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TO: The Represented Parties

AND TO: Coroner Doogan

By E-mail

Dear All

Inquests into the deaths of Dorothy McGrath and Alison Tener – Supplementary Submissions

We refer to the debate before Her Honour and Her Honour's ruling on 19 May 2006.

Her Honour accepted that the additional statements obtained from the witnesses relevant to the deaths of Mrs McGrath and Mrs Tener essentially comprise only speculation concerning what each of the deceased may have done had they received more timely and informative warnings and added nothing material to the evidence already before her in the inquests. In the circumstances, Her Honour ruled that the evidence of the witnesses as revealed by the additional statements was not sufficiently probative to warrant that additional evidence being received. Her Honour also ruled to the effect that her findings as to the manner and cause of death were not final and it was open to her to make supplementary findings. Further, Her Honour made it clear both in her ruling and in later discussion with Mr Lasry that the existing statements and taped records of conversation of witnesses relevant to the deaths were before her as evidence in the inquests without any objection from any of the parties.

Having reviewed the evidence summarised in our submissions of 2 April 2006 at §3.7.6.2 and §3.7.6.4 in the light of Her Honour's ruling, we have concluded as follows:

- (a) that Her Honour's ruling does not preclude the making of the submission set out in paragraph 1323 of our 2 April submissions;
- (b) as to the death of Mrs McGrath, that there is insufficient evidence to support a finding that the lack of adequate warning was a cause of her death; and
- (c) as to the death of Mrs Tener, and contrary to paragraph 1325 of our 2 April submissions, that the finding is still open to be made by Her Honour for the reasons set out in paragraph 1323 of our submissions, as discussed further below.

The relevant evidence concerning the death of Mrs Tener is summarised in §3.7.6.2 of our 2 April submissions. In particular, the evidence is that:

- in the early afternoon of 18 January 2003, Mrs Tener had a short conversation with her neighbour Mrs Taylor, during which Mrs Taylor told Mrs Tener that she (Mrs Taylor) was leaving with her children and she was just putting a few things in the car;
- personal items including photographs albums were located in the boot of Mrs Tener's car, which was located inside the carport at Mrs Tener's home; and
- 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.

In our 2 April submissions, we also refer to:

- the evidence concerning the preparation and broadcast of the SEWS (paragraphs 939 to 942), including the evidence of Mr Castle that:
 - he thought the form of the SEWS had been run past Mr Lucas-Smith before it came to him; and
 - 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 that, with hindsight, more information could possibly have been given.
- Mr Castle's evidence (paragraph 1044) that:
 - the warnings to residents from about 14:30 hours on 18 January (including the SEWS) about filling the bath, did not include an explanation as to the purpose for filling the bath until after 18 January;
 - the reason for filling the bath was not made clear up to and during 18 January; and
 - 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.*
- the evidence of Mr Roche concerning a model for the issue of warnings to the community (paragraph 1022), which we submitted Her Honour should accept (paragraph 1314); and
- the text of the warning issued by the ESB to Canberra residents on 20 January 2003 (paragraph 1045).

In our submission, having regard to all these matters, it is open for Her Honour to find that:

- (a) based on the evidence of Mrs Taylor of her conversation with Mrs Tener and the evidence of the personal items located in the boot of Mrs Tener's car, as at about 2.00 pm on 18 January 2003, Mrs Tener was undecided about whether she should evacuate from her home in Duffy, but had made some preparations should she decide to do so;
- (b) at some time after approximately 2.45 pm, Mrs Tener became aware of the contents of the SEWS, including the advice that residents of Duffy were urged to return to their homes and that if the fire approaches their homes, those residents should fill the bathtub, any buckets etc and soak towels to place in any crevices such as under the door;
- (c) consistent with that advice, Mrs Tener abandoned any plans to leave her home, filled her bathtub and soaked towels;
- (d) at some time after her home came under direct threat from the fire, and misunderstanding the purpose of the instruction to fill the bathtub and soak towels, Mrs Tener sought refuge from the fire by immersing herself in the bathtub, partially covering herself with wet towels;
- (e) had the ESB implemented a community warning system of the kind suggested by Mr Roche, comprising (as a minimum) phase 3 as described by Mr Roche, including the issue of a warning on 17 January (or even early on 18 January) describing a risk to the area of Duffy in similar terms to that issued by the ESB on 20 January, Mrs Tener would have (in the words of the 20 January ESB warning) *temporarily relocated until weather conditions eased*, well before the issue of the SEWS at approximately 2.30 pm;
- (f) in the circumstances:
 - (i) the absence of a warning to the effect and at the times described in (e) above; and
 - (ii) the late issue of the SEWS urging residents of Duffy to return to their homes, offering incomplete advice on precautions to take if threatened by the fire and not suggesting the alternative course of temporarily relocating,

were each as a cause of the death of Mrs Tener.

A copy of this letter is being sent simultaneously to the Coroner, with a request that she regard the matters set out above as forming part of our final submissions and submitting that she should make findings concerning the manner and cause of the death of Mrs Tener to the effect above.

Yours faithfully

Lex Lasry QC and Ted Woodward
Counsel Assisting