help them*[1721].

3.7.3.2 Jane Smyth

971. Ms Smyth was a resident of Chauvel Circle, Chapman at the time of the fires. Her position was also somewhat different from other residents because, as a consequence of the December 2001 fires and before the January 2003 fires, she had on her own initiative arranged through ESB for representatives of the ACT Bushfire Service to give a presentation to about 17 residents of Chauvel Circle[1722]. Ms Smyth described in evidence how she and her husband were great newspaper readers and listened to the ABC radio and television regularly. She was anxious about

the fires from the beginning, but by mid-week, *I had watched and I sort of felt slightly reassured by something that had been said about controlling the fires. Because 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 it must be all right, which in retrospect was quite dangerous*[\[1723\]](#).

972. She and her husband had done some cleaning of gutters and other clearing at the time of the fire. Ms Smyth described how she had planned to go to the Fyshwick Markets and to meet a friend during the morning of 18 January, but cancelled both engagements because it looked dangerous and she decided somebody needed to be at the house. During the morning, she received a telephone call from a neighbour who was away from home at a jazz festival and she specifically recalled in evidence telling, *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're in no danger or we would have been told*[\[1724\]](#). As she hung up from that telephone conversation, she noticed that the wind picked up substantially. She telephoned her neighbour back and told him: *Whether there are warnings or not, Ron, just come home. Just get here.* She described that as she hung up from that conversation, she heard on ABC radio a warning to the effect that Chapman and Duffy residents were advised to return to their homes. She thought that it was about 2.30 pm. She arranged for her husband to come home and then starting calling neighbours[\[1725\]](#).

973. Ms Smyth then began preparing herself and her house as she had been advised during the presentation by representatives of the ACT Bushfire Service earlier in the year and as set out in what she described as a *good article* from the Canberra Times earlier that week[\[1726\]](#). Ms Smyth went on to describe in detail the efforts of she and her husband to save their home, which were ultimately unsuccessful. Ms Smyth said in evidence that she was disturbed by the lack of warning she and her husband received. She could not understand why they were not given proper information in the week leading up to the fire and could not understand why they were not given warning[\[1727\]](#). She considered that there needed to be a system of staged warnings[\[1728\]](#).

3.7.3.3 Other Chapman Residents

974. Mr Park said in evidence that he was not aware that there was a potential risk to his area from bushfires that were burning in the Namadgi: *I wouldn't say that I took it as a tremendous risk. I was aware the night before when I was driving home over from Curtin and I saw the fires in the Brindabellas or the smoke*[\[1729\]](#). When he arrived home from work on the morning of 18 January at approximately 11:30 am, *I feel that I was thinking, well, this is getting a rather close. This is strange. But I still didn't think for a moment that it would burn my house down or come over the ridge and get that serious. The radio – I did have the radio on. At that stage we were not on full alert. We were on alert. So really I didn't take terribly much notice of what was happening until just be observing all the changes in the weather and things like this. As it worsened, then it started to get pretty scary*[\[1730\]](#). He later described how he started hosing down his roof because he saw his neighbours doing it[\[1731\]](#). He learnt a short time later that police in the area were telling people to prepare to evacuate. He drove out of the area with only his cat and a folder that happened to have his passport in it because he was preparing for an overseas trip[\[1732\]](#). He lost his house and everything in it to the fire[\[1733\]](#). *My one thing I would*

have preferred is that, as I said, we really weren't 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 family or something like that, which I didn't[\[1734\]](#).

975. Mr Boyle had closely observed the fires in December 2001 and said in evidence that: *The effect of seeing that fire and the density of the smoke was such that I felt sure that the authorities who responded to that fire must take it into consideration in their contingency planning for the future. It was the clearest indication you could get, I thought, of what would happen if Duffy forest or Stromlo forest went up*[\[1735\]](#). Before 18 January, Mr Boyle had been observing the McIntyre's Hut fire and felt reasonably confident that action would be taken to contain it. He was feeling less certain on the morning of 18 January, *but nevertheless I still felt that, if we were at risk - there was real danger those forests would go up, we would be told*[\[1736\]](#). Mr Boyle described in evidence how he went to the end of his roof and looked across into Duffy and saw flames coming out of Duffy. He had heard nothing of any fire brigades, emergency services or police at that stage[\[1737\]](#). Before the fires hit, Mr Boyle's eldest daughter had called him and said she was concerned from what she could see of the fires from where she was. Also, his sister-in-law rang from Melbourne and said: *"Are you all right?" My wife said, "Yes. Why?" She said, "the fires in Canberra are dreadful. They are all on TV." 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 naïve innocence.* At the time the fire hit, Mr Boyle was wearing a t-shirt, shorts, sandals and a hat but later changed into more suitable clothing[\[1738\]](#).

976. Mr Boyle described in detail the efforts of he and his family members to control the fire as it spread into his home, including how embers had been driven under the tiles of the roof and into the roof space and caught fire. He also described how, despite being quite fit, how quickly he became exhausted and disoriented. The police came and said *You've got to get out. If you don't get out, you're going to die.* They grabbed what they could and drove out as their house and eight neighbouring houses burnt down[\[1739\]](#). Mr Boyle noted in evidence that at the Phillip Evacuation Centre, nearly everybody was dressed the same in t-shirts, shorts and thongs, with a shopping bag in one hand the family pet on a leash[\[1740\]](#).

977. Mr Boyle had considerable professional experience in contingency planning, including contingency planning for major terrorist incidents. His primary concern was the lack of warning that was given to him. *I wouldn't like to think that a judgment was made not to warn us, but I would very much like to know what the reasons were for making that judgment. I would presume that they were duly recorded and were made by more than one person; there was an agreement at senior level.* He considered that people in Chapman could have done a lot to lessen the impact of fire on their homes and their belongings and they could have got elderly and sick people out. *They wouldn't have gone off and done other things, which the lack of warning encouraged them to do*[\[1741\]](#). Mr Boyle later observed that: *Decent planning would have place 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*[\[1742\]](#).

3.7.3.4 Duffy Residents

978. Mr Smith had been aware before 18 January that there were fires in the Brindabellas. He had gone to Belconnen on the night of 17 January and had seen the current state of the McIntyre's

Hut fire and he had been following the progress of the fires from their ignition on 8 January, watching television reports and listening to the ABC radio[1743]. Mr Smith described in evidence that he was well aware from the smoke and what he had seen on 17 January that there was a general level of threat. Before 18 January, he had done what he described as *all the standard things* like cleaning gutters and trimming back the trees that were in contact with the house. He did that partly because he was in the process of doing some renovations and partly because it was something he tended to do in around January each year. Mr Smith described how at about 11:45 am he went to do some shopping, leaving his wife and two adult sons at home. His wife was listening to the radio and watching television to see if there were any developments and could not find anything[1744]. When he returned, his wife and sons had already evacuated. After attempting to put out spot fires for about 30-35 minutes, he also evacuated[1745]. He said that his wife got her first notification that the fire was in Duffy from her neighbour who had spoken to a fireman[1746].

979. Mr Smith expressed the view in evidence that he should have been better informed earlier. He considered that he and his family would not have made their home fireproof, but three days warning of a threat would have made a considerable difference both to his family and other residents. Even if they had more warning on the 18 January, with two cars and four adults, he considered that his family could have done a good job of saving more precious possessions[1747]. He also described being *very frustrated* on hearing on the radio as he drove down Jemalong Street advice that Duffy residents were advised to stay with their houses. He described how that created *massive uncertainty* with him. He was unsure about whether he should go back into the fire. He said that he thought a bland statement of that kind with no qualifications was very poor information[1748]. Mr Smith agreed that as a result of the 2001 fires he had become aware of some of the precautions that could be taken around his house to protect it from fire. He felt some improved level of awareness of the risk of fire because of the experience of the 13 months earlier[1749].

980. On 18 January 2003 Ms Latta was living in Eucumbene Drive, with her husband and 12 year old daughter[1750]. Ms Latta's husband had been a volunteer with the Eurobodalla Shire for 20 years. She and her family had been following the progress of the fires on the television news. They were not particularly concerned because they had experienced bushfires on the coast[1751]. On the night of 17 January Ms Latta's was worried about the heat and trying to keep cool, but had no feeling of impending danger. Her husband was due to fly to Brisbane on Saturday afternoon. On the morning of 18 January, Ms Latta went to Woden to do some shopping and got home around 1:00 pm. She had not been listening to the radio that morning or watching television[1752]. She went to the video shop at around 2:00 pm and was stopped at a road block on her way home. She explained that she was a resident and was allowed to go through. When she got home her husband was speaking with a neighbour and had told Ms Latta to go inside and start packing a few things[1753]. Leaving her husband to defend their home, Ms Latta and her daughter left with the few things they had been able to gather together. As they were driving up Eucumbene Drive, they turned the radio on to ABC 666. The warning on the radio was telling them to stay with their home. She and her daughter screamed at the radio: *What home?*[1754].

981. When Ms Latta had experienced fires in Moruya, they were constantly kept up to date about the progress of the fire and what to do. She said in evidence that she would have liked to have warning about what was happening, even if they were not able to get help. Because of their past experiences on the coast, she was lulled into a false sense of security. When she spoke with her neighbours in the early afternoon, they had absolutely no feeling of impending danger. The street was normal. She said in evidence that all of a sudden the fire was on them and they were literally running for their lives. If her husband hadn't been there, she believes she and her daughter would have perished because: *I didn't have clue what to do*[1755].
982. On the morning of 18 January, Ms Kampen had *absolutely no sense at all that we were in any danger whatsoever*. At 6 o'clock in the morning she and her friend walked their dogs in the forest. While they were walking they noticed black leaves everywhere. After her walk, she picked up a newspaper to see what the commentary was about the black burnt leaves, because she was not sure what they meant. She said in evidence that there was no sense from the papers that there was a sign of impending danger. At 11:30 she, her sister and a friend headed off for the Belconnen Market. Her sister dropped her off at home at 2:00 pm. About 10 minutes later she checked the Canberra Connect website but did not see any warning. She also scanned the radio stations and there was nothing on the radio about it. Ms Kampen said that she had *this amazing faith in people telling me to do if I needed to do anything*. She left to do some shopping and as she was turning into the Woden Shopping Plaza, the warning came on the radio to go back to Duffy and prepare her home, which is what she did. Ms Kampen wasn't sure what to do so she rang her sister who also lived in Duffy and she did not know either. [1756]
983. Ms Kampen described in evidence how she was looking around and deciding what to take with her and could not decide. The smoke alarms went off and there was fire everywhere. She thought: *none of this is actually worth dying for, so I just grabbed my dogs and a torch and my phone and I took off*. By that time her house was on fire. At the corner of Warragamba Avenue and Dixon Drive, she spoke to a policeman who didn't seem to know where she should go. She asked the policeman why all these people were going home and said that her house was on fire. He said: *Are you sure your house is on fire?* Mr Kampen replied: *Yes, I'm damn bloody sure my house is on fire*. Throughout this period, Ms Kampen was wearing shorts, a t-shirt and sandals.[1757]
984. Ms Kampen said in evidence that what really disappointed her was that *we had no communication in the days leading up to the bushfire nor any on the day itself whatsoever. In fact, the message of going home when you know you were literally putting a life in danger still upsets me to this day*. Not being told denied her the opportunity to make choices about what she was going to do, until it was far too late to make any choices. There was no opportunity to save any of her possessions. Ms Kampen considered that one of the reasons for the lack of warning was: *Bureaucracy gone crazy. I understand how bureaucracy works, but it seems like nobody was prepared to say, "Lets give these people some fair warning"*. [1758]
985. On 18 January, Sir Peter Lawler was living in Eucumbene Drive. He had followed the progress of the fires in the Brindabellas and was accessing the Canberra Times, radio and TV. He had an awareness on the morning of 18 January that the area he lived in might be under some

sort of threat from the fires[1759]. On the morning of 18 January, he collected an elderly friend from the airport who was en route to Melbourne. At about midday, he went shopping and, on his return, did not see any sign of people preparing their homes for an impending threat. Sir Peter did some work on his computer until about 3:00 pm when he decided to take a break. It was at this point that he noticed a fireman taking water from the fire hydrant. He asked if they should leave and the fireman told him to go inside, close the doors and windows and stay calm[1760]. Sir Peter noticed a neighbour putting some things into his car and from that point there was a *flurry of activity*. One of his sons arrived. Sir Peter dashed into his house and grabbed medications which might be needed and an armful of files from his study. His wife was rescuing some old photographs. He and his wife left the area, leaving his son to arrange transport for their elderly friend and then to stay and save the house. However, as conditions were deteriorating, his son decided to leave with the elderly friend[1761].

986. Sir Peter's principal concerns were set out in correspondence that he copied to the Coroner and related primarily to the lack of warning to urban residents. In particular, Sir Peter expressed the view in a letter to Mr Wood, the ACT Minister for Police & Emergency Services that he did not accept that the speed of events prevented due warning being given during the middle part of 18 January and, in any event, *it was certainly not an element at 9.30am on January 18, nor on the previous evening, January 17, when rural lessees were being specifically warned, nor on the previous Wednesday, January 15 when it seemed NSW Fire Authorities identified, with some accuracy, what might eventually happen.* [1762]

987. Before 18 January, Ms Devitt was *slightly aware* that there were bushfires burning in Namadgi but, as at the night of 17 or the morning of 18 January, had no awareness that there might be some threat to her area from the fires. Ms Devitt went to work as usual on Saturday morning and was telephoned by a friend at approximately 2:00 pm and told that Duffy was under threat from the fires[1763]. Ms Devitt's supervisor would not let her leave so she did not get home until about 4:30 pm. When she got home, there was fire all around her house and the corner of her house was on fire, as was the whole street. Her boyfriend was in the house in bed asleep. She got him out of bed and found her 19 year old son out the back trying to put spot fires out, but there was no water. They got into their car with their animals and a few photographs[1764]. Ms Devitt felt that there could have been more notice to the residents that the fire was going to hit[1765].

988. Mr Norris had been following the progress of the fires on the ABC news. On the evening of 17 January, he was under the impression that they were not going to be under threat on 18 January and that if the fires were going to come through at all, they would come through later. He had done nothing prior to 18 January to prepare his home for the impact of fire. He and his wife spent their Saturday morning as usual. He first became aware that his area might be under threat when his daughter rang him from Sydney and said: *Dad, you'd better take this seriously. Its on the radio in Sydney.* Mr Norris thought that would have been at around 2:45 or 2:50 pm. He turned on the radio and scanned the channels and got the 3pm news bulletin from a commercial station which talked about residents of Duffy needing to ensure their downpipes were blocked, their gutters were clean and filled with water and that they should fill up their bath and layout their hoses and be prepared to evacuate if necessary. He and his wife began to prepare accordingly.[1766]

989. Mr Norris described in his evidence how he and his wife, with the assistance of neighbours, continued to work around their house putting out spot fires and ultimately managed to save their home. Among other things, he explained difficulties he was having with the gas connection in the house next door which was continually catching on fire[1767]. Mr Norris remarked in evidence that at no time were he and his wife told to evacuate. He considered that if they had been told, they would probably have done so and would have lost their home[1768]. Mr Norris said in evidence that he believed that an evacuation policy and whether to stay or not is crucial. If there was to be a protocol, it should provide for people removing possessions and unfit people earlier, rather than at the time the fire impacts. He also noted that he understood people were not allowed to enter Duffy after a certain time and he considered that allowing people who are fit and able bodied to return to protect their property must be part of a considered policy[1769].

990. Mr Evans was at the time of the fires and at the time of giving evidence, a resident of Eucumbene Drive. Mr Evans followed the progress of the fires, more towards 18 January as the fire seemed to move closer. As of the night of 17 January, he did not have an awareness that the fires posed a threat to the area but he was a *little concerned*. He had spent time before Christmas clearing up his garden and making sure the area around the house was clear. He explained that he had done that because he had lived in a rural environment in Tasmania where there was a quite a lot of effort devoted to making sure people understood the nature of fire and how it impacted and making sure you had a clear area around your home[1770]. On the morning of 18 January, he and his wife undertook various errands as usual, including going to get the dogs clipped. His wife later told him that the woman who clipped the dogs had said that a friend of hers in the Rural Fire Brigade said the fire would impact on Duffy by 8:00 pm that night. Mr Evans said in evidence that he and his wife discussed the information but dismissed it because they believed that, if it was that close, someone in authority would have alerted the community[1771].

991. At 2:00 pm, Mr Evans' daughter told him that she had received a text message from a friend to say that he had heard on the radio that Duffy residents were being asked to return home. Mr Evans then turned on the radio and heard a warning asking Duffy residents to return home. They then began preparing their house[1772]. Mr Evans described in his evidence the actions of he and members of his family as the fire threatened their home, up to and including their last minute evacuation and the loss of their home. Mr Evans could not understand why they weren't given any warning[1773]. He considered that the authorities needed to rely on the good sense of the community not to panic and to give them plenty of notice[1774].

992. Mr Connell was aware there were fires burning in the Namadgi to the west from about 8 January and followed the progress of the firefighting, mostly on the television news. On the night of 17 January, he was not aware that the area he lived in might be under some sort of threat from the fire. He described in evidence that he could see the glow in the distance but, *I was sort of quite confident that we were okay. We had no warning. The previous year when there were fires in the Duffy area, we had plenty of warning*. He explained in evidence that in December 2001, police came around and told residents to be prepared by sprinkling their lawn and things like that. Mr Connell assumed that the same sort of program would take place if the authorities saw any imminent danger.
[1775]

993. On the morning of 18 January, it was hot and he and his wife decided to go to the shopping centre at Woden. They returned home at about 2:30 pm. As they drove into the suburb, Mr Connell did not notice any activity such as people preparing their homes. When they got to their home, their neighbour was hosing down her house. They asked what was going on and she said that she was getting uncomfortable because of the strong wind and smoke[1776]. Apart from cleaning and filling the gutters, Mr Connell had no other knowledge or information about how to prepare the home for a bushfire. As with other witnesses, Mr Connell described the events that followed and the efforts by he and his wife to control spot fires around their house. He lost contact with his wife and eventually only had time to grab the family cat, put her into the car and leave. He was unable to save any documents or other personal possessions[1777]. The issue Mr Connell wanted to raise in his evidence was the lack of any warning[1778].

994. Ms Poulos lived in Duffy and also had an investment property in Duffy[1779]. She explained in her evidence that, from her experience of the fires a year earlier, that she had the sense all year that: *Whoever "they" are who look at these things would be taking clear note of all that and putting into place whatever precautions might be needed should we have a similar occurrence the following year.* She said in evidence that in the week leading up to 18 January, she did not feel terribly safe but also did not feel that her home was under threat. She did not know until her elder daughter rang her at 2:00 pm on Saturday 18 January that she needed to turn on the radio and listen to an emergency message. The message told her not to panic, that she was not in immediate danger, she should stay with her property and secure her property. She took down the points that the message said to do and she tried to follow them through. She spent most of her time outside putting things away, shutting things up in sheds. She described in evidence that she rushed inside and filled the bath with water. *I still don't know what this was for, but I did*[1780].

995. Ms Poulos later described her evacuation and how she kept turning the radio on in the car while she was at the evacuation centre and seemed to be getting the same message: *You are in no immediate danger. Stay with your property.* She believed that her home was well and truly burnt down by then. She described some of the messages on the radio as *really silly*[1781]. Ms Poulos said in evidence that her anger and grief mainly centred on the fact that she was not given any warning and the messages that she did receive were *totally inadequate*. She considered that the messages diverted her from using the very short time available to do something more meaningful[1782]. Ms Poulos referred to people in other parts of Canberra learning their lesson from the experiences of those affected by the fires on 18 January and the steps they took over the following days to prepare, by packing up their belongings and giving thought what they needed to take with them[1783].

3.7.3.5 Other Urban Residents

996. At the time of the fires, Ms Hardy was living in Weston Creek. Ms Hardy described in evidence that before 18 January she had been following the progress of fires in the news. She had been reading the newspapers and on 17 January had accessed the internet. *At no time during that period either through the written media or the television did I think that I was at risk.* From about 1:00 pm, she and other members of her family began pruning branches close to the house, filling gutters,

blocking downpipes and putting buckets at doors[1784]. As far as she could see, throughout the morning her neighbours were going about their business as usual[1785]. The first time at which she became aware that she might be at risk was when she saw the fire coming towards her[1786]. She and her family evacuated their house when told to do so by police[1787].

997. She described later in evidence that she was able to take with her some personal papers, but her husband's studio and his paintings were all burnt[1788]. Ms Hardy described herself as someone who *loved information* and who liked to *make her own decisions about how I am going to deal with the information. It wasn't there. We took nothing, A different emphasis on the information put in newspapers – I might have put something in the car. It is as simple as that.*[1789]

998. Mr Lewington was at the time of the fires and at the time of giving evidence a resident of Kambah[1790]. Mr Lewington was watching television in the early afternoon of 18 January and did not see any alerts or warnings. His wife and daughter called him outside at about 3:00 pm to look at the effect of the smoke on the sun. He noticed one of his neighbours starting to make preparations around their home. He asked whether they had heard anything and they told him they had not[1791]. Mr Lewington was wearing shorts, a t-shirt and thongs when he started making preparations around his house. He later put on some shoes so he would not slip off the roof[1792]. At about 3:20 pm, the police or the fire brigade went past using a loud hailer and telling people that they had about one hour to evacuate. He believed the fires hit at about 4:20 pm[1793].

999. Mr Lewington confirmed in evidence that he received a letter in April 2002 containing a bushfire safety message[1794]. Mr Lewington took steps to reduce fuel loads around his house in response to that letter. He also made a phone call to the Bushfire Service about the fuel build up in the area behind the back of his house[1795]. A document prepared by Mr Lewington setting out his concerns arising from the fires[1796]. These related for the most part to issues of fuel management, water pressure and evacuation. In relation to the latter issue, Mr Lewington noted in his submission that: *Evacuating my house at that critical time was almost a recipe for greater disaster, as indeed left abandoned it would have been destroyed as the full impact of the burning house next door came to bear on ours. If my house had burnt down, my other next door neighbour's house would probably also have been destroyed as there was nobody there to protect it. In turn it would have placed enormous pressure on the next door house as its owner was single-handedly fighting the fires in his back yard. And so it would have gone. My house did not burn down because when we departed with the police, other residents from the area moved back in to continue the fight to keep the fire threat under control. They succeeded, proving that it could be saved.* Mr Lewington made clear in his submission that he was opposed to any policy under which able bodied residents willing to fight to save their homes were compelled to leave.

3.7.3.6 Rural Residents

1000. Mr Franklin-Browne was the first of three residents of the Stromlo forestry settlement to give evidence. He was *very aware* of the fires in the Brindabellas and followed the progress of the fires from 8 January as much as possible. He was getting information from the newspapers, television and CSIRO's website[1797]. On the evening of 17 January, he felt the danger had increased and he was more alert. He had spoken to someone at the NSW Rural Fire Service

camp nearby who showed him on a map where they thought the fires were and said: *Look, you will be alright. We have got plenty of units here. You won't be in any danger.*[\[1798\]](#) Mr Franklin-Browne went on to describe in evidence how the fire arrived much sooner than anticipated and how they managed to get their pets and a few personal papers into their car[\[1799\]](#).

1001. According to Mr Franklin-Browne, he and his family were not given any personal warnings about what to expect or whether to evacuate[\[1800\]](#). He said he had heard some *horrible stories* since the fires. In particular, the people living diagonally oppose the home of the deceased Dorothy McGrath were trapped in their house. He heard that they had tried to shelter in the bath and then realised that the bathroom was burning and then ran out onto the road[\[1801\]](#).

1002. Mr Ferry was also a resident of the Stromlo forestry settlement. He too followed the progress of the fires up to 18 January but only in the newspaper and on television. Up until 18 January, he had a *slight concern that the fires might pose some threat to the area he lived in*. He knew that the fires had not been contained when he thought 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 the Bush Fire Council, whenever there was a lightning strike everything was thrown at it*[\[1802\]](#). On the morning of 18 January, Mr Ferry and a neighbour learned that the fires were in Glovers. They went across to the NSW Rural Fire Service base camp nearby and asked them for a stand pipe and some hoses to fit to the hydrant outside their place. The officer they spoke to said: *Don't worry, that's our job. That's what we are here for*. They started preparation on their own houses by filling up gutters with water and putting sprinklers on their gardens. *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 could be in trouble then*[\[1803\]](#).

1003. Mr Ferry described how he and his family continued with preparations. At one stage in the morning, his daughter telephoned CanberraConnect. When she explained their location, she was told that the fire was not coming towards them but they had about an hour to an hour and a half to prepare if it did come their way. Mr Ferry's daughter spoke to them about an hour later and was told they still had an hour. A short time later, Mr Ferry saw nearby pine trees on fire and told his daughter to get out straight away. Mr Ferry stayed at his home and managed to prevent the fire from destroying his house, suffering injury to his eyes in the process[\[1804\]](#). Mr Ferry gave evidence that he and his family had no calls or contact from any emergency services people before the fire hit, including no telephone calls from ACT Housing or anyone from the Winchester Centre.[\[1805\]](#)

1004. Mr Todkill was the last of the residents of the Stromlo forestry settlement to give evidence. He lived next door to Dorothy McGrath. He had spent 24 years with Forestry and the Rural Fire Service[\[1806\]](#). As of the evening of Friday 17 January, Mr Todkill had an awareness that the fires might potentially impact on where he lived. On the morning of 18 January he and his family went to the reptile display at the National Botanic Gardens. When he got home that morning, he didn't have any awareness that his house might potentially be impacted that day[\[1807\]](#). Mr Todkill confirmed that he was home on the evening of 17 January and received no phone calls about the potential impact of the fires on their home[\[1808\]](#).

1005. Mr Todkill described that when they got home from the National Botanic Gardens, they packed some things into their car and his wife left at about 2:00 pm. He described how he and some friends then worked to protect his house from the fires. He described that after the firefront passed, *there was a lot of tin and stuff flying around so we left for half an hour and came back later*[\[1809\]](#). When Mr Todkill got back from Weston with his friends, one of whom said that he had seen Ms McGrath in her yard earlier in the day, they decided to have a look around. They found her badly burned body and got in touch with the police and ambulance[\[1810\]](#). Asked whether he had any issues he would like to raise, Mr Todkill said: *I would just like to know why the fires and that were left to burn like they did...I mean in summer time when the conditions were like that, the old practice was detection and response. You would go there and stay there until they were blacked out*[\[1811\]](#).
1006. Mr Anderson was one of two residents of the Uriarra forestry settlement to give evidence. He was aware of the fires from about when they started and became concerned about the area he lived in from about 15 January because of how close the smoke was getting[\[1812\]](#). On Friday 17 January, he spent the night in Canberra. He had been out to Uriarra that afternoon and took a few possessions back to town with him. The main reason he took those things with him was to repair his car. He was not aware when he first woke up on the morning of 18 January that there was some threat of impact to his home. He found out at about 10.30 or 11:00 am that there may be some threat, when his cousin told him that: *Things were looking pretty grim out there*[\[1813\]](#).
1007. He and a group of friends then returned to the settlement. He had done nothing to prepare his house for a possible impact. He noted that the rest of the residents were a bit worried about what they were going to do and whether there was going to be any help. He later told his friends to return to Canberra and discussed with his neighbours what to do. After that he and went and called 000. Up to that point, he had not received any telephone contact from ACT Housing or any emergency services personnel to advise what was happening. He described in evidence how when he rang 000, the person he spoke to seemed a bit confused about what he should do. He went on to describe how he and those with him responded to the threat from the fire as the afternoon progressed.[\[1814\]](#)
1008. Mr Houghton also lived in the Uriarra forestry settlement with his de facto wife and 3 children. He followed the fires from 8 to 18 January, by talking to helicopter pilots and listening to the radio. From his conversations leading up to 18 January, he did not understand there was any potential threat to the area where he lived[\[1815\]](#). On the evening of 17 January, he could see the fire hit the top of Blue Range but there were many helicopters and firefighters so they did not think there was a problem. On the morning of 18 January, Mr Houghton woke up at about 10:00 am and saw other people rolling out hoses. He assisted with that and packed the caravan and drove his wife and children into town. On his way back to the settlement, he was stopped by a policewoman. Mr Houghton said in evidence that he thought this was at about 11:00 or 11.30 am. When he got to the settlement, most of the residents were still there, and people were hosing down their surrounds[\[1816\]](#). Mr Houghton also described the actions taken by he and his neighbours to survive the fire and, ultimately, to save his home[\[1817\]](#).

1009. Mr Lecoqguen was a Namadgi Park worker living at the Pierces Creek forestry settlement. He became aware that the fires had started on 8 January and followed the progress of the fires over the next 10 days[1818]. As of the evening of 17 January, Mr Lecoqguen was unaware that the fires could possibly impact on the area he was living in. When he got up on the morning of 18 January, he was still unaware. He went with a friend to a country show in Gunning. His brother telephoned him at approximately 12:10 pm and told him that he had better come home. He returned home at about 1:45 pm. He had already done some cleaning up around his house. At that stage, there were about 13 residences at the settlement. All the residents except the 4 households who had already left were trying to prepare for the fire. Some were leaving. *The majority of us left all in one hit when the fire swept around on Mt McDonald. It actually hit town first before it struck our houses*[1819].

1010. Like other witnesses, Mr Lecoqguen described in evidence how he and those with him survived the passage of the fire. Mr Lecoqguen was able to save his car, some work tools and some clothes but lost everything else[1820]. Mr Lecoqguen gave evidence that the only helpful warning any of the residents of the Pierces Creek Settlement got was from a policeman who came up at approximately 12:15 pm and visited 3 households. *They visited I think 3 households, went to the Reardon's house. Mr Reardon had just come home from hospital after a heart attack. He had been home only a few days. And his wife told the police that he couldn't drive and she can't drive herself. The policeman assured her, he said, "everything will be OK. There will be plenty of help here soon". No-one arrived. John had to drive himself and his wife into Canberra. That was the only helpful warning that any of us got*[1821].

1011. Mr Lecoqguen 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 parents' antiques, all the stuff they treasured. Everything. It is all gone*[1822]. The matter which Mr Lecoqguen wished to raise with the Coroner was as follows: *The only thing is that I'm sure like I want to know and everyone at home was that we had no warning and no assistance. We never saw a fire truck... I just wanted to know why we weren't forewarned and why we had no help.* Mr Lecoqguen had been at home the previous evening but did not receive any telephone calls about the risk from the fires[1823].

3.7.3.7 Other Evidence Relevant to the Response and Experience of Residents

1012. Mr Hoare had two properties affected by the fires, one in Duffy and another, a 600 hectare rural property at Tingaringa. Mr Hoare had considerable experience as a fire ecologist[1824]. Mr Hoare's main focus from 8 January was his rural property and concerns about some fire ecology plots he had at Piccadilly Circus. He was comfortable that his house in Duffy was safe until essentially the evening of 17 January 2003[1825]. He was able to observe personally the development of the McIntyre's Hut fire on Friday evening and Saturday morning from his property at Tingaringa. At 1:00 pm he telephoned his wife who was in the house at Duffy and told her to prepare the house, but it was not until 8:00 pm when he spoke again to his wife that he was aware there had been an impact on Duffy[1826].

1013. Mr Hoare said in evidence that his main concerns were in relation to how the fires continued to burn for so long in the mountains without the full force of fire suppression forces being

brought to bear to contain them in the mountains. Further, his wife informed him that there was no information or forewarning about the impending disaster given to Duffy residents.[\[1827\]](#)

1014. Mr Hoare was cross-examined about his evidence that the content of his telephone call to his wife in Duffy at 1:00 pm was that the fires were blowing up on Pig Hill and that Duffy would be in danger. He agreed that Pig Hill is some 15-17km from Duffy, *as the crow flies*. It was put to him that, while he had some apprehension about Canberra, he did not realise that the fire might reach Canberra with the speed that it did. He responded: *I did realise it...I suspected, given the 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 enquiries, that there was a very strong likelihood that the fire would spot into Canberra within a matter of a couple of hours.*[\[1828\]](#)

1015. Evidence was also given by Ms Van Buuren, who was seriously injured by the fires, in the course of attempting to rescue her horse from the Canberra Equestrian Centre. Ms Van Buuren was aware that there were fires in the National Park. She did not really follow the progress of firefighting over the 10 days, but knew the fires were getting closer[\[1829\]](#). As she and her mother were driving to Chapman, they heard warnings that residents of Chapman and Duffy and other suburbs should return to their houses. Mr Van Buuren and her mother were attempting to lead horses into the stable area but they did not make it out of the paddock. They were forced to let the horses go, after which Ms Van Buuren was knocked over backwards by the wind. She did not recall seeing the fire coming. She managed to get up and run into the stable where she found her mother[\[1830\]](#). Mr Van Buuren went on to describe how she and her mother were forced to leave the stable as it caught fire and then ran to find other shelter, and both eventually found refuge with other people in a car nearby. She was eventually driven to Canberra Hospital with her mum[\[1831\]](#). She had suffered very extensive burns to just about every part of her body and stayed in hospital for 10 months[\[1832\]](#). The issue that Ms Van Buuren wanted to raise in the Inquest was: *Just the lack of warning. We were up at the horse paddock because we thought it was safe to be up there. We didn't know that we had to evacuate. We were not told*[\[1833\]](#).

1016. Mr Shawn McIntyre is one of a number of fire brigade officers and police who gave evidence of their observations of residents of Canberra during the morning of 18 January. Mr McIntyre described how people were coming out to he and his colleagues in their fire pumper on Eucumbene Drive sometime after 2:30 pm and asking what was going on and what they should do. Mr McIntyre at that stage did not believe that there was a great threat to them. The information that he had been given certainly did not give him the feeling of what was coming. He told residents: *If you are going to stay, dress appropriately and make sure you have natural fibre clothing on. Have your hoses ready. Have your vehicles off the street so they don't impede us. Be vigilant. Look out for little embers landing in your garden and put them out.* He spoke to approximately 40 people, including his own father[\[1834\]](#).

1017. Mr McIntyre went on to describe their firefighting efforts during the course of the afternoon and how their pumper broke down as they were attempting to go back up towards the area behind Eucumbene Drive. Mr McIntyre was later informed by a mechanic that the pumper had broken down because sparks had entered the air intake, causing a fire in the vehicle[\[1835\]](#). One

of Mr McIntyre's crew put out the fire underneath the pumper before they left the vehicle. He and his crew thereafter stayed in the area and assisted the firefighting effort among the houses[1836].

1018. Later in his evidence, Mr McIntyre described how, after reuniting with his family, he went back to Moogerah Street at about 1:30 am on 19 January. He was able to get through police road blocks because of his fire brigade identification. He spent some time looking around the area where he and others had been working earlier in the evening. *There were still bits and pieces flaring up, which I used garden hoses and buckets and things to put those out. At this point my greatest worry was the effort that those firefighters, those police officers and members of the public had put in to saving that dozen or so – 13 or 14 houses – was going to go to waste because there was no-one there to monitor these flare-ups. I took that upon myself to do that for as long as I could.* Mr McIntyre patrolled and extinguished flare-ups until 6:00 am[1837].

1019. Mr McIntyre had referred in his statement to his observations about the lack of civilian preparedness. He described in his evidence that: *People were wearing shorts and singlets, thongs. Completely oblivious, I suppose as I was, as to what was coming and they weren't prepared for it*[1838]. He later went on to describe that people seemed to have *varying information*[1839]. He considered that preparation of the residents of Duffy was patchy. According to Mr McIntyre, there were some people that were taking measures. *There were other people who were completely unaware that there was anything at all happening in the suburbs as far as the fire went.* At the time he was speaking to Mr Thornthwaite about deployment, it was not apparent that people were beginning to leave the area, *it was a normal Saturday. As I say, I live there. It just seemed like a normal day to me*[1840].

3.7.4 EXPERT EVIDENCE ON WARNINGS

3.7.4.1 Koperberg

1020. In the course of his evidence, Mr Koperberg referred to the approach he would have taken if he had been responsible for informing Canberra suburban residents that they risked an effect from the fires. He responded: *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 or agencies visiting streets, brigades would have been assisting and 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 infirmed. 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 and 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.*[1841]

3.7.4.2 Roche

1021. Mr Roche deals with the issue of community warnings in Part 10 of his report under the heading *Community Safety and Education*. Mr Roche noted in his report that under the AIIMS ICS

system of incident management, *the responsibility to develop information for distribution to the community rests with the Planning Unit. The IC 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 in his report noted that the SMT model adopted by the ACT Bushfire Service did not vary these responsibilities, however, *during the course of the fires, the Executive Director of the ESB assumed the primary responsibility for media and information management. Media releases were provided at intervals throughout the duration of the fires, however these were of a general nature and primarily related to broad advice concerning suppression progress, road closures and park closures. The content of media releases and material for radio and television interviews was gained from a number of potentially inconsistent sources and, in some cases, interviews were conducted without the endorsement of the IC. Up until midday on 18 January, the media releases provided no information to assist residents as to what action to take if threatened by the fires.*[\[1842\]](#)

1022. In his report, Mr Roche expressed the opinion that, to be effective, an emergency warning system should be the final phase in a continuum of overall community wildfire education. Mr Roche went on to describe in his report a three stage process beginning with: *Community and individual actions that are taken prior to the event and include community/individual recognition and acceptance of the risk, awareness and activities to minimise the risk and development of the fire safety plan.* The second phase comprises *Information provided at the commencement of the incident and regularly updated to reflect the current and predicted situation.* According to Mr Roche, the second phase should be linked back to the first phase to re-emphasise aspects of preparedness identified in that first phase and sources of additional information and advice. According to Mr Roche, the third phase should occur when it can be reasonably predicted that the fire is likely to pose a threat to life and property. In his opinion, this should have occurred no later than 14 January 2003 and should have comprised: *Accurate and up to date information on possible impact and actions that the community should take including activation of their fire safety plan. If sufficient time is available, the risks of last minute evacuation it should be reinforced. The urgency of these warnings should escalate as the likelihood of impact escalates and the emphasis shifts from general warnings to specific instructions and locations.*[\[1843\]](#)

1023. In relation to the actions of the ESB in the period 17 and 18 January, Mr Roche stated in his report that: *Of the greatest concern to me about the conduct of the agencies during this period was the failure of the SMT to promulgate adequate and timely warnings and advice to the community. Under the AIIMS IC system adopted in part by the ESB, the IC has the responsibility to manage the media. During large incidents, he/she will normally achieve this through media and information personnel attached to the Planning Section. The document promulgated by the ESB titled "The SMT Role in ICS" reemphasises the role of the SMT as having the responsibility to "manage media participation".* Later in his report, Mr Roche expressed the opinion that: *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.*[\[1844\]](#)

1024. Mr Roche also noted during his evidence the importance of the issue of warnings as part of the overall development of strategies by the fire suppression authority. In the course of discussing an options analysis that identified that a particular strategy had a 50% chance of success, he noted that such an analysis also means that there was a 50% chance that the strategy or objective was going to fail. According to Mr Roche, in those circumstances, *the analysis of the*

consequences of that failure should then have been carefully considered and steps initiated to deal with the consequences of that failure. Now that may have meant some other alternative strategies. It could have meant changes to deployment, more heavy equipment etc, more people; or it could have meant that the key issue was to increase the community's knowledge of what was occurring so that they were better prepared in case that failure led to the likelihood of a greater impact on the community... In my view, community education and community involvement is the last option that is available; in other words, when everything is being used and does not achieve the outcomes, then the community are the ones that need to be fully informed so that they can take actions to look after themselves and their property.[\[1845\]](#)

1025. In evidence, Mr Roche referred to the process by which information can be disseminated. In particular, he identified the medium of the radio stations as well as using the resources of the AFP and the SES to work at a more local level. Mr Roche had some apprehension about the use of public address systems and considered that there were still some opportunities early in the morning on 18 January 2003 to conduct house to house notifications. *The last resort would be the use of PAs.* His difficulty with public address systems was that it is difficult adequately to convey the message as a vehicle is moving through residential areas announcing a message.[\[1846\]](#)

1026. Mr Roche was asked during his evidence about views expressed by Mr Nicholson. Mr Roche said that he was not aware of any examples from his experience with the Victorian CFA where warnings from an emergency service about an approaching fire have caused panic[\[1847\]](#). In response to Mr Nicholson's opinion that Mr Roche was wrong to refer to the lack of warnings as a failure of the SMT, Mr Roche's evidence was that the SMT were the only agency that was in a position to provide any advice or accurate advice at any time throughout the duration of the fires. *To suggest that it was someone else's responsibility or someone else's failure is quite bizarre to me*[\[1848\]](#).

1027. In the context of the ACT fires in January 2003, Mr Roche considered that around 15 or 16 January, *it was becoming increasingly evident that there was a high likelihood, given the weather that was forecast, that those fires would not stay within their containment lines. On that basis, and given the position of the fire, then I think it was appropriate then to begin to indicate to the community that there was a good chance, or an increase in chance that there would be some risk to areas to the south-east of where those fires were, including the interface areas. And I think by – certainly by the night of the 16th and 17th in particular, then to me it was very clear that the risk was almost certain to materialise*[\[1849\]](#). Mr Roche went on to refer to evidence of other witnesses suggesting that, putting out a warning too early or in inappropriate terms can instil panic. In Mr Roche's opinion, panic arises if the warning is given too late and people flee in the face of fire. His evidence was that: *Early and progressive information and warnings to the community, in my experience, does the opposite of instilling panic*[\[1850\]](#).

3.7.4.3 Nicholson

1028. In his initial report, Mr Nicholson expresses the opinion that: *In dealing with the preparation and issue of warnings and advice to the community, it is important to avoid instilling panic, which may cause people to flee into certain danger...In providing advice and warnings to the community, advance work needs to be done to identify what they are to be told and how advice to leave will be given. Then, work needs to be done well in advance to identify where people who choose to leave will go. Very risky to be encouraging people to leave their homes without having plan on the route to follow and nominated assembly or refuge points to move to.* Mr Nicholson

goes on to describe the time and effort taken by the CFA for the development, implementation and reinforcing of the Victorian CFA's *stay or go early* policy. He continues: *going back to Mr Roche's comment at the start of this section, he is wrong to refer to this deficiency as a "failure of the SMT". It is a far more long-term issue than a few hours before the arrival of the fires at the edge of Canberra.* As discussed above, in an earlier draft of Mr Nicholson's report this paragraph had commenced with the sentence: *The Canberra community, including its emergency services, were not well prepared*[\[1851\]](#).

1029. Mr Nicholson concluded this section of his report as follows: *The other matter to consider when issuing warnings to the community is what is it we want those being warned to do? The matter is very complex, for no matter what they are told, there will be those who do not understand, only hear part of the message or only hear what they want to hear. And what do we want those we are warning to do? It seems to me that given how the fires actually impacted on the urban edge, the able-bodied and well-prepared would probably have been better off staying with their homes: maybe less houses would have been lost. Regarding the criticism of SMT for not issuing warnings, and I read the transcript of cross-examination of Mr McRae on this matter, it seems to me that he was grappling with where, when and to what extent (area) to warn people in the path of the fire. Given that without the effect of the aberrant "tornado" on the behaviour of the fire/s approaching Canberra as described by Mr Cheney – which could not be predicted -the experience of the December 2001 fires may well have been replicated, but with greater ember attack*[\[1852\]](#).

1030. Nowhere in Mr Nicholson's first report does he set out what he considers should have been done by the SMT or the ESB or any other relevant authority or individual to prepare the Canberra community for the impact of the fires in the period leading up to 18 January 2003 in circumstances where, it can be inferred from his report, the *advance work* to which he refers, had not been done. However, it is safe to assume that Mr Nicholson was not suggesting in his report that, in the absence of the *advance work*, the SMT, ESB or other relevant authority should have done nothing.

1031. Further, Mr Nicholson does not refer in his report to any evidence or instruction that suggested that a concern about *instilling panic* was a reason for the SMT, the ESB or any relevant individual in delaying the issue of clear warnings until the afternoon of 18 January 2003. Had those been Mr Nicholson's instructions, they would have contradicted the evidence of the witnesses on whose behalf he was retained, Mr Lucas-Smith[\[1853\]](#) and Mr Castle[\[1854\]](#).

1032. In what is described by Mr Nicholson as a *addendum* to the section of his earlier report on community warnings, Mr Nicholson confirms that: *Having now had an opportunity to examine the following documents provided to me by Mr Mike Castle, or information on where to find relevant documents, I am now in a position to comment further on "warnings"*[\[1855\]](#). Mr Nicholson goes on to express the opinion that, from an examination of relevant documents, *it seems Mr Roche is wrong on two (2) counts.* The first such count relates to the reports given by ESB to Canberra radio and television broadcasters during the period 8 to 17 January, *which should have alerted the community to the gravity of the situation develop into the west of Canberra.* He concludes: *Having considered the papers referred to above and the good cooperation of the Canberra media, significant work was done by ESB to alert the community to a need for individuals to be thinking about their own well-being and preparing, jut in case.* The second count is a recitation of transcripts of broadcasts by ABC 666 radio for 8 January 2003 commencing *shortly*

before 2.30pm. Mr Nicholson asserts that: *In this ABC 666 radio transcript, there is 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.*[\[1856\]](#)

1033. In Mr Nicholson's addendum, he makes a number of additional observations relevant to the issue of warnings[\[1857\]](#). In particular, Mr Nicholson refers to the workload of various ESB officers. In relation to Mr McRae, he notes that: *For the one permanent or core ESB planner, Mr McRae, to work at predicting where the fires would spread and where, when and to what extent they would impact on the urban edge, and recommend the advice and warnings to be issued to the community, continuously over an 11 day period, was a big expectation of 1 person*[\[1858\]](#). Again, Mr Nicholson does not refer in his report to any evidence or instructions that Mr McRae's workload was a relevant factor in the failure of the ESB to provide adequate warnings to the ACT community in the period up to 18 January 2003.

1034. Counsel for Mr Castle was given the opportunity at the commencement of Mr Nicholson's evidence to ask Mr Nicholson some questions expanding on his two earlier reports. During that part of his evidence Mr Nicholson was taken to a number of examples of articles and photographs published in the Canberra Times on and after 9 January 2003. Mr Nicholson said in evidence that he thought the articles were relevant to the community gaining an appreciation as to the level of risk of a bushfire. *They are quite graphic. Headlines such as "Bushfire may burn for weeks" and authoritative sources such as Peter Lucas-Smith, Dr Cooper, they should be taken as authoritative dissemination of important information.* He later described the references in the articles to difficulties of containing the fires and the weather deteriorating as *quite graphic. Quite upfront.*[\[1859\]](#) Mr Nicholson's evidence about the reference in the Canberra Times article on 17 January 2003 to the quote from Mr Lucas-Smith that *at the moment I don't think there is any threat to the urban edge [of Canberra]* is discussed above[\[1860\]](#).

1035. Later in his evidence, Mr Nicholson confirmed that he was aware there had been criticism and comment as to the lack of timely warning. He was asked if he had any comment to make about the types of warnings that could and should have been issued and at what times by emergency services. He responded: *I am of the view that warnings are an issue that need to be very carefully considered. If you are going to issue a warning to the community, if you are going to issue a warning to a community, in my view they need to know: (1) what they are being warned about or against; and (2) what you want them to do; and (3) that you have set up processes to receive them and look after them. I am of the view that to issue warnings too early can have people on the move doing things that, in hindsight, you might not have wanted them to do.* Mr Nicholson then cites the warning over ABC radio urging people to go home to places like Duffy and prepare to defend their homes against ember attack. He continues: *To issue a warning when there has been no community preparedness for it I think is fraught with hazards... If we are going to issue warnings we need to think about what is likely to happen. It worries me that if we issue warnings before we think we might need to – sorry, before we really need to, we might get people reacting in a manner that is inappropriate. If we alerted people to be on the move, we issue warnings two days before the event, some people would hear the word "evacuation" or some people would hear one or two words and link it to something else and be on the move when they didn't need to. I would expect the Emergency Services would be confronted with lots of telephone calls and other forms of request asking "what do we do". I think warnings need to be quite targeted, and the first time you use one it needs to be backed up by some solid procedures in place so that people know what is*

expected of them. Counsel for Mr Castle put to Mr Nicholson: *Do they also need to be linked to an expectation that a certain event is going to occur?* Mr Nicholson responded: *Yes.* As with his report, having described at length the difficulties associated with giving warnings, Mr Nicholson did not go on to answer the question as to the type of warnings that should have been given and when.[\[1861\]](#)

1036. In response to Mr Roche's suggestion that warnings could have been given on 16 and 17 January, Mr Nicholson gave evidence that: *I think it would be fairly difficult, because at that stage I expect that ESB and the other agencies involved, and Environment ACT, but basically ESB, their field commanders probably had a feeling they were going to get on top of these fires, or they were going to contain them – that's what I mean by contain them... but on the 16th personally, would want to be a pretty desperate situation to be saying "Look, we are going to lose this. Get ready for it on the 18th or the following Monday". I think what has been happening in the media, coming from an authoritative source, is conditioning triggers, if you like, in expectation that people would see what was happening, read what was happening, and start to take measures to prepare themselves. Then again, it may never arrive*[\[1862\]](#). Mr Nicholson agreed with evidence from Ms Crawford to the effect that, in giving warnings, *you don't want to cry wolf either. You don't want to go too early. I mean, then by the time the fire comes everyone is sick of it. It is coming. It is coming. And everyone ignores your warning. You have to time it. The timing is very critical*[\[1863\]](#). Mr Nicholson attached to his addendum an article written by him in May 2003 concerning (among other things) the Canberra fires. As discussed above[\[1864\]](#), he notes in that article most people in Canberra, *had not given any thought to how a bushfire might affect them, particularly those residents abutting the open spaces surrounding and within Greater Canberra*[\[1865\]](#).

1037. Asked about the adequacy and timing of the SEWS, Mr Nicholson gave evidence that: *Going back to the newspaper articles which were ramping up the situation from fire out on the hills on the first day to breaking through on the last day, and a couple of days before that, certainly triggers are in to what was actually happening. And I have no doubt the visuals out to the west were quite graphic. Big fire, big smoke. And then once the people on the ground were confident, a fairly high degree of confidence where the fire might impact, then they started to notify people. That's reasonable. To be any better than that is highly desirable. It is a matter of not wanting to push the button until you know exactly where you want the canon pointed.*[\[1866\]](#)

1038. Under examination by counsel assisting, Mr Nicholson agreed that he adhered to the principle that one thing that is important in relation to the conduct of firefighting authorities is that they must be honest with people concerning the risks they face. He also agreed that it is important that firefighting authorities give people advice on measures they need to take to protect themselves and their property and that the advice needs to be useful advice and given at a time when the advice can be put into effect. He agreed that it is a bit late to be warning people that a fire is going to strike their property or their area as the fire is actually striking the area, thus causing people to vacate into perhaps certain disaster. Mr Nicholson also agreed that: *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 the disaster hits.* Mr Nicholson agreed that these principles appeared on his consultancy's website[\[1867\]](#). Mr Nicholson also agreed that he took the view that

particular use must be made of the media to help develop an awareness of the environment in an interface community, including fire behaviour and how to prepare to survive[1868].

1039. Mr Nicholson confirmed in evidence that he had reviewed the radio and television media in the week leading up to 18 January and it was his opinion that the ESB: *were offering the best information that was available to the media*. He thought the news articles were a trigger in raising the awareness of a *prepared community* and was interested to see what material had been distributed. He considered that the principal document was the *Will You Survive?* document which he understood had been distributed in *copious quantities* as far back as 1993. Mr Nicholson's expectation was that the sort of information that was disseminated in the newspapers in the period up to 18 January is a trigger for the implementation of what was in the *Will You Survive?* document[1869]. On the other hand, Mr Nicholson said in evidence that if Mr Lucas-Smith was of the opinion at 9:30 am on 16 January that there was a potential for a significant impact on the urban area of Canberra from these fires, it was not obvious to him why that information would not be provided to the people who were going to be affected by it[1870].

1040. At the commencement of the second day of his evidence, Mr Nicholson indicated that he would like to correct what he considered was a *misrepresentation* in his position by counsel assisting *in selectively quoting from the philosophy page of my website*. In the course of his *correction*, Mr Nicholson referred to the quote from Mr Lucas-Smith in the Canberra Times on 17 January 2003 that he did not think there was any threat to the urban edge of Canberra, and said: *While some people may have responded to what, I suspect, is probably some selective quoting of Mr Lucas-Smith with regard to his comment about the urban edge, in fact people should have been thinking for themselves. I mean, people – no disrespect when I say that; it is really about accepting some responsibility for one's wellbeing. Thank you.*[1871] Mr Nicholson later agreed that he adhered to the principle that it is necessary to be honest with people regarding the risks they face and he was not denying that history is littered with unprepared community suffering enormous losses *because governments and inwardly focused emergency management agencies kept the problems to themselves or failed to recognise their limitations and were overwhelmed when the disaster occurred*[1872].

1041. Mr Nicholson was then asked about the media briefing given by Mr Lucas-Smith and Mr Castle on 16 January and, in particular, Mr Lucas-Smith's comments during that media briefing that *under a north-west wind conditions the chances of meeting the urban edge is pretty slim*. Mr Nicholson could not recall seeing that before and agreed that it would be reasonable for anyone watching the news to act on that opinion. He said in evidence that he had not as a result of having an extra year taken the opportunity to read more material. He confirmed that he was also not aware that Mr Lucas-Smith giving evidence that, on the issue of warnings, the media arrangements and advice to the community was sadly lacking[1873]. Later in his evidence, despite deleting from an early draft of his report his opinion that: *the Canberra community, including its emergency services, were not well prepared*, Mr Nicholson stated that he would not back away from that view. Mr Nicholson asked if he could endeavour to make an explanation that related to this sentence being deleted from his report. His evidence was that: *I would like to add this was done with great haste, with the short lead time I had to do it and the delivery date. I expected to give evidence almost immediately after I finished it. I was trying to produce the best product I could as to how I felt about issues*[1874].

1042. Mr Nicholson confirmed that he would not dispute some of what Mr Roche had said about the need to personalise the risk and accepted that Mr Nicholson's opinion was, in relation to the citizens of Canberra, that that had not been achieved as at January 2003 to the extent that it could have been. He adhered to the view expressed in the article attached to the addendum to his report including the assertion most people in Canberra had not given any thought how a bushfire might affect them.[\[1875\]](#)

1043. In relation to the press conference at midday on 17 January 2003, Mr Nicholson was taken at length to the transcript of that press conference by counsel for Mr Castle and broadly accepted that, if Mr Lucas-Smith was referring to the Stockyard and Bendora fires, he did not believe there was anything inaccurate or misleading in what Mr Lucas-Smith said at the press conference about the position and status of those two fires[\[1876\]](#). In later re-examination by counsel assisting, Mr Nicholson agreed that the media update at 20:50 hours on Friday 17 January 2003 did seem to indicate that the ACT were coordinating with New South Wales. He also agreed that if the media update were issued following a meeting an hour or so beforehand at which the opinion had been formed within ESB that the McIntyre's Hut fire was likely to burn to Narrabundah Hill by 20:00 hours the following night, that would be information which they would be obliged to disseminate to the public. He also agreed that if Mr Lucas-Smith's state of mind on 15 January was that, if the Bendora fire went due west it had the potential to impact upon the southern suburbs of Canberra and rural properties, the people of Canberra were entitled to know that he held that opinion[\[1877\]](#).

3.7.5 WARNINGS AFTER 18 JANUARY 2003

1044. Concerning the warnings issued from about 14:30 hours on 18 January (including the SEWS), Mr Castle agreed in evidence that the warning to residents about filling the bath did not include an explanation as to the purpose for filling the bath until after 18 January. He agreed that the reason for filling the bath was not made clear up to and during 18 January. He believed that the advice about a fatality of somebody in the bath was the impetus for a change in the message that was provided after 18 January so that the instruction was to: *fill baths, sinks and buckets with water for extinguishing small fires and for drinking water.*[\[1878\]](#)

1045. Set out below is the text of a warning issued by the ESB to Canberra residents on 20 January 2003[\[1879\]](#):

HEIGHTENED ALERT IN FIRE THREAT TO NORTH CANBERRA

Residents in Canberra's north western suburbs are being asked to prepare for the worst with an expected change in the weather tomorrow (Tuesday 21 January 2003) posing a very real threat to suburban areas.

Authorities have issued a heightened alert, asking residents in Belconnen, Gungahlin and Hall to begin preparing as soon as possible for the chance of fire at some stage on Tuesday. It is stressed that while there is no room for complacency, people should not panic.

The current forecast indicates high temperatures and strong winds, gusting up to 65 km/hr are expected tomorrow. The winds are currently forecast to increase from mid-morning.

A bushfire in to the north-west of the ACT is currently moving slowly from west to east. Given the harsh weather conditions forecast for tomorrow, there is a possible threat to most Belconnen suburbs, Hall and the whole of Gungahlin.

The following Belconnen suburbs should take these precautions: Cook, Weerangera, Hawker, Higgins, Holt, MacGregor, Dunlop, Charnwood, Fraser, Spence, Evatt and McKellar and in the Wallaroo Road area.

IT IS IMPORTANT THAT ALL RESIDENTS REMAIN CALM. THIS ADVICE IS ISSUED BY THE EMERGENCY SERVICES BUREAU TO ENSURE THAT RESIDENTS TAKE APPROPRIATE PREPARATION TO STAY WITH THEIR HOMES, OR TO TEMPORARILY RELOCATE UNTIL WEATHER CONDITIONS EASE.

Tonight hundreds of homes around the most at-risk areas have been door-knocked and locals have been handed clear information about what to do if the current situation deteriorates tomorrow.

Containment lines are in place, however the Emergency Services Bureau recommends residents of all Belconnen suburbs prepare their homes for the onset of bushfire.

Residents in other areas, not presently affected by fire are, advised to take bushfire precautions for their home.

A significant presence of firefighting vehicles will be in the area overnight and tomorrow. Residents should feel free to approach firefighters to seek advice in preparing themselves.

People should listen to their radio news bulletins or contact Canberra Connect for regular updates on the risk.

(emphasis in original)

1046. Warnings of this kind supported by the door knocking referred to in the warning (and no doubt reinforced by the experiences on 18 January of the residents of Duffy and other suburbs and settlements on the west of urban Canberra^[1880]), led residents were to clear around their homes and undertake other preparations in anticipation of a potential serious impact that did not eventuate^[1881].

3.7.6 THE DEATHS

3.7.6.1 Douglas Fraser

1047. Mr Fraser was born on 22 December 1942 and on 18 January 2003 he lived at 23 Burrendong Street, Duffy with his wife Mrs Ann Fraser. The body of Douglas Fraser, wearing a t-shirt, shorts, running shoes and no hat, was found lying on the porch in the back garden of his home at 23 Burrendong Street, Duffy^[1882].

1048. Mr Corrigan also saw Mr Fraser at approximately 2:35 on the afternoon of 18 January, pm at the corner of Eucumbene Drive and Warragamba Avenue in Duffy. Mr Fraser was wearing a dark t-shirt, light coloured shorts and had joggers on. He appeared to Mr Corrigan to be *clean, calm, relaxed. He looked like he just had a bath or shower and... wandered up to the corner to have a look*[\[1883\]](#). Mr Corrigan had a conversation with Mr Fraser: *Basically we talked very briefly 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 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*[\[1884\]](#). That was the last Mr Corrigan saw of Mr Fraser[\[1885\]](#).

1049. Mr Jungwirth lived next door to Mr Fraser at 21 Burrendong Street, Duffy[\[1886\]](#). He was at his home having evacuated his family from the area between 4:00 and 4:30 pm, he was hosing down his house and surrounds and saw Mr Fraser doing the same thing in his back garden[\[1887\]](#). Mr Boehm was also a neighbour of Mr Fraser and was the first to locate his body. He confirmed in his taped record of conversation that, after he had found Mr Fraser and confirmed that he was dead, he noticed that Mr Fraser had two hoses going which he turned off[\[1888\]](#). After locating Mr Fraser's body, Mr Boehm alerted Dr Manns.

1050. Dr Manns is a medical doctor who lived near Mr Fraser. In his taped record of conversation with the police, Dr Manns said that he last saw Mr Fraser at about 3:30 or 4:00 pm and he was out the front of his house and hosing down his house. Dr Manns described that the fires in Mr Fraser's house seemed to be under control. There were small fires in his backyard but nothing which was threatening his house. *Visibility was probably down to about 30 metres with the smoke*[\[1889\]](#). Later in the afternoon, Dr Manns was walking around the area with other neighbours and they found Mr Fraser on his back porch: *Doug was lying on his back porch obviously dead*[\[1890\]](#). A short time later, Dr Manns telephoned 000. The time of his call was recorded as 18:09 hours[\[1891\]](#).

3.7.6.2 Alison Tener

1051. Mrs Tener was born on 18 May 1964 and on 18 January 2003 she lived at 9 Burrendong Crescent. She was alone at the house that day. Her husband lived at the Richmond RAAF base on a term posting[\[1892\]](#). Their three sons were staying with their grandparents at Coffs Harbour[\[1893\]](#). The police evidence established that Mrs Tener's badly burnt body was found in the bathroom on the rear left hand side of her home. Her legs were bent to fit inside the bath and her arms were bent up in front of her face. There were 3 towels underneath her and one in her right hand. The towels were damp and the bathtub was plugged and a small amount of water was in the bottom[\[1894\]](#). The police investigation also disclosed that Ms Tener's white Mitsubishi Magna vehicle was located in the centre of the carport at the home. A short distance from the vehicle on the driver's side was a small fire extinguisher lying on the ground. The vehicle had sustained only minor heat damage to the front plastic bumper bar and driver's side mirror. The boot of the vehicle was found to contain a number of personal items, including photo albums[\[1895\]](#).

1052. Helen Craven lived at 5 Burrendong Street, Duffy, two houses away from Mrs Tener[1896]. Mrs Craven saw Mrs Tener mid-morning on 18 January 2003 at her home[1897]. Mrs Craven went down to see her. She was in the living room of her home getting ready to go to work, *and then she started looking through a few photos*. Mrs Craven invited her to come down to her house if she liked. It was very smoky at the time[1898]. Ms Craven later described that she had a pile of photos with her and she was just sorting through them[1899]. In giving her answers during the taped record of conversation, Ms Craven was clearly confused by dates and times and did not remember seeing Ms Tener just 10 minutes before the fire[1900].
1053. Mr Craven also spoke with police. Mr Craven confirmed in his taped record of conversation that *towards 2 o'clock* he suggested to his wife Helen that she go up and see how Ms Tener was going, in case she wanted help. Mr Craven was not sure how long his wife was there but he estimated about 5 or 10 minutes. When Mrs Craven came back she said, *Oh 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*. Mr Craven said that was when he first saw signs that the firestorm was approaching[1901]. Mr Craven did not himself see Mrs Tener that day[1902].
1054. On 18 January 2003 Amanda Taylor lived at 11 Burrendong Street, Duffy, next door to Mrs Tener. Mrs Taylor was at home on Saturday morning with her three children. Her husband was at work. *And the day was just going along as any other normal day would*[1903]. In the early afternoon, she contacted her husband at work and asked him if he had a radio on and if he had heard anything about the fires. He had not had the radio on. She told him she felt a little uneasy but said he didn't need to come home. She said *I'm sure if there's any sort of problem or if the fire is getting any closer, we'll be told. We'll be notified*[1904].
1055. A short time later, she decided to drive out of the area. She told her children to get clothes and grabbed some clothes for herself and her husband and went and put those in the car. Her neighbour on the other side Lester, came and asked her whether she had hoses connected and she said that she did and told him that she and the kids were leaving. Mrs Taylor then went back to her car. She was putting her baby's pram in the car when she saw Mrs Tener standing on her side deck which faced Mrs Taylor's house. She knew that Mrs Tener's husband was working in Richmond and her children were with their grandparents in Coffs Harbour. *And I said to Alison, "Alison are you OK?" and she said, "Oh, I'm a little frightened."*[1905] Ms Taylor then said to Ms Tener: *the kids and I are going. I'm just putting a few things in the car. The kids are going but Lester is still here*. Ms Taylor remembered closing the boot of the car and walking to the driver's side door and then seeing that Mr Tener was no longer there. She did not know whether she had gone back inside or into the back garden[1906].
1056. Mrs Taylor did not think that Ms Tener seemed panicked. A short time later Ms Taylor drove away. Once she was in the car and driving, she remembered hearing on the radio that no evacuations had commenced but that they were setting up an evacuation centre at Phillip College and Ginninderra College and *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 the – along the – any crevices, so smoke couldn't get into the house. If you are able to go outside, water down – wet down your – the sides of your house.[\[1907\]](#)

1057. The police conducted a taped record of conversation with Ms Tener's husband David. At the time of the fires, Mr Tener at the RAAF base in Richmond, when he received a telephone call from a friend in Canberra mentioning the bushfires and offering his wife Alison somewhere to stay if she needed to be somewhere safe. Mr Tener did not know anything about the bushfires at that time[\[1908\]](#). Mr Tener was unable to reach his wife on the home phone or her mobile phone and left for Canberra that evening[\[1909\]](#). After spending most of Sunday, 19 January trying to locate his wife, Mr Tener eventually learned that his wife had died in the fire[\[1910\]](#).

3.7.6.3 Peter Brooke

1058. Mr Brooke was born on 2 February 1929 and lived at 40 Tullaroop Street Duffy with his wife Beverley and his son Garry. The house at 40 Tullaroop Street was owned by Mr Garry Brooke, although his parents had assisted him with the purchase[\[1911\]](#). Police forensic investigations suggest that Mr Brooke was on the roof of his home attempting to protect his home from the approaching fire using a garden hose. Mr Brooke died while on the roof and either before the roof collapsed or during the roof collapse, Mr Brooke's body fell onto the pathway adjacent to the western end of his home, where he was later found[\[1912\]](#).

1059. The police conducted a taped record of conversation with Mr Brooke's son Garry[\[1913\]](#). The last time Garry Brooke could clearly remember seeing his father was in the backyard of his father's house as Garry Brooke was trying to put out some embers that had fallen into the yard. His mother and father were packing things into their car. A short time later he drove his own car out into the road and was waiting for his parents to reverse down the drive. He could recall them reversing down the drive but then lost sight of them. He got out of his own car and located his parents' car nearby and saw his mother in the driver's seat. She told him that his father had gone to look for him. He assisted his mother to drive to a point where she could manage the car herself and then walked back to his car. He followed her car in his car looking for his father, both of then looking for his father[\[1914\]](#).

1060. Mr Brooke said it was not his intention to leave the house. It didn't enter his head that it was going to get that bad. His father did not indicate to him directly whether he would leave or stay. *In the past we had talked about how it's silly to stay around when there's obviously no hope, and on the day he and mum were packing like mad.*[\[1915\]](#)

1061. Mr Brooke confirmed that on Saturday while he and his father were preparing for the arrival of the fires, his father was wearing a set of radio headphones for listening to the radio. Mr Brooke's mother had said that he was listening to the radio because of concern about the fires[\[1916\]](#). Mr Brooke described that at some point before 3:00 pm, he and his parents spoke with their neighbour Trish Fryer who said she had not heard anything but 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. *They told her it was 10km away. We took that to mean that it was reasonably safe. Well I did. Dad might not have been so (indistinct) minded about it. He was in some ways more*

careful than I was. We sort of mutually agreed to start preparations around the house. Mr Brooke thought that would have been at about 3:00 pm. Mr Brooke mentioned that when they had lived in Sydney his father had worked as a volunteer on a couple of fires[\[1917\]](#).

1062. In a letter to the Coroner, Mrs Brooke confirmed that she and her husband had reversed down the drive after suggesting that their son Garry drive his car to a safe place. Mrs Brooke asked her husband where Garry was. Her husband said he was going to look for Garry and told her to get into the driver's seat. From that moment she could not see where Mr Brooke had gone.[\[1918\]](#)

3.7.6.4 Dorothy McGrath

1063. Ms McGrath, known as Dolly, was born on 7 August 1926. On 18 January 2003 she was living at Cottage 5, Stromlo Forestry Settlement, Cotter Road, Duffy[\[1919\]](#). Her body was found in the yard of her cottage, where it backed on to cottage no. 7. She was lying on her left side and both her arms were drawn up to the area of her face[\[1920\]](#).

1064. The evidence of Mr Todkill during the Inquest, including evidence of his experience at the Stromlo forestry settlement on the day of the fires and what he knew of the movements of Ms McGrath are summarised above[\[1921\]](#). Among other things, Mr Todkill confirmed in his evidence, as did the other residents of the Stromlo forestry settlement who gave evidence, (namely, Mr Franklin-Browne and Mr Ferry) that none of them nor any member of their family was contacted on the evening before the fires or during the course of the morning by ACT Housing or any other agency with information concerning the threat from the fires. Generally speaking, each of them was aware of the fires, including the McIntyre's Hut fire and, at most, had only slight concerns that the fires might pose some threat to the area in which they lived.

1065. The police conducted a taped record of conversation with Kerry Taylor, Ms McGrath's niece. Mr Taylor described a telephone call that she had made to Ms McGrath in the afternoon on Saturday 18 January, after she heard on the radio that the fire was *really bad and they were worried it would spread over into the ACT*. She described her telephone conversation with Ms McGrath as follows: *So I picked up the phone and rang Dolly. Anyway she answered. I said "Hi, Doll... how are you?" And I said "Look, I just heard on the radio that the fires are really bad and could be headin' your way. You better put – put a few things in the car and get out of there" and Dolly said to me, "There's been nothing on the TV". And I said "Well, it's coming on the radio all the time". And she said, "Well nobody up here has told us to prepare for evacuation and there's all these tents and camp... and their feeding all the people on the hill." And she said, "You'd think they'd tell us if we had to leave". Anyway, then Jock, a friend of mine, said to me "Tell Dolly to come here", which I did. So again Dolly said, "I'll put a few things in the car and get – and come – get out." And then he asked me to go up and get her, go up and help her. And so I asked Dolly and she said, "No, it's OK". So I said goodbye and I know it was half past two because there was a horse race on and I picked a horse in that race.*[\[1922\]](#)

1066. Ms Taylor was able to confirm that Ms McGrath had a car, being a small Hyundai that she had sold to Ms McGrath a few months earlier[\[1923\]](#). Ms Taylor also confirmed that Ms McGrath did not suffer from any kind of mental condition: *She still had all her marbles*[\[1924\]](#). Later in her

taped record of conversation, Ms Taylor told police that Ms McGrath said to her in the phone conversation that she was going to turn the radio on because she heard nothing on the TV. *Dolly loves the ABC. ... I presume she was watching the ABC and she said she'd heard nothing*[\[1925\]](#).

1067. Mr Montagnino was at the time of the fires an employee with Star Security. In a statement provided to the police, he explained that on the evening of Friday 17 January, he was asked to attend at Stromlo Forestry Settlement the following morning because there had been thefts from a rural firefighting base camp set up there[\[1926\]](#). Mr Montagnino arrived at the base camp at 6:00 am and carried out his usual duties there until about 1:00 pm when he heard from a fire officer at the base camp that the fire had crossed the Murrumbidgee and was in the pine plantation heading their way. At about 2:00 pm he approached that officer and asked whether he should start talking to residents. The officer agreed. The two of them went to the first cottage which was either cottage 7 or 11 and delivered a message to the effect as follows: *We don't want to alarm you unnecessarily but we have just been informed that the fire has jumped the Murrumbidgee, we've been put on standby to evacuate. We haven't been given the final order to evacuate but we recommend if you're going to evacuate you leave now or at least be ready to go when we leave. If you are going to stay, only stay if you know what you're doing and you're prepared*[\[1927\]](#).

1068. He and the fire officer from the camp spoke to a couple of cottages together. He said that he remembered a woman in front of cottage 17 said to him that she would tell the residents at cottages 8 through to 23. Mr Montagnino remembered two males from either cottages 21 or 22 telling him that they were staying. He also walked to cottage 15 and spoke to the residents, giving them the same advice. He remembered getting the woman from cottage 15 to help him to communicate with the people from cottage 12 who were deaf. Mr Montagnino could not remember giving advice to any other cottage, *and I can't be sure that I was aware that cottages 2, 4, 5, 8 and 9 were there. I remember seeing the teenage male from cottage 15 go to cottage 3. I can remember knocking on the front door of a cottage where there was no answer. I remember that in the front yard of this house there were two small terrier type dogs that were barking. I remember thinking that there was no-one home. I knocked a second time, and once again got no answer. I can't remember where this cottage was. I don't believe that it was cottage 5.*[\[1928\]](#)

1069. Mr Montagnino told police that he remembered that at about 2:45 pm it was pretty clear that they were going to evacuate. *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 firefighter that I think was from Mittagong checking with 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 words to the effect "Its time to fucking go". These comments appeared to be directed to the residents who were still at their cottages. About 5 minutes before we left the base camp, the firefighting light unit 4 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... the base camp was then evacuated.*[\[1929\]](#)

1070. Ms Trebilco lived in cottage 17 with her partner and two young children. Before 18 January, Ms Trebilco had not heard or read any warnings or alerts about the fires telling her to get ready

and make preparations. *The year before when we had fires, the police came and warned us so that we could make preparations. The police came and knocked on our doors warning us that the fires were coming. They then would drive through the settlement and warn us on the loud speaker, they did this about every 20 minutes. I had things packed and all our paperwork, documents, photos, Christmas presents and other valuables were taken from the house and placed into vehicles. We had trucks on standby at the front of the house to take bigger items and we had friends waiting to load the vehicles if required*[\[1930\]](#).

1071. Ms Trebilco also referred in her statement to feeling safe and secure with the NSW Rural Fire Service base camp nearby. Ms Trebilco described being approached by a security guard and given advice about leaving or staying with the house if she felt safe. Ms Trebilco mentioned to the security guard that there was an *old lady who lived up over the hill next to Bill's who was on her own. My aunt Ann Partridge who was with me at the time told him her name was Dolly*. Ms Trebilco pointed towards Ms McGrath's house. The security guard then walked off with Ms Partridge towards Ms Partridge's house. Ms Trebilco did not see Ms McGrath on 18 January. Nor did she see any emergency vehicles or emergency services people at Ms McGrath's house that day[\[1931\]](#). Ms Trebilco's aunt Ms Partridge also provided a statement to the police. Like Ms Trebilco, she described in her statement feeling safe and secure with the base camp nearby.[\[1932\]](#) Before 18 January, Ms Partridge hadn't heard or read any warnings or alerts about the fire telling them to get ready and make preparation. She also described in her statement the warnings provided by police at the time of the 2001 fires to make preparations[\[1933\]](#).

1072. Ms Ione Kitson provided a statement in very similar terms to that of Ms Trebilco and Ms Partridge, except that she had seen Ms McGrath on 18 January. She said in her statement this was a short time before 3:00 pm. *I saw her vehicle a small white hatch sitting in the driveway. I also saw Dolly and she was chasing after one of her dogs trying to catch it. I assumed that she was getting ready to leave. I was watering down the house and garden at the time. I didn't speak to her at this time. She didn't appear to be distressed. 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.*[\[1934\]](#)

1073. Ms Gregory lived at the Stromlo Forestry Settlement with her husband and two children. On Tuesday 14 January 2003, Ms Gregory spoke to one of the firefighters from the base camp who told her that: *We had about three weeks until the fire got to us. I felt safe and secure with the base camp there*[\[1935\]](#). She returned to the base camp on 15 January and asked how long they had until the fire got to them. *I was told about 3 or 4 days if the wind picked up*. On 16 January, Ms Gregory left Canberra and went to Shellharbour to collect her children and nephew. She left from Shellharbour to return to Canberra at 11:30 am on 18 January, arriving at the Stromlo Forestry Settlement at about 3:00 pm. She observed a number of residents making preparations. Ms Gregory described that: *I lived next door to a female named Dolly McGrath who I knew as Dolly. I listened for her and couldn't hear her or hear her dogs barking. Dolly had two small terrier dogs that were always barking. I didn't see Dolly. Her garage door was down which usually indicated to me that she was not there. During last year's fires at Christmas 2001, Dolly had left the settlement prior to the fires and when she did so the garage door was down and the gate was closed. I remember thinking that she must have left*[\[1936\]](#).

1074. Mr Graham, a friend of Mr Todkill's, was with Mr Todkill on the afternoon of 18 January 2003 assisting him to protect his home from the fires. He was also a resident of the Stromlo forestry settlement. In his taped record of conversation, Mr Graham described what happened on the afternoon of 18 January 2003. He thought the time was somewhere around 2.30 pm: *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, 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, 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 km/h, 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. As we were trying to contain the fire around Bill's [Todkill's] house, over a bit to my left about 45 degree angle I could see a person on the end of a hose, next door to Bill's house. Bill was at number 10 on the corner. I believed that to be Dolly. And then once the fireballs just all came through and everything was alight, we managed to get into a car and get just out past the flames – to the side flank of it and then when we returned, probably an hour or so later, we just surveyed all the damage and it was then it jumped into my mind that I thought I'd seen Dolly and hour and a half or so previous and said to Kevin Short, I better just go and look over here, I thought I remember seeing someone over here. And I walked next door and found the body on the ground.*[\[1937\]](#)

1075. Mr Graham later described in his taped record of conversation that the NSW Rural Fire Service base camp had *anywhere between 10 and 30 units, tankers, land cruisers and then on that morning, there was only a few when I got up*[\[1938\]](#). Mr Graham did not speak to anyone from the Rural Fire Service that day, except very briefly when they left. Mr Graham thought it was some time slightly before the tanker left that he saw Ms McGrath in her yard[\[1939\]](#). Mr Graham could not see any flames when the RFS tanker left and visibility was between 50 to 100 metres[\[1940\]](#). Mr Graham did not see at the time he left whether or not Ms McGrath's house was on fire[\[1941\]](#).

1076. Mr Graham said he had no inclination himself how close the fire was. He only went on his feeling that there were blackened leaves and black embers in his yard that had obviously fallen overnight. *I was lucky enough even one of those didn't even ignite during the middle of the night and that's when I thought I'd get everybody out of my house and get them to somewhere else... That was probably about 12 o'clock. I was looking across the road to see what was happening. All the vehicles were basically gone, there was only 1 or 2 vehicles left there and I'd seen somebody in some uniform, I couldn't even tell you what type of uniform it was, was getting the people out of number 12, because they were a deaf family... but nobody came and told us – nobody came to tell Bill or anything of how close it was or you better get ready to ... it was just that I happened to be in my front yard when I seen these people get these people out.*[\[1942\]](#)

CHAPTER 4 JURISDICTION OF THE CORONER

4.1 STATUTORY PROVISIONS AND ROLE

1077. The Act establishes the ACT Coroners Court and defines the limits of its jurisdiction. Under s13(1) of the Act, the coroner has jurisdiction to hold an inquest into the *manner and cause of death* of certain persons. As indicated above, Your Honour conducted an inquest into the deaths of Douglas Fraser, Peter Brabazon Brooke, Alison Tener and Dorothy McGrath. The coroner also has jurisdiction under s18(1) of the Act to conduct an inquiry into the *cause and origin of a fire that has destroyed or damaged property*. This inquest into the deaths was held concurrently with the inquiry into the bushfires that burnt into Canberra and surrounding areas on 18 January 2003 causing catastrophic damage to property and infrastructure, including the destruction of at least 400 homes in urban Canberra.

1078. Part 5 of the Act establishes how hearings are to be conducted. The coroner is empowered to fix the time and place of a hearing. Section 39 provides that the coroner may appoint a legal practitioner to assist in the conduct of the hearing. The coroner may also by instrument appoint an investigator to assist in the investigation pursuant to s59. Similarly, those with a sufficient interest in the subject matter of the hearing are entitled to be represented by a legal practitioner and to examine and cross-examine witnesses under s42.

1079. At the conclusion of an inquest or inquiry the coroner shall if possible issue findings in writing. Section 52 lists those matters upon which the coroner may make a finding:

- (1) *A coroner holding an inquest shall find, if possible –*
 - (a) *the identity of the deceased;*
 - (b) *when and where the death occurred; and*
 - (c) *the manner and cause of death; and*
 - (d) *in the case of a suspected death of a person – that the person has died.*
- (2) *A coroner holding an inquiry shall find, if possible –*
 - (a) *the cause and origin of the fire or disaster; and*
 - (b) *the circumstances in which the fire or disaster occurred.*

1080. In addition to the power to make findings the coroner may make comment. Subsection 52(4) provides: *A coroner may comment on any matter connected with the death, fire or disaster including public health or safety or the administration of justice*. Section 57(3) also provides that the coroner may also make recommendations to the Attorney-General on any matter connected to the inquiry, including matters relating to public health or safety and the administration of justice. These provisions reflect the power of coroners at common law to make recommendations aimed at preventing similar fatalities, *Director of National Parks and Wildlife Services v Barritt*[\[1943\]](#). It has been said that coroners' findings need *to be of social and statistical importance in the modern community* (*Ex parte Minister for Justice; Re Malcolm*)[\[1944\]](#).

1081. Section 55(1) of the Act contemplates that the coroner's findings may contain adverse comments about individuals:

A coroner shall not include in a finding or report under this Act (including an annual report) a comment adverse to a person identifiable from the finding or report unless he or she has, prior to the making of the finding or report, taken all reasonable steps to give the person a copy of the proposed comment and a written notice advising the person that, within a specified period (being not more than 28 days and not less than 14 days after the date of the notice), the person may –

- (a) make a submission to the coroner in relation to the proposed comment; or*
- (b) give to the coroner a written statement in relation to it.*

This section is designed to ensure that natural justice is afforded to persons who are the subject of adverse comment, in accordance with decisions such as *Annetts v McCann*[\[1945\]](#).

4.2 JURISDICTION AND CAUSATION

4.2.1 THE DECISION OF THE COURT OF APPEAL

1082. The issue of the jurisdiction of the Coroner was examined with some care by the Court of Appeal in *R v Doogan*. The Court noted that it was accepted by all sides during that application that the jurisdiction of the Coroner is limited by the terms of s18(1) of the Act. The relevant statutory phrase is *the cause and origin of a fire that has destroyed or damaged property...* The Court first considered what *fire* meant and concluded that the term *the fire* should be construed to mean the fire that caused the damage to property rather than merely the initial ignition from which that fire ultimately developed. The Court concluded that it is open to Your Honour to enquire into the *cause and origin* of the fire that swept through parts of Canberra causing death and destruction on 18 January 2003 and *to consider all of the factors that might reasonably be regarded as having been causative of the entire process of that fire* [\[1946\]](#).

1083. Dealing with *cause and origin* the Court noted that the phrase was not the expression of a single idea by the use of two independent words (a *bendiadyis*) but rather is rather two separate concepts. Dealing with *origin* the origins of the fire would have been the locations of the lightning strikes that ignited each of the fires which combined to cause the overall fire. The Court was of the opinion that the issue concerning causation was more difficult, referring to a history of legal debate over causation:

*More difficult issues arise in relation to the concept of causation. Many different factors may have contributed to the development of a fire or fires over a period of some days, and a coroner may be required to inquire into a range of potentially causal facts and circumstances. Furthermore, each factor may in turn have been caused by a combination of other factors and there may be debate about the extent to which an apparent chain of causation may be traced. As Nathan J pointed out in *Harmsworth v The State Coroner* (1989) VR 989 at 996, the issue of causation has vexed philosophers and judges since Socrates was obliged to drink hemlock and, even in relation to statutory provisions such as that contained in s 18(1), questions inevitably arise as to whether particular factors are too remote to be regarded as having been causative of the fire, as it developed, in any real sense.*

To take but one example, it may be thought that the thickness of the vegetation at the site where the fire commenced had some causal relevance and, if the first respondent came to that view, then she would clearly be entitled to make a finding to that effect. However, that observation may evoke other questions. Why was the

vegetation in that state? Was there some failure on the part of a government agency to detect its growth and embark upon fuel reduction measures? If so, was this attributable to lack of resources, public policy related to conservation of the natural environment and/or other considerations? The answers to those questions could, in turn, evoke yet others. How much does the ACT Government spend on the construction of fire breaks and other fuel reduction measures in and around Canberra? Is that amount of money appropriate having regard to the Government's competing responsibilities such as those relating to the provision of adequate funds for education, public health facilities and law and order? As a matter of public policy, has an appropriate balance been struck between the need to protect housing on the fringes of Canberra and the need to ensure that the surrounding bushland is maintained in its natural state? If not, is that because the legislature has been misled as to the relative importance of wilderness areas?[\[1947\]](#)

1084. We would have thought, with due respect to both Nathan J and the members of the ACT Court of Appeal, that the causation issue in the case of Socrates was one of the more straightforward in the genre, bearing in mind he was compelled by the vote of the Athenian jury to be his own executioner.

1085. According to the Court[\[1948\]](#), where the line is to be drawn is to be decided by the *common sense* test of causation affirmed by the High Court in *March v E & MH Stramare Pty Ltd*[\[1949\]](#), discussed below. The Court concluded that s18(1) of the Act did confer a limited jurisdiction and *...the common sense test of causation will normally exclude a quest to apportion blame or a wide-ranging investigation into antecedent policies and practices*[\[1950\]](#). Whilst the Court did note that the several of the issues in the original *issues list* was well beyond *even the most expansive concepts of causation*, it did not detail that observation nor criticise the approach, saying that it might well be appropriate, particularly in the early stages of an inquiry[\[1951\]](#).

1086. The Court also dealt with the *right* (as their Honours described it) to make comments. Such comments may extend beyond the scope of findings. In approving the remarks of Nathan J in *Harmsworth v The State Coroner*, the Court held: *Comments may obviously extend beyond the scope of "findings". The latter term refers to judicial satisfaction that facts have been proven to the requisite standard or that legal principles have been established. The former refers to observations about relevant issues, and may extend to recommendations intended to reduce the risk of similar fires, deaths or disasters occurring in the future. However, conferral of the power to make comments does not enlarge the scope of the coroner's jurisdiction to conduct an inquiry*[\[1952\]](#). More particularly, the power to make comment does not enlarge the jurisdiction conferred upon the coroner by s52(1) and s52(2). The Court noted that the entitlement to make comments is also subject to the procedures under s55 of the Act. The coroner is only permitted to inquire into the cause and origin of the fire, although he or she may make comments upon matters beyond that jurisdiction. The Court underscored the limits of the coroner's jurisdiction in this passage earlier in the judgment: *The Act is generally concerned with the resolution of relatively straightforward questions such as "what was the cause of this death?" or "what caused this fire?". It 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. Specific provisions of the Act confer jurisdiction on coroners to enquire into stipulated questions, require them to make certain findings, and empower them to make comments*[\[1953\]](#).

1087. In expressing the view that the proceedings brought by the parties were premature, the Court observed that findings on some *issues* would be ...*clearly beyond the scope of the jurisdiction conferred by the Coroners Act...*, but did not particularise which *issues* would fall into that category[1954].

4.2.2 CAUSATION

4.2.2.1 *March v Stramare*

1088. *March v E & MH Stramare Pty Ltd*[1955] was a motor accident case in which an issue of apportionment of liability arose. The High Court held that where negligence is in issue, causation is essentially a question of fact to be answered by reference to common sense and experience and one into which considerations of policy and value judgments necessarily enter. The *but for* or *causa sine qua non* test is not a definitive test of causation. Deane J said: *I do not subscribe to the view that, under apportionment legislation, causation is automatically established if a negative answer is given to the question whether the plaintiff's injuries would have been sustained "but for" the negligence of the defendant. Causation in the context of the elements of the tort of negligence is not the same thing as the "scientific term descriptive of sequence in physical phenomena"... For the purposes of the law of negligence, the question of causation arises in the context of the attribution of fault or responsibility: whether an identified negligent act or omission of the defendant was so connected with the plaintiff's loss or injury that, as a matter of ordinary common sense and experience, it should be regarded as a cause of it... The "but for" (or "causa sine qua non") test may well be a useful aid in determining whether something is properly to be seen as an effective cause of something else in that sense. In particular, the test will commonly exclude causation for the purposes of the law of negligence if the answer to the question it poses is that the accident which caused the injuries would have occurred in the same way and with the same consequences in any event... There are however, in my view, convincing reasons precluding its adoption as a comprehensive definitive test of causation in the law of negligence. First, the clear weight of authority is against the substitution of such a formularized test of causation for a "common sense idea of what is meant by saying that one fact is a cause of another"... Secondly, unqualified acceptance of the "but for" test as even a negative or exclusionary test of causation for the purposes of the law of negligence would lead to the absurd and unjust position that there was no "cause" of an injury in any case where there were present two independent and sufficient causes of the accident in which the injury was sustained. Less importantly, acceptance of the "but for" test as a comprehensive test would carry with it the need to draw somewhat artificial distinctions to avoid the type of confusion between an accident which happened and one which did not which is to be seen in the discussion in *Fitzgerald v Penn...* Thirdly, the mere fact that something constitutes an essential condition (in the "but for" sense) of an occurrence does not mean that, for the purposes of ascribing responsibility or fault, it is properly to be seen as a "cause" of that occurrence as a matter of either ordinary language or common sense*[1956].

1089. Mason CJ (with whom Gaudron J agreed) also said: *Commentators subdivide the issue of causation in a given case into two questions: the question of causation in fact – to be determined by the application of the "but for" test – and the further question whether a defendant is in law responsible for damage which his or her negligence has played some part in producing. It is said that, in determining the second question, considerations of policy have a prominent part to play, as do accepted value judgments. However, this approach to the issue causation (a) places too much weight on the "but for" test to the exclusion of the "common sense" approach which the common law has always favoured; and (b) implies, or seems to imply, that value judgment has, or should have, no*

part to play in resolving causation as an issue of fact. As Dixon CJ, Fullagar and Kitto JJ said in *Fitzgerald v Penn*: “it is all ultimately a matter of common sense” and “[i]n truth the conception in question [ie causation] is not susceptible of reduction to a satisfactory formula”[\[1957\]](#).

4.2.2.2 Causation in the Coronial Context

1090. In *Chief Commissioner of Police v Hallenstein*, Hedigan J held that the principles in *March v Stramare* are relevant in a coronial setting. His Honour said: *In E & M.H. March v Stramare Pty Ltd (1991) 171 CLR 506, the High Court of Australia considered the fundamentals of causation in the negligence context. The statement of principle in relation to causation are, in my view, applicable to the context of contribution which, within the Act, is concerned with the causes of death and who contributed to it...[1958]*. As discussed above, Hedigan J’s view in this regard was affirmed by the Court of Appeal in *R v Doogan*[\[1959\]](#).

4.2.2.3 Travel Compensation Fund v Tambree

1091. Since the decision of *R v Doogan*, the High Court revisited the issue of causation in *Travel Compensation Fund v Robert Tambree*[\[1960\]](#). This case concerned the assessment of damages to be paid to the applicant arising from conduct by an accountant and an auditor that was negligent or misleading or deceptive conduct in contravention of the *Fair Trading Act 1987* (NSW). The majority held that the issue of causation must be considered in the context of the statute founding the action. Gleeson CJ, with whom the majority agreed, held: *In the context of considering an issue of causation under the Fair Trading Act, the statutory purpose is the primary source of the relevant legal norms. The case did not call for a value judgment about the conduct of Ms Fry...To acknowledge that, in appropriate circumstances, normative considerations have a role to play in judgments about issues of causation is not to invite judges to engage in value judgments at large. The relevant norms must be derived from legal principle. In this case, the primary task of the Court is to apply the legislative norms to be found in the Fair Trading Act...it is in the purpose of the statute, as related to the circumstances of a particular case, that the answer to the question of causation is to be found*[\[1961\]](#).

1092. Similarly, Gummow and Hayne JJ found: *It is now clear that there are cases in which the answer to the issue of causation will differ according to the purpose for which the question is asked. As was recently emphasised in Allianz Australia Insurance Ltd v GSF Australia Pty Ltd, it is doubtful whether there is any “common sense” notion of causation which can provide a useful, still less universal, legal norm. There are, therefore, cases in which the answer to a question of causation will require examination of the purpose of a particular cause of action, or the nature and scope of the defendant’s obligations in the particular circumstances*[\[1962\]](#).

4.2.2.4 The Test in This Inquest

1093. It is clear from the decision of the High Court in *Travel Compensation Fund v Robert Tambree* the issue of causation in this Inquest is therefore to be considered in the context of the Act. However, notwithstanding the doubts expressed by some members of the court concerning the *common sense* approach to causation, in our submission, the reasoning in *Travel Compensation Fund v Robert Tambree* does not represent a significant departure from the principles expressed in the authorities dealing with causation in the coronial context. Indeed the decision is reflected in comments made in cases such as *Chappel v Hart*[\[1963\]](#); *Chief Commissioner of Police v*

Hallenstein[1964] and *R v Doogan*[1965]. More particularly, despite being decided earlier, the manner in which the Court of Appeal in *R v Doogan* approached the issue of causation[1966] is in complete accord with the decision of High Court in *Travel Compensation Fund v Robert Tambree* and, in our submission, properly articulates the tests to be applied by Your Honour in this Inquest.

4.2.2.5 *The Test in the Context of Adverse Findings*

1094. As discussed above, in this Inquest Your Honour is compelled by the Act to find, if possible, the manner and cause of the deaths and the cause and origin of the bushfires and the circumstances in which the bushfires occurred. Further, Your Honour has the power to comment upon matters of public health and safety. During the Inquiry the actions of individuals and government agencies has been the subject of evidence. In our submission, if this evidence is sufficiently connected to the manner and cause of the deaths or the cause and origin of the fires, these matters may form the basis of findings or comment.

1095. Nyland J in the Supreme Court of South Australia provides a useful overview of the role of the modern coroner in *Perre v Chivell*[1967]: *Modern coronership developed in Britain and Australia from the mid-nineteenth century, one of the developments being an increase in the calling of medical evidence. The coroner's office now is much different to its early form. Today the emphasis is upon making recommendations to help prevent injury and death as well as providing accurate statistical information as to causes of death.* It has been often said (and reaffirmed in *R v Doogan*) that the role of a coroner is not to lay moral blame or to apportion criminal or civil liability (see also *Chief Commissioner of Police v Hallenstein*[1968]; *Keown v Khan*[1969]; *R v South London Coroner; Ex parte Thompson*[1970]; *Perre v Chivell*[1971]). However, this does not prevent your Honour making formal findings or making comment on matters connected to public health and safety, which may necessarily involve making adverse comment about a person. Indeed, in our submission, if Your Honour were satisfied that the actions or inactions of an agency or person were a cause of any of the deaths or of the fires, Your Honour is obliged by the Act to so find.

4.2.3 THE STANDARD OF PROOF

1096. Although no legal consequences flow directly from Your Honour's findings and legal rights are not affected, this Inquest does expose individuals and agencies to possible findings that have the potential seriously to damage or destroy their reputations and professional careers, or to result in civil proceedings being brought against them. Section 55 of the Act and the decisions that it reflects (*Mabon v Air New Zealand*[1972], *Annetts v McCann*[1973], and *Ainsworth v Criminal Justice Commission*[1974]), impose a duty of procedural fairness on Your Honour because the power Your Honour exercises under the Act is ... *one which may destroy defeat or prejudice a person's rights, interest or legitimate expectations.* Similar considerations come into play when Your Honour comes to consider the strength of the evidence that has been adduced in the course of the Inquest. It has long been established in this regard that the test in *Briginshaw v Briginshaw*[1975] applies in coronial proceedings to any potential finding of causation where the question of causation relates to individuals or agencies acting in their professional capacity[1976].

1097. In *Briginshaw v Briginshaw* Dixon J held that: *The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exist may be held accordingly to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency... This does not mean that some standard of persuasion is fixed intermediate between the satisfaction beyond reasonable doubt required upon a criminal inquest and the reasonable satisfaction which in a civil issue may, not must, be based on a preponderance of probability. It means that the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.* [\[1977\]](#)

1098. However, it is important not to approach the application of the test in *Briginshaw v Briginshaw* as if it articulates some intermediate standard of proof sitting higher on the scale than *reasonable satisfaction*...based on a *preponderance of probability* as referred in the passage from the judgment of Dixon J above. For example, *Anderson v Blashke*[\[1978\]](#) concerned an examination by Gobbo J of the findings of a coroner as to whether or not the plaintiff had contributed to the death of the deceased. The plaintiff sought to have the finding declared void. During the course of His Honour's judgment he referred to the issue of the standard of proof and applied what he described as the "Briginshaw test". His Honour said: *In applying the Briginshaw test to the facts in this case and keeping in mind the words of Lord Diplock in Mabon's Case, the nature of the allegation here demands a high standard of proof. The allegation involves a deliberate assault by way of kicking with a shod foot of some force when the patient was lying on the floor. There is no question of accident or negligence. The extremely deleterious effect the finding has upon the plaintiff's character, reputation and employment prospects demand a weight of evidence that is commensurate with the gravity of the allegation.*

1099. However, Gobbo J was apparently unaware of and had not been referred to the decision of the High Court in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* in which the High Court restate or explained the applicable standard of proof in the following terms: *The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary 'where so serious a matter as fraud is to be found'. Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal*

conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct. As Dixon J commented in Briginshaw: "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved...". There are, however, circumstances in which generalisation about the need for clear and cogent evidence to prove matters of the gravity of fraud or crime are, even when understood as not directed to the standard of proof, likely to be unhelpful and even misleading. [1979]

1100. Further on in the judgment their Honours said as follows: *When an issue falls for determination on the balance of probabilities and the determination depends on a choice between competing and mutually inconsistent allegations of fraudulent conduct, generalisations about the need for clear and cogent proof are likely to be at least unhelpful and at worst misleading. If such generalisations were to effect the proof required of the party bearing the onus of proving the issue, the issue would be determined not on the balance of probabilities but by an unbalanced standard. The most that can validly be said in such a case is that the trial judge should be conscious of the gravity of the allegations made on both sides when reaching his or her conclusion. Ultimately, however, it remains incumbent upon the trial judge to determine the issue by reference to the balance of probabilities*[1980].

1101. Having regard to the reference in the above passage from the judgment of the High Court in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* to onus of proof, it is appropriate to make brief reference to the question of onus in the Inquest. In both civil and criminal litigation there is an onus or burden of proof, which in some cases may shift. Broadly speaking, in civil proceedings the onus of proof is on the plaintiff and in criminal proceedings the onus of proof is on the prosecution. However, a coronial inquest or inquiry is not a judge conducting litigation and the Act does not contain any provisions about onus of proof. In our submission, there is no role for an onus of proof in this Inquest. In particular, there is no onus of proof on us as counsel assisting to satisfy Your Honour of a particular set of facts nor is there an onus that applies to the represented parties.

4.2.4 JURISDICTIONAL ISSUES

4.2.4.1 Initial Response

1102. Throughout the evidence, we have examined the general issue of the initial response to the fires which began in NSW and ACT on 8 January 2003. For the purpose of this submission, *initial response* includes all action taken as a result of the fires starting including whether, and in what circumstances, each fire was observed, contained or attacked and the planning that surrounded the response. It also includes an examination the context in which the initial response occurred, including what was known to those involved in the initial response about the pre-existing weather conditions and fuel loads and the importance of rapid and aggressive initial response to remote fires. In these submissions, we are critical of the initial response.

1103. In our submission, the jurisdictional basis for the examination by Your Honour of the *initial response* to the fires, is clear from the judgment of the Court of Appeal in *R v Doogan*. Their Honours concluded[1981] that the fire was both the original ignition and the fire that developed and caused the damage. They were of the view that involved a consideration of all of the factors

that ...*might reasonably be regarded as having been causative of the entire process of the fire*. Further, there could be no question of the issue of the initial response being too remote to be regarded as having been causative of the fire as it developed. A consideration of all the factors might have been causative of the entire process of the fire necessarily involves the question of whether the fire developed into the conflagration that it did because the initial response was inadequate. That is one of the central questions in this Inquest.

4.2.4.2 Warnings

1104. When we opened this Inquest on 7 October 2003, the issue of public warnings in relation to the January 2003 fires was referred on several occasions. The public warnings that we were concerned about, were the warnings, or lack of them, which might have indicated that there was a risk of the fires encroaching on the suburban area of Canberra accompanied by advice as to how that might be coped with. We predicted that the evidence in this specific case would show that the ACT and its residents were poorly prepared for the fires and that is what the evidence does show as submitted elsewhere in this submission. A question we raised initially was whether residents were given the information they required to cope with the catastrophe[1982].

1105. The Inquest into the fire inevitably involves inquiring into the consequences. This too was reaffirmed by the Court of Appeal in *R v Doogan*: *the term "the fire", in s18 of the Act should be construed to mean the fire that caused the damage to the property rather than merely the initial ignition from which that fire ultimately developed. In the present case, it was open to the coroner to inquire into the "cause and origin" of the fire that swept through parts of Canberra causing the deaths of four people and immense damage to property on 18 January 2003*[1983]. Since an intrinsic part of inquiring into a fire is inquiring into the damage it does, how that damage occurs and what was done or attempted to be done to prevent it is central to the enquiry.

1106. Both the expert evidence and the evidence of witnesses involved in responding to and surviving the fires on 18 January adduced in the course of the Inquest, establishes that the presence of adequately prepared and informed residents is the single most important factor in house survival[1984]. Indeed, the ESB's own policy of encouraging well prepared and able bodied residents to stay with their homes as fire approaches, is premised on that fact[1985]. It is trite that a person can only be well prepared for an event if they are given timely warning of the event. Both Mr Leonard and Mr Roche expressed an opinion that lends support to a conclusion that the extent of house loss in Canberra on 18 January 2003 was not consistent with what would ordinarily be expected where bushfire impacts on a well informed and well prepared urban interface[1986].

1107. Thus, if an issue arises, as it has here, of whether those threatened by the fires had insufficient time to prepare for the effect of the fires either by preparing to defend their properties by being present or by choosing to leave the area safely and taking with them precious possession and documents that could otherwise have been taken to a safe area, then that is a ...*pertinent and relevant line of investigation*.... [and] *the Coroner is entitled to inquire as to why*... that occurred[1987]. Further, as discussed in detail elsewhere in these submissions[1988], on the

evidence the issue of warnings bears a particular relevance to the manner and cause of the deaths of Alison Tener and Dorothy McGrath.

4.2.4.3 *The NSW Border*

1108. A further issue of jurisdiction arose earlier in the proceedings created by the fact that the major fire which burned into Canberra was a fire which commenced in NSW. Initially the NSW authorities did not seek representation at the Inquest. It was also to be noted that an Inquest conducted by a NSW Coroner was held in relation to the McIntyres Hut fire commencing on 7 March 2003, with findings delivered on 18 September 2003.
1109. On 15 December 2003 Mr Bret Walker SC sought leave to be heard, without seeking leave to appear, on behalf of the State of New South Wales and the department known as the National Parks & Wildlife Service which he said had now disappeared^[1989]. The first submission he made was that given that the NSW Coroner had already looked at the fire in which this Inquest was interested, his client was anxious not to duplicate anything or lend themselves to a ...*canvassing of the NSW Coronial process and its outcome*. On the other hand, they were anxious to co-operate. Apart from referring to the costs involved on behalf of his clients in the process, Mr Walker then referred to the “phase 2 issues list”.
1110. Mr Walker then submitted there were two topics that concerned his clients:
- a. McIntyre’s Hut fire: As to this, the submission was that the NSW Coroner had already made a finding refuting the suggestion that *a more aggressive approach* was required in dealing with the fire and critical of those who suggested otherwise. Mr Walker submitted that the finding had been made on the merits and it was not the role of the ACT Coroner to *mark the work of the New South Wales Coroner*^[1990]. He also submitted that they would not wish to participate unless someone with evidence of expertise, experience and knowledge had something to say about the conduct of the NSW officers^[1991]. He appeared to accept that given the consequences of the McIntyre’s Hut fire, there was *extraterritorial jurisdiction* for the ACT Coroner but that not extend to criticism of the *administrative operations* of a New South Wales agency.
 - b. Hazard Reduction. As to this, the submission was that Mr Walker was unaware of there being any evidence, without hindsight, from anyone suggesting that things should have been done which would have had a material effect on the fires which occurred in January 2003.
1111. Ultimately, what was sought was that the NSW authorities have access to the brief under s51 of the Act so that an informed decision could be made whether to make an application for leave to appear under s42 of the Act.
1112. In reply we submitted to Your Honour that we accepted that it was beyond your jurisdiction for you to make recommendations about the functions and operations of NSW government agencies^[1992]. We submitted that you should permit Mr Walker’s client to have access to the

documents for the purpose he articulated and you agreed to grant such leave^[1993]. In our original submission we also suggested that the question of comments that you might make might be *more problematic* but the issue could not be resolved until the nature of the comments we would be urging you to make was clearer. We have now reached that position. In these submissions, we do criticise aspects of the conduct of the NSW agencies in dealing with the McIntyre's Hut fire in particular. We do that because the criticisms we raise are relevant to *causation* issue referred to by the ACT Supreme Court in *R v Doogan*.

1113. The issue arose again during the evidence of Mr Koperberg. In the particular context, Mr Bret Walker SC objected to questioning on behalf of Mr Lucas-Smith of Mr Koperberg to the extent that the questions suggested there was some obligation on Mr Koperberg to ensure that the people of the ACT were warned about the potential risk from the McIntyre's Hut fire^[1994]. We agree that, given the existence of the NSW/ACT border, questions which suggested some obligation to the people of the ACT on the part of Mr Koperberg were not helpful and any obligation to warn in the ACT rested with ESB not the NSW Rural Fire Service. That theme continued in the cross examination of Mr Koperberg by Mr Whybrow on behalf of Mr Castle^[1995]. Mr Bret Walker SC made it clear in the course of discussion that he had no jurisdictional objection to Your Honour making comments about co-operation between NSW and the ACT and he was only concerned at criticism which appeared to be being formulated that NSW had some obligation to warn the residents of the ACT.

1114. Our concern about warnings in these submissions is limited to the obligation, as we submit it should, resting on the ESB. We make no submissions about any similar obligation on the NSW Rural Fire Service to warn ACT residents. However a reading of these submissions will make it clear that we are critical of the NSW authorities in other areas – particularly in their actions in responding to the McIntyre's Hut and associated fires on the evening of 8 January 2003 and the following days. Such would be obvious from the manner in which the relevant witnesses – Bruce Arthur, Julie Crawford and others were examined. Such material is well within the ambit the cause and origin of the fire that did so much damage to Canberra on 18 January 2003.

CHAPTER 5 INITIAL RESPONSE

5.1 INITIAL RESPONSE TO THE ACT FIRES GENERALLY

5.1.1 THE HISTORICAL CONTEXT FOR THE ACT FIRES

1115. The importance of a rapid and aggressive response to fires in the ACT, particularly in remote areas, has long been recognised by those with experience in fire suppression in the ACT. It is referred to in the Rural Fire Control Manual^[1996] and was actively practised in times when the suppression of fires was the direct responsibility of the Bush Fire Council^[1997]. In years gone by, it was assisted by aggressive standby arrangements on days of high or extreme fire danger, including pre-positioning of heavy plant and ensuring that fire fighters who may be deployed did no other work that day^[1998]. The circumstances of the attack on and control of the Pago fire described by Mr Cheney^[1999] provide a good example of what can be achieved by rapid aggressive response in conditions very similar to those experienced at Bendora on the afternoon and evening of 8 January.

5.1.2 KNOWLEDGE OF THE CONDITIONS

1116. At the time of these fires, the severity of the drought conditions were known by the senior officers of the ESB long before the season formally commenced^[2000]. The fact that fuel loads in the area of all the fires were at maximum or *equilibrium* levels was also known, and was a matter of considerable consternation at the ESB, which is not the ACT government agency responsible for managing fuel loads^[2001]. Shortly before the fires, a plan was developed to address concerns relating to vehicle access and egress points, water points and access by RAFT crews to remote parts of the Namadgi. However, at the time of the fires, those concerns had not been addressed and were known to still exist^[2002]. Despite knowledge of these matters, with the exception of some measures concerning fuel loads, heavy plant and training of RAFT crews implemented by ACT Forests under the direction of Mr Bartlett, the ESB and ACT land management agencies made essentially no preparations for this particular fire season over and above the preparations made in any normal year^[2003]. This is regrettable. And there can be no doubt that, had an approach to pre-season preparedness more akin to that taken in the years of Bush Fire Council been adopted by the ESB, the prospects of bringing all of the fires in the ACT rapidly under control would have been significantly enhanced.

5.1.3 RAPID AGGRESSIVE RESPONSE

1117. In our submission, even without that level of pre-season preparedness, but with a genuine rapid and aggressive response to all the fires, there remained a strong likelihood that the ESB would have effected containment of all the fires in the ACT that began on 8 January within the first 24 hours. Had that initial containment been achieved, there equally were good prospects of thereafter successfully controlling and suppressing those fires before the onset of extreme weather, particularly given the unusually long period between the extreme conditions experienced on the day of the lightning strikes and the next extreme day.

1118. Further, as we describe in our narrative above, the importance of a policy of rapid aggressive response to fires in remote areas in the ACT was reinforced only a few months before the fires,

following the *Namadgi Burn Scenario*^[2004]. This was a desk top exercise involving both Mr Graham and Mr McRae based on a fact scenario with uncanny similarities to what was experienced in January 2003. One of the key outcomes of that exercise was that *in any fire situation in the Cotter Catchment, the Emergency Services Bureau (ESB) would attack the fire aggressively*.

1119. In our submission, successful implementation of a rapid aggressive response to the fires in remote parts of the ACT required, as a minimum:

- a. an immediate response to all fires in accordance with the ESB's standard weight of response, with crews who were adequately equipped and trained to undertake remote area firefighting for a full shift;
- b. the standing up of all available additional resources to be deployed as soon as reasonably practicable after first arriving crews are on scene and have provided an initial situation reports; and
- c. immediately ascertaining the availability of heavy plant and arranging for this to be deployed to all fires at the earliest opportunity, and by no later than first light on the morning after the fires are first detected.

5.1.4 THE OPERATIONS OFFICER ROLE ON 8 JANUARY

1120. This, in turn, required a functional system of incident management, with the most experienced senior officers available in the key operational positions. The choice of the officer responsible for making decisions about strategies and resource deployment at the time of initial response to all fires is probably the most important. In the ACT, this would normally be expected to be the incident controller at the ESB. But at the time of these fires, that officer, the CFCO Mr Lucas-Smith spent a large part of the first evening at Queanbeyan. So under the system for allocation of roles^[2005] at the ESB, it fell to the relevant duty officer at the time Mr Graham, to take on that responsibility as the nominated Operations Officer. 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^[2006]. 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^[2007].

1122. In our submission, the officers who should have been given that role on the night of 8 January 2003 were one or other of the other two Deputy CFCO, Mr Bartlett or Mr Sayer (Mr Graham was the third). The former of these, observing from Canberra the smoke plumes and fire activity in the hills and understanding instinctively the urgency of the situation, arrived at the ESB at 4:20 pm that afternoon and made an open offer of his own services and those of his ACT Forests trained and equipped RAFT crews^[2008]. Your Honour would accept Mr Bartlett's evidence about the fact and content of his offer over that of Mr Lucas-Smith and Mr Graham, who could not recall it but did not deny it occurred. As our narrative shows, that offer was not taken up in whole or in part on either of the first two crucial days of these fires.

1123. Mr Bartlett was a very experienced firefighter and controller^[2009]. Indeed, his qualifications, training and recent experience at the time possibly eclipsed that of Mr Lucas-Smith. He gave evidence of how he would have approached the response on the first night of the fires had he had responsibility for managing that response^[2010], which sits in stark contrast to the actions taken by Mr Graham on the night. And we note that Mr Bartlett cannot be accused of just being wise after the event. Following the fires in December 2001, Mr Bartlett prepared a memorandum outlining concerns he had about aspects of the management of those fires^[2011] that provide support for the approach he is likely to have taken had he been managing the response to the ACT fires on 8 January. In particular, Mr Bartlett notes in that memorandum the importance of 24 hour operations when it is clear that the fire will not be extinguished before the second day.

1124. Further, other experienced officers including Mr Sayer and Mr Neil Cooper, like Mr Bartlett, recognised immediately the urgency of the situation and the need to respond as soon as possible additional resources and heavy machinery^[2012]. Mr Graham, on the other hand, did not^[2013]. He was also unaware of the typical 5 to 7 day summer weather pattern referred to by many other witness and in the Rural Fire Control Manual and incorrectly asserted in his statement that night time operations are usually conducted once the strategies have changed from direct to indirect attack. Mr Lucas-Smith disagreed with this statement^[2014]. As is universally acknowledged in the evidence, the first night of a fire is usually the time when the fire is at its most benign and offers the best opportunity for control. This will almost invariably be achieved by direct attack.

1125. Mr Graham accepted in evidence that he did not recognise the same level of concern as Mr Sayer and Mr Cooper and that Mr Sayer, Mr Bartlett and Mr Cooper had considerably more experience in bushfire fighting than Mr Graham did at that time. Mr Graham also accepted that the reason that Mr Sayer, Mr Bartlett and Mr Cooper were recognising risks and concerns that Mr Graham was not recognising, was because of that additional experience. However, perhaps not surprisingly for someone who was clearly a conscientious and dedicated officer, Mr Graham would not accept that he was not sufficiently experienced in relation to bushfire behaviour and bushfire fighting at that time to be in the position he was in that night^[2015].

5.1.5 RELEVANCE TO CAUSE

1126. In our submission, Your Honour should conclude that Mr Graham's lack of experience in fire behaviour and fire suppression contributed significantly to the poor decision making on the first night of the fires and the following morning. Your Honour would be satisfied, particularly

based on the evidence of Mr Lucas-Smith, Mr Bartlett and Mr Roche, that had an officer with the expertise and experience of Mr Bartlett been in that role:

- a. decision making would have been based on a philosophy that requires fighting the fires that are burning, only worrying about other possible fires when they appear and applying all available resources at those fires at the first opportunity;
- b. work would have commenced that night on locating and responding heavy plant, including bulldozers that ACT Forests had available;
- c. additional fully equipped RAFT crews and other firefighting resources, including those trained and resourced by ACT Forests, amounting to at least the standard weight of response for that day, would have been despatched to all fires that afternoon, with the intention that they remain all night and be on the ground ready to brief incoming crews the next morning to ensure a smooth hand over;
- d. it is likely that discrepancies in reports coming in from Firebird 1 and the Southcare helicopters about fire size would have been identified and further information sought, including a clear assessment of fire size from incident controllers on the ground, thus ensuring that decisions about resourcing that night and the following morning were based in accurate information; and
- e. the vital importance of attempting control of the fires on the first night would have been readily understood and all crews would have been directed to remain at the fires overnight and undertake whatever suppression activity could be safely implemented that night, as well undertaking reconnaissance and identifying water points and access routes to assist handover at first light.

1127. Your Honour should also conclude that had an approach of the kind referred to above been taken to all the fires in the ACT that first night, it is likely that initial attempts at containment in the first 24 to 48 hours would have been successful, and a significant degree of control achieved over the ensuing ten days. The size of the ACT fires when the extreme conditions arrived on 17 and 18 January was a significant factor in the level of destruction they caused as they moved towards Canberra and southern ACT. If the fires had been contained in the first days and controlled over the next week in the manner described, while breakouts may have occurred under extreme conditions on 18 January or the following weeks, that level of control would have meant that the effect of those breakouts (if any) would have been minimal and a significant part of the damage and destruction of property caused by the fires on 17 and 18 January is likely to have been avoided. In particular, as discussed below in the context of warnings, without the effect of the run from the Bendora fire on 18 January, it is likely that the tornado that swept into areas of Canberra around Chapman and Kambah, would not have eventuated^[2016].

5.1.6 PROPOSED FINDING

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.

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.

5.1.7 FLAWS IN THE SMT STRUCTURE

1130. In our submission, another factor that played a part those errors was the flaws in the SMT structure that was in operation at the ESB at the time of the fires^[2017]. Although this became more apparent later in the fire - fight to the point that it would be fair to describe the entire structure as dysfunctional^[2018] - in our submission, it is clear that on 8 and 9 January there were already signs of role confusion, particularly on the part of field controllers. The evidence as referred to in our narrative demonstrates that Ms Arman was initially seeking guidance on the question whether she and her crews would remain at the Bendora fire, only to be told by Mr Graham that it was her decision. Mr Hayes also seemed uncertain about his authority to demand additional resources to assist his efforts on 9 January, including bulldozers.

1131. But probably the key deficiency resulting from the SMT structure in evidence at least at Bendora on 8 and 9 January and at all fires thereafter, related to the role of planning. More particularly, while labelled *Incident Controller* under the AIIMS ICS system of incident

management, field controllers had effectively no planning support in the field. This was certainly the case up until about 13 January, when some limited administrative support was arranged for field controllers at Bulls Head. While field controllers in many cases had sufficient experience to themselves undertake planning as part of their broader role, and indeed were effectively forced by the absence of planning support to do so, the consensus in the evidence was that it was difficult in the circumstances for them to do any effective planning beyond the next shift.

1132. In the meantime, effective planning was being undertaken at Curtin under the direction of Mr McRae, including fire spread prediction and analysis and fire mapping. But, according to Mr McRae, he was working upwards to the IC and other at the SMT and it was not part of the role of his planning team to be working to the ICs in the field. In particular, Mr McRae considered that it was the ICs in the field who were responsible for preparing Incident Action Plans. On the other hand, Mr McRae seemed unsure about whether there were planning officers in the field capable of undertaking this kind of work. He assumed, without knowing, that there were. There were occasions on and after 13 January when Mr Taylor and other members of the SMT planning team went into the field with good maps and other resources, but this was the exception, not the rule^[2019].

1133. However, with the exception of the position on 8 and 9 January, it is difficult to point to any aspect of the dysfunction of the SMT that could be said to be relevant to the ultimate development and spread of the fires. Further, in relation to those two days, the most that could be said is that:

- a. the role confusion demonstrated by Ms Arman and Mr Hayes referred to above;
- b. the fact that, with the absence of any effective planning support in the field or from Mr McRae at Curtin, neither was reasonably in a position to examine the consequences of their decisions and actions beyond the next 8 hours,

both probably contributed in a small way to the poor decision making by them and by others that in turn was a cause of the fires. It is not otherwise possible, in our submission, to draw a direct line between a particular aspect of the dysfunction of the SMT structure and the development of the fires on 8 and 9 January and thereafter.

5.2 THE BENDORA FIRE

5.2.1 RESPONSE AND ARRIVAL AT THE FIRE

1134. 8 January was an orange day under the ESB's system of operational readiness. SOP 7 in force at the time of the fires directed in effect that initial response on an orange day to any fire sighting should be three tankers and two light units^[2020]. The actual response to Bendora was two tankers and three light units. In our submission, that discrepancy is not material in the case of the Bendora fire. Indeed the actual personnel present of 14 may have exceeded the assumed number based on SOP 7 of 11^[2021].

1135. The officer in command of the fire, Ms Arman, arrived at the Bendora fire at 6:50 pm. A number of the crews and Mr Stevens were there before her. Some of those crews commenced suppression work while Ms Arman walked around the fire conducting a reconnaissance^[2022]. Apart from what Ms Arman observed during her walk^[2023], nothing that occurred in relation to the travel to or arrival at the fire and what was done by the crews is of any particular consequence. The more important issue concerns the decision to withdraw. Some time after 8:15 pm she was informed by Comcen that she and her team would not be required to stay any longer and they left the fire.

5.2.2 THE DECISION TO WITHDRAW

1136. In our submission, the importance of the decision to withdraw has two main constituents. Firstly, the effect of the Bendora fire burning unchecked overnight on 8-9 January 2003 and what might have been achieved if the crews had remained both that night and with a view to preparations for the following day. Secondly, and assuming the effect of withdrawal was significant, was the decision to withdraw and the process by which that decision was reached carefully considered and appropriate?

5.2.2.1 *The Effect of the Decision*

1137. The evidence suggests that the fire burned slowly overnight, although it continued to spread^[2024]. It seems unlikely that the fire crossed the Bendora break until the early morning of 9 January and it was later in the day that it crossed Wombat Road. However, on the evidence, there was significant work that could have been done overnight. Continued presence could have resulted in the construction of a hand trail or part of it overnight on 8 January with, as Mr Cheney^[2025] and Mr Roche^[2026] suggested, support from a bulldozer the following morning to supplement that work. Then, during the following morning, a bulldozer could have opened up the Bendora break and the old control line between Wombat Road and the Bendora Arboretum. Mr Roche's evidence was that Bendora break would thereafter have provided a secondary or back-up control line for the hand line constructed overnight^[2027].

1138. An attempt was made in the cross-examination of Mr Roche to suggest, in effect, that no useful work could have been done on the night of 8 January in the area of the Bendora break, because the fire was going to cross the Bendora break during the night regardless. However, what this line of questioning overlooked, as Mr Roche later explained in his evidence, was that the construction of a hand line commencing in the early evening would have halted the spread of the fire that night towards and over the Bendora break. Further, to the extent that all or part of the handline was not completed in time, providing adequate resources were on the ground the next morning, those crews would have succeeded in cutting off any sections where the fire has crossed the line and the Bendora break. The likely success of this strategy is reinforced by the evidence of Mr Hayes^[2028], which indicates that this was one of the few tactics that he and his crews had succeeded in implementing the following day, until conditions worsened and they lost the fire in numerous areas.

1139. It is also important to note, in this context, the evidence from several witnesses including Mr Nicholson that the area of the Bendora fire nearer the top or north-west corner of the fire in the vicinity of the Bendora break, was much more open country and susceptible to direct attack with hand tools. This is to be contrast with the more difficult country nearer Wombat Road, where different tactics would have been appropriate, as described by Mr Roche. The evidence establishes that, in the event, without overnight attendance, the fire had expanded and crossed the Bendora break by morning. Further, any suggestion that parts of the fires (including the *head* to the extent there was one overnight – the evidence is that the fire spread on all perimeters) were too intense for direct attack with rake hoes is answered by Ms Arman’s own evidence of the intensity of the fire experienced by her during her reconnaissance. Further, the intensity would have reduced further as the night progressed.

1140. Mr Lucas-Smith in his statement and his evidence recognised that by the afternoon of 9 January 2003 direct attack on the Bendora fire had ceased to be viable because the fire edge could not be readily accessed with adequate water resources^[2029]. His evidence was that had they made the decision to attack the fire directly on the night of 8 January, then at first light on the morning of 9 January, they would have had heavy plant in there opening up trails and doing what they could to limit the growth of the fire^[2030]. Mr Lucas-Smith went on to express doubt that a line around the fire could have been achieved on the night of 8 January but, in our submission, with crews remaining and containing the fire and being in position overnight ready to receive adequate resources at first light on 9 January, it is likely that a patrollable containment line around the fire would have been established by later on 9 January.

1141. Mr Roche in his evidence^[2031] suggested that had the crews remained, then hose lines which had already been extended from at least one vehicle might have been used and work could have been done on the lower portions of the fire down toward Wombat Road. As discussed above, he also suggested that a hand trail could have been commenced around the higher elevations where the ground was flatter. As he put it, those actions would have given them a good head start for the resources that were to be deployed the following morning and also have limited the growth of the fire overnight. Therefore, in our submission an important opportunity to control the Bendora fire was lost by the decision to leave the fire. Given that decision, and the inadequacy of the resources provided the following day as discussed below, by 10 January the chances of controlling the fire had dramatically diminished and without a meteorological miracle soon, were non-existent.

1142. In our submission, there is evidence on which Your Honour can conclude that had these activities as described by Mr Roche and Mr Cheney occurred on the night of 8 January supported by adequate resources the following day, it is likely that fire would have been contained and not spread, or at least not spread in the way that it did, when the adverse weather arrived ten days later.

5.2.2.2 *The Making of the Decision*

1143. In our submission, given that the decision to withdraw was a critical decision in connection with the cause of the Bendora fire for the reasons discussed above, the manner in which it was

made is of significance. In this case, the manner of the making of the decision left a great deal to be desired.

1144. The evidence of Ms Arman about a telephone conversation she had with Mr Graham after the decision to withdraw had been made^[2032] was to the effect that Mr Graham informed her that *we were hoping you would do that*. Your Honour should accept that Mr Graham said that to Ms Arman despite his unwillingness to recall that he had, on the basis of his earlier conduct leading to the decision to withdraw. Mr Graham's ill-informed and inexperienced position supporting a withdrawal was clear from earlier in the evening as we now submit.

1145. The evidence indicates shortly before 7:00 pm on the night of 8 January Ms Arman started to make her assessment of the fire by commencing to walk around the perimeter of the fire^[2033]. Three minutes later, Mr Graham and Mr Arthur are speaking on the phone and already agreeing that there would not be much fire fighting activity that night^[2034]. About 40 minutes later, and still before any report has been received from Ms Arman at the Bendora fire, Mr Graham and Mr Lucas-Smith have their telephone conversation^[2035]. In our submission, the effect of that call was that it was agreed between Graham and Lucas-Smith that there would be no overnight effort at the scene of the Bendora fire and that the decision was made without knowing any of the detail of what Odile Arman had discovered. It is also likely that the conversation was heard by the radio operators in Comcen, who later reflected the substance of the conversation when the question of whether Ms Arman should stay was first raised by her^[2036].

1146. At the time of the phone call, Mr Lucas-Smith was on his way to a meeting at Queanbeyan to discuss the McIntyre's Hut fire. In our submission, Mr Lucas-Smith, as the CFCO, had a responsibility to be much more involved in the decision than he was. Given the prevailing conditions, he must have realised that a concentrated initial response was important in case the weather conditions worsened. Mr Lucas-Smith asking Mr Graham whether they would be able to do anything that night, almost inviting a negative response and without the benefit of a situation report from Ms Arman was, in our submission, a key link in a series of connected discussions and events that led inexorably to the decision to withdraw from the fire. His immediate acceptance of the inevitability of withdrawal after Mr Graham's *I would be very doubtful if they could*, is another.

1147. Further, his failure to respond to Mr Graham's doubt, by emphasising the importance of rapid aggressive attack and the advantages of overnight firefighting and pressing Mr Graham to find out more from the IC on the ground with a view to encouraging crews to stay overnight, was a serious error of judgment. It is all the more so when one considers that Mr Lucas-Smith said in evidence that he might have made a different decision if he had been more directly involved in the making of the decision and when, as discussed above, Mr Lucas-Smith must have been aware of Mr Graham's lack of relevant expertise and experience that were almost certainly informing Mr Graham's expressions of doubt.

1148. Mr Lucas-Smith was right to suggest in evidence that more analysis should have been conducted into Ms Arman's reasons for withdrawal and someone of his experience might have made a different decision. However, his evidence to this effect was not directed to his own

conduct that night, and it should have been. In our submission, his error of judgment in treating so causally, even flippantly, what he should have seen as a very important decision and not probing the issue in the manner we have described, was also a key link leading to the decision to withdraw. Indeed, we would submit probably the single most important link in the scheme of events that evening.

1149. Odile Arman's situation report^[2037] was provided at a little after 8:00 pm followed by a request from her for guidance as to what her crew was expected to do. She was informed of an understanding that the teams would be removed and return the next morning. As we note above, that exchange set the tone for the rest of the decision making process and followed the Lucas-Smith/Graham telephone discussion some time beforehand which, in our submission, had pre-determined the outcome in any event.
1150. Mr Graham's evidence about this process^[2038] should be rejected. His suggestion that night time operations are only usually conducted when the tactic had changed to indirect attack has no real basis and was even rejected by Mr Lucas-Smith. Likewise, Mr Graham's suggestion that he discussed Odile Arman's concerns with Peter Lucas-Smith is not borne out on the evidence. Mr Graham clearly held the view, which had been formulated in his discussion with Mr Arthur, that there would not be any night time fire fighting on the night of the 8 January.
1151. Against that background, Ms Arman was asked to make a choice whether her crew was remaining overnight or not. She made the decision not to stay, indicating that there was "*..not to much we can do this evening*". Ultimately, she determined to leave for the reasons we have set out^[2039]. Your Honour should accept that one of those reasons was her concern for the safety and welfare of her crew as she had said. The reasons listed in our narrative include two that reveal the role played in her thinking that night of the attitude demonstrated Mr Lucas-Smith and Mr Graham as discussed above. Thus they expose the flaws inherent in the decision making process and the and the less than thorough approach in this instance. Her second reason for deciding to leave was that the question of who had the responsibility for making the decision was a *grey area* and she at least wanted here decision to be confirmed by ESB. This is the role confusion issue raised in our introductory submission above. Her third reason for deciding not to remain, was that she was influenced by the impression she gained from the communications that Comcen were not going to keep crews on the fire ground overnight.
1152. The irony in all this is that Ms Arman made it clear in her evidence that her position was not inflexible and she was willing to stay at the scene overnight if that was what the SMT thought should occur^[2040]. Messrs Lucas-Smith and Mr Graham, particularly, failed to give the matter the thorough and urgent consideration it deserved and so the process failed.
1153. Mr Graham accepted that his failure to take the opportunity to further question the decision that Ms Arman had come to was a deficiency in the way the matter was handled. The process represented a failure to properly consider the importance of gaining control of the Bendora fire as soon as possible given the conditions – a need not recognised by Mr Graham. His concession was an appropriate concession for him to make. He was asked about whether he could have

contacted Mr Lucas-Smith but, of course, the die was very much cast so far as Lucas-Smith was concerned. As discussed in our introductory submissions, despite his rejection of this proposition, it is our submission that Mr Graham was sufficiently experienced to handle such an important decision as this. His failure to appreciate the need for early control of the Bendora fire is perhaps the strongest evidence of that.

5.2.2.3 *The Attitude of the Crews*

1154. Part of the reasoning for Odile Arman in the decision she made was concern for the welfare of the crews since they had been working since 7:30 am that morning. The evidence indicates^[2041] that particular members of the crew were willing to continue working had it been decided to remain at the scene overnight. It appears that Ms Arman did not consult the crew to see whether they were willing to remain.

1155. In our submission, the only relevance of this evidence is whether it would have been *reckless*, as Mr Nicholson has asserted, for the crews to remain. If the crew were willing to remain and were not suffering from the effects of over-work as appears to be the case, then that obviously has a bearing on the suggestion of Mr Nicholson that to have remained at the scene overnight would have been reckless. However, Ms Arman was in charge and we do not submit that she had any obligation to consult with the crew about their view before making a final decision. It was for her to make a choice and, importantly, be assisted by those at the SMT if assistance was necessary.

5.2.3 EXPERT EVIDENCE

1156. In our submission, the evidence of Mr Cheney^[2042] and Mr Roche^[2043] is obviously correct when they assert that the decision to withdraw on the night of 8 January was the wrong decision. The simplest statement of the reason for that from Mr Roche highlights the issue – *there is always an imperative to extinguish a fire as quickly as possible...* As both witnesses point out although there were safety considerations, conditions for fighting the fire would have improved significantly with increased humidity, lower temperatures and reduction in fire behaviour. Their evidence deals in detail with how each of the undoubtedly legitimate safety concerns raised by Ms Arman, could and should have been addressed that night.

1157. They are also correct when they suggest that Ms Arman did not have sufficient experience to control the fire in this type of environment and, for that matter, to make an appropriate decision in the circumstances that confronted her. Both Mr Lucas-Smith and Ms Arman herself also acknowledged that the lack of depth of her experience played a part in the decision to withdraw^[2044]. If the SMT were functioning correctly then this situation would have been remedied – by, among other factors, Mr Lucas-Smith participating appropriately in the making of the decision. Mr Cheney is similarly correct in his assessment that issues of safety of trained fire fighters, including on the issue of falling trees, has to be looked at against the consequences of not fighting the fire and the consequences for the ACT community. More broadly, the consequences of *not* fighting the fire that night were clearly given insufficient attention by all those involved in the decision that night. Although, in the case of Ms Arman in the absence of

the planning support as discussed above, the fact that she may not have looked beyond the next shift is understandable.

1158. In the cause of establishing that withdrawal from Bendora on the night of 8 January 2003 was the correct decision, Mr John Nicholson was called to give expert evidence^[2045]. His conclusion was that the decision to depart was correct and it would have been *reckless* to have remained. In our submission, this conclusion is not credible and, with respect, Mr Nicholson is not a credible witness on this topic nor on the issue of warnings for the reasons we give in Chapter 6, below.
1159. The reasons why we submit that Your Honour should reject such evidence as Mr Nicholson gave on this issue are as follows:
- a. His report and evidence fail to analyse the consequences of the withdrawal for the future of the effort against the Bendora fire^[2046]. This is a crucial issue and he has essentially ignored it. Mr Cheney analysed it in his report and evidence and Mr Cheney's material has been similarly by-passed by Mr Nicholson.
 - b. Mr Nicholson's report leaves out of account the fact that Mr Lucas-Smith made the concession that if had been in Odile Arman's position he would have made a different decision^[2047].
 - c. Mr Nicholson went to the scene of the Bendora fire with Odile Arman but did not appear to have walked around the perimeter of the fire as it was on the first night and did not know that he *pressed the perimeter point* with Ms Arman^[2048]. It appears that having gone to the scene, he did not walk the entire perimeter in order to make a judgment about Ms Arman's view of the circumstances^[2049].
 - d. Mr Nicholson conceded that sometimes, notwithstanding the risks, night time fire fighting *becomes an absolute necessity*^[2050]. In our submission, and for the reasons given by Mr Cheney referring to antecedent weather, dry conditions and number of fires burning this was a very serious situation which in fact made fighting the fire on the first night an absolute necessity.
 - e. Mr Nicholson's evidence of his own experience of night time firefighting suggested that, despite the *dithering* of *senior volunteers*, he has forged ahead into the bush with a rake hoe in conditions that seemed from his description to be no better than those confronting Ms Arman and her crews at Bendora^[2051].
 - f. Confronted with information from Ms Arman which might not have helped the conclusion that withdrawal from Bendora was the correct policy because it suggested they [the fire fighters on the scene] *could have chased a fire that got over the road, chased it with hose line* Mr Nicholson did not pursue the finer details of this *in all the circumstances*^[2052].

- g. In an email exchange with counsel, Mr Nicholson refers to the benefits of visiting the site for him and *possibly to Odile's peace of mind* and goes on *Yes, Phillip [Walker] even to the extent of a picnic*^[2053]. We should note that Mr Nicholson denied that he was concerned to bring peace of mind to Ms Arman despite the contents of the e-mail. But in our submission his evidence, including the matters referred to above, support a conclusion that this was a consideration in formulating the opinions expressed in his report.

1160. With all due respect to Mr Nicholson, his evidence on this topic is of no use to Your Honour. Almost in spite of the evidence, Mr Nicholson has adopted a position which appears to be one he considers consistent with the interests of those who retained him notwithstanding the evidence, much of which he did not consider.

5.2.4 RESOURCES FOR THE FOLLOWING DAY

1161. The last issue which we have outlined in our narrative on the response to Bendora on 8 January^[2054] concerns the recommendation for the resources to be applied to the Bendora fire the following day. The undisputed evidence is that, Ms Arman's response to a request for her views about what crews would be required the following day, in her radio transmission to Mr Graham at 8:14, Ms Arman suggested *at least* 2 rake hoe teams and *at least* one heavy tankers. Her evidence was that she said *at least*, because she was aware there were various fires reported and was not sure what resources the ESB has available. However, Ms Arman's evidence is that later that night in a 9 minute mobile phone conversation with Mr Graham, she made it clear to Mr Graham that she would have liked to ask for more resources, including four rake hoe teams. Ms Arman could not recall her precise words, but she was clear that she mentioned four rake hoe teams. In our submission, Your Honour would accept this evidence.

1162. However, Mr Graham ultimately arranged to deploy resources strictly in accordance with Ms Arman's initial request, despite her later comment that more would have been better and, that even with the uncertainty over the size of the fire, the resources suggested would be patently insufficient with the likely fire development overnight. They did not even meet the minimum requirement for initial response, let alone what would ordinarily be necessary on the second day of a fire burning in tinder dry bushland in a remote national park: *[T]he resources that Mr Graham arranged to attend the Bendora fire on the morning of 9 January comprised a tanker from Guises Creek and a command unit and a light unit from Rivers, with a total of 12 personnel, plus Mr Hayes in his own vehicle. These resources involved significantly fewer firefighting vehicles than had been part of the initial response on the evening of 8 January and less still than the weight of response according to SOP 7 for a code yellow day (two tankers and two light units*^[2055]*). 9 January 2003 was a code yellow day*^[2056]. It is also clear on the evidence that ample additional resources were available, including the ACT Forests RAFT crews that Mr Bartlett had offered earlier in the day^[2057]. In our submission, Mr Graham's decision to adopt the minimum requirements suggested by Ms Arman again demonstrates his complete lack of appreciation of how this fire was likely to behave overnight and the next day.

1163. A concerted effort to make progress toward gaining control of this fire on 9 January was probably the last opportunity for that to occur given the conditions. Mr Hayes, who was the commander at the fire, was clearly under resourced^[2058] on 9 January despite the fact that he did

not in terms request more resources assuming they would not be available. The fact that tankers had to be effectively stood down so that the crew could form a rake hoe is obvious evidence of the problem he faced^[2059].

1164. The absence of overnight crews also significantly hampered Mr Hayes' progress. As the evidence demonstrates^[2060], he spent a considerable time that morning undertaking reconnaissance of the fire, searching for water points and determining tactics more or less by a process of trial and error. It is clear that, with the benefit of a briefing and guidance from a departing night shift, precious hours would have been saved. It is also likely that the need for additional resources at the fire that day, including a bulldozer, would have been identified. If not during the night then certainly the next day when the crews turning up were seen to be fewer and less well equipped than those leaving.

1165. As we have earlier submitted, the deployment of a dozer at first light would have enabled important progress to be made, but it was not until well into the afternoon that that resource was offered to Mr Hayes. The prospect of it arriving at first light the next morning meant that such an important piece of equipment was going to be on the fire ground at least a day and night later than should have been the case. By then, in our submission, it was too late.

1166. Indeed, in our submission, the inadequacy of resources should have been apparent to Mr Graham, and probably also to Mr McRae at the very latest, when Mr McRae returned from his aerial reconnaissance of all the fires and provided his report, including his estimate that the Bendora fire was a 20 hectare fire^[2061]. Mr Graham accepted that he would have received and read Mr McRae's report, although he did not recall it. Your Honour would consider on the evidence that an operations manager with even the most basic knowledge of fire behaviour, would ordinarily have been shocked to learn that a fire that he thought was 500 square meters late the night before had grown to 20 hectares by 11:00 am the next day and reacted accordingly - by dramatically ramping up the levels of resourcing on the fire, regardless of what the IC on the ground was saying. However, Mr Graham could not recall being surprised by the apparent fire growth.

1167. The failure to appreciate the significance of this information and consequent lack of urgency on the part of Mr Graham in relation to these issues, is again a matter of concern. However, we would accept that, by the early afternoon and factoring in travelling times, even a dramatic increase in the resources at the fire from that may not likely to have materially altered the outcome, particularly having regard to Mr Hayes' evidence about the deterioration in weather increase in fire activity in the mid to late afternoon. The events of 9 January underline the importance of the original decision to both to leave the fire on the night of 8 January and deploy the minimum recommended resources on the morning of 9 January.

5.2.5 PROPOSED FINDING

1168. We would therefore submit that Your Honour should make the following findings:

- a. Given the fuel loads and the severity of the drought in the area, and the circumstances prevailing on the night of 8 January 2003, the decision whether or not leave crews to continue suppression efforts on the Bendora fire overnight was a decision critical to the future prospects of controlling that fire.
- b. Ms Odile Arman' took into account important safety considerations in making her decision to withdraw her crews from the fire, but ultimately reached that decision because she believed ESB wanted her to make that decision and she was insufficiently experienced to weigh all the competing considerations in a way that would have led her to make a different decision.
- c. Mr Graham was insufficiently experienced and had a view as to what should occur before receiving any detailed information from the field.
- d. That Mr Lucas-Smith displayed a casual approach to a decision which he must have known was important to the future fire suppression effort and failed to participate in the process to a level commensurate with his role, his previous experience and his knowledge of the inexperience of Mr Graham.
- e. The conduct of Mr Lucas-Smith and Mr Graham on the night of 8 January in their dealings over the question of whether crews should withdraw from Bendora, was consistent with each of them wanting Ms Arman to withdraw crews from the Bendora fire that night and led to Ms Arman forming the belief that ESB wanted her to withdraw crews.
- f. On being informed of Ms Arman's reasons for the proposed withdrawal, Mr Graham failed either to enquire for more detail or discuss the matter with those more experienced than he, notably Mr Lucas-Smith, and failed to take action to ensure that crews remained at the fire overnight.
- g. The decision to withdraw from the Bendora fire on the evening of 8 January made in the circumstances described above was the wrong decision in the circumstances and effectively deprived ESB of any realistic chance of gaining control of the fire before the weather worsened.
- h. The had crews remained overnight and the fire been adequately resourced throughout the next day, including with the assistance of heavy machinery, it is likely that the fire would have been contained within 24 to 36 hours of initial ignition and substantially controlled and suppressed before the onset of extreme condition on 17 and 18 January.
- i. With no fire suppression activity overnight, come the morning of 9 January and throughout the day, the Bendora fire was severely under-resourced.

5.3 THE STOCKYARD SPUR FIRE

1169. In our submission, the obvious first problem in relation to the initial response to this fire was one of access, because of the condition of the Stockyard Spur track. There were difficulties with gaining access and Mr Gray's concerns about the conditions and the fitness of his crew were relevant to a decision to leave the fire without reaching it and trying to attack it^[2062]. However, with the exception of the error by Mr Roche in suggesting that Mr Gray had given evidence that he could driven to the site of the fire, in our submission, the evidence concerning initial response to this fire and the events the following day as summarised in our narrative, supports Mr Roche's opinion concerning this fire^[2063].

1170. In particular, in our submission:

- a. it is reasonable to conclude that, despite the difficulties encountered by Mr Gray, if the initial response had been in accordance with the weight of response prescribed for that day and had included properly fit, trained and equipped RAFT crews, those crews could have walked into the fire that evening and done useful suppression work overnight;
- b. any difficulties in locating the fire could have been addressed by collecting Mr Gray in Firebird 7 and flying him over the fire and the area between the fire and the nearest access point so he could familiarise himself with the route in the light;
- c. as with Bendora, the presence of crews overnight, even if they had not been able to complete a containment line around the fire overnight, would have greatly assisted the handover the next day, obviating the need for the time consuming searches and reconnaissance by crews arriving cold at first light the next day;
- d. in any event, the difficulties of access experienced by Mr Gray on the first night should have alerted those in command to the urgent need to source a bulldozer to open up the Stockyard Spur track and to ensure access could be gained at the earliest opportunity by firefighting vehicles; and
- e. the timely despatch of a bulldozer would also have greatly assisted RAFT crews in the constructions of control lines around the entire perimeter of the fire throughout the next day – an important strategy having regard to the absence of formed tracks in the area.

1171. Instead, as events transpired, although Mr Gray accepted that he initiated the decision to withdraw, it is clear on the evidence that the decision was supported by the CFCO. Based on the radio transmission from Comcen, it appears that the decision of the CFCO in that regard was made independently of Mr Gray's comment that: *I don't think we will make it tonight*. The response was *CFCO also believes you should not go to the fire tonight and return to your vehicles*. We note that the attitude of Mr Lucas-Smith to remaining over night suggested by this transmission is entirely consistent with the position he took in the mobile phone conversation with Mr Graham later that evening concerning the Bendora fire. Further, despite the efforts of the two rake hoe crews under the command of Mr McNamara^[2064] the following day, without the assistance of a bulldozer and firefighting vehicles, they were unable to construct sufficient length of control line after walking in that morning, to prevent the fire getting away when conditions deteriorated later in the day.

Also, by then Mr McNamara's crews were too fatigued to continue working, withdrew in the late afternoon and were not replaced.

1172. In our submission, the evidence establishes that had the various steps been taken as recommended in the evidence of Mr Roche and as summarised above, it is likely that the Stockyard Spur fire would have been contained within 24 to 36 hours of ignition and controlled and probably suppressed in subsequent days, well in advance of the onset of extreme conditions on 17 and 18 January. The fact that those steps were not taken consistently with the weight of response prescribed by SOP 7 and a rapid aggressive response was a failure by the ESB that was a cause of the Stockyard Spur fire that burnt into areas and damaged property in the south of the ACT. And Your Honour should so find.

5.4 THE MT GINGERA FIRE

1173. The Mt. Gingera fire was detected on the afternoon of 8 January but Comcen were apparently informed from the helicopter that access to the fire was difficult^[2065]. Again, contrary to the principles of rapid response and the prescribe weight of response, no attempt was made to resource this fire at any time on the afternoon or night of 8 January or at any time before 12:00 noon on 9 January. It was discovered the next day when crews responded after midday that the fire was only 3400 metres from the Mt Franklin Road and access did not turn out to be difficult^[2066]. There is no evidence to suggest that there were no crews, including RAFT crews available to attend the fire than night and at first light the next day. We refer again to Mr Bartlett's evidence about the failure by Mr Graham and Mr Lucas-Smith on 8 and 9 January to accept the offer of ACT Forests RAFT crews^[2067].

1174. In our submission, Mr Roche^[2068] was correct when he said that the fire could have been attacked overnight on 8 January had resources in accordance with SOP7 including RAFT crews been despatched shortly after it was detected and the location confirmed. He also said that direct attack using tankers and extended hose lays in combination with the hand crews was an option, particularly given the reasonably close proximity of the Mt Franklin Road as noted in our narrative above. Mr Roche's evidence in relation to the initial response to the Mt Gingera fire was unchallenged.

1175. Further, it was a small fire and did not grow substantially overnight or during the first part of the following day. Indeed, examining the transcripts of the radio transmissions and Mr Graham's statement and evidence^[2069], Your Honour could conclude that the early reports that it was a small fire led to it being put out of at least Mr Graham's reckoning entirely until his decision to despatch crews at about 12:00 noon on 9 January. It took those crews about 5 hours to reach the site of the fire. Your Honour would also note from the evidence^[2070], Comcen's immediate dismissal of Mr Callan's suggested option of getting a bulldozer in as soon as possible, the failure to offer relief crews and the initial reluctance to accept Mr Callan's suggestion that crews should be left in overnight to ensure the fire did not cross the Mt Franklin Road. By 10 January it had grown to a size and travelled into areas that meant it was no longer reasonably amenable to direct attack by constructing control lines around the entire perimeter of the fire. Further, because of

the remoteness of the fire including the lack of formed tracks in the area, containment of the fire before the onset of extreme conditions was problematic, if not impossible.

1176. In the circumstances, we repeat the substance of our submission in relation to the Stockyard Spur fire. Namely, the evidence establishes that had the various steps been taken as recommended in the evidence of Mr Roche and Mr Cheney^[2071], it is likely that the Mt Gingera fire would have been contained within 24 to 36 hours of ignition and controlled and probably suppressed in subsequent days, well in advance of the onset of extreme conditions on 17 and 18 January. The fact that those steps were not taken consistently with the weight of response prescribed by SOP 7 and a rapid aggressive response was, a failure by the ESB that was a cause of the Mt Gingera fire that burnt into areas and damaged property in the south of the ACT. And Your Honour should so find.

5.5 THE MCINTYRE'S HUT FIRE

5.5.1 THE STRATEGY ADOPTED

1177. In our submission, it is clear that the McIntyre's Hut fire as a whole was not amenable to direct attack on the afternoon and evening of 8 January 2003 or at any time thereafter. In particular, we do not subscribe to the suggestion made elsewhere that a direct attack on the main run of the fire could realistically have been mounted from the Webb's Ridge track. In our submission, the evidence supports the view expressed by Mr Cheney that such an attack would have been futile and probably very dangerous^[2072]. The only method by which control and suppression of the fire could be attempted once the fire had commenced its rapid run up towards the Webb's Ridge track throwing spot fires long distances, including as far as the Baldy Range trail, was by a combination of long distance indirect attack and direct attack. Direct attack would be limited to locations where the fire had crossed existing roads and tracks that might otherwise serve as containment lines.

5.5.2 SUMMARY OF SUBMISSION

1178. In summary, our submission about the long distance indirect attack strategy adopted for the purpose of containing the McIntyre's Hut fire is that the area selected as the containment area being of the order of 10,000 hectares, was far too large given the conditions and the prospects of completing the burning and gaining control before the likely onset of adverse weather conditions. Indeed, the delay in the onset of those conditions beyond the typical five to seven day cycle was fortuitous in the circumstances. But the 10 days that delay gave was still not enough time to complete the containment and burn out the areas to a sufficient depth to prevent breakouts on several fronts on 17 and 18 January. It was open to better investigate the options for reducing that area by about a quarter by using different containment lines to the east and west and to hasten the process of burning out from those containment lines once chosen. Those options were either not satisfactorily explored and examined or were the subject of delay in applying resources. It is of no consequence that it can be said that during the 10 day period the fire was *kept within containment lines*.

5.5.3 NO TIMEFRAME SET

1179. The time for the completion of the indirect attack strategy devised on the evening of 8 January strategy was apparently not considered or discussed by the personnel at the Queanbeyan meeting who agreed on the strategy. The lack of discussion about a timeframe does not appear to be in contention. Mr Arthur, for example, explained that such an exercise is not *time driven*^[2073]. A time for completion was suggested in Scott Seymour's situation report which was completely unrealistic^[2074] – completing the control lines on 9 January and back burning from them that evening^[2075]. However, according to Ms Crawford, this was not a timeframe set at the meeting^[2076]. With the antecedent weather conditions well known to everyone, and particularly the IC Ms Crawford, on the afternoon and evening of 8 January^[2077], and the risk of the onset of hot, dry unfavourable conditions as part of the weather cycle, it is extraordinary that no-one at the meeting saw the need to discuss and agree on an estimate of the time likely to be necessary to complete the strategy before committing to it. In our submission, both Mr Cheney and Mr Roche are correct in their evidence about the importance of determining and setting estimated timeframes for the completion of objective for the reasons they articulate^[2078].

1180. In our submission, if some effort had been made by the fire controllers at Queanbeyan on the afternoon and evening of 8 January to estimate the time likely to take to complete the strategy under consideration, it would have been tolerably clear that the area to burn out was so large and the work needed to be done so extensive, that the prospects of completing the strategy within the usual weather cycle of five to seven days, were very poor. That, in turn, would have prompted an urgent review of the strategy to examine options for reducing the burn-out area, including further urgent on the ground reconnaissance of the fire area and the viability of potential alternative containment lines. In our submission, Your Honour could conclude that such a review, prompted by a realisation of the poor prospects of success of the strategy then under consideration, would have identified three things:

- a. first, the opportunity to control the small area of the spot fire that had burnt across the Baldy Range trail, opening up that trail as a viable eastern containment line;
- b. second, the opportunity to control the small area of fire near the base of the point of origin of the main run of the McIntyre's Hut fire that had burnt over Lowell's trail, opening up Lowell's and McIntyre's trail as a viable western containment line; and
- c. thirdly, the importance of commencing burning-out operations on that reduced burn-out area as soon as practicable.

1181. In the event^[2079], the only reconnaissance of the area of the fire and the proposed burn-out area on the night of 8 January was the aerial reconnaissance undertaken by Mr Seymour, an assessment of the fire by Mr Hunt from the Mt Coree fire tower, some 6 or 7 kilometres from the main fire, and the information from Mr Bretherton about the Baldy Range spot fire discussed below. Ms Crawford also had some intelligence from Brookvale, again several kilometres from the main fire. It is understandable that Ms Crawford would be reluctant to send observers or crews too close to the main fire while it was making its main run up to Webb's Ridge. However, in our submission, Mr Cheney was correct in his evidence that there was every opportunity for

observers or firefighting crews under the direction of the Queanbeyan IMT to undertake on-the-ground inspections of all the fires in the area from about 8:00 pm, once the fire behaviour had subsided. Mr Cheney was also correct in his view that the opportunity should have been taken by the Queanbeyan IMT.

5.5.4 EASTERN CONTAINMENT LINE

1182. In our submission, an opportunity was lost on the night of 8 January to inspect the area of the Baldy Range spot fire that fire at close quarters, commence direct attack, and reign in that area of the spot fire to the west of the Baldy Range trail. The first step in the process appears to be a misunderstanding on the night of 8 January 2003 as a result of a conversation between Ms Crawford and Mr Cooper as to the message Mr Cooper had from Mr Bretherton about the condition of the Baldy Range fire. However, we accept that Ms Crawford understood that what she was being told was that the Baldy Range trail was lost as an eastern containment line. We accept also that, given no time frame had been set and thus the compelling need to explore alternative containment lines was not identified, Ms Crawford should not be criticised accepting the information from Mr Bretherton, relayed by Mr Cooper. In particular, we do not agree with the evidence of Mr Roche that Ms Crawford should, as a matter of course, have sought corroborative information.

1183. As we have submitted, what should have prompted a first hand assessment of the fire on the night of 8 January or, at the latest, at first light on 9 January, was not a need to presume that Mr Bretherton's information may not be reliable. Rather, it was an assessment of the time the proposed strategy would take to complete. As we have submitted, such an assessment is likely to have shown that in the five to seven days that should have been assumed to have been available, the proposed strategy would probably fail.

1184. Despite the decision reached the night before that the eastern containment line would be the firebreak on the eastern perimeter of the Brindabella National Park, an assessment was made of the spot fire over the Baldy Range trail by two NSW Rural Fire Service Group Officers during the following morning^[2080]. It is not clear from the evidence when the decision was made to despatch the Group Officers nor the time they arrived at the site of the spot fire. Ms Crawford thought that they left Queanbeyan at about 6:00 am. They were not in firefighting vehicles and did not have any firefighting crews with them. The Group Officers reported that it was worth attempting to construct a control line around the part of the fire on the eastern side of the Baldy Range trail. Arrangements were made for 3 category 7 tankers (light units) that had been assigned to work in the Charlie Sector, but were unable to do so without assistance from a dozer, to be diverted to start work of the Baldy Range track. However, not long after they commenced work, they received information from an aerial reconnaissance that the fire was bigger than they could see on the ground. Shortly before 12:00 noon all crews were withdrawn.

1185. The evidence shows that by this time, construction had commenced on control lines, particularly the southern control line along the power line trail. Problems had been encountered, particularly at the western end of that control line, and as discussed further below, the serpentine nature of the track led the Incident Controller (by this stage, Mr Arthur) to delay burning-out

operations. But still no attempt was made to make an estimate of how long the strategy would take to complete. In our submission, Your Honour can conclude that this again deprived the IMT at Queanbeyan with the impetus it needed to do everything practicable to control the fire on Baldy Range trail as soon as possible. In our submission, there were still good prospects of bringing the fire to the east of the trail under control if additional RAFT crews and, assisted by a bulldozer if one could be found, had been sent to the fire that afternoon and worked through the night of 9 January. Better still, accepting that a misunderstanding led to the loss of an opportunity on the evening of 8 January, adequate crews, ideally with bulldozer support should have been responded to the fire as soon as the Group Officers reported that the fire could be controlled, not just three light units that happened to be not required elsewhere on the fireground.

1186. Instead, apart from some waterbombing in the afternoon which was likely to have little or no effect without support from ground crews, the fire was left unattended to continue its spread into increasingly difficult terrain all afternoon on 9 January and throughout the night. Mr Arthur did not have a recollection as to whether it was though necessary to put crews on the Baldy Range fire on 9 January for direct attack. He was asked whether there would be any reason why the IMT would not have put crews on that fire that night. He said there wasn't a reason and he didn't know why it wasn't done. RAFT crews comprising a total of 30 firefighters finally arrived on the morning of 10 January and began attempts to control the fire. However, by this time, according to Mr Cheney, it had become a question of the size of the fire and steepness of the terrain that it had got in to, which presented those crews with a difficult task to hold that fire. Mr Roche described the task by this time as problematic. This belated attempt to control the fire was ultimately unsuccessful and all further attempts were abandoned during the afternoon of 13 January.

5.5.5 WESTERN CONTAINMENT LINE

1187. As to the western containment line²⁰⁸¹, the geographical feature selected was the Goodradigbee River. In our submission, Your Honour should conclude that the river was a poor choice as a containment line for the reasons given by Mr Cheney. It is obviously difficult to burn back from and difficult to patrol. In our submission, the suggestion by Ms Crawford that it was easier to control than the Lowell's trail/McIntyre's track alternative is unsustainable. There were large sections of the river that could not be reached except by winching firefighters in and by waterbombing. It is well known that waterbombing alone will not halt the run of a fire. There were large amounts of fuel close to the river. Further, by definition, a river is in the bottom of a valley. Any spot overs across the river would immediately begin an uphill, and winching crews into that environment would be extremely dangerous.

1188. In contrast, the combined Lowell's trail and McIntyre's track, was traversable by tankers from much of its distance and by light units for its entire length. The video re-enactment by Mr Cheney and Mr Smith left no doubt that category 9 tankers could have reached at least the area of the trail near the point of origin and the construction of about 300 metres of hand trail around the part of the fire near the point of origin where it had crossed the trail to the west, would have been relatively easy. Ms Crawford accepted that a hand line could have been constructed around

this part of the fire. Further, unlike a river, much of the trail ran along a downhill slope, so spotovers in those areas would simply burn back into the track, not up a hill away from it. Mr Smith also gave evidence that the Brindabella Brigade would have been available to respond to the fire on the night of 8 January once conditions had abated and that members of that brigade had a constructed considerably longer hand trail in more difficult terrain in January 2001.

1189. In our submission, Your Honour can conclude on the evidence, including the expert evidence^[2082], that:

- a. the Lowell's trail and McIntyre's track would have been a viable containment line on the night of 8 January and for most of 9 January;
- b. there were crews available to work the trail, including by constructing a hand line around the part of the fire that had crossed the trail to the west on and from the evening of 8 January;
- c. it was patrollable for its entire length and in more suitable and accessible terrain than the Goodradigbee river, and therefore a significantly better choice for a control line; and
- d. the choice of that trail over the Goodradigbee river would have reduced the overall size of the burn-out area.

5.5.6 DELAY IN COMMENCING BURNING

1190. The final issue was the timing of the commencement of the burning-out operation. We have already submitted that no timeframe was discussed on the night of 8 January at Queanbeyan, or the following day. But it is our submission that even if burning was able to be commenced in the afternoon and overnight by the end of 9 January or early on 10 January, with a view to the changing weather cycles, time for completion would have been very short. And yet burning-out operations did not actually commence until the morning of 11 January. Given that the burn-out area remained so large it was almost inevitable that the weather would work against the success of this strategy.

1191. The circumstances of the delay are referred to in our narrative above^[2083]. The problem was that in essence the Queanbeyan IMT were not prepared to commence burning-out operations until the containment lines were ready and particular concern was expressed by Mr Arthur about the *serpentine* power line trail which became the southern containment line. In our submission, Mr Arthur's concerns overstated the risk to firefighters of commencing burning-out operations along the power line trail. Your Honour should conclude that, for the reasons discussed in the evidence of Mr Bartlett, it was open to start burning-out operations at least along the eastern end of the trail, which was less serpentine, while construction work continued. Because of the prevailing and forecast wind conditions on 9 and 10 January 2003, that work could have commenced without undue risk to firefighters. It is notable that, following a telephone conversation between Mr Arthur and a senior officer of the NSW Rural Fire Service on 10 January, Mr Arthur indicated that work would commence on the burning out operations the

following morning. When that occurred, there were still sections of the containment lines that were incomplete.

1192. In our submission, therefore, an already difficult strategy of indirect attack was made all the less feasible by an absence of committed investigation of eastern and western containment lines and a significant delay in the commencement of the burning-out operations.

5.5.7 AERIAL INCENDIARIES

1193. Issues concerning the sourcing and deployment of aerial incendiaries are discussed in our narrative above^[2084]. Likely need for them was identified probably as early as the night on 8 January. Ms Crawford first requested a supply of incendiaries on 10 or 11 January. However, on 16 January when a decision was made to deploy the incendiaries late that afternoon, none were available. By the time this was identified and an aircraft sent to Tumut to pick them up and return, it was too late in the day to commence the operation. This left the Queanbeyan IMT with a difficult dilemma on the morning of 17 January. They knew conditions were worsening and would continue to do so. The forecast for 18 January was for extreme fire danger. Putting more fire into the area under those conditions was a highly risky strategy. But doing nothing and leaving the substantial area of unburnt country within the containment lines to burn out under the conditions forecast for the following day was also problematic.

1194. In our submission, for the reasons given in the reports and evidence of both Mr Cheney and Mr Roche as set out in our narrative, having lost the opportunity to use the incendiaries on the afternoon and evening of 16 January, the decision to deploy them on the morning of 17 January was probably the wrong one. It was a last desperate attempt to complete a strategy at a point where the Queanbeyan IMT had no doubt realised that the time for completing the strategy that they had failed to estimate when the strategy was first devised, had all but run out. It is also a decision that is directly relevant to Your Honour's jurisdiction, because it involved ignitions of fire independently of the main fire which, according to the incident controller section 44 report^[2085], developed into separate fire activity throwing spot fires, before later coalescing with the main fire.

1195. While the aerial ignitions probably added to the overall fire behaviour experienced on 17 January and on 18 January, in our submission, there is not sufficient evidence on which to conclude with any confidence that, had the incendiaries not been deployed at all on the morning of 17 January, the fire that reached Canberra on 18 January would have arrived any later or been any less fierce than. However, as we discuss below, it is open to Your Honour to conclude that, had the Queanbeyan IMT been in a position to deploy the incendiaries on the afternoon of 14, 15 or possibly even as late as 16 January, the fire would not have burnt into Canberra on 18 January with the speed and intensity described by Mr Cheney^[2086], or at all.

5.5.8 PROPOSED FINDING

1196. You Honour can be satisfied that, had the Queanbeyan IMT pursued any one of these alternative approaches to the containment and control of the McIntyre's Hut fire, there was an increased prospect that the control lines would have been completed earlier than 16 January

2003. Had all three been pursued, in our submission, Your Honour could comfortably conclude based on the progress that was made notwithstanding the larger burn-out areas and the delay by up to two days in commencing the burning-out operation, that it was likely that the control lines would have been completed and burnt to sufficient depth to undertake any remaining burning-out by aerial ignition by 14 January, or 15 January at the latest. And had this occurred, and the aerial incendiaries sourced in time to undertake the aerial ignition strategy on 14 or 15 January:

- a. any aerial ignition required would have been undertaken in the evening in falling fire danger, and allowed to burn out the remaining unburnt areas overnight and on days of much lower fire danger;
- b. the dramatic escalation of fire behaviour including spotting across control lines that occurred under increasing fire danger during the afternoon and evening of 17 January as a result of the aerial ignitions, would have been avoided;
- c. thus the chances of keeping the fire behind control lines on 17 and 18 January particularly on the south eastern boundaries, would have increased and any breakouts that did occur are likely to have been less extensive and more amenable to attack;
- d. the spread of the fire towards Canberra (if any) is likely to have started significantly later and been on a significantly smaller scale than was experienced in the morning and early afternoon of 18 January.

1197. In those circumstances, Your Honour should find that:

- a. the failure of the Queanbeyan IMT on the evening of 8 January or before noon on 9 January to undertake an assessment of the time likely to be required to complete the long distance indirect strategy devised on 8 January; and
- b. the consequent failure to identify and implement with adequate resources and as a matter of urgency, containment options that would have resulted in a smaller burn-out area and speedier consolidation of the burning-out operation, including most notable the failure to adequately resource the Baldy Range spot fire until the morning of 10 January,

was a cause of the fire that burnt into Canberra on 18 January 2003.

CHAPTER 6 WARNINGS

6.1 THE ISSUE

1198. The evidence has highlighted one of the critical issues of public interest in this Inquest – at what stage between 8 and 18 January 2003 did it become apparent to the senior personnel at ESB that there was a realistic risk of the fires, probably in combination, having an impact on that part of Canberra which included some rural settlements and the edge of the urban area? The second aspect of that issue is that assuming the realistic risk was appreciated prior to the events on the afternoon of 18 January, was information about that risk conveyed to the public in a timely and appropriate way? Finally, if the existence of the risk was appreciated and information about it was not so conveyed, why did that occur? The importance of the timing and content of a warning, once a risk became apparent, is discussed above[2087].

6.2 SUBMISSION IN SUMMARY

1199. In summary, in our submission, the realistic risk of an impact on the urban area of Canberra was appreciated as early as 13 January 2003 by senior ESB personnel or at least some of them. Secondly, it is clear that the existence of that risk was not conveyed to the public of Canberra prior to about 2:40 pm on 18 January 2003. Indeed, on occasions leading to the events of 18 January, the opposite of what was known was said publicly about the risk of an impact on the suburban area. The more complicated issue is why that occurred. It may be that the answer to that, in part, lies in the somewhat convoluted approach taken the issue of warnings to the community by Mr McRae in his evidence. The answer may also lie in the misplaced desire not to alarm the community articulated by Mr Lucas-Smith at the ACT Fire Brigade briefing on 16 January coupled with a break down in the co-ordination of particular activities within the ESB, particularly the Planning section.

6.3 THE RISK RECOGNISED AND UNDERSTOOD

1200. The risk of serious impact on the urban area of Canberra from a wildfire burning under extreme conditions, particularly following an extended period of drought, was well known in emergency service circles within the ACT. It had been established by history[2088], as Mr Lucas-Smith outlined during his midday press conference[2089] and briefing of the ACT Fire Brigade[2090] on 16 January 2003. It was articulated in unequivocal terms in the opening chapters of Rural Fire Control Manual, which was at the time of the fires was the statutory instrument guiding the operations of ACT Bushfire Service. It refers to *potential weather to create widespread havoc within the suburban area*[2091]. It was identified in 1995 in controversial circumstance by Mr McBeth[2092]. Mr Nicholson considered that serious fires in neighbouring jurisdictions should have alerted the Canberra community to risks of wildfire[2093]. While this is open to doubt in the case of residents of urban Canberra, it would certainly apply to senior officers of the ACT Bushfire Service. According to Mr Lucas-Smith, the conditions experienced in the 2001 fires that burnt right to the edge of urban Canberra in some areas, were only an entrée to what was potentially going to occur in the 2002/03 fire season[2094]. Mr McRae and Mr Lucas-Smith (no doubt among others) were also well aware long before the fires started of

the state of the fuel loads in the area of the fires and what implications that had for fire spread potential in the ACT[2095].

1201. The deteriorating conditions in the 12 months leading up to the fires were widely discussed among senior officers of the ESB up to and during the initial part of the 2002/03 fire season[2096], nowhere more graphically than in the series of e-mails sent by Mr McRae, beginning in January 2002. It would not be overstating the position to describe the language used in Mr McRae's series of e-mails as alarming, or even a *call to arms*. Most notably, less than 10 days before these fires started, Mr McRae recognised with extraordinary accuracy precisely the manner of impact that the expert evidence has since established was the cause of so much damage in urban Canberra on 18 January 2003[2097]. In an e-mail to Mr Lucas-Smith, Mr Graham, Mr Ingram and Mr Bennet, Mr McRae identified (among other things) that because of 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*[2098]. In the case of Mr McRae at least, the level of recognition and understanding articulated in this e-mail needs to be coupled with his view, reflected in the *Dr Doom e-mail* and repeatedly expressed by him in ESB training sessions, that when the *big one* hits, embers and fire brands would be likely to cause damage up to three rows of houses into the urban area[2099].

1202. It should be noted in the context of Mr McRae's e-mail about the potential for the fire to fire spread in the suburbs of Canberra that some witnesses in the course of their evidence (although not including Mr McRae and Mr Lucas-Smith) sought to draw a distinction between an impact on the *urban interface* or *urban edge*, on the one hand, and houses on the edge of the suburbs abutting the open grasslands and forested areas surrounding Canberra, on the other[2100]. To the extent that it might be suggested that information about an impact from the fires on the *urban interface* was understood as conveying an impact on the grassland and forested area on the edge of the urban area, but not on homes on the edge of the urban area, Your Honour would reject such a suggestion as artificial. Even if there were a basis for suggesting that expressions such as *urban interface* or *urban edge* do not encompass homes and other structure on the edge of the urban area, it cannot be seriously suggested that information that a wildfire (whether in the form of embers or the main fire run) may reach an area immediately adjacent to homes on the urban edge does not necessarily also involve a degree of risk to those homes.

6.4 RISK APPARENT ON 13 JANUARY 2003

1203. By 13 January 2003 at the latest, it was apparent that there was a realistic risk that the fires might in some form, and possibly in combination, impact upon the urban area of Canberra. Mr Lucas-Smith said he had considered the possibility but did not consider it was a realistic prospect. In our submission, Your Honour should reject that evidence of Mr Lucas-Smith. Two important events of 13 January 2003 suggest that in fact his and other minds had been turned to the prospects of the urban area being affected and that the view about that was far from unrealistic.

6.4.1 REQUEST FOR COMMONWEALTH ASSISTANCE AND MEDIA INTERVIEW

1204. Firstly, on that date a request was made by Mr Castle for Commonwealth assistance in relation to the fire effort and, secondly, the conversation between Mr Lucas-Smith and Mr Cheney. In the request for Commonwealth assistance[2101], Mr Castle noted that *ACT Government resources are severely stretched* and described the McIntyre's Hut fire as a *substantial threat to the ACT*. These sentiments were repeated by Mr Castle during an interview with the ABC on that day[2102]. He talked about wind swinging around to the north-west resulting in the fires coming back *on a very large front* and conceded that the ESB did not have enough resources to handle the fires. The interviewer asked a direct question about the threat to Canberra. In our submission, despite Mr Castle's denial of this suggestion, his response sought to downplay the risk, but it is clear from his response that he was not able to exclude it entirely.

6.4.2 LUCAS-SMITH'S CONVERSATION WITH CHENEY

6.4.2.1 *The Substance of the Conversation*

1205. So far as the conversation between Mr Lucas-Smith and Mr Cheney[2103] is concerned, Your Honour can conclude that Mr Cheney expressed the view to Mr Lucas-Smith that the situation was very dangerous and that strong gusts of wind from the west would bring the fires into Canberra city. Further Your Honour can conclude that Mr Lucas-Smith's response was to the effect that: *That's fine Phil. That's our opinion too*. This discussion was significant not just because Mr Cheney had expressed his intent to say what he did, but because it was going to be said by him publicly and that would naturally require an ESB response which, in turn, would presumably require them to turn their minds to whether there was a risk of an effect on the metropolitan area or not.

1206. Mr Cheney had a good recollection of the conversation. He was vigorously cross-examined about his recollection of what was said. Although, not surprisingly, in giving his version of the conversation he from time to time used a different word, he could not be shaken on the substance of his statement nor, importantly, on the substance and effect of Mr Lucas-Smith's response. Mr Lucas-Smith, on the other hand, agreed that his recollection of the conversation was not as good as Mr Cheney's[2104]. Further, the attempt in his statement and in the early part of his evidence to suggest that Mr Cheney had referred to west winds bringing the fires *towards urban areas* (not *into* Canberra), and that this potential was recognised at the planning meeting the following afternoon, was contrived. This was demonstrated later in Mr Lucas-Smith's evidence, when the handwritten notes of what he said at the planning meeting about the conversation were put to him. He was then forced to concede that Mr Cheney had talked about winds from the west bringing the fires *into Canberra city*[2105]. In the circumstances, to the extent of any inconsistency in the evidence as to the substance of the conversation, Your Honour should prefer the evidence of Mr Cheney. Further, as discussed below, Your Honour should find that the potential recognised by Mr Lucas-Smith in the conversation with Mr Cheney and discussed at the planning meeting the following day, was the potential for westerly winds to bring the fire, not merely towards Canberra, but into the Canberra urban area.

1207. Mr Cheney had long been recognised (including by Mr Lucas-Smith) as an expert in bushfire behaviour of considerable standing and the view he held was the obvious view to hold in the

circumstances. If Mr Lucas-Smith agreed with Mr Cheney's view that strong gusts of wind from the west would bring the fire into the Canberra urban area, then there was absolutely no reason not to inform the public of the existence of that risk. At that stage, the threat was not imminent but distinctly possible, if not probable if attempts at containment continued to be unsuccessful, those potentially affected would from that point have had ample time to make arrangements to deal with the fire and its possible affect on them.

6.4.2.2 *The Discussion at the Planning Meeting*

1208. However, instead of examining the substance of Mr Cheney's view and debating the seriousness of the risk to the urban area and how the ESB should respond to that risk, the debate apparently centred around how the ESB should respond to the *media issue* enlivened by someone other than ESB being a source of information about threats to the public. This was despite Mr McRae's statement earlier in the same meeting that the long term weather outlook was for stronger north-westerly winds and his observation that this forecast indicated that *strategies will be harder to complete and hold after Friday evening*[\[2106\]](#).

1209. As our analysis demonstrates, the meeting commenced with Mr Graham discussing the progress of containment of the fires in the ACT. It is clear that concerns were being expressed about the expansion of the Stockyard Spur and Mt Gingera fire and difficulties with containment of the north-west corner of the Bendora fire. This was followed by Mr McRae's description of the long term weather outlook referred to above. Mr Lucas-Smith's report of his conversation with Mr Cheney came towards the end of the meeting[\[2107\]](#), and is recorded in the minutes under the heading *Media*. The evidence given about this discussion at the planning meeting on 14 January was entirely unsatisfactory and many of the witnesses failed to grapple with the issue. The issue was why, if it was known on 14 January that there was a risk of the fire affecting urban Canberra, were not the public informed of that risk. Instead the evidence produced a variety of unhelpful responses:

- a. Mr Keady challenged the record of his contribution to the discussion while at the same time denied any specific recollection;
- b. Mr Graham likewise suggested he had no memory and may not have been present at that stage;
- c. Mr Lucas-Smith accepted that if certain combinations of events did occur there was a significant risk;
- d. Mr Castle had a poor recollection of the discussion but, when it came to the issue of who was invested with a duty to inform the public about such an issue, he decided to take refuge in a *whole of government approach*.
- e. Mr McRae dealt with the issue by being critical of Mr Cheney for going to the media and not bringing his information to the ESB, then suggesting that there wasn't a risk to the city of Canberra, apparently because the long term weather outlook referred to by

him earlier in the meeting was for north-westerly winds, not westerly winds which arose from a totally different pressure system. The north-westerly winds *may or may not lead to escalating fire behaviour* depending on the moisture content of the air mass. *We needed detailed analysis of the weather sequence, detailed analysis of the fire behaviour. It's a very complex area.*

1210. In our submission, because of the unsatisfactory nature of the evidence about this discussion, the most reliable source for what was said by those participating in the discussion is the handwritten notes taken at the meeting. Despite Mr Keady's suggestion to the contrary, based on the evidence of the note takers (among others), Your Honour can be satisfied that these notes, albeit in shorthand form, are an accurate record of the words used at the planning meetings on and after 14 January 2003.

1211. It is clear from the notes^[2108] and was conceded by Mr Lucas-Smith that he informed the meeting that Mr Cheney had told him he had been approached by WIN television and wanted Mr Lucas-Smith to know that, if asked, he would say in substance that any strong gusts of wind from the west would bring the fires into Canberra city. The immediate response from someone present was apparently defensive: they were upset – the Bureau was not forecasting west winds. Further, it was anticipated that there would be *media attention* and that Marika Harvey as the ESB's media liaison person (with no experience whatsoever in fire behaviour) would need to *field questions*. Mr Castle clearly wanted to know what winds would create a threat and appears not to have received an answer. Someone considered that the ESB (and Your Honour should infer, to the exclusion of Mr Cheney) should be the source of reasonable advice to of threats to the public. Mr Keady appeared to consider that the ESB's response to Mr Cheney's comments would be to offer reassurance: concede that wind changes would make things difficult, but the ESB was *implementing measures to control this possibility*.

1212. In his evidence, Mr Castle conceded that it *could be the case* that the response suggested by Mr Keady as recorded in the minutes was being formulated to counter what Mr Cheney was going to be saying in the press, although he later asserted that he did not think it would be necessary for ESB to counter Mr Cheney's remarks. Your Honour would be satisfied based on the notes and Mr Castle's initial concession, that the focus on the meeting on hearing of Mr Cheney's forthcoming interview, was how to field enquiries from the media and counter what Mr Cheney would say, by offering reassurance about ESB's capacity to implement strategies to control the effects of wind changes. In our submission, this process indicates unwillingness on the part of ESB personnel to confront or even acknowledge the issue of the risk to the more densely populated areas of Canberra. It does not appear that ESB formed a collective view that there was no risk to Canberra, but rather that such risk as there was should not be discussed publicly, and certainly not without the imprimatur of the ESB. Further, if confronted with a position by someone in a position to speak with authority on the subject, the risk should be down-played..

6.4.2.3 *Mr McRae's Dismissal of Mr Cheney's Information*

1213. Mr McRae's response to the information from Mr Cheney is the most surprising. He was critical of Mr Cheney for *going to the media* and not *bringing the information to us*, despite the fact that what Mr Lucas-Smith was reporting was just the opposite. The media had approached Mr

Cheney, not the other way around, and his call to Mr Lucas-Smith was for the very purpose of notifying the ESB, in advance of the planned interview, of the views he would be expressing. Moreover, Mr McRae dismissed Mr Cheney's view as simplistic. He was apparently not assisted by a comment from arguably Australia's pre-eminent expert in fire behaviour, that strong winds from the west would bring the fires into urban Canberra. He needed *detailed analysis of the weather sequence*. According to Mr McRae, a forecast long term weather outlook of north-west winds involved an entirely different weather pattern from one which involved west winds. He was not prepared to concede the possibility of a risk arising from even a north-west wind, until he had information on moisture content.

1214. Your Honour should reject Mr McRae's explanation for his dismissal of this important information from Mr Cheney. The suggestion that a long term forecast of north-westerly winds does not bring with it the possibility of strong gusts of wind from the west, defies both common sense and the evidence in the Inquest. For example, Mr Bartlett spoke in his evidence about his experience in the 2001 fires where winds were forecast to come from the north-west but turned out to be almost due west[2109]. And there are numerous examples in the evidence of forecasts and discussions to the effect that the weather for 17 and 18 January 2003 would bring winds from the north-west turning westerly[2110]. One of these was noted in evidence by Mr McRae himself, in the course of explaining why predictions of impact on the morning of 18 January were referring to western South Belconnen[2111].

1215. Further, as planning officer, it was part of Mr McRae's role to identify a range of possible scenarios, including a worst case scenario. An assessment of possible consequences four or five days in advance will necessarily be simplistic. Indeed, it is the simplicity of Mr Cheney's assessment that makes it compelling and should have alerted senior officers at the ESB, and Mr McRae in particular, to the need for them to begin making their own assessments of the risk to the urban area and communicating the results of those assessments to the ACT community. Instead, Mr McRae contrived a basis for dismissing Mr Cheney's assessment without offering any alternative, apparently because the issue was *too complex*, while others at ESB planned a public relations strategy to counter the assessment.

6.4.2.4 *Flaws in the ESB Approach to Community Information*

1216. In our submission, the response to the views of Mr Cheney revealed by this evidence represents an early demonstration of two fundamental and ultimately significant flaws in the approach of the ESB and its senior officers to the growing risk from the fires, that continued to infect decision making about warning the ACT community of that risk, up to and during 18 January 2003. These were:

- a. treating the dissemination of information about the fires and their likely impact as a public relations exercise, rather than as an integral part of the operational response to the fires; and
- b. an unwillingness on the part of Mr McRae to admit of any view of potential fire spread, the consequent risk and the appropriate response to that risk, that did not fit within his

own rigid and sometimes obscure constructs, often in the face of clearly superior knowledge and expertise or common sense (or both).

1217. In the case of the public relations approach to the dissemination of information, in our submission, a significant factor contributing to this approach was the decision to, in effect, shift the reporting line of the media unit prescribed under AIIMS ICS through the situation unit to the planning officer and then Incident Controller[2112], to a line directly from Ms Harvey and Ms Lowe to Mr Castle[2113]. Although the evidence was that Ms Harvey was reporting to both Mr Lucas-Smith and Mr Castle, it is clear that her discussions on media issues, including settling the form of media releases, were primarily with Mr Castle. Thus, the system chosen resulted in responsibility for community information ultimately residing in personnel with no knowledge or expertise in fire behaviour and fire suppression, and scant knowledge in community warnings and preparedness. And the person with primary responsibility for predicting fire spread and its potential affect on assets and communities, Mr McRae was effectively absolved from the responsibility of ensuring that such predictions were meaningfully communicated to those under threat. It is open to doubt, given Mr McRae's intransigent views on identifying and communicating risk and his failure to *activate the trigger* for warnings to the community as discussed below, that a strict AIIMS ICS approach to the role of the media unit would have resulted in more accurate and meaningful media communications. But we invite Your Honour nevertheless to accept Mr Gellie's assessment that: *... a lot of stress was placed on public relations via media rather than creating a string of local networks to prepare the community for potential threats*[2114].

1218. It is also clear[2115] that Ms Harvey and Ms Lowe, as those primarily involved in drafting and formatting the messages to go to the community for approval by Mr Castle or Mr Lucas-Smith, were not adequately equipped for that role. Ms Harvey's background was exclusively in public relations and Ms Lowe was plainly out of her depth. However, this is a not a criticism of Ms Harvey nor of Ms Lowe. In our submission, ultimate responsibility for the dissemination of information to the community rested with those to whom Ms Harvey and Ms Lowe reported, namely Mr Lucas-Smith and Mr Castle, and primarily the latter. Mr Castle's focus on ESB public relations over community information and warning, is no more amply demonstrated than by his remarks referred to in the notes of the planning meeting on the morning of 15 January, that he was looking for some *positive spin*, which he said in evidence reflected a concern to make some *positive aspects public*[2116]. The difficulty with Mr Castle's position on this, as Your Honour should find, was that the information about *some of the successes* the ESB had achieved in, for example, saving the corroboree frog habitat, was not being communicated as a balance to bad news about the threat to the ACT and the Canberra urban area in particular, but instead of it.

1219. We refer below to later instances where these flaws in approach, in our submission, similarly obscured what should have been relatively simple assessments of risk and clear statements of potential threat.

6.5 KOPERBERG DISCUSSION – 15 JANUARY 2003

1220. Obviously not all of the fires that were a potential threat to populated areas of the ACT in general and Canberra in particular were fires under the control of the ACT ESB. The McIntyre's

Hut fire had its origin in NSW and the status of that fire was discussed between Mr Lucas-Smith and Mr Koperberg on 15 January 2003 at Queanbeyan. In our submission, the views expressed by Mr Koperberg about the fire situation, both to Mr Lucas-Smith and publicly, should have resulted in consideration being given to a general public warning that these fires were now a genuine threat to the Canberra urban area.

1221. As our outline of the evidence demonstrates^[2117], as was the case with ACT media releases and media comment, there appears to be an attempt in Mr Lucas-Smith's evidence about the discussion to portray a fire described as *contained* as something more than simply burning within containment lines, which may be no more than an existing road or track towards which the fire is burning. With that in mind and based on our analysis of the evidence, in our submission, Your Honour should conclude that on 15 January 2003, during the discussion between Mr Lucas-Smith and Mr Koperberg:

- a. Mr Lucas-Smith was informed in substance that although the McIntyre's Hut fire remained within containment lines (which we have already submitted were unacceptably expansive) that fire was by no means controlled or suppressed;
- b. At no stage was Mr Lucas-Smith told by Mr Koperberg or any other representative of the NSW Rural Fire Service in words or in substance that the McIntyre's Hut fire *would not be an issue* for the ACT. Mr Lucas-Smith's evidence to this effect should be rejected.
- c. In their discussions about possible developments in fire behaviour over the next few days, and in particular in the course of identifying possible scenarios, Mr Koperberg expressed concern for Canberra. So much was conceded in the cross-examination of Mr Koperberg by counsel for Mr Lucas-Smith^[2118]. Further, Mr Lucas-Smith responded to Mr Koperberg's concern by saying that he did not need Mr Koperberg to come from Sydney to tell him what the threat to Canberra was^[2119].
- d. During the discussion, Mr Lucas-Smith did not reject such an eventuality as a possibility.

1222. In our submission, Your Honour should also conclude that after Mr Lucas-Smith heard Mr Koperberg's television interview on the afternoon of 15 January 2003, at the latest:

- a. he understood that Mr Koperberg considered that the fires were a serious threat to the western suburbs of Canberra;
- b. Mr Lucas-Smith's own position as at 15 January 2003 was that he too would have expressed concern about the fires having potentially serious implications for the western suburbs of Canberra were the fires not contained before the onset of the predicted weather, and that was the reason he was requesting additional resources;
- c. Mr Lucas-Smith's comment to Mr Koperberg that he did not need Mr Koperberg to come from Sydney to tell him what the threat to Canberra was, reflected Mr Lucas-

Smith's belief at the time, as was the fact, that the fires to the west of Canberra including the McIntyre's fire represented a serious risk to the Canberra urban area.

1223. If, as Mr Lucas-Smith asserted, the recognition of that risk was the basis for Mr Lucas-Smith's request for more resources, then it was a risk that should have been communicated to the public. The importance of so doing in minimising the damage from the fires to property in the urban area, was succinctly articulated by Mr Koperberg when he was pressed on his view that it was inevitable that if the predicted weather eventuated, the containment lines would be breached and the fires would end in Canberra: *I can accept that the impact on Canberra was inevitable. The outcome however, is a different proposition in terms of loss. The outcome would be determined by the extent to which the community was effectively informed, the amount of appliances and other resources available in and around the point of impact.*

6.6 OTHER DEVELOPMENTS ON THE AFTERNOON OF 15 JANUARY

1224. It is clear that Mr Lucas-Smith was not the only senior officer at the ESB who had identified and acknowledged a risk to urban Canberra by the afternoon and evening of 15 January 2003. In Mr Castle's second and third requests for Commonwealth physical assistance sent early in the afternoon of 15 January, referred directly to the expansion of the fires and the weather conditions forecast for the weekend *causing concern for the ACT urban environment*, in the course of making the case for the assistance sought in the request^[2120]. Later that afternoon, Mr Castle expressed similar sentiments when he drafted the Cabinet briefing paper^[2121], discussed further below. Having had put to him the reference to *concern for the ACT urban environment* referred to in the request for Commonwealth physical assistance, Mr Castle agreed in evidence that as at the afternoon of 15 January 2003 his own concern for the ACT urban environment was no longer small, and Your Honour would so find.

1225. Mr Lucas-Smith was also asked about the words used by Mr Castle in this document. While disassociating himself from the words themselves, Mr Lucas-Smith went on to agree, in effect, that:

- a. the risk to the urban area was by this time a distinct possibility if certain things happened;
- b. that there should have been warnings issued that there was now a distinct risk to particular areas where people were living;
- c. there were not any such warnings; and
- d. responsibility for the lack of warning at that stage rested with Mr Lucas-Smith.

Subject to our comments below on those who, in our submission, shared Mr Lucas-Smith's responsibility for the failure to warn people at risk, Your Honour should so find.

1226. At the planning meeting commencing at 4:00 pm^[2122], it was clear from Mr Graham's report on operations that time was fast running out to complete containment lines on all the

ACT fires. Against that background, Mr McRae gave his *do the maths* warning, including the references to an FDI for the following Monday of 110-140, a 1 in 20 year fire and 1 in 40 year fire weather forecast and *the worst fire situation that you will see in your careers*. The minutes of the planning meeting record Mr McRae also referring to potential impacts on *public land, infrastructure, property and assets*. Mr McRae's evidence about the threats he was identifying in his comments at the meeting, and his later evidence dealing with similar issues[2123], can fairly be described as, at best, confusing and, on occasion, impenetrable. However what stands out from Mr McRae's evidence in relation to his thinking as at the afternoon of 15 January 2003 was that:

- a. while in referring to *large fire runs form any of these fires* he was talking about the ACT fires, he recognised the risk of a breakout from the McIntyre's Hut fire threatening the ACT pine plantations;
- b. he agreed that under extreme fire weather conditions it would have been difficult to stop a run from the McIntyre's Hut fire regardless of any work being done by ACT Forests in anticipation of a breakout from the McIntyre's Hut fire;
- c. his view was that at some point in the sequence of the bad weather that had been forecast, runs from the fires would run across the landscape and cause some damage, but he would not have expected a run when it was first made to reach anywhere near the city; and
- d. his feeling was that by Monday 20 January 2003 there would be a likelihood that any of the fires, including the McIntyre's Hut fire would impact upon the Canberra urban areas – that by Monday an impact on the Canberra urban area was a likely scenario.

1227. Mr McRae's evidence was that he did not say explicitly to anyone on 15 January that he thought an impact on the Canberra urban area was likely by Monday, but that he used the planning meeting to convey that Monday was when things would be most dangerous and he believed he did have discussions with people along the lines that he thought it was likely that the fires would impact on the urban area by Monday. In our submission, Your Honour would find that by the afternoon of Wednesday 15 January 2003, Mr McRae had formed the view that an impact on the Canberra urban area was likely by the following Monday.

1228. In a telephone discussion between Mr Graham and Mr Byrnes of the AFP at 5:34 pm[2124], 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*. Whatever Mr Byrnes may have made of Mr Graham's response, in our submission, Mr Graham's suggestion in evidence that he *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* should be rejected. Just as Mr Lucas-Smith at first attempted to characterise Mr Cheney's 13 January prediction as the fires burning *towards* Canberra city, this attempt by Mr Graham to explain away the plain meaning of his words in response to Mr Byrnes' reference to *Canberra*, is contrived. Particularly having regard to the dire warnings given by Mr McRae at the planning meeting only an hour or so earlier, Your Honour would be satisfied based on the exchange between Mr Graham and Mr

Byrnes and notwithstanding his assertions in evidence to the contrary, that by the late afternoon of 15 January 2003 Mr Graham had recognised a serious risk to the urban area of Canberra. However, unlike Mr Lucas-Smith, Mr Castle and Mr McRae, Mr Graham's role at the time was such that it was not part of his responsibility to ensure that the risk was communicated to those affected by it.

1229. In the circumstances, in our submission, Your Honour should find that by the late afternoon or evening of 15 January 2003 and at all times thereafter up to and including 2:00 pm on 18 January 2003:

- a. The Rural Fire Control Manual, the history of fires in the ACT, each of Mr McRae's e-mails received by them in the 12 months before the fires commenced (including, in the case of Mr Lucas-Smith and Mr McRae, the 30 December 2002 e-mail discussing flammability of the suburbs) and Mr McRae's dire warnings at the planning meeting in the afternoon of 15 January 2003, formed part of the thinking of each of these officers and are likely to have influenced their view of the risk from the fires;
- b. each of Mr Lucas-Smith, Mr Castle, Mr McRae recognised and acknowledged that the fires, including the McIntyre's Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of urban Canberra; and
- c. in the case of Mr McRae, he considered that an impact on the Canberra urban area was *likely* by Monday 20 January 2003.

1230. As discussed below, no warning was given clearly identifying that risk before 2:40 pm on 18 January 2003. We should add, by way of contrast to the position taken by the ESB, that Mr Val Jeffrey too had recognised the risk on or before 15 January, but despite his limited resources and the absence of any relevant personal responsibility, he took step to ensure that all those in his area who might be affected by the risk were notified of it and given guidance on how to prepare^[2125]. Consistently with the views of Mr Koperberg referred to above on the relevance of timely warning to the extent of loss and as discussed further below, Your Honour would conclude that had a warning to the effect of that sent by Mr Jeffrey on 15 January 2003, been issued that day by the ESB to residents on the western edge of urban Canberra and rural residents west of there, much of the injury and property loss and damage resulting from the fires, would have been avoided.

6.7 THE DECISION TO DEFER A WARNING TO THE PUBLIC

1231. The view reached by Mr Lucas-Smith, Mr Castle and Mr McRae (among others) on the afternoon of 15 January that the fires presented a serious risk for the urban area of Canberra as discussed above, was disclosed by Mr Lucas-Smith and Mr Castle to the ACT Cabinet when they briefed the Cabinet the following morning. Further, while this Cabinet briefing was being held, the morning planning at ESB attended by (among others) Mr McRae and Mr Graham, was being conducted at which it was noted that *urban contingencies* were to be discussed between the ACT Fire Brigade and ACT Ambulance Service^[2126]. However, in our submission, for reasons that

are at best obscure, Mr Lucas-Smith, probably with the concurrence of Mr Castle based on his conduct, had by the time of the Cabinet briefing determined that, for the time being, the public would not be told of the view he and others at ESB had formed on 15 January 2003 at the latest, that there was a serious risk of an impact on the suburbs of Canberra.

1232. Likewise, Mr McRae had made a decision that was not necessary or appropriate on 15 or 16 January to be activating the trigger for a clear warning to the Canberra urban community that there was likely to be some impact on the western side of urban Canberra on the following Monday. In our submission, the conduct of each of Mr Lucas-Smith, Mr Castle and Mr McRae up to the early afternoon of 18 January 2003 is explicable on no other basis. We discuss further below the elements of those decisions and the manner in which they were implemented over the three days.

6.7.1 THE CABINET BRIEFING [\[2127\]](#)

1233. Obviously, the most likely fire to affect the Canberra urban area was the McIntyre's Hut fire and the Cabinet Briefing document refers to the potential for spotting over containment lines for that fire under north-west winds and *potential serious impact to ACT Forest Pines and subsequently the urban area*. The briefing paper went on to include the urban edge as *assets under potential threat*. The document produced a discussion in the meeting of the process by which a State of Emergency might be declared and it would not be contentious to assert, as Mr Castle did, that declaration of a State of Emergency would be necessary if the fires impacted on the urban area.

1234. The question to which there was no satisfactory answer during the evidence is why, if the ACT Cabinet were entitled to be informed of such a *potential serious impact*, the public were not entitled to be aware of it. In addition, as the notes taken at the briefing and our detailed analysis of the evidence of the witnesses who were present at the briefing make clear, there was discussion about which actual suburbs faced the greatest risk, threats to major infrastructure, the need to prioritise which assets to save and fixing a percentage chance of a State of Emergency being declared.

1235. Perhaps the apparent indifference to the issue is explained by the evidence of Mr Tim Keady who, apart from protesting a continuing lack of recollection on important issues, ventured the suggestion that the risk did not seem to be high enough and posed the question as to what they could be told, particularly given what he anticipated would be a demand for more specific information. However, if this were the reason, it is nonsensical. In our submission, a public statement by the ESB could have been formulated in the following terms: *The Emergency Services Bureau informs the public of Canberra, particularly those residents on the western edge of the urban area, that there is a significant risk that in the next few days, possibly by Saturday and more likely by Monday, the fires currently burning to the north and west of Canberra in both the ACT and NSW will directly affect the urban area of Canberra to some extent. Where that affect will occur cannot yet be more than estimated but the suburbs in the Dunlop and Weston Creek area are at greatest risk. Residents in those areas should immediately commence making preparations for such an eventuality and can refer to the ESB web site for information about how to do that. ESB will be making direct contact with residents in the areas likely to be affected over the following days to assist in those preparations and provide information on how residents might prepare for evacuation should that*

become necessary. A warning in similar terms was issued by the ESB on 20 January 2003 for the following day^[2128].

1236. In our submission, the briefing paper and the contemporary record of the Cabinet briefing is at odds with the evidence from several of those present who sought to diminish the impact of those predictions on the discussion. The Chief Minister, Mr Stanhope, for example, gave evidence that his awareness of the risk from the fires was not changed by the briefing and he seemed to suggest that the discussion did not amplify the risk to the urban area. In his statement, he confirmed that the suburbs of Weston Creek and Dunlop were mentioned in the context of a general comment about the possibility of the fires reaching urban Canberra, but again we see the formulation that these suburbs would, as a result of their location, be the suburbs *towards which the fires might run*. He suggested that the possibility of the fires reaching urban Canberra was not discussed in a way that conveyed any understanding that the fires were a direct threat or that it was anticipated that houses within the urban area were at risk. Mr Stanhope appeared to accept that the fire *advancing to the urban edge* was a *theoretical possibility*, but it was important to distinguish in the language used to draw a distinction between *that area of land immediately before the start of the suburbs* and the suburbs themselves. It is not clear from Mr Stanhope's evidence how he was able to conclude that a wildfire that reached as far as *that area of land immediately before the start of the suburbs*, would not cause some damage in the suburbs themselves. However, according to Mr Stanhope, the threat referred to in the briefing paper was not described as imminent and that it was not discussed as a real possibility.

1237. In our submission, this evidence is very difficult to accept. The written record comprised of both the briefing paper and the notes of the discussion make it clear what the Cabinet was told. On that material, they would and should have been very concerned by the information. Of course, with the benefit of hindsight and in the knowledge that the public were not given the information available to ESB and the Government by 16 January 2003, it was no doubt tempting to reduce the impact of the discussion about the risk to Canberra in the Cabinet briefing. It may also be that the tension between the record of the meeting and the apparent lack of concern about when and how the residents of Canberra would be warned, springs from the assumption on the part of the Government that the ESB would have the matter of warnings in hand. However, it remains the fact that the Cabinet were told on the morning of 16 January 2003 that there was a serious risk that the fires would impact on infrastructure and the suburbs of Canberra, including particular named suburbs, and that information was never publicly disseminated.

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. It is unfortunate, however, that during the briefing, the ESB representatives were not called upon to outline how they proposed to inform the public of the risk.

6.7.2 THE MIDDAY PRESS CONFERENCE^[2129]

1239. In our submission, Mr Lucas-Smith's decision is first evidenced by his statement at the midday press conference in which he says he did not think there was any threat to the urban

areas, which sits in stark contrast to what had he told the ACT Cabinet earlier that morning, both in writing and in the course of his briefing. As appears in the summary of the evidence, when asked about this Mr Lucas-Smith and Mr Castle placed emphasis on the words *at the moment* – *At the moment I don't think there's any threat to the urban areas*. To the extent that the phrase *at the moment* qualifies his state of mind, in our submission Mr Lucas-Smith simply was not telling the truth. His state of mind was that there was a potential threat to the urban area. Similarly, if *at the moment* is meant to qualify the existence of the threat, such a statement by Mr Lucas-Smith is inconsistent with his conduct up to this point and, worse, significantly inconsistent with what was about to occur that afternoon at the briefing of the ACT Fire Brigade.

1240. It is notable from our analysis that neither Mr Lucas-Smith nor Mr Castle sought to explain or justify this comment by Mr Lucas-Smith on the basis that he was referring only to the fires in the ACT, in contrast to his similar remarks at the press conference the following day. Rather, as discussed above, their focus was on his use of the words *at the moment*. This is not surprising, in view of Mr Lucas-Smith's earlier evidence that the risk to the urban area he had identified by that time included a risk to the southern suburbs of Canberra from the Bendora fire, under the influence of winds tending due west^[2130]. In any event, as discussed below in reference to the press conference the following day, it is inconceivable that someone in Mr Lucas-Smith's position in talking to the media would make the blanket statement: *At the moment I don't think there's any threat to the urban areas*, and expect to be understood as referring only to threats from fires burning in the ACT.

6.7.3 BRIEFING OF THE ACT FIRE BRIGADE AND ACT AMBULANCE SERVICE

1241. In our submission, Your Honour should conclude that two hours after this press conference, Mr Lucas-Smith briefed members of the ACT Fire Brigade and ACT Ambulance Service^[2131] in the terms recorded by Mr Cartwright and supported by the evidence of Mr Prince (among others), including that the information carried Mr Lucas-Smith's caveat that it was not for public dissemination. Done with the aid of a map which he drew during the briefing and on the basis that he did not want to alarm the public and media, Mr Lucas-Smith made it clear that there was a 50/50 risk that the fires would break their containment lines and that there would be an impact on the urban area of Canberra as there had been in 1939, 1952 and 1985. Apart from some issues of detail and the question of the sensitivity of the information as discussed below, there does not appear to be any real issue on the evidence about the general thrust of what Mr Lucas-Smith was saying during this briefing and neither could there be, since it is consistent with what had been discussed at planning meetings and during the Cabinet briefing earlier that day.

1242. Mr Lucas-Smith could not recall saying that something to the effect that he did not want the public alarmed, the information he provided to the briefing was not to leave the room and that if it got to the media he would deny it. He did not deny that he said it but thought it was unlikely. He also did not recall that a concern about alarming the public being a thought in his mind. But he could not be as categorical as saying that he never thought there was a problem with alarming the public and that never made comment about alarming the public. Mr Lucas-Smith suggested

that there might have been some friendly discussion or banter about it. But as he could not recall it, Your Honour can exclude this suggestion as entirely speculation.

1243. On the other hand, Mr Cartwright made a contemporaneous handwritten note of the comment and was categorical that it was said seriously. Mr Cartwright's note and recollection was supported by Mr Barr, Mr Ross, Mr McLeary and, to some extent, by Mr Collins. In particular, Mr Barr noted in his evidence a remark by Mr Lucas-Smith to the effect that the statements he had been making in the media did not accurately reflect his assessment of the fires and this was something he did not want to leave the room^[2132]. Mr Bennett agreed that Mr Lucas-Smith made remarks along the lines suggested by Mr Cartwright but he took it to be a reference in jest. Importantly, Mr Prince who presented as an astute observer and an impressive witness, recalled that Mr Lucas-Smith made it clear that the information he was imparting was of a sensitive nature and *we didn't want to alarm either the media or the public in relation to those fires*. He also agreed that Mr Lucas-Smith said something along the lines that he wanted the information to stay within the room. In cross examination by counsel for Mr Lucas-Smith, Mr Prince accepted the general proposition that when fire fighters come together there can be touches of humour. But he was not asked directly whether he understood the comments made by Mr Lucas-Smith referred to in his evidence were made in jest. Only Mr Dutton and Mr Newham could not recall reference to the issue and, in the case of Mr Newham, he could not say that it was not said and thought he may not have been in the room for the entire briefing.

1244. In our submission, the weight of the evidence overwhelmingly favours the conclusion that Mr Lucas-Smith made the comments concerning the sensitivity of the information as recorded by Mr Cartwright and affirmed by the evidence of Messrs Barr, , McLeary, Ross and Prince, and Your Honour should so find. Further, because of Mr Cartwright's contemporaneous note and his categorical recollection of the gravity of Mr Lucas-Smith's remarks, coupled with the fact that only Mr Bennett appears to have taken the remarks in jest, Your Honour should conclude that when Mr Lucas-Smith said that he did not want the public alarmed, the information he provided to the briefing was not to leave the room and that if it got to the media he would deny it, he was serious. This statement, made seriously by Mr Lucas-Smith to his senior colleagues in the ACT Fire Brigade and ACT Ambulance Service, and regardless of whether or not those who heard it felt constrained by how they used the information, further evidences the decision by him to withhold from the media and the public, his true state of mind concerning the risk from the fires (including the McIntyre's Hut fire) to the Canberra urban area.

6.7.4 AFP NOT INFORMED^[2133]

1245. Similarly, while that risk could be spoken about at the Cabinet table and with the ACT Fire Brigade and ACT Ambulance Service on condition of confidentiality, it could not be revealed to anyone else who would have insisted that the public be informed. Thus, in a briefing later on 16 January for the AFP, commenced by Mr Castle but in which Mr Lucas-Smith later took the lead role, the evidence reveals that any risk to the urban area was not discussed. The Cabinet briefing paper used that morning discussion was not provided to the police members present. It may be that the fact of the Cabinet briefing was not even mentioned to the AFP, and while there was a

discussion about the threat to rural property there was no discussion to suggest that ESB regarded the fires as an emergency. As has been outlined in the narrative, Mr Murray considered that information suggesting there was a risk to the urban area and high risk to Uriarra Pine Plantation of the order of 70% was *critical information* and Your Honour can be satisfied that if the AFP members present had been given that information they would have recorded it and remembered it.

1246. The evidence of the AFP members, particularly Commander Newton, was that if they had been aware of a genuine risk to the urban area they would taken quite different action including the activation of the Police Operations Centre much earlier and more planning and consultation with the ESB. Inevitably the issue of informing the public of the risk would have come to the fore. Your Honour would be entitled to conclude based on this evidence and on the evidence of the actions in fact taken by the AFP on the morning of 18 January when the extent of the risk became clear that, if the AFP members had been given the same information as that provided earlier that afternoon to the ACT Fire Brigade and ACT Ambulance Service:

- 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 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 on 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^[2134].

6.7.5 THE MCRAE TRIGGER

1247. Our narrative of the evidence above^[2135] sets out in considerable detail the evidence of Mr McRae on this issue for two reasons. First, it provides the clearest example of Mr McRae's unwillingness to admit of any view of potential fire spread, the consequent risk and the appropriate response to that risk, that did not fit within his own rigid constructs, as referred to above. In that regard, the passages of evidence set out in the narrative speak for themselves. Secondly, it articulates and provides the context for Mr McRae's evidence in response to the

direct question why it was not appropriate on 15 or 16 January to be telling the ESB media people that ESB planning was suggesting that there was likely to be some impact on the western side of urban Canberra on the following Monday and people should be told about this so they can begin to prepare. Critically, Mr McRae's evidence was that: *At the time we made certain decisions on the levels of fire activity and the triggers that they cause for activating warnings to the community. And these were based on what was currently going on and what was forecast to go on. The decision that was made was that we hadn't yet reached the point where we needed to do that*^[2136] (emphasis added).

1248. Ultimately, the position taken by Mr McRae was that as at 15 or 16 January, the warnings to the public up to that point were sufficient and that he made a *professional call* that there was not then a need for a level of warning that would involve telling those who may suffer the impact of fire the following Monday (in the form of embers and firebrands up to three rows of houses into the suburbs) about the need to prepare for possibility of that impact. According to Mr McRae, the need for a such a warning to all or part of the urban community would not be triggered until *we are tracking fires heading towards certain suburbs*.

1249. However, what is most striking about Mr McRae's evidence on this issue, is his view that while people on the western edge of urban Canberra and nearby rural areas, did not need to be told on 15 or 16 January of an impact that was *likely* the following Monday, by as early as 16 January, it was *most important* for the ACT Fire Brigade and ACT Ambulance Service who *conduct most of the business in the urban setting* to plan for impacts on the urban environment. It is self evident that if these agencies were to begin planning for bushfire impacts on the urban area, the ACT Fire Brigade would be planning for fires affecting urban structures and the ACT Ambulance Service would be planning for fire related injuries to people in urban Canberra. In our submission, the proposition that it was *most important* to provide these agencies with the opportunity to plan for damage to homes and injuries to residents in the urban area, but not equally important to give the residents themselves that opportunity, is nonsense and should be criticised by Your Honour accordingly.

1250. It is not clear whether the decisions taken by Mr McRae and referred to in his evidence and that of Mr Lucas-Smith referred to above, were in some way co-ordinated, or whether each came to the same result by a different process of reasoning. We strongly suspect the latter, because of the lack of evidence of Mr Lucas-Smith and Mr McRae consulting with each other about their views on planning and strategies outside the formal planning meetings. This is in itself a matter of concern, given the importance under the AIIMS ICS of co-ordinating the roles of planning and incident controller. But what is clear, in our submission, is that independently or in consultation, both arrived at a decision that had the effect of depriving the people of Canberra of a reasonable opportunity to prepare for a risk that both saw as serious, or even likely.

6.7.6 THE SITUATION AT THE END OF 16 JANUARY

1251. In a radio interview with Mr Lucas-Smith at around 5:00 pm on 16 January^[2137], he was describing the importance of completing containment lines around *the fires in the Namadgi*. Asked whether spotting from the fires would bring them closer to the suburbs, Mr Lucas-Smith was quick to dismiss that possibility: *Close to the suburbs, no, that's not right – it will go further south in the*

Namadgi. Once again, this interview presented him with a clear opportunity to say, as he knew to be the fact, something to the effect that: *Well, under the influence of a more westerly wind, spotting closer to the suburbs from the fires in the Namadgi is distinctly possible. And more so under forecast conditions from the McIntyre's Hut fire just over the border in NSW*. But he apparently chose not to. The NSW Rural Fire Service, on the other hand, that evening issued a press release that predicted in clear terms that *West north-west winds expected Saturday and Sunday will pressure lines to the east and south-east and force the fire to the ACT border* (emphasis added). Any senior officer of the ESB who read this would have known that the McIntyre's Hut fire would only reach the ACT border if it had first breached its eastern containment line. However, inexplicably, the ESB had no system in place for monitoring media releases from the NSW Rural Fire Service^[2138].

1252. In considering the situation as at the end of 16 January 2003, our submission is that the people of Canberra, the people in settlements and rural areas west of Canberra and the Australian Federal Police, were entitled to have the same information that was given to the ACT Cabinet and, for that matter, the ACT Fire Brigade and ACT Ambulance Service. The fact that was not done is, in our submission, a serious and deliberate omission, primarily by Mr Lucas-Smith as the experienced senior officer at ESB but also by Mr Castle and Mr McRae, since they were all invested with the knowledge of the risk and were each in a position to take steps to impart the necessary information.

6.8 17 JANUARY

6.8.1 CANBERRA TIMES ARTICLE

1253. In dealing with the events of 17 January 2003, Your Honour would dismiss the evidence of Mr Nicholson that headline in the Canberra Times of that morning reading *Next Five Days Critical* was some kind of effective warning or *linkage* for the urban community, particularly given that the article carries the quote from Mr Lucas-Smith that he did not think there was a threat to the urban edge of Canberra. Mr Nicholson first suggested in evidence that, while earlier quotes from Mr Lucas-Smith should be seen *authoritative statements*, in this comment he was not being *categoric*, that one conclusion you could draw is that people should not believe the quote and that it would be *fairly risky* for people to read it and to go about their business and not stay at their house over the weekend. These suggestions should be rejected by Your Honour as both absurd and inconsistent with Mr Nicholson's earlier evidence. As Mr Nicholson ultimately conceded, any resident of Duffy reading the article would be entitled to conclude there was no immediate risk^[2139].

6.8.2 MORNING PLANNING MEETING

1254. At the morning planning meeting^[2140], Mr Mason of the Bureau gave his weather forecast. His forecast for the following day, 18 January 2003, is notable in two respects. Firstly, as conceded by Mr McRae, Saturday and Monday were starting to look as though they would be much the same in terms of fire weather. Both days had all of hallmarks of extreme conditions, and Mr McRae's description of what that meant for the likely run of the fires as recorded in the minutes, including *potential for 10km spot over distance*, was suitably alarming. Secondly, the winds

for Saturday were forecast as: *north-west winds are expected 20-25kms, gusting 45kms possibly as high as 60kms, pulling back to a westerly direction* (emphasis added). It was also clear from the reports of the progress of containment, that critical backburning operations had not been completed overnight or, in some case, even commenced. And the prospect of aerial incendiary operations on the McIntyre's Hut fire was generating considerable concern, to the point that a decision was made formally to notify Queanbeyan that the ESB objected to the aerial ignitions under the worsening weather conditions.

1255. Your Honour can be satisfied that the message coming out of the planning meeting to those present was unequivocally one of considerable alarm. It is clear that options for controlling the Bendora and Stockyard fires in advance of the forecast extreme conditions were all but exhausted. The NSW Rural Fire Service was resorting to a strategy in a last ditch attempt to control the McIntyre's Hut fire that was seen by Mr Lucas-Smith and others at ESB to be at best, extremely risky and at worst, foolhardy. And the prospect of all of the fires experiencing runs *up hills, across creeks, rivers and containment lines* and spotting 10 km with embers starting new fires, was identified and discussed. Mr Lucas-Smith asked for map detailing potential spot distances *for all fires*, including the McIntyre's Hut fire. Further, the evidence is clear that the outlook worsened considerably as the morning progressed.

6.8.3 MIDDAY PRESS CONFERENCE^[2141]

1256. Despite this, at the midday press conference on 17 January 2003, an important opportunity to state what was now obvious to both Mr Lucas-Smith and Mr Castle was lost. Instead of saying that it was likely that fires, fanned by north-west to westerly winds, would collide with the urban area some time over the next few days, Mr Lucas-Smith chose to compound the harm done by that morning's newspaper by saying that, under a north-west wind the chances of the fire meeting the urban edge were *pretty slim*. He also responded with a categorical *no* to a question about the need to evacuate and, while referring to it being prudent to take precautions, was clear that his remarks applied only to people who lived *adjacent to Namadji National Park*. In this context, it is appropriate to note that Mr Lucas-Smith said in the press conference that people adjacent to the National Park would know what precautions to take, because *people who live in the rural areas understand what the impacts or potential impacts of fire is*. The clear inference that Your Honour can draw from this remark is that, at least in Mr Lucas-Smith's mind, people who live in urban areas did not.

1257. It is also notable that on a number of occasions during the press conference, Mr Lucas-Smith described the fires as *within* or *behind containment lines*. Mr Lucas-Smith was apparently careful not to go as far as describing the fires as contained or controlled. But to a media person at the press conference or the public hearing reports of the press conference, untrained in fire suppression, the impression given and intended to be given by Mr Lucas-Smith, was that there was some kind of barrier that he considered had a realistic prospect of holding the passage of the fires under forecast conditions. Your Honour should conclude that this was an impression that was false and that Mr Lucas-Smith knew to be false. Your Honour would draw the same conclusion concerning the ESB's noon media update^[2142].

1258. Mr Lucas-Smith is an experienced firefighter. He was present at the planning meeting that morning and heard the predictions of fire runs and spread, and indeed himself referred to 10 km spotting distances. He can be taken to have known that, since the planning meeting, the aerial ignitions on the McIntyre's Hut fire had commenced and, due to deteriorating weather, backburning operations on Bendora and Stockyard had ceased and crews were in the process of being withdrawn altogether from the Stockyard fire. Your Honour can be satisfied that at midday on 17 January, a man of Mr Lucas-Smith's experience well recognised that it was in fact the chances of preventing the fires crossing containment lines that were *pretty slim*, to the point of being non-existent.

1259. An attempt was made in the course of the evidence to justify or explain Mr Lucas-Smith's *pretty slim* prediction on the basis that, read in context, his prediction related only to the ACT fires. Mr Lucas-Smith agreed with that analysis, suggesting that he was not thinking about the McIntyre's Hut fire. Your Honour should reject this evidence – it is absurd. As a general comment, the concept that the CFCO briefing the media on fires that obviously all threatened Canberra – a view with which he had privately concurred for some time – would leave out of account the effect of the biggest and most threatening fire of the three, simply because it was in NSW, is untenable. More particularly, the explanation is wholly contrived and Your Honour should so find. First, as discussed above, it overlooks that Mr Lucas-Smith himself had earlier acknowledged that under winds tending due west, the Bendora fire would impact the southern suburbs of Canberra, as in fact occurred[2143]. Winds turning to westerly on the following day had been forecast by Mr Mason at the morning planning meeting. Secondly, if it were to be suggested that Mr Lucas-Smith was conscious of this distinction as he was making these remarks, Your Honour should find he must have been equally conscious that the subtlety of the distinction was likely to be lost on the media people present at the conference and certainly by the time his comments were edited and broadcast to the Canberra public, as appears to have occurred[2144]. Thirdly, if the distinction were said to have been dictated by an agreement or protocol with NSW that the ESB would only talk about the ACT fires only, it is clear on the evidence that the suggestion of such an agreement or protocol is a concoction[2145].

6.8.4 AGREEMENTS AND PROTOCOLS WITH NSW

1260. Both Mr Lucas-Smith and Mr Koperberg[2146] denied the existence of any such agreement or protocol and Mr Castle himself ultimately conceded that the agreement or protocol referred to in paragraphs 107 and 108 of his statement did not, in fact, exist. In the end, the best Mr Castle could do was describe it as *more of a courtesy* adopted by the ESB, and apparently reciprocated by NSW, without any meeting of minds or, to Mr Castle's actual knowledge, it ever being discussed. Further, it is clear from the evidence as referred to in our analysis that there were numerous instances, particularly later in the week leading up to 18 January, of ESB press comment and media releases referring to the McIntyre's Hut fire. And Mr Lucas-Smith agreed in evidence that there was nothing preventing him from passing on information he had about the McIntyre's Hut fire at noon on 17 January. Indeed, as early as 9 January, Mr Lucas-Smith expressed the view that the ESB's biggest concern was the McIntyre's Hut fire[2147].

1261. The reference in paragraphs 107 and 108 of Mr Castle's statement to *agreements and protocols we had in place with NSW* and the assertion that *ESB press releases consistently only referred to the Bendora and Stockyard fire*, were simply untrue. Mr Castle agreed that he was present in court throughout Mr Lucas-Smith's evidence[2148], but later denied[2149] that he heard Mr Lucas-Smith say he was unaware of the existence of *anything as formal as a protocol* and agreement with the proposition that there was nothing preventing him from passing on information about the McIntyre's Hut fire at midday on 17 January 2003. He agreed that he had read his statement the night before giving his evidence and, apart from some minor corrections, swore that his statement was true and correct[2150].

1262. In our submission, the evidence establishes beyond any doubt that that these references in paragraphs 107 and 108 of Mr Castle's statement were untrue. And the fact that they remained in Mr Castle's statement after he re-read his statement and then swore to the truth of the statement including the paragraphs, is very serious. It is ultimately for Your Honour to determine whether it appropriate to take the matter any further. However, as a minimum, Your Honour would conclude that at the time Mr Castle prepared his statement, he was acutely conscious of the fact that at the press conference at midday on 17 January 2003, Mr Lucas-Smith had made a prediction concerning the risk to the urban area of Canberra that Mr Castle knew to be unsupportable based on what was known by ESB and its senior officers (including Mr Castle) at the time the prediction was made. He therefore set about attempting to concoct a justification for the prediction which he must have known would not stand up to close scrutiny. His evidence that in drafting paragraphs 107 and 108 of his statement he was not trying to establish an explanation as to why more was not said at the press conference on 17 January, is equally implausible and should be rejected.

1263. In our submission, it is open on the evidence to conclude that the media conference at midday on 17 January 2003 and the explanations offered both by Mr Lucas-Smith and Mr Castle for the words used by Mr Lucas-Smith:

- a. constituted a further instance of the implementation by Mr Lucas-Smith of his decision to defer telling the people of the ACT, and Canberra and particular, the true position concerning the risk presented by the fires, including the McIntyre's Hut fire;
- b. confirm that Mr Castle participated in the deception, either by condoning the decision or not acting to correct an impression left by Mr Lucas-Smith's prediction, which Mr Castle knew to be unsupportable.

It was suggested to Mr Lucas-Smith[2151] during his evidence that there was a conscious distinction between what he said in the media about the risk to the urban area of Canberra and what he really believed. He rejected that suggestion. Similarly, Mr Castle gave evidence that he did not think there was *any conscious reason* for not identifying by midday on 17 January that there was a possibility that people in Canberra may be personally affected by the fires[2152].

6.8.5 EVENTS IN THE AFTERNOON OF 17 JANUARY

1264. Conditions in the afternoon of 17 January continued to deteriorate dramatically, both in respect of the ACT fires and the McIntyre's Hut fire[2153]. In particular, the ESB's fears about the aerial ignition strategy at McIntyre's Hut began to be realised. However, despite referring that morning to 10 km spotting distances, Mr McRae would not accept that he thought at the time it was likely that the McIntyre's Hut fire would run into the Uriarra pine plantation. His focus was on fires to the south breaking containment lines and his view at the time was that *we didn't have to fuss too much about McIntyre's*. On the other hand, early in the afternoon, Mr Kevin Cooper was at the ESB at Curtin, and spoke to Mr Graham and Mr McRae. Despite a tendency to prolixity, Your Honour would have been impressed by Mr Cooper's recall of events and should accept his evidence to the effect that:

- a. he asked Mr Graham what plans were in place to cope with the fires reaching the western edge of Canberra and Mr Graham responded that the urban fire service will look after that; and
- b. he asked Mr McRae a similar question, to which Mr McRae responded that there were not any plans at the moment.

6.8.6 ACT FIRE BRIGADE PLANNING

1265. During the course of the day, prompted by what they were told by Mr Lucas-Smith the previous afternoon, officers of the ACT Fire Brigade has been developing an Incident Action Plan, which they produced at 4:30 pm[2154]. In the context of acknowledging that the ACT Fire Brigade is the primary response agency for the Canberra urban area and some properties east of the mountains close to Canberra, the plan specifically identifies the risk of spotting from the fires in the Namadgi affecting the suburbs of Canberra: *Spot fires may occur up to 10-15km in front of the fires. Predominant NW winds are likely to initially cause grass fires within 5km of Canberra's western boundary, and later to structures and bushland areas within the Canberra urban area.* The IAP contemplates that the response to structures in the built up area would be 2 pumpers for first alarm. In our submission, Mr Roche's criticisms of the IAP summarised in our narrative are valid and justified. However, it is not possible for Your Honour to conclude that a more realistic assessment at that late stage of the resources necessary to deal with the impact of the fires, would have produced a different outcome in respect of the damage to property caused by the fires the following day.

6.8.7 3:45 MEDIA RELEASE

1266. In our submission, what would have produced a different outcome, and indeed the only realistic strategy left to the ESB by the afternoon of 17 January to limit the likely damage from the fires in urban Canberra and nearby rural communities, was to provide a warning to all residents who may be effected that they should immediately begin to prepare for the impact of the fire in whatever time they had left. Instead, and consistently with the position taken by both Mr Lucas-Smith and Mr McRae the previous day, the ACT Fire Brigade were well advanced in their preparations for an impact of the urban area, but the people of the ACT were told by press release only 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 and, finally, that because of the prevailing winds, ash and burnt material may be deposited in some suburban areas of Canberra.[\[2155\]](#)

1267. In view of the clear words of the media release, it is impossible to suggest that it was not intended to provide information to ACT residents about all the fires threatening them, including the McIntyre's Hut fire. Further, Mr Castle agreed that what was said in the press release about the McIntyre's fire did not include the more cautionary tone used in the NSW Rural Fire Service media releases and that it would not be unreasonable for someone having looked at the press release to think that, if there was anything to be concerned about, the ESB would be telling them. We would add that this must encompass the McIntyre's Hut fire, which the press release says was being *closely monitored* along with the two fires in the ACT. Further, there could be no more apt demonstration of what it meant to be in the loop in relation to the true state of knowledge about the risk, than is provided by a comparison of what is in the ACT Fire Brigade IAP about spot fires affecting the urban area, and the reference in the media release to the effects on the urban area of smoke and *ash and burnt material*.

1268. What is worse, an earlier draft of this media release prepared at 3:30 pm by Ms Lowe included as a part of a suggested quote by Mr Castle the words *residents in some areas may see flying embers*, which would have at least provided a slightly more accurate picture of what was anticipated. But Mr Keady, a man apparently with no expertise whatsoever in fire behaviour or fire suppression but who had been present at important planning meetings and the briefing of Cabinet[\[2156\]](#), took it upon himself to delete those words and substitute the reference to *ash and burnt material*. Neither Mr Castle nor Ms Lowe could recall the circumstances in which this occurred.

1269. The suggestion by Mr Nicholson[\[2157\]](#) that such information could be seen as a warning of spot fires in Canberra is impossible to take seriously. Could be seen by whom? The urban community who had very little information prior to the fire season and had been effectively told that they were not at risk? If the intention of that media release was to warn residents of spot fires in Canberra, then why does the media release not say that *burning* not *burnt* material may be deposited in some suburban areas of Canberra and that spot fires are likely to occur as a result? His later suggestion that the media release provided warnings of *embers and burning material* is particularly ironic, given that *embers* is the very word that Mr Keady deleted. In any event, as was made clear in the evidence of Mr McRae, there is a significant difference between what is contemplated by the expression *burnt material*, and fire brands capable of starting a spot fire[\[2158\]](#).

1270. Although Mr Castle said in evidence that he did not think he saw the draft of the media release[\[2159\]](#), he was apparently involved in the preparation and despatch of the release in its final form, including the comments attributed to him. In our submission, the form of this media release is a further illustration of the implementation of the decision referred to above to conceal from the people of the ACT for the time being the true position concerning the seriousness of the risk from the fires. That true position was in fact confirmed less than an hour later, in a further request for Commonwealth physical assistance signed by Mr Castle and timed at 4:30

pm[2160], which talks of predicted weekend weather conditions *causing concern for the ACT urban environment and potential for 10m spot fires threatening the containment lines.*

6.8.8 EVENING PLANNING MEETING

1271. Messrs Lhuede, Taylor and Gellie spent the best part of the afternoon on 17 January 2003 preparing maps and other documents predicting where the fires were likely to be the following afternoon, for use at the afternoon planning meeting. The process they went through to produce their predictions is set out in detail in our narrative[2161]. The mapping they produced was presented to the planning meeting at 6:00 pm on Friday, 17 January. As the evidence concerning the planning meeting makes clear[2162], by the time that meeting was held there was no question that there was a significant risk that the urban area would be affected. This was directly acknowledged by Mr Lucas-Smith, although he spoke in evidence about options for intervention.

6.8.8.1 Fire Spread Predictions

1272. Mr McRae's position as to what the predictions were showing about potential for an impact on the urban area is difficult to fathom, particularly having regard to what he had said in his e-mails in the preceding 12 months and his dire predictions at the afternoon planning meeting two days earlier. And, indeed, what he had said about fire runs and spotting distances at the planning meeting that morning. Almost the entire focus of his answers on this issue as referred to in our narrative, is on what factors were, in his mind, likely to delay or inhibit the spread of fire towards the suburbs or interfere with the accuracy of fire spread predictions. Factors such as not knowing *exactly* where breakouts from the McIntyre's Hut fire would occur, the capacity of NSW to prevent spotting from the McIntyre's fire into the pine plantations, his expectation that the weather would abate by the afternoon or evening and that the forecast wind change would arrive as predicted and his expectation that firefighting operations in NSW and the ACT having *some impact*.

1273. Also, despite his knowledge of the work of Mr Cheney's Project Vesta[2163], he was not prepared to factor in to his fire spread predictions that the McArthur meter might under-estimate rates of spread at high wind speeds. We note that, in addition to the findings of Project Vesta, this appears as a warning on the McArthur meter itself. The evidence is that Project Vesta's interim findings from several years of thorough field research, had established that the extent of the under-estimate could be as high as a factor of three. Mr McRae did say in his evidence that an *experienced fire officer* when using the meter will also apply a *common sense element* as to whether the predictions are making sense. But Your Honour would comfortably conclude from Mr McRae's evidence as a whole, that he showed little or no propensity during the fires himself to apply what might fairly be described as a *common sense element*. What is perhaps even more troubling for the citizens of Canberra is that, presumably despite what Mr McRae saw himself of the fire spread on 18 January 2003 (ignoring the tornado effect) and being present for most of Mr Cheney's evidence, Mr McRae frankly admitted that *today I would not apply* the Project Vesta correction.

1274. In the end, Mr McRae agreed that the worst case scenario he had developed for the planning meeting put the head fire at Narrabundah Hill, directly to the west of Duffy, by 8:00 pm that

night, and he accepted that it was realistic to expect some spotting. However, having got that far in his reasoning by the evening of 17 January and having that morning talked about 10 km spotting distances, what defies common sense is his failure to identify a sufficient level of uncertainty in his predictions and in the factors he thought might inhibit fire spread, to admit of the possibility of damage at the urban interface on the afternoon or evening of 18 January.

1275. The approach advocated by Mr Cheney^[2164] is a refreshing counterpoint to the labyrinthine explanations offered by Mr McRae, and finds strong support in the *worst case* analysis in the Rural Fire Control Manual^[2165]. Mr Cheney's starting point was to ask, *what is the worst possible?* To answer this question, Mr Cheney looked to precedent: *We know by historical precedent that, at the top end of extreme, we can get rates of spread of 10kmb in forests and 20kmb in standing pastures. So, in terms of being concerned about the fires, that was certainly the first thing that would go through my mind. If it is at the top end of the range, these fires could be here in an hour.* He then outlined how forecasts and fire spread meters can assist in the process of coming up with something more likely having regard to weather forecasts the actual conditions on the ground. Again, in contrast to Mr McRae, Mr Cheney eschews complexity: *There is no point in being terribly fancy about it. You have got fairly severe conditions.*

1276. The approach he advocated in his evidence and the results produced were very similar to the work the following morning by Mr Taylor to arrive at an accurate prediction for the arrival of the McIntyre's Hut fire at the suburbs^[2166]. The only difference was that Mr Cheney would have made an estimate that put the commencement of the run of the fire at 10:00 am and Mr Taylor had it at midday. Mr McRae did not believe that he saw Mr Taylor's prediction after it was produced and this is consistent with Mr Taylor's evidence. However, it is notable that when asked about it during his evidence and while acknowledging its accuracy, he stated: *but it wasn't within the specifications that I required from the planning section.*

1277. In considering issues of fire spread prediction and what occurred on 18 January 2003, it is important the Your Honour is not diverted by the effect of the tornado described in the evidence^[2167]. Your Honour would readily accept that the tornado was an aberrant event and could not reasonably have been predicted. The relevance of the tornado is that it is likely that it was produced by the combined and parallel runs of the McIntyre's Hut and Bendora fires towards Canberra. In our submission, based on the evidence of Mr Cheney, Your Honour can be satisfied that without the effect of the run of *both* these fires, the tornado would not have been generated and caused damage, particularly in and around Chapman and Kambah. However, there is no evidence that the tornado contributed in any way to the speed or ferocity of the main run of the McIntyre's Hut and Bendora fires. In our submission, Your Honour can also be satisfied that effect of Mr Cheney's evidence is that both these fires travelled more or less as would be expected from a substantial wildfire burning through severely drought affected forested and grassland country under extreme conditions. Further, while the extent of the ember shower that affected urban Canberra might not have been foreseeable, a substantial ember attack affecting homes in the area clearly was.

6.8.8.2 Warnings to the Urban Community

1278. Despite the risk to the urban community recognised days earlier and confirmed by the evening planning meeting, but on this occasion supplemented by fire spread maps giving some idea of the areas likely to be impacted, there was no discussion at all at the planning meeting about the need to issue warnings to the urban area[2168]. And despite the obvious need to do so, no warnings were issued that Friday night, apart from a ring around to certain rural lessees under threat from the Bendora and Stockyard fires. It also appears that no attempt was made that night to contact residents of the forestry settlements under threat from the McIntyre's Hut fire[2169].

1279. Having accepted that responsibility lay with him, Mr Castle's evidence[2170] appears to explain his lack of action concerning the need to warn the community on the basis of taking an optimistic view as to the ability of ESB to suppress the fires. Mr Castle accepted that it was not the role of the ESB to take the more optimistic outlook of an emergency situation. In our submission, this resort to optimism is also apparent from the evidence of Mr Lucas-Smith, Mr McRae and Mr Graham who each, in one way or another, pointed to their hopes for successful strategies for halting the run of the fires, possibly in the grasslands. The difficulty with this approach is that it was apparent from the minutes of the planning meeting that a decision had been made that crews *would not be placed near the fire front the next day*. Indeed, on our analysis of the evidence, the only strategy being discussed by that stage was property protection. Having regard to the anticipated extreme conditions, this was the only safe strategy available. In our submissions, there was no basis for expecting NSW crews to be in any different position and, not surprisingly, no-one seemed to be suggesting that the run of the fires the next day would be halted without the intervention of fire crews.

1280. Thus, there was no strategy being considered that evening by ESB or known to be under consideration by NSW, for attempting to halt or limit the run of any of the fires towards urban Canberra once they had breached containment lines, as was inevitably going to occur under the anticipate conditions. In the circumstances, any genuine expectation on the part of senior officers of ESB that crews might be able to inhibit an unattended run is hard to accept. Your Honour would therefore be highly sceptical about any suggestion that the failure to warn all people likely to be affected by the fire of the risk, was justified based on a belief that containment of the run of the fires was possible. In any event, Your Honour should find that a resort to optimism of the kind displayed in the evidence represented a complete breakdown in the role of the ESB. Mr Castle and his colleagues would have done well to follow the attitude expressed by Mr Koperberg and assume a *worst case scenario*[2171].

6.8.9 20:50 MEDIA RELEASE

1281. Once again, while planning by the ACT Fire Brigade and ACT Ambulance Service for an impact on the urban area was continuing late into Friday night[2172] and Mr Castle was making a case for further Commonwealth assistance based on predictions of fires moving into rural residential areas and concern over *significant assets* at risk associated with spot fires from the McIntyre's Hut fire, at 8:50 pm the ESB issued the last media update for Friday 17 January[2173]. It is clear that considerable attention was given by Mr Castle and Ms Lowe to revising the format for the media release and Mr Castle wanted it to *look different*. The result was that the media

release did look different, but apart from acknowledging the fact of spot fires across containment lines, it still contained nothing in the nature of a warning of risks to residents whether suburban or rural. Indeed, all it said would result from the stronger north-westerly wind from mid-morning the next day was *significant smoke over the urban area*.

1282. Not only was that an obvious understatement of what those winds were known to be likely to produce for the urban area the next day, it gives the impression that, if something more than smoke were expected, the release would have said as much. Mr Castle's evidence was that the main reason for the release was to notify of the closure of the North Curtin district playing fields. He also suggested that the failure to refer in the media release to a threat to urban Canberra may also have been because of the *preoccupation with rural*. Your Honour might be persuaded that these factors explain the absence of a warning to urban Canberra, if it were not for two things. First, the media release in fact does not contain a warning of any risk to rural areas either. Secondly, it refers to the forecast wind resulting in significant smoke over the urban area. If those responsible for the release (notably Mr Castle) took the trouble to use the media release to warn of smoke over the urban area, the only plausible explanation for leaving out a warning at least about the risk of embers and spot fires in the urban area is, once again, a positive decision to defer identifying the risk in those terms.

1283. The result is that until midday on Saturday 18 January 2003, there was no media release or other warning emanating from ESB which gave people in areas likely to be affected by the encroaching fires any information about what they should do in the event that they were affected. Even the release at midday the next day was unsatisfactory in several respects^[2174]. This, after 10 days of fires and some five days since the question of an urban effect was first discussed between Mr Lucas-Smith and Mr Cheney. Even Mr Nicholson was driven to the view that if the view within ESB was that the fires would reach Narrabundah Hill by the following night, that was information ESB would be obliged to disseminate to the public.

6.8.10 OTHER DEVELOPMENTS

1284. The evidence concerning the ring around to rural lessees is set out in our narrative above^[2175]. In our submission, Your Honour can be satisfied based on that evidence and supplemented by the accounts of the residents of the forestry settlements at Stromlo, Uriarra and Pierce's Creek^[2176], that:

- a. the ring around that night did not encompass lessees of ACT Housing living in those settlements; and
- b. to the extent that any telephone contact was attempted or made the following day, such contact was too late to be of any practical assistance.

1285. Ms Harvey and Mr Prince made arrangements during the evening for a meeting the following morning to discuss community information and evacuation centres^[2177]. What occurred at that meeting is discussed below. We pause in our submission to note in this context that, of all the senior personnel present at ESB during the evening and into the night of 17

January, only Mr Prince appears to have accurately interpreted the fire spread predictions and other signs as pointing to a serious impact from the fires on the urban area by early evening the following day, and then acted on those concerns within the scope of his limited authority at the time. His efforts in that regard that evening and the following morning as revealed by his own and other evidence[2178], notably Mr Lines, deserves acknowledgement.

1286. We have included in our narrative of the evidence a summary of the evidence about overnight operations on 17 January[2179]. In our submission, it is a matter of considerable concern that, notwithstanding the conditions expected for the following day, there was effectively only a single duty officer in attendance at the ESB headquarters overnight. It is no criticism of Mr Gore in the circumstances that he was unable to do any more than answer the telephone from operations personnel, seek approvals where necessary and record activities and resource movements. Mr Gore understandably had no capacity for any planning for what was clearly going to be a very difficult day. However, it is difficult to conclude that the presence of a fully staffed planning unit at ESB overnight would have had a material impact on events the following day. The most that could be said is that it would be hoped that a member of such a planning unit during the quieter early hours of the morning, would have turned his or her mind to the need to issue warnings to those who may be affected by the fires over the weekend or on the following Monday. On the other hand, as discussed below, a meeting arranged that night held at 8:00 am the next day for the very purpose (among others) of discussing a process for disseminating community information, and still nothing was issued until four hours later.

6.8.11 'THE POSITION AS AT THE END OF 17 JANUARY

1287. Your Honour would be entitled to conclude that by late on Friday 17 January, the failure to issue a warning which alerted all residents, both rural and urban, likely to be affected by the fires that there was a substantial risk that by some time the following day they would so affected, whether directly or by ember attack, is an omission on the part of ESB and its senior personnel that directly contributed to the extent of the property damage and injury caused by the fires the following day. Your Honour can be satisfied based on the evidence of residents[2180], the evidence of relevant experts that[2181], and the survey evidence (both the references to the absence of warning and the proportion of residents away from their homes)[2182], that given overnight and the following morning to prepare, residents given a clear warning of the risk of impact, the consequences of risk and how to prepare are likely to have:

- a. made a decision not to leave Canberra for the weekend but to remain and protect their home or, if already away from Canberra, to return and prepare;
- b. taken steps to familiarise themselves with the nature of the risk they faced and with the appropriate procedures to follow if affected by fire, including the making of an early choice of whether to remain or evacuate;
- c. made arrangements to remove precious or valuable possessions including photographs, documents, jewellery and motor vehicles, to a safe area;

- d. made arrangements for the safety of the elderly or infirm, children and pets and, if a decision were made for someone able bodied to stay and protect the home, arranging assistance for that person from similarly able bodied friends or relatives;
- e. prepared their properties as best they could in the time left available by the removal of flammable material near their homes, cleaning and blocking gutters, blocking entry points for embers into roof and under floor areas, arranging water reserves, putting aside or purchasing hoses, mops, ladders and suitable clothing and other protective equipment; and
- f. identified escape routes and appropriate evacuation areas.

6.9 18 JANUARY

1288. The events of the morning of 18 January 2003 are recorded in detail in our narrative and are important for three reasons:

- a. first, they are the final part of the prologue to the human tragedy that unfolded that afternoon;
- b. secondly, they highlight deficiencies in systems and processes that will properly be the subject of recommendations by Your Honour; and
- c. thirdly, they demonstrate the continuing implementation of the decisions made two or more days earlier, to defer warning people at risk about the nature of the risk they faced.

1289. However, it needs to be acknowledged that, as the morning progressed, the opportunity for a step to be taken or a decision to be made that Your Honour can find is likely that afternoon to have materially reduced the extent of damage to property and injury, or prevented a death, was steadily eroding.

6.9.1 THE EVENTS OF THE EARLY MORNING

1290. Consistent with the decisions to defer warnings to the public, at 6:00 am on the morning of 18 January 2003, despite the collective state of mind of ESB, Mr Castle gave no indication to the interviewer Natalie Larkins that there was any risk to Canberra from the fires^[2183]. Meanwhile, Mr Lucas-Smith had formed the view at about the same time that it was inevitable that the fires would affect Canberra. That was his *heart of hearts* view^[2184]. The exact time at which he accepted that the urban area would be affected is academic because it is clear from his previous conduct that, subject to degrees of inevitability, he had recognised that such a risk existed since 13 January. However, his own evidence about a dawning realisation of the risk to the urban area on 18 January 2003 begs the question why there was not an immediate warning issued over the electronic media accordingly. In fact, nothing was done in that vein until midday.

6.9.1.1 Evacuation Planning Meeting

1291. The evacuation planning meeting took place at 8:00 am as planned^[2185]. Your Honour can be satisfied that the evidence about the meeting establishes that:

- a. at least one purpose of the meeting was to put in place process to ensure the information was flowing to people in the community likely to be affected by the fires;
- b. the meeting was informed by Mr Prince that the predicted time of potential impact on the suburbs was 6:00 pm that night;
- c. places of concern included *Stromlo forest...Woden West, Duffy, Holder and the Belconnen suburbs of Dunlop, Holt, Higgins and McGregor* and there was also a reference to Rivett;
- d. there was some hope expressed about containing the fires in the grassland verge; and
- e. the outcomes of the meeting included ensuring Canberra Connect was set up to receive calls and give out information both by telephone and on the web as putting in place a process put in place that was to ensure that there would be written statements issued every hour.

Notwithstanding the outcomes agreed at the meeting, and the matters discussed at the morning planning meeting at 9:30 am, no media release was in fact issued by ESB on Friday 18 January 2003 until midday.

6.9.1.2 Morning Planning Meeting^[2186]

1292. As with the evacuation planning meeting at 8:00 am, Your Honour can be satisfied that the evidence establishes that at the planning meeting at 9:30 am, there was considerable discussion about the impact of the fires on western Canberra and *high levels of exposure* for areas including on the urban interface from Weston Creek to Greenaway, and possibly including western South Belconnen if the wind was more westerly than forecast. Further, a prediction was made during the meeting that the McIntyre's fire might be at Mt Stromlo by 17:00 hours. More particularly, in our submission, to the extent that there is any inconsistency about what said at that meeting and by whom, Your Honour should prefer the evidence of Mr Bartlett. Because of his reconnaissance flight earlier that morning, he was in the best position to assess what the fires were likely to do. Of all those participating (with the possible exception of Mr Lucas-Smith) he had the greatest expertise and most experience in the behaviour and suppression of large-scale wildfires. He bore no responsibility at the time or later to ensure that the people of the ACT were fully aware and prepared for the risk from the fires and thus had no personal interest in down-playing the content or consequences of what was being predicted in the course of the meeting. And, finally, he was throughout his evidence an impressive witness, with a good recollection of events and certainly far superior to that of other senior ESB officers. Other matters discussed at the meeting included huge spotting potential and that all crews were in property protection mode.

1293. In Mr McRae's evidence concerning the meeting and what followed, Your Honour will again see Mr McRae emphasising the importance of ensuring that the ACT Fire Brigade and ACT Ambulance service had and immediate understanding of the exposure to the urban interface,

including *which parts of the urban interface they should be putting their resources into to carry out their legislative obligations*. According to Mr McRae, the reference at the planning meeting to Weston Creek through to Greenaway was to ensure that the ACT Fire Brigade knew where in the urban area they should be deploying their resources: *The planning meeting was saying, "This is where you should go and this is where you should go now."* However, despite all this and despite up to date forecasts for that day and Mr Bartlett's summary of what he had seen, Mr McRae asserted that: *I wasn't implying there would be an impact on it from Weston Creek to Greenaway that afternoon. I 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.*

6.9.1.3 The McRae Trigger - Again^[2187]

1294. Asked why it wasn't at that point immediately appropriate to issue some kind of warning to people in those areas Mr McRae said: *My assessment on the balance was that that wasn't needed yet. As I say, I was viewing it as 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 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.* Mr McRae was apparently content to *trigger a risk treatment* that had fire brigade crews and ambulance crews deployed to deal with areas of concern, but did not see the need to *trigger a risk treatment* that engaged the community, until the risk escalated. Mr McRae did not adequately explain in his evidence the down side to issuing a warning, particularly given what was seen as an appropriate warning on 20 January.

1295. Your Honour would be astonished by Mr McRae's suggestion that there was a significant degree of urgency by the morning of 18 January in ensuring the ACT Fire Brigade and ACT Ambulance Service were prepared to respond to an impact in the urban area some time on or after 18 January, but apparently no urgency about engaging the urban community. Indeed, by the end of the morning planning meeting, not only was there apparently no urgency about so engaging the urban community, according to Mr McRae, there was as yet no need to do it at all. It is a preposterous suggestion and should be rejected. Your Honour can also be satisfied from the evidence summarised in our narrative, that Mr McRae:

- a. accepted that he bore the responsibility for activating the trigger that would have engaged the urban community;
- b. did not accept that he was responsible for determining the form the warning would take once the trigger had been activated;
- c. as at the end of the morning planning meeting, did not expect that he would need to activate the trigger at all on 18 January;
- d. only became conscious a little before 3:00 pm on 18 January that the fire had *changed its nature*;

- e. up to that point (namely, as late at 3:00 pm – even the urban community understood the risk by then) had not identified or recognised the need to scale up the warning to the community beyond what had already been provided; and
- f. by the time the realisation dawned, had lost the opportunity to do so.

6.9.2 MIDDAY

6.9.2.1 *The Midday Media Release* [\[2188\]](#)

1296. Mr McRae also accepted that it was his failure to activate the trigger that resulted in the midday media release not containing any explicit material to the effect that the fires could impact on the urban area from Weston Creek to Greenaway. His evidence was that the content of the media release was *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*. However, Mr McRae's cannot accept sole responsibility for the deficiencies in the midday media release. It is clear on the evidence that Mr Castle was closely involved in the preparation of the release. Mr Castle was also present at the morning planning meeting and heard all the predictions discussed during that meeting. It can be assumed that nothing happened later in the morning to lead Mr Castle to conclude that the outlook was improving as the day progressed – quite the reverse. But the evidence shows that, while an extraordinary amount of time and effort went into getting the format of the release right, no attention appears to have been paid to ensuring that the content of release accurately stated what was then known to be the true nature of the risk faced by those to whom the release was directed. Once again, in our submission, this evidence demonstrates that public relations considerations were dominating the attention of those involved and the ESB, and more particularly Mr Castle and Mr McRae were still not ready to give a frank account of the current predicament to the people of the ACT and Canberra in particular.

6.9.2.2 *Midday Press Conference* [\[2189\]](#)

1297. In the case of Mr Lucas-Smith, it took him until midday to actually say that *there has always been a chance that the fire would reach the urban area*. But as our summary of the evidence demonstrates and as Mr Lucas-Smith himself accepted he and Mr Castle *didn't emphasise adequately enough he potential risk* and therefore, we would submit, diminishing the value of the warning.

6.9.2.3 *The Position at Midday*

1298. The evidence about what was appearing on the Canberra Connect website during the morning of 18 January and earlier is far from clear[\[2190\]](#). Your Honour cannot be satisfied that anything in the nature of a warning to urban Canberra and useful information about how to respond to the threat from bushfire was appearing on the website or being offered to callers to Canberra Connect before midday, if then.

1299. Thus by midday on 18 January 2003, with the fires having already commenced their inexorable run towards Canberra, the ESB, and Messrs Lucas-Smith, Castle and McRae in

particular, are continuing knowingly to withhold vital information from the people of the ACT and Canberra. In our submission, it is open for Your Honour to find on the evidence[2191] that, even at that late stage, if the information provided in the midday media release and during the midday media conference had contained a full and frank account of the potential from the fires then bearing down on Canberra and nearby rural settlements, and adequately explained how residents should respond to the likely impact, this would have led to one or both of two results relevant to Your Honour's jurisdiction in this Inquest.

- a. First, many residents would still have had time to save property from the effects of the fires. As a minimum, the evidence is that many would have saved treasured possessions and important documents. It is also open to Your Honour to find that residents would have been somewhat better equipped to protect their homes, resulting in saving some of the homes and other property that was lost later in the day in the absence of that information.
- b. Secondly, and subject to what we say below about the current status of the evidence, up to two lives would have been saved.

1300. In our submission, there is no excuse for failing to provide this vital information at or before midday on 18 January – none. The concern about any risk of panic is a diversion. The public who were in the direct line of a rapidly advancing bushfire had been entitled for days to know there was a risk of an impact, but to be withholding information at this stage is a dereliction of the duty that ESB and its senior officers owed to the public. Further, as discussed below in the context of the expert evidence on warnings, the suggestion made by a number of witnesses that the community could not be warned until it was possible to identify the particular sections of the community known to be at risk, is an insult to the intelligence of the people of the ACT.

6.9.3 THE AFTERNOON

6.9.3.1 *The SEWS* [2192]

1301. Finally, at 2:05 pm the Standard Emergency Warning Signal was signed and began to be broadcast on radio 20 to 40 minutes later. The SEWS listed certain suburbs (including Duffy, Rivett, Chapman and Holder) and then urged residents of those suburbs to *return to their homes*. Residents were instructed that if fire approaches their house to close doors and windows fill the bathtub, any buckets etc and soak towels to place in any crevices such as under the door. Apart from increasing the list of suburbs, there was no material change in the form of the SEWS throughout the afternoon. Mr Castle accepted in evidence that the information in the SEWS, on the Canberra Connect website and in the midday media release about filling the bathtub, did not adequately explain the purpose for filling the bathtub, and was later changed to provide that explanation. He said in evidence that circumstances of the death of Alison Tener provided the impetus for the change[2193].

1302. Your Honour would also note the evidence of residents[2194] who were confused or even angry about the instruction, as part of the SEWS, that residents in named suburbs should return

to their homes. In some cases, the homes of these residents were already on fire. In a number of cases, the residents concerned had formed the view that their lives would be at risk if they had stayed at with their home, and heard the message while in the process of evacuating. For example, Mr Smith of Duffy^[2195] described being *very frustrated* on hearing on the radio as he drove down Jemalong Street to escape the fires that Duffy residents were advised to stay with their houses. He described how that created *massive uncertainty* with him. He was unsure about whether he should go back into the fire. He said that he thought a bland statement of that kind with no qualifications was very poor information. In our submission, Your Honour would agree with Mr Smith.

1303. If a community is already armed with some basic level of understanding of the nature of the risk they face and how to respond to it, or has sufficient time to make enquiries about these matters, a warning along the lines of the SEWS being issued as the fire approaches areas at risk, is probably appropriate. However, in our submission, as the first real warning to an urban resident that a fire is about to threaten their home and family, it will inevitably lead to confusion and poor decision making. Thus, the problem with the form of the SEWS lies in the combination of the bland instructions complained of by Mr Smith and the failure by ESB and its senior officers to take the opportunity in the preceding hours and days to warn residents about the nature of the risk and explain how to respond to that risk. As discussed below, that failure merely compounded an existing failure on the part of ESB properly to educate the people of the ACT, and urban Canberra in particular, about the risk of bushfire in the lead up to the fire season.

6.9.3.2 *The Position at 2:40*

1304. Your Honour should conclude that there were no meaningful warnings until the issue of the first SEWS and the later declaration of a state of emergency and that, from the point of view of the public affected by these fires who had a strong impression that there had not been give any useful warnings, they have that impression because the evidence demonstrates that there were none. In our submission, as discussed above, the lack of adequate early warning was a cause of the loss of property, the destruction of houses and, more importantly, in two of the deaths – Alison Tener and Dorothy McGrath. We will return to that issue below.

1305. Further, the lack of warnings is, in our submission, a product of a completely misguided unwillingness on the part of Mr Lucas-Smith to be frank with the people of the ACT about the reality of the situation. It was also significantly contributed to by:

- a. an essentially ineffective role played by Mr Castle; and
- b. the convoluted and at times nonsensical reasoning of Mr McRae which is outlined in the course of the narrative and analysed above.

1306. As that analysis shows, Mr McRae thought that:

- a. as to warning the urban community he assumed the *media people* were looking at arrangements;

- b. the planning unit under his control would provide a *trigger* for community warnings;
- c. considered that such warnings should not be issued until it was known which *subset of the urban community* needed to be warned because there was breakout headed their way – that was the trigger;
- d. a specific alert should not be given to the whole community;
- e. dealing with the community *in terms of emergency warnings* was complex;
- f. what was being told to the community in combination with the pre-season information was sufficient; and
- g. asserted that the final *trigger* – a warning that the urban area would hit by the fires – was one they never saw a need to activate and then were over run by circumstances.

In our submission, Mr McRae and his complex concepts of *triggers* was lost in a mire of meaningless bureaucratised processes which were of no benefit to the community at all and played a significant role in the failure to provide urban Canberra with straightforward and timely information about the risks they were facing.

6.9.3.3 Findings

1307. In our submission, the evidence establishes that the position reached at 2:40 on 18 January 2003 was, in summary, as set out below, and Your Honour should so find.
- a. On or before 15 January 2003 each of Mr Lucas-Smith, Mr Castle, Mr McRae and through them the ESB, recognised and acknowledged that the fires, including the McIntyre’s Hut fire, presented a serious risk to the Canberra urban area and rural settlements west of urban Canberra.
 - b. Each of Mr Lucas-Smith, Mr Castle and Mr McRae accepted in the course of his evidence that each had as part of his duties and functions, a responsibility to ensure that people facing that risk were given adequate and timely warning of that risk, including advice on how to prepare for the risk.
 - c. Each also acknowledged in the course of his evidence that he had the capacity at all times on or after 15 January to give such a warning, either directly or by implementing a process by which such a warning would be given.
 - d. In the case of the ESB, its responsibility to give such a warning arose from its mission and objectives and its responsibility to give to the residents of the ACT, and urban Canberra in particular, the opportunity to help themselves and their neighbours, consistently with the ESB philosophy as articulated by Mr Castle^[2196].

- e. None of Mr Lucas-Smith, Mr Castle and Mr McRae individually, nor the ESB corporately, gave that warning or took steps to implement a process by which that warning would be given at any time before 2:00 pm on 18 January 2003.
- f. The failure to give that warning came about because:
 - i. each of Mr Lucas-Smith and Mr McRae, either independently or together, made a decision or decisions, that the warning would not be given;
 - ii. Mr Castle either knew of and condoned the decision or decisions or, knowing of the decision or decisions, failed himself to take steps to ensure the warning was given.
- g. 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.
- h. Subject to what we say below about the current status of the evidence, it is open for Your Honour to find that the failure to give the warning was a cause of two of the deaths.

6.10 EXPERT EVIDENCE ON THE WARNINGS ISSUE

1308. In examining the question of warnings there are two broad elements that need to be examined based on the evidence of those who have both experience and knowledge in the area. The first element is the state of knowledge that the community to be warned has before the fire season commences, so that when they are warned of the potential effect of a fire, they have a clear idea of what to do. In addition, it is anticipated that during the off-season, some work will have been done by way of preparation for the season. The second element is the timing and content warnings – when should a warning be given and what precise information must they contain.

6.10.1 PRE-SEASON AWARENESS

1309. In our submission, the evidence indicates^[2197] that the pre-season awareness was low and that residents in the Duffy area, for example, based on information, had no means to estimate the degree of the risk they faced in the event of a substantial fire to the west of that area. The substance of the evidence of Mr Castle, supported by Mr Nicholson, was that the *Will You Survive?* document was the primary source of bushfire information issued to the ACT community. However, the evidence also established that, apart from a letter box drop of that brochure in 1994, which may have included homes in suburban Canberra, there has been no further targeted campaign for its distribution. Instead, it has been available at community events. Further, it is far from clear from the form of the brochure that it is intended for suburban residents. It refers, for instance, to *equipment for you to consider at your country home*.

1310. In the period immediately before the 2002/03 fire season there was some publicity, as we have summarised[2198]. Using the criteria outlined by Mr Roche[2199], in our submission Your Honour cannot be satisfied on the evidence about the community awareness material that the urban community:

- a. understood the risks associated with a wildfire;
- b. had *personalised* the risk;
- c. had been properly advised on what to expect if and when a wildfire approaches and affects their property;
- d. had been properly advised on the options they might use to reduce the risk to them and their property.

In our submission, Your Honour should accept Mr Roche's assessment that, by current standards, the steps taken by ESB to raise community awareness before the 2002/03 fire season were inadequate. We note that this is a view that Mr Nicholson appeared to share.

1311. An issue arose in the evidence of Mr Roche about the results of Ms Watson's analysis of the survey by police of some 411 residents[2200]. As appears above, Mr Roche was cross-examined about the results of that survey the suggestion in the survey that some 86% of those who were home on the day said they knew what preparations to take and took some preparations. Mr Roche's view was that that statistic is somewhat at odds with the losses that were suffered and there are also issues to be raised about the lack of information in the questionnaires themselves. However, if that figure is to be relied upon as being in some way accurate and a reflection that the Canberra urban community had digested the information they had been provided with by ESB and that it was useful, how is it that so many people raise the lack of warning as an important issue? And if it had been the opinion of ESB that the community was well informed as to how to prepare, then what possible reason can there have been for the continuing lack of useful information and warnings coming from ESB until 2:40 pm on 18 January 2003? In our submission, despite Mr Castle's unwillingness to adopt the proposition, the ESB and its senior officers had at the time of the fires no basis on which to assume that residents of urban Canberra had any level of understanding of fire risk, let alone a sufficient level to comprehend and act on a warning received less than an 30 minutes before impact.

6.10.2 WARNINGS – TIMING AND CONTENT

6.10.2.1 *Koperberg and Cheney*

1312. We have submitted earlier that a general warning to the Canberra and nearby community advising of the risk of the fires affecting the urban interface and urban area could usefully have been issued some days prior to 18 January. In our submission, the Canberra public were entitled to at least the same information about that risk that was given to the ACT Cabinet at the briefing on the morning of 16 January. That submission is supported to some extent by the evidence of Mr Koperberg[2201] who explained that if he had responsibility, a two phase approach would

have been involved – a general advising of the potential by Thursday evening or Friday morning followed by an intensive and more specific process commencing on Friday evening.

1313. Similarly, Mr Cheney considered, correctly in our submission, that the statements emanating from ESB on Friday 17 January which seriously under-stated the risk were not adequate. Whilst noting that it is difficult to convey information to residents in urban areas in meaningful terms because of their lack of experience of fire^[2202], as we had put to a number of witnesses, advice from ESB that the fires could come into Canberra would have done something to prepare more people than were actually prepared by the information that was available.

6.10.2.2 Roche's Evidence

1314. As an experienced fire fighter, Mr Roche expressed the view^[2203] which, in our submission Your Honour should accept, that general warnings are in fact useful and that it is not necessary to wait until the precise point of impact can be predicted as Mr McRae appeared to believe. Mr Roche was unaware of the concept of *triggers* and instead described a structured process similar to that referred to by Mr Koperberg, early general but accurate warnings and then escalating the level of warning and targeting particular areas as the situation unfolds.

1315. Mr Roche also explained how warnings are part of the overall development of strategies by the fire suppression authority and *community education and community involvement is the last option that is available; in other words, when everything is being used and does not achieve the outcomes, then the community are the ones that need to be fully informed so that they can take actions to look after themselves and their property*. In our submission, the evidence establishes that the ESB treated community information not as part of an overall response to fire risk, but as an exercise in public relations. Not surprisingly, Mr Roche dismissed the suggestion by Mr Nicholson and others that providing warnings to the public too early can instil panic or create problems for emergency services. In Mr Roche's opinion, panic arises if the warning is given too late and people flee in the face of fire. In his experience, early and progressive information and warnings to the community does the opposite of instilling panic. In our submission, this proposition is self-evident.

6.10.2.3 Nicholson's Evidence

1316. Mr Nicholson also gave evidence at the instigation of Mt Lucas-Smith and Mr Castle^[2204]. He prepared a report and a supplement to that report in October 2004. Shortly after doing so and before he gave evidence, the hearing of the Inquests was interrupted by the proceedings later heard by the ACT Court of Appeal. Having not read most of the material, Mr Nicholson and those who retained then allowed an entire year pass without him doing any more work on his brief in order to better inform his conclusions. He said the reason for that was that he felt his brief had finished and he had a business to run^[2205]. At the time of giving evidence, for example, Mr Nicholson had not read the whole of Mr Lucas-Smith's evidence and was unaware of the concessions Lucas-Smith had made about the inadequacies of the warning to the community. He had not read all of Mr Castle's statement or evidence in these proceedings. He was unsure whether he had read Mr McRae's evidence although he had his statement in his

bag[2206]. He did not have transcripts of all of the press conferences. He was unsure whether he had read the evidence of several of the AFP witnesses[2207].

1317. This approach by Mr Nicholson and those who retained him to his role as an expert significantly detracts from the creditability of any of this witness' evidence. Indeed, we would submit that Mr Nicholson's evidence overall is devoid of any merit and, in some respects, offensive to those who were victims of these fires. We will now explain that proposition further.

1318. A further aspect of Mr Nicholson's report which further detracts from his credibility as a witness, is the process by which he concluded in a draft report submitted to the solicitors instructing him on or about 1 October 2004 that *the Canberra community, including its Emergency Services, were not well prepared* as far as advice and warnings about the fires were concerned. That phrase did not find its way into the final version of his report because in a very short period of time Mr Nicholson claims[2208] that he felt he was being unfair. Then, when questioned about the words he had taken out, he gave evidence that he would not *back away from* the conclusion about poor preparation. Despite this, he failed to explain why that view did not remain in his final report[2209]. He would, on reflection, leave that in but not regard it as a failure of the SMT.

1319. With respect, this is simply nonsense. Based on our analysis of Mr Nicholson's evidence as a whole on the issue of warnings[2210], including the obvious inconsistencies between what he put in his reports and in material previously published by him, it is open to Your Honour to conclude that Mr Nicholson's approach to his task was to contradict Messrs Cheney and Roche almost regardless of what the evidence showed, without actually reading and analysing large amounts of it, and despite his own views as revealed in his published material and ultimately conceded in the course of his evidence.

1320. Ultimately, in supporting the position of ESB on the warnings issue, Mr Nicholson's thesis was that a collection of *authoritative* sources were being reported in the newspapers and that represented the *dissemination of important information*[2211]. People, he suggested, would use such information as a *trigger*. He also suggested that to warn people too early could result in people being *on the move doing things that, in hindsight, you might not have wanted them to do*[2212]. Mr Nicholson seems to subscribe to the same view as Mr McRae in his use of the metaphor: *It is a matter of not wanting to push the button until you know exactly where you want the cannon pointed*[2213]. Your Honour should reject this suggested explanation for withholding information about the true nature of the risk for the reasons already discussed.

1321. What is perhaps most baffling about Mr Nicholson's evidence on this topic as revealed by our analysis, is his central thesis seemed to be that giving a warning to an ill prepared community is extremely problematic and, if an adequate warning is not given in those circumstances, responsibility does rest on those forced to deal with issue of warnings as the fire approaches (in this case the SMT). This seems, at least, carry with it the assumption that ACT community as a whole, or the Canberra urban community in particular, was ill prepared. It also must follow from this that, in Mr Nicholson's view, the responsibility lies with whoever had the job of preparing that relevant community in advance of the fires, namely, the ESB. Mr Nicholson carefully avoids

stating this in terms, at least in his first report. But then in his addendum and evidence Mr Nicholson seemed to be saying that ESB in fact did its job of preparing the community reasonably well, using the *Will You Survive?* document and other material. So does that mean it was the responsibility of the SMT after all? And in any event, if Mr Nicholson considered that the whole of the issue of warnings was so problematic once the fires started, what does he say should have been done? Surely he was not suggesting that the SMT should simply have thrown up there hands and done nothing? If not that, then what? In response to this question, Mr Nicholson raised many question and problems but unlike Mr Roche and Mr Koperberg, studiously avoided giving any answers[2214]. In our submission, the true answer lies in Mr Nicholson's philosophy found on his website. Mr Nicholson said in evidence that he adhered to the view that it is necessary to be honest with people regarding the risks they face and history is littered with unprepared communities suffering enormous losses because governments and inwardly focused emergency management agencies kept the problems to themselves or failed to recognise their limitations and were overwhelmed when the disaster occurred. It is hard to imagine a more eloquent summary of what the evidence before Your Honour demonstrates.

1322. In the following passage from Mr Nicholson's evidence, his position is genuinely offensive to those who were adversely affected by the fires and who were never warned that the suburbs could be affected until 2:30 pm on 18 January 2003: *While some people may have responded to what, I suspect, is probably some selective quoting of Mr Lucas-Smith with regard to his comment about the urban edge, in fact people should have been thinking for themselves. I mean, people – no disrespect when I say that: it is really about accepting some responsibility for one's own well-being. Thank you.* (emphasis added). In our submission, Your Honour would consider this to be an entirely inappropriate observation in the circumstances of these fires, particularly having regard to the analysis of the evidence of residents above[2215], supported by the survey of residents[2216]. This establishes that the almost universal position among those residents was that they were ready, willing and able to take responsibility for the safety of their property and themselves, but the lack of adequate and timely warning denied them the opportunity to do so.

6.11 THE ISSUE OF WARNINGS AND THE DEATHS

1323. In our submission, in the case of two of the deaths, prima facie the lack of warning may be able to be identified as a cause of death. The two deaths are Alison Tener and Dorothy McGrath. In both cases the deceased persons had indicated a willingness to leave their houses in the event that they had been requested to do so by the authorities. In the case of Alison Tener[2217], the evidence indicates that she had placed some personal items into her vehicle and had been getting some things together. As the summary indicates, when her body was found, she was badly burnt and in the bath. The media update of 18 January 2003 had, among other things, an instruction to fill the bath tub without any explanation about why that was to be done. The SEWS broadcast over the radio from approximately 2:40 pm contained a similar instruction and also urged residents to return to their homes. Your Honour might conclude that Mrs Tener became aware of one or more of these warnings for the first time in the early afternoon of 18 January, as she was preparing to evacuate. Your Honour might also find that she was not adequately equipped to understand the warnings, but accepted the instruction to stay with her home, filled her bath and

soaked towels and, ultimately, immersed herself in the bath hoping to find refuge there as her home burnt down around her.

1324. In the case of Ms McGrath^[2218], as the summary indicates, she also indicated to her niece that she would begin to make preparations to leave her house. She observed to her niece that no-one had informed that the people in the area should evacuate and she believed on the basis of what she had observed that she would be informed if it was necessary for her to leave. There is also evidence that at the time of the December 2001 fires:

- a. police had visited homes speaking to residents and on a number of occasions drove around using a loud hailer in the Stromlo forestry settlement where Ms McGrath lived, warning of the approach of the fires; and
- b. Ms McGrath left the settlement before the fires.

1325. A finding that the lack of adequate warning was a cause of these two deaths is a serious finding for Your Honour to make and we do not consider that, at this stage, the evidence would permit that finding to be made. That is because the witnesses who could provide some insight into the likely conduct of the two persons involved had they been giving a timely warning about the likely effect of the fires, has not been given other than through the statements made as part of the coronial brief for each of the two deaths. We would therefore propose that this evidence be now called in order to determine whether on the evidence, once tested, we are able to submit to Your Honour that you should make the findings that that appear to be open.

CHAPTER 7 PROPERTY DAMAGE, INJURY AND DEATH

1326. Apart from providing a human dimension to the losses from the fires, the evidence before Your Honour on the property damage, injury and death from the fires is essentially as it was when we opened the Inquest before Your Honour on 7 October 2003^[2219]. For the most part, that evidence is derived from the statement of Constable Goldsmith^[2220] and can be summarised as follows:

- a. 407 homes and 3 commercial or government premises in urban Canberra were destroyed. A further 80 homes and 20 commercial buildings in rural ACT were destroyed, giving a total for the ACT of 487 homes and 23 commercial or government premises.
- b. A total for the ACT of 96 homes and commercial/government premises were damaged by the fires, and 119 commercial or residential outbuildings were also damaged or destroyed
- c. There were a total of 355 fire related civilian injury presentations to ACT hospitals resulting from the fires. In excess of 80 members of emergency service organisations also reported injuries of various degrees of seriousness. Of the civilian injuries, three serious burns victims transferred to Sydney for long term treatment. Four burns victims had full thickness burns to at least 33% of their body, including one victim who suffered burns to 66% of her body^[2221]. These victims have all had pressure suits fitted and receive ongoing treatment. A fifth victim suffered burns and serious injury after being crushed by a horse. These five victims all spent three weeks or more in hospital.
- d. Financial loss to the Federal Government comprised damage to buildings and other structures on land occupied by the Australian Federal Police and associated costs (\$2,905,887), damage to the ANU's Weston Campus (estimated at \$2,805,361) and the destruction of the ANU's Stromlo Observatory and associated residences and other buildings and equipment. The minimum loss associated with the destruction of the Stromlo Observatory was estimated as \$40 million, but had the potential to be as high as \$50 to \$100 million if Heritage Commission requirements led to the complete restoration of the original observatory.
- e. Financial loss to the ACT Government, including homes in the forestry settlements, but not including the pine plantations, was estimated at \$59,896,000 as at July 2003. The information available to Constable Goldsmith put the value of the pine plantations at \$62.9 million. However, Mr Bartlett gave evidence that the value of the forest lost in the ACT as a result of the fires was \$56 million. He explained that the figure was calculated based on a standard methodology which has been developed across Australia for valuing plantations when they are destroyed. However, the community values that were also destroyed were not taken into account in the \$56 million^[2222]. Similarly, Ms Goldsmith's figures did not attribute a financial or other value to the native forest in the catchment

and other areas of the Namadgi National Park, nor the consequential cost the ACT's water supply.

- f. Based on the insurance information obtained by Constable Goldsmith from owners of residential and commercial property or damaged in the fires (and subject to the qualifications referred to in her statement), Ms Goldsmith estimated the total cost associated with this loss and damage to be \$450 million.

1327. These estimates give a total for the financial losses associated with the fires for the ACT of \$610 million (using the lowest estimate for the Stromlo Observatory). We said in our opening and repeat that: *Without being able to quantify the damage done to the catchment areas and the consequential cost to the water supply for Canberra...it may be that the total figure, if it could ever be calculated, may be closer to \$1 billion, and that is a phenomenal sum of money.* We would add that these calculations of course say nothing about the extent of the personal cost to those who lost loved ones, who have had to cope with the financial burden and suffering associated with serious injury, whether to themselves or to someone close, and who lost treasured possessions and precious memories.

CHAPTER 8 RECOMMENDATIONS

1328. In November 2005, the ACT Government solicitor provided to us a letter from the ACT Emergency Services Authority Commissioner Peter Dunn and a substantial bundle of attachments to Mr Dunn's letter. The letter and attachments updates and expands upon material previously provided to Your Honour arising from the McLeod Inquiry. It is obviously important to any recommendations Your Honour makes to take careful note of developments and reforms in the area of government agency response to the bushfire risk in the ACT before making recommendations, to both avoid duplication and to ensure that recommendations that Your Honour may otherwise have made have not been overtaken by events.

1329. We have not yet considered this latest material and therefore are not presently in a position to make submissions on recommendations to Your Honour, apart from our recommendation on amendment to the Act referred to above, which is the only submission we wish to make on a recommendation unrelated to response to bushfire risk. We expect to be in a position to consider this material and provide submissions on recommendations on agency service response to bushfire risk in the ACT within four weeks of these submissions.

^[1] [\[ESB.AFP.0028.0112\]](#) ACT Bushfire Council "Rural Fire Control Manual for the ACT Rural Firefighting Service July 1992" (*"Rural Fire Control Manual"*) p2.9-2.10

^[2] *R v Doogan, ex parte Lucas-Smith & Ors* [2004] ACTSC 91 17 Septmeber 2004

^[3] *R v Coroner Maria Doogan; ex parte Peter Lucas-Smith & Ors and R v Coroner Maria Doogan & Ors; ex parte Australian Capital Territory* [2005] ACTSC 74 (5 August 2005) (*"R v Doogan"*)

^[4] §3.1.2

^[5] [\[T0003\]](#)

^[6] [\[T0003\]](#)-[\[T0005\]](#)

^[7] [\[T0011\]](#)

^[8] [\[T0012\]](#)

^[9] [\[T0013\]](#)

^[10] [\[T0018\]](#)-[\[T0019\]](#)

^[11] [\[T0021\]](#)-[\[T0022\]](#)

^[12] [\[T0026\]](#)-[\[T0027\]](#)

^[13] [\[T0029\]](#)

^[14] [\[T0036\]](#)-[\[T0038\]](#)

^[15] [\[T0002\]](#)

^[16] [\[T0012\]](#)

^[17] [\[T0003\]](#)

^[18] [\[T0005\]](#)

^[19] [\[T0006\]](#)

^[20] [\[T0257\]](#)

^[21] [\[T0029\]](#)

^[22] [\[T0620\]](#)-[\[T0621\]](#)

^[23] [\[T0649\]](#)

^[24] [\[T0720\]](#)

^[25] §6.11

^[26] [\[T0724\]](#)

^[27] [\[T0732\]](#)

^[28] §4.2.4.3

^[29] [\[T1184\]](#)-[\[T1186\]](#)

^[30] [\[T1188\]](#)-[\[T1189\]](#)

^[31] [\[T1192\]](#)-[\[T1193\]](#)

^[32] [\[T2068\]](#)-[\[T2072\]](#)

^[33] [\[T2776\]](#)-[\[T2777\]](#)

^[34] [\[T2778\]](#)

^[35] [\[T2779\]](#)-[\[T2780\]](#)

^[36] [\[T3944\]](#)-[\[T3945\]](#)

^[37] [\[T6645\]](#)

^[38] [\[T7298\]](#)

^[39] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith statement §4

^[40] [\[ESB.AFP.0111.0117\]](#) Castle statement §24

^[41] Lucas-Smith [\[T0771\]](#)

^[42] [\[ESB.GSO.0005.0421\]](#) Lucas-Smith CV

^[43] Castle [\[T1378\]](#)

- ^[44] Castle [\[T1226\]](#)
- ^[45] [\[ESB.AFP.0111.0117\]](#) Castle statement §4-6
- ^[46] Castle [\[T1231\]](#)
- ^[47] [\[ESB.AFP.0111.0117\]](#) Castle statement §3
- ^[48] [\[ESB.AFP.0111.0117\]](#) Castle statement §7
- ^[49] Castle [\[T1232\]](#)
- ^[50] [\[ESB.AFP.0111.0117\]](#) Castle statement §25
- ^[51] McRae [\[T3031\]](#)-[\[T3032\]](#)
- ^[52] McRae [\[T3033\]](#)-[\[T3035\]](#)
- ^[53] McRae [\[T3038\]](#)
- ^[54] [\[ESB.AFP.0001.1307\]](#) Graham statement §5, Graham [\[T2584\]](#)-[\[T2585\]](#)
- ^[55] Graham statement §6, Graham [\[T2588\]](#)-[\[T2589\]](#)
- ^[56] Graham [\[T2590\]](#)-[\[T2591\]](#)
- ^[57] Graham [\[T2593\]](#)-[\[T2597\]](#)
- ^[58] Lucas-Smith [\[T0775\]](#)-[\[T0776\]](#)
- ^[59] Bennett [\[T1865\]](#)-[\[T1867\]](#)
- ^[60] Bennett [\[T2012\]](#)-[\[T2012\]](#)
- ^[61] Bartlett [\[T5928\]](#)
- ^[62] [\[ESB.AFP.0001.1140\]](#) Bartlett statement §7-26, see also Bartlett [\[T5931\]](#)-[\[T5939\]](#)
- ^[63] Ingram [\[T3519\]](#)
- ^[64] Ingram [\[T3520\]](#)-[\[T3521\]](#)
- ^[65] Stanhope [\[T3597\]](#)
- ^[66] Stanhope [\[T3595\]](#)
- ^[67] [\[GSO.GSO.0004.0103\]](#) Stanhope supplementary statement §3
- ^[68] [\[ESB.AFP.0111.0284\]](#) Stanhope statement §1, [\[GSO.GSO.0004.0103\]](#) Stanhope supplementary statement §17
- ^[69] [\[ESB.AFP.0111.0284\]](#) Stanhope statement §4
- ^[70] Keady [\[T2028\]](#)
- ^[71] Tonkin [\[T4214\]](#)
- ^[72] Tonkin [\[T4218\]](#)

- [73] [Tonkin \[T4221\]](#)
- [74] [Tonkin \[T4237\]-\[T4239\]](#)
- [75] [Larkins \[T2295\]](#)
- [76] [Harvey \[T2352\]-\[T2353\]](#)
- [77] [Harvey \[T2432\]](#)
- [78] [Lowe \[T2478\]-\[T2480\]](#)
- [79] [Wheatley \[T4176\]-\[T4177\]](#)
- [80] [Wheatley \[T4178\]ff](#)
- [81] [Keane \[T2511\]](#)
- [82] [Ferry \[T2564\]](#)
- [83] [Gellie \[T5017\]-\[T5019\]](#)
- [84] [Lhuede \[T4876\]-\[T4879\]](#)
- [85] [Taylor \[T4980\]-\[T4981\]](#)
- [86] [Gore \[T4152\]](#)
- [87] [Gore \[T4159\]](#)
- [88] [\[ESB.DPP.0001.0194\]](#) Jamieson statement §5-6
- [89] [Jamieson \[T4138\]](#)
- [90] [\[ESB.DPP.0001.0194\]](#) Jamieson statement §11-12, 14
- [91] [Sayer \[T3949\]](#)
- [92] [Sayer \[T3950\]](#)
- [93] [Corrigan \[T4663\]](#)
- [94] [Corrigan \[T4664\]](#)
- [95] [Corrigan \[T4669\]](#)
- [96] [\[ESB.AFP.0111.0001\]](#) Arman statement §5
- [97] [Arman \[T4018\]-\[T4019\]](#)
- [98] [\[ESB.AFP.0111.0001\]](#) Arman statement §16
- [99] [Cooper \[T4707\]](#)
- [100] [Cooper \[T4710\]](#)
- [101] [Gray \[T3688\]](#)

[\[102\]](#) Hayes [\[T3881\]](#)-[\[T3882\]](#)

[\[103\]](#) Prince [\[T6437\]](#)-[\[T6438\]](#)

[\[104\]](#) Newham [\[T5047\]](#)

[\[105\]](#) Collins [\[T5384\]](#)

[\[106\]](#) Cartwright [\[T5315\]](#)

[\[107\]](#) McIntyre [\[T5183\]](#)

[\[108\]](#) Dutton [\[T4247\]](#)

[\[109\]](#) [\[T5430\]](#)

[\[110\]](#) [\[DPP.DPP.0006.0268\]](#) Jeffrey statement §15-16, Jeffrey [\[T5434\]](#)

[\[111\]](#) Koperberg [\[T2074\]](#)

[\[112\]](#) Arthur [\[T4546\]](#)

[\[113\]](#) Crawford [\[T4418\]](#)

[\[114\]](#) Hunt [\[T4631\]](#)

[\[115\]](#) Cooper [\[T4845\]](#)-[\[T4846\]](#)

[\[116\]](#) Cooper [\[T4852\]](#)-[\[T4853\]](#)

[\[117\]](#) Smith [\[T6602\]](#)

[\[118\]](#) Murray [\[T4287\]](#)

[\[119\]](#) Newton [\[T5262\]](#)

[\[120\]](#) Kirby [\[T4341\]](#)

[\[121\]](#) Byrnes [\[T4384\]](#)

[\[122\]](#) Webb [\[T0031\]](#)-[\[T0033\]](#)

[\[123\]](#) Mason [\[T0086\]](#)

[\[124\]](#) Davis[\[T0104\]](#)

[\[125\]](#) Tycehurst [\[T0373\]](#)

[\[126\]](#) Cheney [\[T0247\]](#)

[\[127\]](#) Cheney [\[T0249\]](#)

[\[128\]](#) Cheney [\[T7084\]](#)-[\[T7090\]](#)

[\[129\]](#) Cheney [\[T6813\]](#)ff

[\[130\]](#) [\[DPP.DPP.0009.0001\]](#) Roche Report p6-11

- [131] [[HIL.DPP.0001.0026](#)] Nicholson CV
- [132] [[HIL.DPP.0001.0001](#)] Nicholson Report p1-2
- [133] McBeth [[T0128](#)]-[[T0131](#)]
- [134] Leonard [[T6744](#)]-[6745]
- [135] Ellis [[T0560](#)]
- [136] *R v Doogan* at §70, 73, 87, 126.
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- [141] Lucas-Smith [[T1215](#)]-[[T1216](#)]
- [142] McRae [[T3108](#)]-[[T3109](#)]
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- [145] McRae [[T3111](#)]-[[T3112](#)]
- [146] §3.6.1.9
- [147] Graham [[T2852](#)]-[[T2854](#)]
- [148] §3.5.2.8
- [149] Cheney [[T0305](#)], [[DPP.DPP.0001.0003](#)] Cheney Historic Wildfires Powerpoint Presentation
- [150] Cheney [[T0308](#)]-[[T0309](#)]
- [151] Cheney [[T0306](#)]
- [152] Cheney [[T0310](#)]
- [153] Cheney [[T0309](#)]
- [154] Cheney [[T0312](#)]
- [155] Cheney [[T0313](#)]
- [156] Cheney [[T0313](#)]-[[T0314](#)]
- [157] Cheney [[T0314](#)]
- [158] Cheney [[T0317](#)]

- [159] [[HIL.DPP.0001.0001](#)] Nicholson Report p17-18
- [160] Roche [[T7443](#)]-[[T7444](#)]
- [161] Nicholson [[T8159](#)]
- [162] Nicholson [[T8182](#)]
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- [164] Nicholson [[T8211](#)]
- [165] §2.3.1
- [166] [[DPP.DPP.0006.0222](#)] Bartlett Stromlo Plantation Fire report 19 February 2002 (“*Bartlett Report*”) p1
- [167] [[DPP.DPP.0006.0222](#)] Bartlett Report p8
- [168] [[DPP.DPP.0006.0222](#)] Bartlett Report p20-21
- [169] [[AUS.AFP.0035.0392](#)] ACT Christmas 2001 Debrief 16 January 2002 p7 §iii)
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- [171] §2.2.1
- [172] [[ESB.DPP.0013.0099](#)] Bartlett supplementary statement 4 September 2000 §11-14
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- [174] Cheney [[T0311](#)]-[[T0312](#)]
- [175] For example, Lucas-Smith [[T1200](#)], Castle [[T1776](#)], Harvey [[T2405](#)], Crawford [[T4509](#)]
- [176] [[ESB.GSO.0005.0312](#)] The Canberra Times 29 November 2002
- [177] McRae [[T3089](#)]
- [178] [[ESB.DPP.0013.0085](#)] E-mail from Rick McRae “El Nino Update” 30 May 2002
- [179] [[BOM.AFP.0092.0001](#)] The Commonwealth Bureau of Meteorology “Submission to the ACT Coroner’s Bushfire Inquiry” 25 August 2003 p27 (“*BOM Submission*”), [[DPP.DPP.0008.0051](#)] NP Cheney “Origin and Development of the Bushfires that spread into the ACT 8-18 January 2003” (“*Cheney Report*”) p52
- [180] [[DPP.DPP.0008.0001](#)] NP Cheney “Fuel Management in the ACT” 7 June 2004 (“*Cheney Fuel Management Report*”) p17-18
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- [186] [[AFP.AFP.0087.0005](#)] McBeth Report p24
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- [193] [[ESB.DPP.0001.0074](#)] Phoenix Imperative document p2
- [194] [[ESB.DPP.0001.0074](#)] Phoenix Imperative document p3
- [195] [[DPP.DPP.0008.0001](#)] Cheney Fuel Management Report
- [196] McRae [\[T3102\]](#)
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- [198] [[DPP.DPP.0008.0001](#)] Cheney Fuel Management Report p10
- [199] Lucas-Smith [\[T0781\]](#)-[\[T0782\]](#)
- [200] Lucas-Smith [\[T1216\]](#)
- [201] McRae [\[T3103\]](#)
- [202] Bartlett [\[T6011\]](#)
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- [210] [[RFS.AFP.0093.0002](#)] NSW Submission to NSW Coroner p35

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[212] [DPP.DPP.0008.0051] Cheney Report p12-14

[213] [MLI.DPP.0007.0240] ESB submission to the McLeod Inquiry p13ff, [DPP.DPP.0009.0001] Roche Report Part 2 p15ff, McLeod Inquiry Report p5ff

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[215] [ESB.AFP.0028.0112] Rural Fire Control Manual p10.2ff

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[227] Bartlett [T6095]-[T6097]

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[229] Bartlett [T6579]

[230] McRae [T3056]

[231] McRae [T3057]-[T3058]

[232] McRae [T3059]-[T3060]

[233] McRae [T3060]-[T3061]

[234] McRae [T3079]

[235] McRae [T3080]

[236] McRae [T3078]

[237] McRae [T3082]

[238] Graham [T2598]-[T2599]

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- [240] [Graham \[T2622\]-\[T2624\]](#)
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- [246] [McRae \[T3274\]-\[T3275\]](#)
- [247] [Prince \[T6465\]](#), [Harvey \[T2432\]](#)
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- [259] [Webb \[T0039\]](#), [\[BOM.DPP.0001.0009\]](#) Bureau of Meteorology PowerPoint slideshow slide 6
- [260] [Webb \[T0039\]](#), [\[BOM.DPP.0001.0009\]](#) Bureau of Meteorology PowerPoint slideshow slide 7
- [261] [Webb \[T0040\]](#), [\[BOM.DPP.0001.0009\]](#) Bureau of Meteorology PowerPoint slideshow slide 8
- [262] [Webb \[T0041\]](#), [\[BOM.DPP.0001.0009\]](#) Bureau of Meteorology PowerPoint slideshow slide 11

[263] [[BOM.AFP.0092.0001](#)] BOM Submission p16, see also [[BOM.DPP.0001.0009](#)] Bureau of Meteorology PowerPoint slideshow slide 13

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[265] [[BOM.AFP.0092.0001](#)] BOM Submission p16-17 (see also the KBDI chart at p18)

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[270] Cheney [[T6811](#)]-[[T6814](#)]

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- [315] Bartlett [\[T5951\]](#)-[\[T5952\]](#)
- [316] Bartlett [\[T5957\]](#)

[317] Roche [\[T7991\]](#)

[318] Roche [\[T7992\]](#)

[319] Roche [\[T7996\]](#)

[320] Roche [\[T8012\]](#)-[\[T8014\]](#)

[321] Roche [\[T8015\]](#)

[322] Roche [\[T8017\]](#)

[323] Roche [\[T8142\]](#)

[324] Roche [\[T8142\]](#)-[\[T8143\]](#)

[325] [\[AUS.AFP.0035.0016\]](#)

[326] Roche [\[T8021\]](#)

[327] Roche [\[T8022\]](#)

[328] [\[DPP.DPP.0006.0268\]](#) Jeffrey Statement §17-22

[329] [\[DPP.DPP.0004.0023\]](#) Bartlett TROC q74-75

[330] Bartlett [\[T5946\]](#)

[331] [\[MLI.DPP.0007.0240\]](#) ESB submission to the McLeod Inquiry p17

[332] [\[ESB.AFP.0111.0117\]](#) Castle statement §17

[333] Castle [\[T1264\]](#)

[334] Castle [\[T1251\]](#)

[335] [\[ESB.AFP.0111.0117\]](#) Castle statement p32

[336] Castle [\[T1255\]](#)

[337] Castle [\[T1267-1268\]](#)

[338] Castle [\[T1268\]](#)-[\[T1269\]](#)

[339] Castle [\[T1270\]](#)

[340] [\[ESB.GSO.0005.0199\]](#)

[341] Castle [\[T1282\]](#)

[342] Castle [\[T1283\]](#)

[343] [\[DUS.AFP.0001.0587\]](#)

[344] Castle [\[T1288\]](#)

[345] Castle [\[T1289\]](#)

- [346] [\[ESB.GSO.0005.0252\]](#)
- [347] Castle [\[T12184\]](#)
- [348] [\[ESB.GSO.0005.0245\]](#), [\[ESB.GSO.0005.0247\]](#), [\[ESB.GSO.0005.0250\]](#), [\[ESB.GSO.0005.0251\]](#)
- [349] [\[ESB.GSO.0005.0258\]](#)
- [350] §2.5.2.3
- [351] Castle [\[T1305\]](#)
- [352] Castle [\[T1306\]](#)
- [353] Castle [\[T1272\]](#)
- [354] Castle [\[T1273\]](#)
- [355] Castle [\[T1273\]](#)-[\[T1274\]](#)
- [356] Castle [\[T1275\]](#)
- [357] Castle [\[T1277\]](#)
- [358] Castle [\[T1278\]](#)
- [359] Castle [\[T1279\]](#)
- [360] Castle [\[T1328\]](#)-[\[T1329\]](#)
- [361] Castle [\[T1325\]](#)
- [362] Castle [\[T1331\]](#)
- [363] McRae [\[T3037\]](#)-[\[T3038\]](#)
- [364] McRae [\[T3039\]](#)
- [365] McRae [\[T3045\]](#)
- [366] McRae [\[T3047\]](#)
- [367] [\[ESB.GSO.0005.0300\]](#) The Tuggeranong Chronicle “A Bushfire Warning” 15 October 2002
- [368] [\[ESB.GSO.0005.0310\]](#) The Canberra Times “Prepare Now for Bushfire Season” 22 October 2002
- [369] [\[ESB.GSO.0005.0302\]](#) The Chronicle “Start of Bushfire Season Call for Vigilance” 29 October 2002
- [370] [\[ESB.AFP.0110.0834\]](#) Minute from the Executive Director, ESB 23 December 2002
- [371] [\[T0888\]](#) Lucas-Smith
- [372] [\[ESB.GSO.0005.0312\]](#) The Canberra Times “Plan Aims to Avert Fire Threat” 29 November 2002

- [373] [[DPP.DPP.0009.0001](#)] Roche Report p171
- [374] [[DPP.DPP.0009.0001](#)] Roche Report p173
- [375] [[DPP.DPP.0009.0001](#)] Roche Report p174
- [376] [[DPP.DPP.0009.0001](#)] Roche Report p176
- [377] [[DPP.DPP.0009.0001](#)] Roche Report p179
- [378] Roche [[T7426](#)]-[[T7427](#)]
- [379] Roche [[T7844](#)]
- [380] [[ESB.GSO.0005.0269](#)]
- [381] Roche [[T7845](#)]-[[T7846](#)]
- [382] Roche [[T7935](#)]
- [383] [[ESB.DPP.0014.0056](#)] Nicholson addendum, [[ESB.DPP.0014.0077](#)] Nicholson article
- [384] Roche [[T8140](#)]
- [385] [[HIL.DPP.0001.0001](#)] Nicholson Report p16
- [386] §3.7.4.3
- [387] [[HIL.DPP.0001.0001](#)] Nicholson Report p17
- [388] Nicholson [[T8205](#)]-[[T8208](#)]
- [389] Nicholson [[T8208](#)], [[ESB.DPP.0014.0094](#)] Nicholson draft report
- [390] Nicholson [[T8210](#)]
- [391] [[ESB.DPP.0014.0077](#)] Nicholson article “Bushfire Shock and Awe – Will We Ever Learn”
May 2003
- [392] Nicholson [[T8210](#)]-[[T8211](#)]
- [393] [[ESB.DPP.0013.0234](#)] Watson statement
- [394] [[AFP.AFP.0102.0001](#)] Goldsmith statement p1
- [395] §2.5.2.4, see also the summary of the evidence of residents at §3.7.2
- [396] [[ESB.DPP.0013.0237](#)], final column under the heading “Comments”
- [397] §3.7.2
- [398] [[ESB.DPP.0013.0196](#)] Ingram October 2005 statement §6-7
- [399] Roche [[T7970](#)]
- [400] §2.4, particularly §2.4.1.6

^[401] Castle [\[T1346\]](#), Graham [\[T2633\]](#), Ingram [\[T3523\]](#), Corrigan [\[T4668\]](#) and McNamara [\[T3737\]](#)

^[402] Lucas-Smith [\[T0865\]](#)

^[403] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith Statement §37, Lucas-Smith [\[T0863\]](#)

^[404] Graham [\[T2633\]](#)-[\[T2634\]](#)

^[405] Graham [\[T2662\]](#)-[\[T2663\]](#)

^[406] Ingram [\[T3552\]](#)

^[407] Ingram [\[T3553\]](#)

^[408] [\[AUS.AFP.0035.0016\]](#) Namadgi National Park Pre-Suppression Plan Minute

^[409] Lucas-Smith [\[T0820\]](#)

^[410] [\[ESB.AFP.0108.0089\]](#) Blinksell statement §10

^[411] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith statement §48

^[412] Lucas-Smith [\[T0858\]](#)-[\[T0859\]](#)

^[413] Lucas-Smith [\[T0859\]](#)-[\[T0860\]](#)

^[414] Lucas-Smith [\[T0860\]](#)

^[415] McNamara [\[T3840\]](#)-[\[T3841\]](#)

^[416] Sayer [\[T3977\]](#)-[\[T3978\]](#)

^[417] Cheney [\[T0335\]](#)-[\[T0336\]](#)

^[418] §2.5.1.2

^[419] [\[ESB.DPP.0013.0196\]](#) Ingram October 2005 statement

^[420] [\[DUS.AFP.0001.0601\]](#) Namadgi Burn Scenario 2002

^[421] Graham [\[T2631\]](#)

^[422] [\[AUS.AFP.0035.0019\]](#) Namadgi Fire Workshop, 8 November 2002, Outcomes

^[423] McRae [\[T3116\]](#)-[\[T3117\]](#)

^[424] Graham [\[T2631\]](#)-[\[T2632\]](#)

^[425] §2.2.1.3

^[426] Lucas-Smith [T780]

^[427] [\[ESB.AFP.0028.0112\]](#) Rural Fire Control Manual p2.9

^[428] §2.1.1.3

^[429] §2.5.1.3

- [430] Ferry [\[T5832\]](#) and Todkill [\[T6434\]](#)
- [431] [\[DPP.DPP.0008.0051\]](#) Cheney Report p 10-11 (McIntyre's fire), p28 (Bendora fire), p42 (Stockyard Spur and Mt Gingera fires)
- [432] Cheney [\[T0339\]](#)-[\[T0342\]](#) (McIntyre's fire), [\[T0395\]](#) (Bendora fire), [\[T0416\]](#)-[\[T0417\]](#) (Stockyard Spur and Mt Gingera fires)
- [433] [\[NSP.AFP.0013.0154\]](#) Letter and attached Lightning Data Search report from Kattron to Detective Sgt Adam Phillips Strike Force Tronto II, 30 January 2003
- [434] Tycehurst [\[T0375\]](#)-[\[T0381\]](#)
- [435] Tycehurst [\[T0381\]](#)
- [436] Tycehurst [\[T0377\]](#)-[\[T0379\]](#)
- [437] [\[RFS.AFP.0093.0002\]](#) NSW Submission to NSW Coroner p17
- [438] Cheney [\[T0339\]](#), see also Mr Cheney's slide show presentation for the McIntyre's fire 8 January at 20:00 illustrating the location of each of the 6 spot fires
- [439] For example, Crawford [\[T4534\]](#)
- [440] [\[DPP.DPP.0008.0051\]](#) Cheney Report p11
- [441] Cheney [\[T0341\]](#)-[\[T0342\]](#)
- [442] [\[DPP.DPP.0008.0051\]](#) Cheney Report p28
- [443] [\[DPP.DPP.0008.0051\]](#) Cheney Report p28
- [444] [\[DPP.DPP.0008.0051\]](#) Cheney Report p42
- [445] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith statement §14
- [446] [\[ESB.AFP.0001.1307\]](#) Graham statement §8
- [447] [\[ESB.AFP.0001.1307\]](#) Graham statement §9
- [448] [\[ESB.AFP.0111.0291\]](#) Ingram statement §8
- [449] [\[ESB.AFP.0111.0291\]](#) Ingram statement §9
- [450] [\[ESB.AFP.0001.1307\]](#) Graham statement §13
- [451] [\[ESB.AFP.0001.1307\]](#) Graham statement §11-13
- [452] [\[ESB.AFP.0111.0001\]](#) Arman statement §20 & 21, [\[DPP.DPP.0004.0021\]](#) TROC of Odile Arman q178-184, [\[ESB.AFP.0111.0091\]](#) Brooke statement §8
- [453] [\[ESB.AFP.0001.1307\]](#) Graham statement §14
- [454] [\[ESB.AFP.0001.1307\]](#) Graham statement §25
- [455] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith statement §19

[456] [[ESB.AFP.0110.0551](#)] Lucas-Smith statement §20

[457] [[ESB.AFP.0110.0551](#)] Lucas-Smith statement §15

[458] [[ESB.AFP.0111.0262](#)] Sayer statement §6, 8, 11&12

[459] [[ESB.AFP.0001.1140](#)] Bartlett statement §28-30

[460] Lucas-Smith [[T0796](#)]

[461] Graham [[T2709](#)]

[462] [[ESB.DPP.0001.0206](#)] Cooper amended statement §18-20

[463] [[ESB.AFP.0111.0291](#)] Ingram statement §10-11

[464] [[ESB.AFP.0001.1140](#)] Bartlett statement §30

[465] [[ESB.AFP.0111.0291](#)] Ingram statement §9-11

[466] [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p28-29, [[ESB.AFP.0111.0291](#)] Ingram statement §16

[467] [[ESB.AFP.0108.0262](#)] Stevens statement §7

[468] [[DPP.DPP.0004.0021](#)] Arman TROC q178&185, [[ESB.AFP.0111.0001](#)] Arman statement §23&28

[469] [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p37-38, [[ESB.AFP.0111.0001](#)] Arman statement §28

[470] [[DPP.DPP.0004.0021](#)] Arman TROC q178-184

[471] [[ESB.AFP.0108.0262](#)] Stevens statement §8

[472] [[DPP.DPP.0004.0021](#)] Arman TROC q191, [[ESB.AFP.0111.0001](#)] Arman statement §32

[473] [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p48-49

[474] [[ESB.AFP.0111.0001](#)] Arman statement §28

[475] [[ESB.AFP.0111.0001](#)] Arman statement §33

[476] [[ESB.AFP.0111.0068](#)] Beath statement §12, [[ESB.AFP.0108.0115](#)] Blundell statement §16, [[ESB.AFP.0111.0091](#)] Brooke statement §13-16, [[ESB.AFP.0108.0138](#)] Harding statement §12-17, [[ESB.AFP.0108.0158](#)] Statement of Andrew Hewlett §11-12, [[ESB.AFP.0111.0229](#)] Mitchell statement §11

[477] [[ESB.AFP.0111.0001](#)] Arman statement §35

[478] [[ESB.AFP.0111.0001](#)] Arman statement §36-37

[479] [[ESB.AFP.0111.0001](#)] Arman statement §40

[480] [[ESB.AFP.0111.0001](#)] Arman statement §41

[481] NP Cheney PowerPoint presentation slide 82

[482] Arman [\[T4030\]](#)

[483] Arman [\[T4030\]](#)-[\[T4031\]](#)

[484] [\[ESB.AFP.0111.0001\]](#) Arman statement §38, [\[DPP.DPP.0004.0021\]](#) Arman TROC q191

[485] Arman [\[T4029\]](#)

[486] [\[ESB.AFP.0111.0001\]](#) Arman statement §42

[487] [\[DPP.DPP.0004.0021\]](#) Arman TROC q191, Arman [\[T4033\]](#)

[488] [\[ESB.AFP.0111.0001\]](#) Arman statement §43

[489] [\[DPP.DPP.0004.0021\]](#) Arman TROC q191

[490] [\[ESB.AFP.0111.0001\]](#) Arman statement §43-46

[491] [\[DPP.DPP.0011.0001\]](#) Odile Arman video walkthrough

[492] [\[DPP.DPP.0011.0001\]](#) Odile Arman video walkthrough, at approx 36-38 mins

[493] [\[DPP.DPP.0006.0096\]](#) Transcript of telephone conversation between Mr Arthur and Mr Graham, 8 January 2003 7.03pm

[494] Graham [\[T2673\]](#)-[\[T2674\]](#)

[495] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p55-56

[496] Ingram [\[T3535\]](#)-[\[T3536\]](#)

[497] Lucas-Smith [\[T0821\]](#)&[\[T0830\]](#), cf McRae [\[T3122\]](#) and Graham [\[T2734\]](#)

[498] [\[DPP.DPP.0003.0207\]](#) Transcript of discussion between Peter Lucas-Smith and Tony Graham 8 January 2003

[499] Lucas-Smith commencing at [\[T0821\]](#)

[500] Lucas-Smith [\[T0823\]](#)

[501] Lucas-Smith [\[T0829\]](#)

[502] Lucas-Smith [\[T0830\]](#)

[503] Lucas-Smith [\[T0832\]](#)-[\[T0834\]](#)

[504] Graham [\[T2680\]](#)-[\[T2681\]](#)

[505] Graham [\[T2681\]](#)

[506] Graham [\[T2683\]](#)

[507] Graham [\[T2683\]](#)-[\[T2684\]](#)

[508] McRae [\[T3122\]](#)-[\[T3124\]](#)

[509] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p60, [\[ESB.AFP.0111.0001\]](#) Arman statement §46-48

[510] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p60, [\[ESB.AFP.0111.0001\]](#) Arman statement §49

[511] [\[ESB.AFP.0001.1307\]](#) Graham statement §18-20

[512] Lucas-Smith [\[T0832\]](#)

[513] Lucas-Smith [\[T0831\]](#)

[514] Graham [\[T2685\]](#)-[\[T2688\]](#)

[515] Graham [\[T2689\]](#)

[516] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p61, [\[ESB.AFP.0111.0001\]](#) Arman statement §51

[517] Graham [\[T2689\]](#)-[\[T2691\]](#)

[518] Graham [\[T2693\]](#)

[519] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p61

[520] Graham [\[T2693\]](#)-[\[T2694\]](#)

[521] Arman [\[T4034\]](#)-[\[T4035\]](#)

[522] [\[ESB.AFP.0111.0001\]](#) Arman statement §55

[523] Arman [\[T4036\]](#)

[524] Graham [\[T2712\]](#)-[\[T2713\]](#)

[525] [\[DPP.DPP.0004.0021\]](#) Arman TROC q236

[526] Arman [\[T4037\]](#), [\[DPP.DPP.0004.0021\]](#) Arman TROC q236-237

[527] Arman [\[T4038\]](#)

[528] [\[DPP.DPP.0004.0021\]](#) Arman TROC q238&243

[529] Arman [\[T4039\]](#)

[530] [\[ESB.AFP.0111.0001\]](#) Arman statement §52-53

[531] [\[DPP.DPP.0004.0021\]](#) Arman TROC q243

[532] Arman [\[T4043\]](#)

[533] Arman [\[T4044\]](#)

[534] Arman [\[T4046\]](#)

[535] Arman [\[T4045\]](#)

[536] Arman [T4046]

[537] [DPP.DPP.0004.0021] Arman TROC q266

[538] [DPP.DPP.0004.0021] Arman TROC q281-282

[539] Arman [T4047]-[T4049]

[540] [ESB.AFP.0111.0001] Arman statement §53

[541] Arman [T4044], [DPP.DPP.0004.0021] Arman TROC q293

[542] [ESB.AFP.0108.0262] Stevens statement §4

[543] [ESB.AFP.0108.0262] Stevens statement §9-14

[544] [DPP.DPP.0004.0021] Arman TROC q293

[545] [ESB.AFP.0111.0229] Mitchell statement §11

[546] [ESB.AFP.0111.0068] Beath statement §15-17, [ESB.AFP.0108.0115] Blundell statement §17-21, [ESB.AFP.0108.0158] Hewlett statement §14-15, [ESB.AFP.0111.0091] Brooke statement §13-17, [ESB.AFP.0108.0138] Harding statement §16-19

[547] Arman [T4078]

[548] [ESB.DPP.0002.0001] ESB radio transcript 8 January 2003 p62-63, [ESB.AFP.0111.0001] Arman statement §56

[549] [ESB.DPP.0002.0001] ESB radio transcript 8 January 2003 p62-63, [ESB.AFP.0111.0001] Arman statement §57

[550] Graham [T2698]

[551] Graham [T2699]

[552] Graham [T2720]

[553] Graham [T2721]

[554] Graham [T2716]&[T2721]

[555] Graham [T2715]

[556] Graham [T2722]

[557] Graham [T2728]-[T2729]

[558] Graham [T2722]-[T2723]

[559] Graham [T2664]-[T2665]

[560] Graham [T2723]

[561] Graham [T2726]

[562] Graham [T2726]-[T2728]

[563] Graham [T2729]

[564] [DPP.DPP.0004.0021] Arman TROC q243&249

[565] Lucas-Smith [T0825]

[566] Lucas-Smith [T0834]

[567] Lucas-Smith [T0835]

[568] Lucas-Smith [T0862]-[T0863]

[569] Graham [T2715]-[T2716]

[570] Graham [T2717]

[571] Graham [T2720]

[572] [DPP.DPP.0004.0021] Arman TROC q244&247

[573] [DPP.DPP.0008.0051] Cheney Report p30

[574] Cheney [T6857]-T6858]

[575] Cheney [T6858]

[576] Cheney [T7069]

[577] Cheney [T7070]

[578] Cheney [T7071]-[T7072]

[579] Cheney [T7077]

[580] Cheney [T7079]

[581] Cheney [T7079]

[582] Cheney [T7080]

[583] Cheney [T7176]ff

[584] Cheney [T7178]

[585] Cheney [T7196]

[586] [DPP.DPP.0008.0051] Cheney Report p30-31

[587] [DPP.DPP.0009.0001] Roche Report p71

[588] [DPP.DPP.0009.0001] Roche Report p69-70

[589] Roche [T7347]

[590] Roche [T7350]-[T7352]

[591] Roche [T7533]

[592] [[DPP.DPP.0009.0001](#)] Roche Report p72

[593] Roche [[T7353](#)]

[594] Roche [[T7440](#)]-[[T7441](#)]

[595] Roche [[T8056](#)]-[[T8057](#)]

[596] Roche [[T8058](#)]

[597] Roche [[T8059](#)]-[[T8060](#)]

[598] Roche [[T8065](#)]

[599] [[DPP.DPP.0004.0021](#)] Arman TROC Q244

[600] [[HIL.DPP.0001.0001](#)] Nicholson Report p14

[601] [[HIL.DPP.0001.0001](#)] Nicholson Report p9

[602] [[HIL.DPP.0001.0001](#)] Nicholson Report p13

[603] Nicholson [[T8213](#)]

[604] Nicholson [[T8124](#)]-[[T8125](#)]

[605] Nicholson [[T8218](#)]

[606] Nicholson [[T8223](#)]-[[T8225](#)]

[607] Nicholson [[T8225](#)]

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[609] Nicholson [[T8231](#)]

[610] Nicholson [[T8233](#)]-[[T8234](#)]

[611] Nicholson [[T8236](#)]-[[T8237](#)]

[612] [[ESB.AFP.0111.0001](#)] Arman statement §65

[613] Arman [[T4051](#)]

[614] Arman [[T4066](#)]

[615] Graham [[T2787](#)]-[[T2788](#)]

[616] [[ESB.DPP.0002.0001](#)] ESB radio transcript, 8 January 2003 p62-63

[617] Arman [[T4049](#)]-[[T4050](#)]

[618] Arman [[T4059](#)]-[[T4050](#)]

[619] Arman [[T4066](#)]-[[T4069](#)]

[620] Arman [[T4050](#)]

[621] Arman [\[T4053\]](#)

[622] [\[ESB.AFP.0001.1307\]](#) Graham statement §21-22

[623] Graham [\[T2735\]](#)

[624] Lucas-Smith [\[T0810\]](#), McRae [\[T3143\]](#)

[625] [\[ESB.AFP.0001.1307\]](#) Graham statement §22

[626] Graham [\[T2990\]](#)-[\[T2992\]](#)

[627] [\[ESB.DPP.0014.0079\]](#) Transcript of telephone discussion between Tony Graham and Rick Hayes 8 January 2003

[628] [\[ESB.DPP.0014.0079\]](#) Transcript of telephone discussion between Tony Graham and Rick Hayes 8 January 2003 p7

[629] [\[ESB.AFP.0052.0056\]](#) SOP7 at 0069

[630] [\[ESB.DPP.0003.0001\]](#) ESB radio transcript, 9 January 2003 p10

[631] [\[DPP.DPP.0008.0051\]](#) Cheney Report p29

[632] McRae [\[T3143\]](#)-[\[T3146\]](#) and [\[T3152\]](#)

[633] [\[DPP.DPP.0004.0029\]](#) TROC of Rick Hayes q272

[634] [\[ESB.AFP.0108.0002\]](#) Hayes statement §23

[635] [\[DPP.DPP.0004.0029\]](#) Hayes TROC q432-434

[636] Hayes [\[T3906\]](#)

[637] [\[DPP.DPP.0004.0029\]](#) Hayes TROC q108

[638] §3.3.1.3

[639] [\[ESB.AFP.0111.0291\]](#) Ingram statement §8, [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p5

[640] [\[ESB.AFP.0111.0291\]](#) Ingram statement §9-10, [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p20

[641] [\[ESB.AFP.0108.0002\]](#) Hayes statement §13-15

[642] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p10

[643] [\[ESB.AFP.0108.0230\]](#) Gray statement §11

[644] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p48-50, [\[ESB.AFP.0108.0230\]](#) Gray statement §12-13, [\[ESB.AFP.0111.0291\]](#) Ingram statement §27-28

[645] [\[ESB.DPP.0002.0001\]](#) ESB radio transcript 8 January 2003 p50-51

[646] [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p51, [[ESB.AFP.0108.0230](#)] Statement of Dennis Gray §12-13, [[ESB.AFP.0111.0291](#)] Ingram statement §27-28

[647] [[ESB.AFP.0108.0230](#)] Gray statement §17

[648] [[DPP.DPP.0004.0027](#)] Gray TROC q104-107

[649] Gray [[T3696](#)]-[[T3697](#)]

[650] [[DPP.DPP.0004.0027](#)] Gray TROC q70&82, Gray [[T3699](#)]

[651] Gray [[T3701](#)]

[652] [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p57-58, [[ESB.AFP.0108.0230](#)] Gray statement §14, [[DPP.DPP.0004.0027](#)] Gray TROC q58

[653] [[ESB.AFP.0108.0230](#)] Gray statement §15

[654] [[ESB.AFP.0001.1307](#)] Graham statement §24

[655] Gray [[T3699](#)]-[[T3701](#)], [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p66-68

[656] [[ESB.AFP.0103.0052](#)] McNamara statement §29-30

[657] §3.2.3.2

[658] [[DPP.DPP.0008.0051](#)] p43-44

[659] [[DPP.DPP.0009.0001](#)] p75-76

[660] [[AUS.AFP.0035.0016](#)] Namadgi National Park Pre-Suppression Minute p3

[661] [[DPP.DPP.0009.0001](#)] p 76

[662] Roche [[T8096](#)]-[[T8098](#)]

[663] [[DPP.DPP.0008.0051](#)] Cheney Report p43

[664] [[ESB.AFP.0111.0291](#)] Ingram statement §19-20, [[ESB.DPP.0002.0001](#)] ESB radio transcript 8 January 2003 p38-39

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[\[1344\]](#) [\[ESB.AFP.0110.0868\]](#) Planning meeting minutes 09:30 17 January 2003,
[\[ESB.AFP.0110.0871\]](#) Operations Officer situation report 17/1/03

[\[1345\]](#) [\[DPP.DPP.0004.0006\]](#) Radio ABC 666 17:00 16/1/03

[\[1346\]](#) [\[ESB.AFP.0110.0868\]](#) Planning meeting minutes 09:30 17 January 2003

[\[1347\]](#) [\[ESB.AFP.0110.0868\]](#) Planning meeting minutes 09:30 17 January 2003

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[1351] [\[ESB.AFP.0111.0117\]](#) Castle statement §106

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[1353] Graham [\[T2942\]](#)

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[1355] [\[ESB.AFP.0001.1307\]](#) Graham statement §167&169

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7^[1362] [\[ESB.AFP.0111.0117\]](#) Castle statement §107-108

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[1369] Castle [\[T1664\]](#)

[1370] Castle [\[T1665\]](#)-[\[T1666\]](#)

[1371] Castle [\[T1668\]](#)

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[1373] [\[NSP.AFP.0047.0409\]](#) NSW RFS media release 12:00 17 January 2003

[1374] Castle [\[T1689\]](#)-[\[T1691\]](#), evidence confirming that there was no process in place at ESB for monitoring NSW RFS media releases is summarised above under §3.5.1.7

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[1381] Castle [\[T1680\]](#)

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[1385] Castle [\[T1687\]](#)

[1386] Crawford [\[T4448\]](#)-[\[T4449\]](#)

[1387] [\[NRF.AFP.0001.0001\]](#) McIntyre's Hut fire situation report 24:00 08/01/03

[1388] Arthur [\[T4567\]](#)

[1389] Crawford [\[T4449\]](#)

[1390] [\[NRF.AFP.0001.0101\]](#) McIntyre's Hut fire IAP 15/01/03

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[1403] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith statement §99-100

[1404] [\[ESB.AFP.0110.0481\]](#) McRae statement §110-111

[1405] [\[ESB.AFP.0001.1307\]](#) Graham statement §169-170, 172 & 173

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[1411] Collins [\[T5399\]](#)-[\[T5400\]](#)

[1412] Collins [\[T5399\]](#)-[\[T5400\]](#)

[1413] [\[ESB.AFP.0110.0860\]](#) IAP ACT Fire Brigade 16:30 17/01/03

[1414] Bennett [\[T1951\]](#)-[\[T1953\]](#)

[1415] Bennett [\[T1957\]](#)-[\[T1959\]](#)

[1416] [\[DPP.DPP.0009.0001\]](#) Roche Report p107-108

[1417] [\[DPP.DPP.0009.0001\]](#) Roche Report p108

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[1431] Castle [\[T1708\]](#)-[\[T1710\]](#)

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[1575] [\[ESB.AFP.0001.1140\]](#) Bartlett statement §146, §148-149

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[1660] [[ESB.AFP.0111.0117](#)] Castle statement §122

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[1666] [[ESB.AFP.0023.0408](#)] ESB fax radio stations and attached SEWS 15:20 18/01/03, [[CCT.AFP.0060.0030](#)] E-mail from F Prideaux to CCEIC 15:21 18/01/03, Castle [[T1787](#)]-
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[\[2056\]](#) [\[ESB.DPP.0003.0001\]](#) ESB radio transcript 9 January 2003 p10

[\[2057\]](#) §3.3.2.2

[\[2058\]](#) §3.3.2.4

[\[2059\]](#) §3.3.1.2

[\[2060\]](#) §3.3.1.3

[\[2061\]](#) §3.3.2.3

[\[2062\]](#) §3.2.3.3

[2063] §3.2.3.6

[2064] §3.3.1.6

[2065] §3.2.4.1

[2066] §3.2.4.2

[2067] §3.3.2.2

[2068] §3.2.4.2

[2069] §3.2.4.2

[2070] §3.3.1.7

[2071] §3.2.4.2, §3.3.1.7

[2072] §2.2.2.2

[2073] §3.2.5.7

[2074] Crawford [T4455]

[2075] [NRF.AFP.0001.0001] Situation Report – McIntyre’s Hut Fire 9 January 2003

[2076] Crawford [T4446]&[T4448]

[2077] Crawford [T4434]&[T4520]

[2078] §3.2.5.7

[2079] §3.2.5.1

[2080] §3.3.3.1

[2081] §3.2.5.5

[2082] §3.2.5.6

[2083] §3.3.3.2, §3.4.1.1

[2084] §3.6.1.6

[2085] §3.6.1.6

[2086] §3.7.1.1, §3.7.1.3

[2087] §4.2.4.2

[2088] §2.1.1.2

[2089] §3.5.2.5

[2090] §3.5.2.8

[2091] §2.1.1.1

[\[2092\]](#) §2.2.1.2

[\[2093\]](#) §2.1.1.4

[\[2094\]](#) §2.5.2.3

[\[2095\]](#) §2.2.1.3

[\[2096\]](#) §2.4.1.6

[\[2097\]](#) §3.7.2

[\[2098\]](#) [\[ESB.DPP.0013.0097\]](#) E-mail from Rick McRae “Outlook” 30 December 2002

[\[2099\]](#) §2.4.1.6

[\[2100\]](#) For example, Mr Stanhope [\[T3613\]](#)-[\[T3614\]](#)

[\[2101\]](#) §3.4.2.2

[\[2102\]](#) §3.4.2.3

[\[2103\]](#) §3.4.2.5

[\[2104\]](#) Lucas-Smith [\[T0984\]](#)-[\[T0985\]](#)

[\[2105\]](#) §3.4.2.5

[\[2106\]](#) §3.4.3.3

[\[2107\]](#) §3.4.3.4

[\[2108\]](#) §3.4.3.4

[\[2109\]](#) Bartlett [\[T6509\]](#)-[\[T6510\]](#)

[\[2110\]](#) Lucas-Smith [\[T1046\]](#)-[\[T1047\]](#), [\[DPP.DPP.0003.0078\]](#) Cabinet briefing paper – January 23 bushfires, ^[2110] [\[ESB.AFP.0110.0551\]](#) Lucas-Smith statement §88, [\[NSP.AFP.0047.0407\]](#) NSW RFS Media Release 16/01/03, [\[ESB.AFP.0110.0868\]](#) Planning meeting minutes 09:30 17 January 2003

[\[2111\]](#) McRae [\[T3416\]](#)

[\[2112\]](#) 2.3.2.4

[\[2113\]](#) §2.3.2.4

[\[2114\]](#) §2.3.2.4

[\[2115\]](#) §1.2.7.9

[\[2116\]](#) §3.5.1.3

[\[2117\]](#) §3.5.1.4

[\[2118\]](#) Koperberg [\[T2149\]](#)

[2119] Koperberg [\[T2152\]](#)&[\[T2195\]](#)

[2120] §3.5.1.5

[2121] §3.5.1.10

[2122] §3.5.1.6

[2123] §3.5.2.7

[2124] §3.5.1.9

[2125] §3.5.1.8

[2126] §3.5.2.4

[2127] §3.5.2.3

[2128] §3.7.5

[2129] §3.5.2.5

[2130] Lucas-Smith [\[T1046\]](#)-[\[T1047\]](#)

[2131] §3.5.2.8

[2132] Lucas-Smith [\[T1067\]](#), [\[AFB.AFP.0001.0058\]](#) Barr TROC p63ff

[2133] §3.5.2.9

[2134] See, for example §3.7.3.4, §3.7.6.4

[2135] §3.5.2.7

[2136] McRae [\[T3358\]](#)-[\[T3359\]](#)

[2137] §3.5.2.12

[2138] §3.5.1.7

[2139] §3.6.1.1

[2140] §3.6.1.2

[2141] §3.6.1.3

[2142] §3.6.1.4

[2143] §3.7.1.4

[2144] Lucas-Smith [\[T1093\]](#)-[\[T1094\]](#), Castle [\[T1634\]](#)-[\[T1635\]](#), see also Castle [\[T1644\]](#)

[2145] §3.6.1.5

[2146] Koperberg [\[T2120\]](#)

[2147] §3.3.2.1

[\[2148\]](#) Castle [\[T1226\]](#)

[\[2149\]](#) Castle [\[T1638\]](#)

[\[2150\]](#) Castle [\[T1226\]](#)

[\[2151\]](#) Lucas-Smith [\[T1069\]](#), see also Lucas-Smith [\[T1073\]](#)-[\[T1075\]](#)

[\[2152\]](#) Castle [\[T1692\]](#)

[\[2153\]](#) §3.6.1.7

[\[2154\]](#) §3.6.1.8

[\[2155\]](#) §3.6.1.9

[\[2156\]](#) Castle [\[T1697\]](#)-[\[T1698\]](#)

[\[2157\]](#) Nicholson [\[T8270\]](#)

[\[2158\]](#) §2.1.1.1

[\[2159\]](#) Castle [\[T1693\]](#)

[\[2160\]](#) §3.6.1.10

[\[2161\]](#) §3.6.1.11

[\[2162\]](#) §3.6.1.12

[\[2163\]](#) §2.4.1.5

[\[2164\]](#) §3.6.1.13

[\[2165\]](#) §2.1.1.1

[\[2166\]](#) §3.6.2.5

[\[2167\]](#) §3.7.1.3

[\[2168\]](#) §3.6.1.15

[\[2169\]](#) §3.6.1.14

[\[2170\]](#) Castle [\[T1723\]](#)-[\[T1724\]](#)

[\[2171\]](#) Koperberg [\[T2162\]](#)

[\[2172\]](#) §3.6.1.16

[\[2173\]](#) §3.6.1.17

[\[2174\]](#) §3.6.2.8

[\[2175\]](#) §3.6.1.14

[\[2176\]](#) §3.7.3.6

[\[2177\]](#) §3.6.1.15

[\[2178\]](#) §3.6.1.16, §3.6.2.6

[\[2179\]](#) §3.6.1.18

[\[2180\]](#) §3.7.3

[\[2181\]](#) §3.7.2

[\[2182\]](#) §2.5.2.5

[\[2183\]](#) §3.6.2.2

[\[2184\]](#) §3.6.2.1

[\[2185\]](#) §3.6.2.3

[\[2186\]](#) §3.6.2.4

[\[2187\]](#) §3.6.2.4

[\[2188\]](#) §3.6.2.8

[\[2189\]](#) §3.6.2.9

[\[2190\]](#) §3.6.2.11

[\[2191\]](#) §3.7.3, §3.7.6.2, §3.7.6.4

[\[2192\]](#) §3.6.2.12

[\[2193\]](#) §3.7.5

[\[2194\]](#) §3.7.3

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[\[2196\]](#) §2.5.2.1

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[\[2202\]](#) Cheney [\[T0558\]](#)

[\[2203\]](#) §3.7.4.2

[\[2204\]](#) §3.7.4.3

[\[2205\]](#) Nicholson [\[T8199\]](#)

[\[2206\]](#) Nicholson [\[T8242\]](#)

[\[2207\]](#) Nicholson [\[T8245\]](#)

[\[2208\]](#) Nicholson [\[T8206\]](#)

[\[2209\]](#) Nicholson [\[T8208\]](#)

[\[2210\]](#) §3.7.4.3

[\[2211\]](#) Nicholson [\[T8165\]](#)

[\[2212\]](#) Nicholson [\[T8168\]](#)

[\[2213\]](#) Nicholson [\[T8173\]](#)

[\[2214\]](#) §3.7.4.3

[\[2215\]](#) §3.7.3

[\[2216\]](#) §2.5.2.5

[\[2217\]](#) §3.7.6.2

[\[2218\]](#) §3.7.6.4

[\[2219\]](#) [\[T0007\]](#)-[0008]

[\[2220\]](#) [AFP.AFP.0102.001] Goldsmith statement

[\[2221\]](#) Ms Van Buuren §1015

[\[2222\]](#) Bartlett [\[T6021\]](#)