

ACT FIRES
JANUARY 2003

SUBMISSIONS OF
COUNSEL ASSISTING
ON
RECOMMENDATIONS

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
4 MAY 2006

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CHAPTER 8 RECOMMENDATIONS

8.1 INTRODUCTION

1. These further submissions are to be read in conjunction with our substantive submissions dated 2 April 2006 (“**2 April Submissions**”). In particular, terms used in these further submissions have the meanings ascribed in our 2 April Submissions
2. In our 2 April Submissions, we noted that in November 2005 the ACT Government Solicitor provided to us a letter from ACT Emergency Services Authority Commissioner Peter Dunn (“**Mr Dunn’s Letter**”) and a substantial bundle of annexures to the letter. The letter and annexures identify all of the reforms that have so far been implemented by the ACT Government and the recently constituted Emergency Services Authority (“**ESA**”) as part of the implementation of the recommendations in the McLeod Report delivered in August 2003.
3. On the whole, the reforms seem to us to be a welcome and appropriate response to the issues identified during the course of the Inquest and the subject of our 2 April Submissions. In particular, we note that consistently with our submissions on initial response and warnings, the document that presently constitutes the central plank of the package of reforms, namely the Strategic Bushfire Management Plan for the ACT Version 1 January 2005 (“**SBMP**”)¹, identifies the following among the key objectives for bushfire management in the ACT for the future:
 - *To provide information for decision-making to all functions of fire management and stake holders at all levels – and keep ACT residents informed and consulted.*
 - *To ensure the community is aware, capable and informed so that it can effectively share the fire management responsibility.*
 - *To ensure people, planning, equipment, systems and processes to contain or suppress bushfires are capable of doing so and are ready to respond.*
 - *To ensure rapid and appropriate responses to all bushfires in the ACT with a capacity to contain or suppress both small and large fires.*²
4. As we have submitted, these *key objectives* succinctly identify what was lacking during the fires in January 2003.

¹ Mr Dunn’s Letter, Annexure 4

² SBMP p2

5. For the convenience of Your Honour and the represented parties, we set out below our submissions on recommendations in the order in which the issues are addressed Mr Dunn’s Letter. We also note that our submissions below are by exception, in the sense that we have restricted our comments to instances where we consider it necessary to make some comment or raise an issue concerning the reforms referred to in Mr Dunn’s Letter. In cases where we consider a particular reform is both necessary and appropriate and we have nothing useful to add, we make no comment. In our submission, Your Honour should generally endorse the reform process outlined in Mr Dunn’s Letter and exhort the ACT Government and the ESA to continue that reform process, including by the provision of adequate ongoing funding, subject to the additions or variations as discussed below.

8.2 IMPLEMENTATION OF MR MCLEOD’S RECOMMENDATIONS.

8.2.1 LEGISLATION.

8.2.1.1 *Four Emergency Services Under the Management of the Emergency Services Authority (“ESA”)*

6. At paragraph 16 and following, Mr Dunn’s Letter confirms that the *Emergencies Act* 2004 (“*Act*”) has retained each of the four emergency services, namely the ACT Fire Brigade, the ACT Bushfire Service (renamed the ACT Rural Fire Service) (“*ACT RFS*”), the ACT Ambulance Service and the ACT Emergency Service (renamed the ACT State Emergency Service). According to Mr Dunn’s Letter the four services were retained *in order to retain the identity and culture of the services, but as part of an integrated single authority*³. Mr Dunn’s letter goes on to describe the ways in which the functions of each of the services has altered. In the context of discussing the role of the ACT RFS, Mr Dunn notes that members of that service have been trained in defensive structural fire fighting techniques. We note that this addresses a concern raised during the course of the Inquest by witnesses who were volunteer members of the ACT Bushfire Service⁴.
7. We accept that retaining the identity and culture of each of the individual services is a valid concern, particularly in the early stages of a reform process. In particular, we understand that a full integration of the two fire services in the short term could operate to undermine the existing culture among rural brigades leading to disaffection and the loss of some members. We nevertheless are not persuaded that a jurisdiction as small as the ACT, that is surrounded by NSW and, indeed, equates to a single fire district in NSW⁵, can sustain in the medium to longer term four separately constituted emergency services, each with its own chief officer.

³ Mr Dunn’s Letter §17

⁴ For example, Katz [T5481]-[T5482]

⁵ Koperberg [T6190]

8. The declaration of the Bushfire Abatement Zone (“**BAZ**”), the statutory provisions dealing with management of operations in the BAZ and the guidelines for response arrangement in the BAZ⁶, will probably prevent a repeat of what occurred during the January 2003 fires (and particularly between 16 and 18 January) where the two fire services were effectively planning in isolation from each other. However, in our submission, there remains a risk of inefficiencies developing in the use and allocation of resources through duplication and the possibility of conflicts arising over issues of jurisdiction and responsibility, particularly in the BAZ where roles and responsibilities overlap.
9. The provisions for the management of operations in the BAZ also suffer from a deficiency discussed below concerning the issue of unified control arrangements between the ACT and NSW authorities. Namely, it does not prescribe joint management of operations in circumstances where a fire is burning outside the BAZ but constitutes a substantial threat to structures and other assets within the BAZ. To take the January 2003 fires as an example, on a strict application of the provisions as we understand them, joint operational management would not have been formally required (except perhaps for Uriarra) until shortly after noon on 18 January 2003, notwithstanding that the fires entered and burnt out a major proportion of what is now the BAZ over the next few hours.
10. On the other hand, we note that part of the role of the Commissioner under the Act is to ensure that the services operate as part of an integrated single authority and the Commissioner is accountable for the strategic direction and management of all the emergency services⁷. Further, in our submission, with each of the services operating under its own chief officer with a deputy and other senior staff, there is less scope for personnel finding themselves in positions for which they are not adequately qualified or experienced, as was the case with Mr Graham during the January 2003 fires⁸. In particular, it seems unlikely under the new structure prescribed by the Act that a person such as Mr Graham with experience generally in emergency response, but lacking experience in bushfire fighting strategies and operations, would find himself filling the role of operations manager in an incident management team engaged in fighting a level 3 wildfire.
11. In the circumstances, in our submission, the new emergency services structure discussed in Mr Dunn’s Letter⁹ should be a prominent issue in the review of the reforms which we discuss in more detail below¹⁰. In particular, in our submission, the review should proceed from the premise that a full merging of the two fire services is desirable, unless persuaded to the contrary. In the meantime, in our submission, Your Honour should recommend that the *Emergencies (Response Arrangements for Fires in the Bushfire Abatement Zone) Authority Guidelines*

⁶ Mr Dunn’s Letter §24, 27 & 28

⁷ Mr Dunn’s Letter §17 & 21

⁸ 2 April Submissions §3.2.2.9

⁹ Mr Dunn’s Letter §17-25

¹⁰ §8.3

2004 be amended so that they provide, in effect, that the response arrangements operate in respect of bush/grass fires in the BAZ and bush/grass fires outside the BAZ if it is probable that the fires will affect the BAZ.

8.2.1.2 *Future Urban Development*

12. In paragraph 29 of Mr Dunn's Letter, he notes that the Canberra Urban Development Working Group, of which the ESA is a member, has been established to develop a framework for urban development on the urban fringe. It is not clear from Mr Dunn's Letter how far progressed the work of the Working Group is. We note that the community awareness material referred to later in Mr Dunn's Letter¹¹ and discussed in more detail below¹², includes information for residents concerning measures they can implement to better protect their homes from the impact of bushfires and, in particular, from ember attack. However, in our submission, Your Honour should recommend that the Working Group as part of its deliberations consider carefully the report of Mr Leonard to Your Honour and his evidence to the Inquest. More particularly, in our submission, the Working Group should note:
 - a. that the existing information available to householders in the community awareness material about measures they can take to better protect their homes from bushfires does not include reference to the potential of wooden fences, conifers and outbuildings to contribute significantly to fire spread, particularly within suburban areas¹³; and
 - b. Mr Leonard's evidence to the effect that the linear siting of homes on house blocks in urban Canberra appeared also to be a significant factor in contributing to house to house spread and that this should be avoided in future developments on the Canberra urban fringe¹⁴.
13. In our submission, Your Honour should also support Mr Leonard's recommendation that that Australian Building Standard 3959, *Construction of Buildings in Bushfire Prone Areas* be implemented for the Canberra urban area. We confirm that in his evidence as discussed in our 2 April Submissions, Mr Leonard explained that the implementation of AS3959 would not mean that all houses constructed in urban Canberra in the future will need to comply with the standard. The standard has built into it a process for assessing the level of exposure of houses in a particular area and then requiring a level of compliance with AS3959 based on the level of exposure. According to Mr Leonard, most houses in urban Canberra would fall outside the standard. As for houses on the edge of Canberra, Mr Leonard pointed out in his

¹¹ Mr Dunn's Letter §116

¹² §8.2.3.1

¹³ See our 2 April Submissions at §961

¹⁴ See our 2 April Submissions at §959

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. Further, the application of the standard may also lead to increased voluntary adoption of mitigation measures provided for under the standard for existing households.¹⁵

8.2.1.3 *The SBMP*

14. Mr Dunn's Letter confirms that s72 of the Act provides for the preparation and making of the SBMP¹⁶. It is clear from a review of Mr Dunn's Letter and the SBMP itself that, as discussed above, it constitutes the central plank in the reform process implemented since the January 2003 fires. A reading of the SBMP reveals that the plan is the result of a considerable amount of work, including thoughtful analysis of past deficiencies and wide consultation with stakeholders. It is structured around a number of general statements of objective which are clearly important in setting the framework for the reform process and emphasises audit and other measures designed to ensure that the reform process is implemented in the short term and sustained in the medium to longer term.
15. On the other hand, this current version of the SBMP is lacking in detail as to how the key objectives will be implemented on the ground. We acknowledge that an important part of the process of implementation and no doubt the repository of much of the detail in relation to bushfire mitigation and prevention works is likely to be contained in the Bushfire Operational Plans referred to in s74 of the Act and discussed in the SBMP¹⁷. However, the current Bushfire Operational Plans have not been provided among the material annexed to Mr Dunn's Letter. Your Honour should reserve any endorsement of the proposed bushfire mitigation and prevention works pending submission on behalf of the ACT as to the form and content of the Bushfire Operational Plans.
16. Similarly, SBMP Version 1 annexed to Mr Dunn's Letter readily acknowledges that it is effective only for an interim period, pending the completion and delivery of Version 2 which we understand from SBMP Version 1 will be a much more detailed document, designed to guide bushfire management in the ACT for the next 10 years. However, we note that SBMP Version 2 was to be introduced on 1 July 2005 and our own recent enquiries suggest that Version 2 has still not been completed and may not be completed until dedicated government funding is allocated to the completion of SBMP Version 2. In our submission, subject to further submission on behalf of the ACT on this issue, Your Honour should comment on this delay in the completion of SBMP Version 2 and recommend that any

¹⁵ See our 2 April Submissions at §964

¹⁶ Mr Dunn's Letter §30&ff

¹⁷ SBMP p44

shortfall in funding necessary to complete SBMP Version 2 be made up urgently and that SBMP Version 2 be completed and introduced as soon as practicable.

8.2.1.4 Fuel Management Under the SBMP

17. An important element of the SBMP is section 6, *Prevention – Minimising Bushfire Occurrence and Impacts* and, in particular, the proposed approach to bushfire hazard reduction there set out. The adoption of three fuel management zones appears to us to be a sensible response to the bushfire risk assessment summarised in the preceding section of the SBMP. However, we have had difficulty understanding what hazard reduction works are proposed for the *Land Management Zone*. We accept that we may have misread the SBMP or that our concerns discussed below are addressed in the Bushfire Operational Plans or are proposed to be addressed in the SBMP Version 2.
18. In the meantime, we note that the SBMP identifies that the Land Management Zone may cover as much as 70% of the total landscape, but appears to suggest that hazard reduction works will only be undertaken in that area as necessary *to sustain production, or ecological, catchment values*, and that in some areas *no planned fire will be applied*¹⁸. We accept that there will always be some discrete areas where compelling ecological or conservation considerations require that no planned fire will be applied. However, we are concerned by the possibility that under the SBMP as it stands, areas amounting to up to 70% of the ACT could potentially be excluded entirely from fuel reduction burning. We note that the burning of corridors designated as the Landscape Division Zone will be undertaken with a view to breaking up major fire runs in instances where initial attack fails, but we are unconvinced that fuel reduction burning in only those zones will have the desired effect in the case of a major fire event such as was experienced in January 2003.
19. In our submission, subject to clarification of our understanding of the SBMP as discussed above, Your Honour should recommend consistently with the evidence of Mr Cheney¹⁹ and, indeed, the Phoenix Imperative document²⁰, a hazard reduction program that involves regular and strategic hazard reduction burning in all areas of the ACT including catchment areas, with a view to having fuel reduced areas in a mosaic across the entire landscape, excluding only small areas of particular ecological or conservation importance. More particularly, Your Honour should recommend that the SBMP and associated Bushfire Operational Plans be revised to provide for a fuel reduction burning regime in the Land Management Zone that is equivalent to that contemplated for the Landscape Division Zone and involves burning of areas in rotation to achieve an appropriately varying fire age spectrum across the entire landscape.

¹⁸ SBMP p43

¹⁹ 2 April Submissions §2.2.1.1

²⁰ 2 April Submissions §2.2.1.3

8.2.1.5 Responsibility for Fuel Management

20. In the Cheney Fuel Management Report and in evidence, Mr Cheney was unequivocal in stating his view that effective fuel management will only be achieved in circumstances where the organisation that owns the fuel and is responsible for the fuel management, is also the organisation with responsibility for suppressing fires that start in those fuels. According to Mr Cheney, in order for a land management agency to have the incentive to focus on, and put resources and effort into, fuel management, that agency needs to be responsible for the consequences of failing in that area. If the land manager is not responsible for suppression, then it does not have the necessary degree of focus and incentive to find out what fuels under the control of the land manager are the most difficult and which would benefit most from treatment²¹.
21. In our submission, the logic of Mr Cheney's views is inescapable. But in a jurisdiction the size of the ACT, it is understandable that the land management authorities may not have the organisational capacity to take exclusive responsibility for large scale wildfires that occur on their land. On the other hand, there are procedures that can be implemented that will go some way to meeting the approach advocated by Mr Cheney, while recognising the constraints imposed by the budgetary and organisational limitations that necessarily exist in a jurisdiction the size of the ACT.
22. One of these is to give to the branch of the ESA with responsibility for suppression of wildfires (now the ACT RFS) the capacity and the authority to direct the land management agencies or other landholders to implement adequate preparedness and prevention measures, including fuel reduction works, where the ACT Rural Fires Service identifies failures in compliance. In our submission, this principle appears to have been adequately addressed by the provisions of the Act dealing with the involvement of the ACT RFS in the audit of compliance with the preparedness and prevention measures developed in the SBMP, as referred to in Mr Dunn's Letter.²²
23. A second and equally important measure is that suggested by Mr Roche in the Roche Report²³. Mr Roche recommended that the relevant land management authority *must be delegated the responsibility and accountability to respond to all fires on land under its care or management. This responsibility and accountability should extend to active participation, in conjunction with the ACT RFS, in the development of ongoing fire management objectives, strategies and resourced deployments.* Mr Roche's recommendation is consistent with recommendation 32 in the McLeod Report that provides that *operational procedures should be amended once additional land management resources are in place, to reflect the responsibility of land managers to initiate the first response to fires on land that they*

²¹ Cheney [T6805]

²² Mr Dunn' Letter §33 & 38

²³ [DPP.DPP.0009.0042] Roche Report p42

*manage – within the overall operational response of the ACT Bushfire Service*²⁴. It is not clear to us from the letter from Mr Dunn’s Letter and the annexures whether arrangements to this effect are contemplated or now in place.

24. The Memorandum of Understanding between the Department of Urban Services and the ESA at Annexure 17 to Mr Dunn’s Letter (“**DUS MOU**”) contemplates that the land management agencies (“**LMA**”) will contribute resources to operate a single departmental brigade under the structure and control of the ACT RFS, which is an amalgam of the previous Parks and Forests Brigades²⁵. Further, the DUS MOU provides that the LMAs agree to respond to any bushfire and other incidents when requested by the ACT RFS call-out system as prescribed in the relevant ACT RFS standard operating procedure and computer aided dispatch business rules, and to operate in accordance with the ACT RFS operational arrangements²⁶. However, neither the ACT RFS standard operating procedures nor the computer aided dispatch business rules are included with the material with Mr Dunn’s Letter so we are not able to say whether it is contemplated under these documents that the relevant LMAs have *responsibility* for initial response to all fires on their land.
25. Mr Dunn’s Letter states that *the Lone Pine Fire also provided the opportunity to test the capabilities of land managers to provide initial response to fire on their land. The success of the Lone Pine operation established a ‘first principle’, namely that the closest resources should self respond in the first instance to fires on managed land in the ACT, rather than waiting to be deployed by the Authority. The responsibility for the overall response remains with the Authority, as legislated, and the Authority will provide coordination and additional fire-fighting resources if the scale of the fire requires. This is consistent with recommendation 32 of the McLeod Report, and is reflected in new standard operating procedures (SOPs)*²⁷. However, in the absence of the SOPs referred to by Mr Dunn, we are concerned that the procedures which Mr Dunn refers may not constitute a full implementation of Mr McLeod’s recommendation 32. It may be *consistent* with the recommendation to have procedures in place that prescribe that the closest resources should self respond in the first instance to fires on managed land in the ACT (which will presumably be the firefighting resources established and operated under the auspices of that LMA). But this does not of itself confer *responsibility* to a level which, in our submission, is contemplated by the recommendations of Mr McLeod and Mr Roche.
26. The Act provides in effect that ultimate responsibility for fire suppression in rural areas resides with the ACT RFS, and we would not submit that this should be shifted to the relevant LMA by amendment to the legislation. However, in our submission, Your Honour should recommend that the DUS MOU be amended to provide in effect that the LMA on whose land a fire starts, has responsibility immediately to respond resources to that fire in

²⁴ McLeod Report p235

²⁵ DUS MOU §2.5

²⁶ DUS MOU §2.6

²⁷ Mr Dunn’s Letter §67

accordance with the applicable standards for weight of response and has responsibility to attempt suppression of any such fire until such time as it is clear that the suppression task is beyond the capacity of the resources of the relevant LMA, at which point the ACT RFS will assume direct responsibility for coordinating ongoing response. We assume that this will occur as the fire develops from a level 2 incident into a level 3 incident, as defined²⁸. A revision of the DUS MOU to this effect is likely to require consequential amendments to the ACT RFS Operations Plan, particularly in relation to the staffing of the IMT. If sufficient numbers of trained staff are available, the relevant LMA should also be responsible to fill IMT positions while the fire remains under the direct responsibility of that LMA.

8.2.2 INCIDENT CONTROL SYSTEM

8.2.2.1 *The Service Management Team*

27. Mr Dunn's Letter confirms that the structure previously known as the Service Management Team no longer operates²⁹ and he summarises the regime for managing response to wildfires and other emergency incidents in place since about December 2003. The details of these new arrangements are found in annexures 8 and 9 to Mr Dunn's Letter, Chapter 6 of the SBMP and, most particularly, the ACT RFS Operations Plan, section 7 *Incident Management*.
28. The new arrangements are closely aligned with the orthodox structure contemplated under AIIMS ICS and, in particular, will involve the establishment of an incident management team ("**IMT**") charged with responsibility for managing the incident, supported by the Emergency Coordination Centre ("**ECC**") which will be based at the ESA head office. Chapter 7 of the ACT RFS Operations Plan makes clear that the functions of the IMT, on the one hand, and ECC, on the other, are not overlapping and thus, at least in theory, the role confusion experienced during the January 2003 fires as a result of the ambivalent function of the SMT and apparent lack of understanding of the structure, should be avoided.
29. However, it is possible that in time the distinct roles of the IMT and ECC may become blurred, particularly where they are operating out of a single location. In this regard, we note that while these reforms are broadly consistent with the recommendations made by Mr Roche in the Roche Report³⁰, he specifically cautioned against the physical co-location of the ESA operational headquarters with an IMT in an incident control centre ("**ICC**") using shared facilities.

8.2.2.2 *Co-location of the ECC and ICC*

30. We note that the ACT RFS Operations Plan has identified a number of ICC locations, which should in the future result in a physical separation between the IMT managing the

²⁸ ACT RFS Operations Plan at Annexure 22 to the Mr Dunn's Letter ("**ACT RFS Operations Plan**") p20, 34, 35

²⁹ Mr Dunn's Letter §64

³⁰ [DPP.DPP.0009.0001] at p159

emergency and the ECC providing a coordinating role. However, this will not always be the case. In our submission, if the location of the ESA headquarters (and thus the ECC) in a particular incident is also the most appropriate location for the IMT, this should not preclude the use of the facilities at the ESA headquarters as an ICC. However, in these circumstances, those involved in operating the ECC (and the Commissioner in particular) and the officers appointed to the IMT must be acutely conscious of ensuring the separation of the two functions as contemplated under Chapter 7 of the ACT RFS Operations Plan. We would expect this could be achieved by a combination of:

- a. clear identification of functional responsibility through the use of tabards; and
- b. physically separating the ICC from the ECC and minimising the occasions when officers in the ECC are present at the ICC.

8.2.2.3 *Appointment to Functional Roles in the IMT*

31. We also note that while the ACT RFS Operational Guidelines specifically provide that *experience, training and competence to fill roles are the most important considerations in selection of incident management personnel*³¹, the SBMP provides that the formation of an IMT is the responsibility of the Duty Coordinator, *in consultation with the Chief Officer ACT RFS*³². Once again, providing that consultation occurs and the principle articulated in the ACT RFS Operations Plan set out above is adhered to, there should not be a repeat of the circumstances encountered on 8 January 2003 and for several days thereafter, where the person with primary operational responsibility for the ACT fires (Mr Graham) was wholly lacking in the requisite training and experience in wildfire suppression.
32. We are nevertheless concerned that over time there is scope for a Duty Coordinator to make inappropriate appointments to positions within an IMT, particularly in the early stages of an incident. In our submission, procedures should be established so that the Chief Officer of the ACT RFS (or, in the absence of that officer, the Deputy Chief Officer of the ACT RFS) has primary responsibility for the appointment of personnel to IMT functional positions, particularly for level 2 and 3 wildfires. In our submission, Your Honour should recommend that for level 2 and level 3 wildfires, responsibility for selecting personnel to fulfil IMT roles rests with the Chief Officer of the ACT RFS or, in the absence of that officer, the Deputy Chief Officer of the ACT RFS, in consultation with the Duty Coordinator.

³¹ ACT RFS Operations Plan p21

³² SBMP p60

8.2.3 ADDITIONAL IMPLEMENTATION OF MCLEOD RECOMMENDATIONS

8.2.3.1 *Community Awareness Material*

33. Mr Dunn's Letter summarises the processes put in place by the ESA in pursuance of its obligation under the Act to *emphasise community education and preparedness for emergencies*³³. These include the development and roll out of the Bush Firewise Program and a letterbox drop of an updated Bushfire Information Booklet and the distribution of other publications. Although it appears that work is continuing on identifying other ways to get the message across to the ACT community, in our submission, Your Honour's recommendations should emphasise the importance of *personalising the message*, so that affected residents understand that the material seeks to educate them about a risk that affects them personally. The need to personalise the message was something that was strongly emphasised in the evidence of Mr Roche, whose evidence in this regard was endorsed by Mr Nicholson³⁴. Continued resourcing, development and deployment of the Bush Firewise Program will be a vital part of this process and Your Honour should recommend that it continues to have the full support of the ACT Government through adequate funding.
34. In this regard, the real test of the effectiveness of the steps taken to improve community awareness of fire risk will not be the level of that awareness in the next 5 to 10 years, while the experience of the January 2003 fires remains reasonably fresh. That test will come in 10, 20 or even 50 years time, when the trauma of the January 2003 fires is largely forgotten and there has been no event on a similar scale in the interim period. In our submission, Your Honour should emphasise in your recommendations concerning the ongoing funding of community awareness programs, that it will be the responsibility of current and future governments of the ACT to ensure that the level of complacency and lack of understanding of the risk to urban Canberra of serious impact from wildfire that existed before the January 2003 fires, is never repeated. The reforms implemented following the January 2003 fires provide a solid foundation for a regime under which residents of the ACT, and Canberra in particular, will continue to understand the risks they face from bushfire and how to respond to those risks notwithstanding the time that may elapse between serious fires, but the importance of maintaining the political will to ensure that occurs cannot be overstated.

8.2.3.2 *Liaison with NSW Authorities*

35. The annexures to Mr Dunn's Letter include a draft of a memorandum of understanding between the ESA and the New South Wales Department of Environment & Conservation (formerly the NSW National Parks and Wildlife Service)³⁵ as well as the existing memorandum of understanding between the ESB and the NSW RFS that was in evidence

³³ Mr Dunn's Letter §115&ff

³⁴ 2 April Submissions §240

³⁵ Mr Dunn's Letter annexure 12

before Your Honour³⁶ (together the “*NSW MOUs*”). The NSW MOUs each make provision for liaison and joint operations where a fire is burning in both jurisdictions. In our submission, Your Honour should recommend that ESA with the support of the ACT Government seek to have the NSW MOUs revised in two respects.

- a. First, it should be clear that it is not necessary for a fire to be actually burning in both the ACT and NSW before joint operational arrangements are implemented. For example, the MOU between the ESB and the NSW RFS currently provides for the establishment of a joint incident management team and a mutually agreed location only *where the incident is on both sides of the border*. In our submission, Your Honour should recommend that the ESA with the support of the ACT Government seek the agreement of the NSW RFS and the NSW Department of Environment & Conservation to an amendment to the NSW MOUs so that they provide, in effect, that joint operational arrangements be implemented as soon as it becomes apparent to whichever jurisdiction is managing the fire that it is probable that the fire will affect the other jurisdiction. To take the McIntyre’s Hut fire as an example, had such a provision governed liaison arrangements at the time of the fire, the joint operational arrangements contemplated under the NSW MOUs would have been implemented in respect of that fire immediately after it was detected and remained in place for the duration of the fire.
- b. Secondly, it is not clear what the *unified control arrangements* referred to in the NSW MOUs will involve. In particular, the ACT/NSW Border Fire Management Plan of Operations referred to in the MOU between the ESB and the NSW RFS is not among the material made available to us. While we would not necessarily endorse the establishment of a *shadow IMT* concept which was discussed during the evidence of Mr Roche³⁷, the unified control arrangements should involve more than simply the placement of liaison officers in respective ECCs. In our submission, Your Honour should recommend that the ESA with the support of the ACT Government seek the agreement of the NSW RFS and NSW Department of Environment & Conservation to include as part of the unified control arrangements, provisions to the effect that:
 - i. the authority whose jurisdiction is most affected, or likely to be most affected, by the fire will appoint suitably qualified and experienced personnel to the key functional roles in the IMT (incident controller, planning officer, operations officer and logistics officer) in accordance with its own operational arrangements but in consultation with the authority of the other affected jurisdiction;

³⁶ Mr Dunn’s Letter annexure 19

³⁷ Roche [T7612]

- ii. the authority of the other affected jurisdiction will appoint suitably qualified and experience personnel to fill the position of deputy incident controller as well as deputy to each of the other key functional roles in the IMT as the size and complexity of the incident demand, in accordance with its own operational arrangements but in consultation with the authority whose jurisdiction is most affected; and
 - iii. the arrangements contemplated by these provisions will be varied only with the consent of the chief officer or equivalent (or in their absence, their deputy) of each affected authority, who will also be responsible for resolving any disagreement concerning which jurisdiction is most affected and over the appointment of personnel to IMT functional roles as required by these provisions.
36. Thus, if the McIntyre's Hut fire were to have occurred under these arrangements, the incident controller would be appointed by the NSW Department of Environment & Conservation upon detection of the fire, with a deputy incident controller appointed by the ESA. It is likely to have been appropriate as the fire developed to have a NSW operations and planning officer, also each with an ESA deputy. Further, by late on Friday 17 January or on the morning of 18 January at the latest, there would have existed a strong case for switching the ESA's deputy incident controller to incident controller, with a NSW officer filling the role of deputy. Similar (but reverse) arrangements would have been implemented for the Bendora and Stockyard fires once they began to approach the NSW border. Clearly, these arrangements would need to be sufficiently flexible to take account of the size of the incident and the extent of the threat to the respective jurisdictions. However, the circumstances of the McIntyre's Hut fire in January 2003 reinforced the need for a degree of integration between the jurisdictions that is significantly more sophisticated than was in place at the time.
37. Above all, those arrangements should ensure that neither jurisdiction in cast in the role of interested bystander, but instead should require that:
- a. each jurisdiction is intimately involved in examining and planning for the threat posed by any fire likely to affect that jurisdiction, and in coordinating the response to that fire; and
 - b. as the threat shifts between jurisdictions, there is a seamless transition in operational control.

We understand arrangements similar to those described above apply in Victoria where a fire is affecting, or likely to affect, both land under the management of the Country Fire Authority and on land under the management of the Department of Sustainability and

Environment. Those arrangements (which may also be in place in other jurisdictions including NSW) could serve as model for the provisions proposed above.

38. Further, although the MOU with the NSW RFS is concerned primarily with operational arrangements and the draft MOU with the NSW Department of Environment & Conservation addresses, in addition, issues of access, it is not clear why all of these matters cannot be dealt with in a single MOU between the ESA and both of the NSW authorities. Having two separate and independent documents increases the scope for inconsistency in the joint operational arrangements, leading to confusion and disagreement during an incident, particularly where both the NSW RFS and NSW Department of Environment & Conservation are engaged on the NSW side. In our submission, Your Honour should recommend that the ESA with the support of the ACT Government seek to negotiate a single MOU with both authorities, integrating the provisions in the existing NSW MOUs and adding provision to the effect described above.

8.2.3.3 *ACT Stand-up Arrangements*

39. The stand-up arrangements now in place in the ACT are referred to in both the DUS MOU and in the ACT RFS Operations Plan, at sections 5 and 6. For the most part, these new arrangements appear to us to be an appropriate response to the deficiencies in stand-up arrangements identified during the January 2003 fires. In particular, we note the stand-up arrangements for dozers and graders facilitated by the DUS MOU and reflected in the ACT RFS Operations Plan table³⁸. We also accept that, as a general proposition, the stand-up arrangements already accommodate varying levels of stand-up reflecting the conditions on particular days, through the allocation of readiness levels from low (green) through to extreme (red)³⁹. However, as the fires of January 2003 demonstrated, from time to time there will be clear signs in the lead-up to a particular fire season that the fire season generally will be abnormally bad. The need for an assessment of the coming bushfire season adjustments to the base standards of cover based on seasonal conditions is recognised in the SBMP⁴⁰, but we consider that the importance of a heightened level of awareness and response in particularly severe season justifies a more prescriptive approach.
40. In our submission, Your Honour should recommend a process along the lines suggested by Mr Roche in the Roche Report⁴¹ pursuant to which the ESA, in conjunction with the Bushfire Council, conducts an annual qualitative risk analysis of conditions and circumstances forecast and prevailing prior to each fire season. These assessments should be conducted in association with all appropriate agencies, including the Commonwealth Bureau of Meteorology, the NSW RFS and NSW Department of Environment & Conservation. If

³⁸ p17

³⁹ See, for example, ACT RFS Operations Plan p13

⁴⁰ p54-55

⁴¹ [DPP.DPP.0009.0001] Roche Report p40

that risk analysis identifies circumstances such as those experienced during 2002 that indicate a fire season of unusual severity is in prospect, the ESA should have the capacity and power to enhance stand-up and other pre-season preparation arrangements beyond those contemplated by the readiness levels of an average year.

41. This could involve, for example, lowering the threshold for each of the readiness levels to a point where, for instance, the factors that would result in an orange readiness level in a typical year, will trigger a red readiness level in an extreme year. In such a year, where conditions indicate a red readiness level, the stand-up arrangements could be heightened beyond what is contemplated for a red readiness level in an average year. For example, under the stand-up arrangements as prescribed by the ACT RFS Operations Plan, a red readiness level in an average year dictates that a rapid response dozer be on float between 1200 and 2000 hours. In an extreme year, that time period could be extended, there could be provision for additional dozers to be on float or even for pre-positioning of heavy plant in areas closer to likely ignition points. Similarly, as we understand it, under arrangements in an average year, a red readiness level will now dictate an enhanced stand-up by personnel but, in the case of LMA staff, crews on stand-up are generally required to undertake normal work duties. In a designated severe year, this could be altered so that crews on stand-up remain at their depot or are otherwise being rested and therefore better able to respond rapidly to ignitions and comfortably undertake an overnight shift.
42. In our submission, Your Honour should recommend that the Bushfire Council include this as an agenda item and that SBMP Version 2 and a revised Operational Management Folder and DUS MOU make specific provision for enhanced readiness and response arrangements during seasons identified as particularly severe.

8.3 REVIEW OF REFORMS

43. The reforms implemented and in the course of implementation as a result of the recommendations by Mr McLeod and discussed in Mr Dunn's Letter are, on the whole, a comprehensive and welcome response to the failures, deficiencies and other issues identified in our 2 April Submissions. However, as discussed above, we have some misgivings about aspects of those reforms and there is still work to be done. In particular, the finalisation of SBMP Version 2 is a priority. Having regard to those misgivings and teething problems that will no doubt be encountered as implementation of the reforms continues, in our submission Your Honour should recommend a wholesale review of all of the reforms referred to in Mr Dunn's Letter and any additional reforms implemented as a result of Your Honour's recommendations, once a sufficient period has elapsed to enable those reforms to be fully implemented and tested in practice.
44. In our submission, the timing of that review should be dictated by the timeframe for the review of the SBMPs pursuant to s80 of the Act. Section 80(1) provides that the Minister

must, in consultation with the Bushfire Council, comprehensively review the SBMP at intervals of not more than 5 years. Assuming that SBMP Version 2 is completed before the end of this calendar year, the review should occur so that it can be completed and taken into account at the time of the first review of SBMP Version 2, which we presume will occur some time before the end of the year 2011.

45. Your Honour should recommend that the review is independent and involve wide consultation with stakeholders and, in particular, those who are directly engaged in the structures and processes established as part of the reform process. Ideally, the review would be undertaken by someone with some knowledge and experience of emergency services, but not in any way connected with the current management and operation of those services, whether directly or indirectly, by reason of having a role in a government department that oversees or funds the provision of the services. Suitable candidates would include Mr McLeod or a retired chief officer or deputy chief officer of a rural fire service in a neighbouring jurisdiction.. That person should be given uninhibited and confidential access to officers and staff of the ESA and the various emergency services organisations and be able to receive submissions from other interested parties.

8.4 SUMMARY OF RECOMMENDATIONS

46. In summary, we submit that Your Honour should recommend that:
 - a. that the *Emergencies (Response Arrangements for Fires in the Bushfire Abatement Zone) Authority Guidelines* 2004 be amended so that they provide, in effect, that the response arrangements operate in respect of bush/grass fires in the BAZ and bush/grass fires outside the BAZ if it is probable that the fires will affect the BAZ;
 - b. that the Canberra Urban Development Working Group as part of its deliberations consider carefully the report of Mr Leonard to Your Honour and his evidence to the Inquest;
 - c. the Canberra Urban Development Working Group note:
 - i. that the existing information available to householders in the community awareness material about measures they can take to better protect their homes from bushfires does not include reference to the potential of wooden fences, conifers and outbuildings to contribute significantly to fire spread, particularly within suburban areas; and
 - ii. Mr Leonard's evidence to the effect that the linear siting of homes on house blocks in urban Canberra appeared also to be a significant factor in

contributing to house to house spread and that this should be avoided in future developments on the Canberra urban fringe;

- d. Australian Building Standard AS3959, *Construction of Buildings in Bushfire Prone Areas* be implemented for the Canberra urban area;
- e. any shortfall in funding necessary to complete SBMP Version 2 be made up urgently and that SBMP Version 2 be completed and introduced as soon as practicable;
- f. a hazard reduction program be implemented that involves regular and strategic hazard reduction burning in all areas of the ACT including catchment areas, with a view to having fuel reduced areas in a mosaic across the entire landscape, excluding only small areas of particular ecological or conservation importance;
- g. the SBMP and associated Bushfire Operational Plans be revised to provide for a fuel reduction burning regime in the Land Management Zone that is equivalent to that contemplated for the Landscape Division Zone and involves burning of areas in rotation to achieve an appropriately varying fire age spectrum across the entire landscape;
- h. the DUS MOU be amended to provide in effect that the LMA on whose land a fire starts, has responsibility immediately to respond resources to that fire in accordance with the applicable standards for weight of response and has responsibility to attempt suppression of any such fire until such time as it is clear that the suppression task is beyond the capacity of the resources of the relevant LMA, at which point the ACT RFS will assume direct responsibility for coordinating ongoing response;
- i. consequential amendments be made to the ACT RFS Operations Plan, particularly in relation to the staffing of the IMT, so that if sufficient numbers of trained staff are available, the relevant LMA should also be responsible to fill IMT positions while the fire remains under the direct responsibility of that LMA;
- j. for level 2 and level 3 wildfires, responsibility for selecting personnel to fulfil IMT roles rest with the Chief Officer of the ACT RFS or, in the absence of that officer, the Deputy Chief Officer of the ACT RFS, in consultation with the Duty Coordinator;
- k. the importance of personalising the message concerning the risk to ACT residents from wildfire be recognised through the continued resourcing, development and deployment of the Bush Firewise Program, which should continue to have the full support of the ACT Government through adequate funding;

- l. the ESA with the support of the ACT Government seek the agreement of the NSW RFS and the NSW Department of Environment & Conservation to an amendment to the NSW MOUs so that they provide, in effect, that joint operational arrangements be implemented as soon as it becomes apparent to whichever jurisdiction is managing the fire that it is probable that the fire will affect the other jurisdiction;
- m. the ESA with the support of the ACT Government seek the agreement of the NSW RFS and NSW Department of Environment & Conservation to include as part of the unified control arrangements, provisions to the effect that:
 - i. the authority whose jurisdiction is most affected, or likely to be most affected, by the fire will appoint suitably qualified and experienced personnel to the key functional roles in the IMT (incident controller, planning officer, operations officer and logistics officer) in accordance with its own operational arrangements but in consultation with the authority of the other affected jurisdiction;
 - ii. the authority of the other affected jurisdiction will appoint suitably qualified and experience personnel to fill the position of deputy incident controller as well as deputy to each of the other key functional roles in the IMT as the size and complexity of the incident demand, in accordance with its own operational arrangements but in consultation with the authority whose jurisdiction is most affected; and
 - iii. the arrangements contemplated by these provisions will be varied only with the consent of the chief officer or equivalent (or in their absence, their deputy) of each affected authority, who will also be responsible for resolving any disagreement concerning which jurisdiction is most affected and over the appointment of personnel to IMT functional roles as required by these provisions;
- n. the ESA with the support of the ACT Government seek to negotiate a single MOU with both authorities integrating the provisions in the existing NSW MOUs and adding provision to the effect described above;
- o. the Bushfire Council include as an agenda item and that both SBMP Version 2 and a revised Operational Management Folder and DUS MOU make specific provision for enhanced readiness and response arrangements during seasons identified as particularly severe through a process incorporating the following measures:

- i. the ESA, in conjunction with the Bushfire Council, conduct an annual qualitative risk analysis of conditions and circumstances forecast and prevailing prior to each fire season;
 - ii. these assessments be conducted in association with all appropriate agencies, including the Commonwealth Bureau of Meteorology, the NSW RFS and NSW Department of Environment & Conservation; and
 - iii. if that risk analysis identifies circumstances that indicate a fire season of unusual severity is in prospect, the ESA enhance stand-up and other pre-season preparation arrangements beyond those contemplated by the readiness levels of an average year, being enhanced stand-up and other pre-season preparation as determined by the ESA in consultation with the Bushfire Council; and
- p. there be a wholesale review of all of the reforms referred to in Mr Dunn's Letter and any additional reforms implemented as a result the recommendations above, which review should:
 - i. be undertaken during the year 2011 and completed in sufficient time to enable any further recommendations from the review to be incorporated in the review of the SBMP that is likely to be required that year pursuant to s80 of the Act;
 - ii. be undertaken by a person appointed by the ACT Government with experience of emergency services in the ACT, but not in any way directly connected with the current management and operation of those services;
 - iii. the person appointed to conduct the review having uninhibited and confidential access to officers and staff of the ESA and the various emergency services organisations; and
 - iv. involve wide consultation with stakeholders (including allowing for submissions from the public) and, in particular, those who are directly engaged in the structures and processes established as part of the reform process.