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TRANSCRIPT OF PROCEEDINGS

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**CORONER'S COURT OF THE  
AUSTRALIAN CAPITAL TERRITORY**

15

**MRS M. DOOGAN, CORONER**

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CF No 154 of 2003

INQUEST AND INQUIRY

25

INTO

THE DEATHS OF DOROTHY MCGRATH,  
ALLISON MARY TENNER,  
PETER BROOKE, AND DOUGLAS JOHN FRASER,  
AND THE FIRES OF JANUARY 2003

30

CANBERRA

35

DAY 8

10.04 AM, THURSDAY, 16 OCTOBER 2003

40

45

[10.04am]

5 THE CORONER: These are the inquests into the  
deaths of Douglas Fraser, Peter Brooke, Allison  
Tenner and Dorothy McGrath. Yes, Ms Cronin.

10 MS CRONIN: Your Worship, I formally in this  
inquest tender some folders that are already on  
the Courtbook, being folders AMT, DJF, DMC and  
PBB.

15 THE CORONER: Just before we start, I'll just  
ask: are there any members of the families of  
any of these persons present here this morning?

MRS FRASER: Yes. I'm Mrs Fraser.

20 THE CORONER: Do you wish to sit closer to the  
table?

MRS FRASER: No, that's fine.

25 THE CORONER: Do you have anybody representing  
you today? You don't have to.

MRS FRASER: No.

30 THE CORONER: Have you seen a copy of the  
brief, the evidence that is to be presented?

MRS FRASER: Yes, just part of it. That's fine.

35 THE CORONER: If there's anything you wish to  
know or any questions you wish to ask, please  
feel free to do so.

MRS FRASER: Thank you.

40 MS CRONIN: Those items that have just been  
tendered to your Worship have the same exhibit  
numbers that they do in the inquiry.

45 MR STITT: Sorry, but I just can't hear  
my learned friend.

MS CRONIN: If the contents of those folders that have just been tendered could have the same exhibit numbers that they do in the inquiry.

5

THE CORONER: So there's no separate exhibit at this stage?

MS CRONIN: No, your Worship.

10

THE CORONER: I think counsel should have a copy of the brief of evidence in this matter.

MS CRONIN: I call Constable Chris Burgess.

15

**<CONSTABLE CHRISTOPHER BURGESS, SWORN**

**<EXAMINATION-IN-CHIEF BY MS CRONIN**

20

MS CRONIN: Please tell the court your name, rank and station.

A. Christopher Burgess. I am a constable of police and currently stationed with the sexual assault and child abuse team.

25

Q. Were you rostered on duty on Saturday, 18 January this year?

A. I wasn't rostered on duty. I was called on to duty.

30

Q. What time were you called on?

A. 6pm.

35

Q. When you got there, did you receive communication to attend to a street in Duffy?

A. Yes, I did.

40

Q. Where did you go to?

A. I was called to attend at 23 Burrendong Street, Duffy.

45

Q. Did you go there?

A. Yes, I did.

Q. Now, at 7pm, before you arrived, did

Senior Constable David Williams go to the scene?

A. Yes, he did.

5 Q. And do you know what he saw at the scene?

A. Yes, at 7pm Senior Constable David Williams attended the scene and confirmed that a deceased male had been located at that place. The Coroner's Officer, Sergeant Bruce Brown, 10 was notified and members of the AFP Forensic Services and the South Criminal Investigation Team were requested to attend. At that time I was a member of the South Criminal Investigation Team.

15

Q. Do you know if Ms Tracey Young went to 23 Burrendong Street?

A. Yes, she did. About 7.14pm that evening, Ms Tracey Young from AFP Forensic Services 20 attended the scene and conducted an examination, including the taking of photographs. During that examination, Ms Young observed that the deceased was located on the back porch leading into the premises.

25

Ms Young noted that the deceased was located prone and on his left-hand side with his left arm straight and extended from the body at about 90 degrees, and hand in a fist with palm 30 pointing up. The right arm was slightly bent at the elbow, but also extended from the body next to the left with hand in a fist and palm pointing downwards. The left leg was fully extended and the shoe missing, which was 35 located approximately six to seven metres away in the rear yard near the clothes line. The right leg was slightly bent at the knee, and the foot was resting on the left. The deceased was dressed in a green polo shirt, tan coloured 40 shorts, brown socks and blue joggers. The deceased's head was off the end of the porch and the deceased was covered in soot, particularly his face. A hose was nearby and it and appears to Ms Young that the deceased was 45 fighting fire in the rear yard and neighbouring

properties.

Ms Young noted that rigor mortis had set  
throughout the body and lividity appeared  
5 consistent with the positioning of the body.  
The deceased was warm to the touch. Ms Young  
then rolled the deceased over and noted he had  
sustained a large blue swelling above the left  
eye, with a small cut above the left eye  
10 issuing blood. The deceased's head was intact,  
and eyes were red and bloodshot. There was a  
small graze on his left elbow which appeared  
old and a small amount of smeared blood on the  
elbow. There was a small amount of blood on  
15 the porch near the deceased's head. No other  
apparent injuries to the deceased were noted.  
The examination was concluded at 8.20pm.

Q. After the forensic examination, what time  
20 did you arrive at 23 Burrendong Street?

A. I arrived at 23 Burrendong Street at  
9.05pm in the company of Detective Senior  
Constable Angus Beveridge.

Q. When you got there, what did you observe?

A. Upon arrival, I observed that the area was  
dark and there was no street lighting or  
electricity to the residential properties in  
Burrendong Street. I observed the residence at  
25 25 Burrendong Street, Duffy was totally  
destroyed by fire and still alight. This  
residence is situated to the direct right-hand  
side of the deceased's house. I also observed  
the residence at 18 Burrendong Street, which is  
35 located across the road from the deceased's  
house, had been totally destroyed by fire.  
There was an extremely strong smell of smoke in  
the air and visibility was restricted due to  
smoke. In addition, there were various  
40 isolated spot fires visible on surrounding  
properties.

Q. If I could just stop you there, could you  
45 have a look at this map, please. Does that map  
show the situation of the properties you just

described?

A. Yes, it does.

5 Q. And it has 23 Burrendong Street marked in red?

A. That's correct.

10 MS CRONIN: I tender that hard copy of the map, your Worship. It's already on the Courtbook as [DJF.AFP.0098.0114]. So if that could be marked with that number.

15 THE CORONER: Yes, that same number can stay with the exhibit.

MS CRONIN: Were you briefed by anybody when you arrived?

20 A. I was. Senior Constable Williams briefed me of the situation and escorted me to the rear yard of 23 Burrendong Street. I observed a Ford Falcon utility vehicle bearing ACT registration YUK 361 parked in the driveway of the premises. Checks later conducted with ACT Motor Registries indices confirmed this vehicle  
25 is registered to David Fraser, who I know to be the son of the deceased. I also observed the right and rear perimeter fences of 23 Burrendong Street had been destroyed by fire. In addition, I observed the shed on the  
30 residence of 23 Burrendong Street had been destroyed by fire.

35 I observed evidence of an isolated grass fire present in the rear yard of 23 Burrendong Street, with charred and blackened dry grass located near the clothesline area about 10 metres distance from the rear porch of the residence. The area affected by this fire was about 15 metres square in area. I observed a  
40 water hose positioned on the ground near the area of this fire damage. There was no water flowing from the hose at the time of my arrival.

45 I approached the back porch of 23 Burrendong

Street and observed a brown and white coloured blanket placed over a deceased male. The deceased was Caucasian, about 60 years of age and about 100 kilograms in weight,  
5 approximately five foot, 10 inches in height. The deceased's eyes were closed and both hands were clenched. I observed a bruise to the deceased's upper left eye and a small amount of blood present around the injury. There was a  
10 blood smear on the rear corner of the porch closest to the sliding door. The blood smear was approximately 30 centimetres in length.

The deceased was wearing white coloured shorts  
15 a green coloured t-shirt, black socks and one blue running shoe on his right foot. There was grass and debris situated on the sole of his left sock, consistent with the grass matter in the rear yard. There was a matching blue  
20 running shoe lying on the grass approximately six metres from the deceased. This shoe was positioned in the vicinity of the grass fire described above. I also observed an aluminium ladder placed against the side of the  
25 residence, leading towards the roof, about two metres to the direct right-hand side of the deceased.

The deceased had black coloured soot, ash and dirt on his face, arms, hands and clothing. I  
30 observed two doors running off the porch, a laundry door and a sliding door, accessing the lounge room.

35 Q. From the observations you've just described, were you able, when you were at the scene, to come to any conclusion or opinion as to what the deceased had been doing prior to his death?

40 A. Given the location of the hose and the left shoe situated at the foot of the isolated spot fire in the yard, I formed the opinion that the deceased had been fighting fire, a spot fire in the rear yard and had moved with  
45 haste towards the rear porch, given he'd left

the left shoe behind and had moved to the porch, missing the shoe.

5 Senior Constable Williams advised me that, when he had arrived, the deceased was lying prone on the porch with his left-hand side, injured side facing down. The deceased's feet were facing towards the laundry door and the head towards the back fence. I then took several digital  
10 images of the deceased and the surrounding area. Due to the state of emergency declared, Senior Constable Williams and other police had entered the residence and searched the residence for any other occupants. There was  
15 no sign of any struggle within the residence. No other occupants had been located. The interior of the residence also smelt strongly of smoke.

20 Police located and seized prescription medication, which were Colchicine tablets in the name of Douglas Fraser. This medication was prescribed by Dr Mark Hislop in December 2002.

25

Q. Did police then proceed to interview the neighbours of the deceased?

A. We did. Senior Constable Williams advised that Dr Manns knew the deceased and was  
30 awaiting to speak to police. Detective Beveridge subsequently conducted a taped record of conversation with Dr Manns, who advised that the deceased male was Douglas Fraser. Dr Manns advised that the deceased lived with his wife,  
35 Ann, and had been Dr Mann's neighbour for approximately eight years. Dr Manns also provided details of the deceased's son, David Fraser.

40 Mr Manns stated that he had last seen the deceased about 4pm that date. The deceased had remained in the area with several nearby residents for the purpose of fighting fires in the area. Dr Manns had observed the deceased  
45 hosing out the front of his residence during



that time. Dr Manns also stated that  
visibility at the time was about 70% restricted  
due to the heavy smoke caused by the bushfires.  
There were also various small fires seen in the  
5 surrounding area.

About 6pm, Dr Manns decided to check the  
welfare of surrounding residences. Dr Manns  
went for a walk and met with Ronald Jungwirth  
10 of 21 Burrendong Street and Peter Boehm of 39  
Burrendong Street. Mr Boehm advised Dr Manns  
that the deceased was lying on his back porch  
at 23 Burrendong Street. Dr Manns approached  
and observed the deceased's face blackened by  
15 smoke, had a head injury and a smear of blood  
on the porch. Dr Manns conducted an examination  
and could not locate a pulse. Dr Manns  
estimated that Doug Fraser had been dead for at  
least an hour.

20 Dr Manns telephoned 000 and reported the  
incident to police. Dr Manns then placed a  
blanket over the deceased and attempted to  
contact the deceased's son, David. Dr Manns is  
25 a medical practitioner employed by the  
Department of Defence at Russell Offices and he  
pronounced life extinct at 6.15pm. Dr Manns  
also provided a statement of identification.

30 I later spoke to Peter Boehm of 39 Burrendong  
Street and conducted a taped record of  
conversation with him. Mr Boehm advised that  
he had known the deceased through neighbourhood  
connections for approximately six years. Mr  
35 Boehm is a close friend of the deceased's son,  
David Fraser. Mr Boehm stated at about 5.30pm  
he was checking houses in the immediate area of  
Burrendong Street for spot fires and for the  
welfare of residences. Mr Boehm noted that the  
40 entire area was engulfed in smoke and estimated  
visibility was reduced by approximately 50%.

Mr Boehm, after receiving no answer at the  
front door, entered the rear yard of 23  
45 Burrendong Street and observed the deceased

lying on his back porch. Mr Boehm approached the deceased and checked for a pulse, however could not locate one. Mr Boehm observed that the deceased's face and hands were blackened  
5 with soot and he had sustained an injury to his left eye that was positioned towards the concrete ground. Mr Boehm observed that there were two garden hoses in the rear yard of 23 Burrendong Street and there was water flowing  
10 from both hoses at the time.

Mr Boehm then ran to Dr Manns' residence and informed him of the situation. Dr Manns attended in the company of the resident of 21  
15 Burrendong Street, Mr Ronald Jungwirth. Dr Manns conducted an examination of the deceased and then contacted 000. He then turned off the tap supplying the running hoses. The deceased was later conveyed to and lodged at the  
20 Kingston forensic centre.

A search of the deceased located property, including a black leather wallet containing an ACT drivers licence numbered 103229 in the name  
25 of Douglas J. Fraser of 23 Burrendong Street, Duffy. I observed that the identification photograph upon the licence depicted an image matching the appearance of the deceased. Also located in the deceased's shorts pocket was a  
30 blue-coloured small radio, portable radio.

About 2.42am on Sunday, 19 January 2003, Detective Beveridge and I notified the deceased's wife, Ms Gwendolyn Ann Fraser of the  
35 death of Douglas Fraser. About 1.26pm on 19 January 2003, I contacted Dr Mark Hislop to arrange for the provision of medical records pertaining to the deceased. Dr Hislop is a general practitioner at the Chapman Medical  
40 Centre in the ACT.

Dr Hislop informed me he had been the deceased's doctor for several years. The deceased was regarded by Dr Hislop to be in a  
45 generally good state of health. He is a

non-smoker and, in the past five years, had  
been for consultations on only eight occasions.  
The deceased had not been diagnosed with any  
heart or lung conditions that could be  
5 attributed to his death. Dr Hislop treated the  
deceased for a gout condition recently, and at  
that time he had prescribed the Colchicine  
tablets to aid the treatment of his condition,  
and they are the tablets we located at the  
10 residence.

The deceased had last been examined by Dr  
Hislop on 14 September 2002 for the purpose of  
a medical check prior to a trip to New Zealand.  
15 At that time the deceased had been diagnosed as  
being in a fit state of health with no cause  
for concern. Dr Hislop has since provided me a  
copy of all medical records held by his surgery  
pertaining to the deceased.

20 About 4.37pm on 19 January, I conducted a taped  
record of conversation with Mr Ronald Kevin  
Jungwirth of 21 Burrendong Street Duffy at his  
home residence. During this conversation, Mr  
25 Jungwirth informed me that he had resided at  
that address for the past 27 years. Mr  
Jungwirth's residence is positioned next door  
to the home of the deceased, and Mr Jungwirth  
has been a neighbour to the deceased for 27  
30 years.

Mr Jungwirth stated at about 3pm on 18 January  
he'd become aware of the notice to evacuate his  
suburb. Mr Jungwirth had left the area with  
35 his wife, however had returned a short time  
later and began making preparations to douse  
the flames in his area. Mr Jungwirth stated  
the rear fence common to his residence and that  
of the deceased had become alight between 4 and  
40 4.30pm.

At that time, Mr Jungwirth had observed the  
deceased to be alive and utilising his hose to  
wet the rear fence. Mr Jungwirth had not  
45 noticed any injuries to the deceased at that

time. He stated the deceased appeared to be in good health at that time, although his face and arms were covered with black soot. Mr Jungwirth stated that the smoke in the area had  
5 been extremely thick around that time due to the proximity of the nearby residences consumed by fire.

Mr Jungwirth stated that visibility had been  
10 reduced by about 80% due to smoke in the air. About 5.30pm, Mr Jungwirth had been at the front of his residence dousing spot fires when he was approached by Peter Boehm, who stated that he needed help next door. Mr Jungwirth  
15 accompanied Mr Boehm and Dr Manns to the rear yard of 23 Burrendong Street, where he observed the deceased lying motionless on the rear concrete porch. Dr Manns then examined the body of the deceased and informed Mr Jungwirth  
20 of the death.

Mr Jungwirth looked at the body of the deceased for only a few seconds and was able to make very few observations regarding its state,  
25 however he did notice evidence of spot fires in the rear yard and the presence of at least one hose. Mr Jungwirth observed the deceased was wearing only one shoe and that the other shoe was located near the clothes line, the spot  
30 fire in the rear yard.

Q. On 19 January you also spoke to the deceased's wife, Mrs Ann Fraser?

A. Yes, I did. About 7.22pm on 19 January, I  
35 conducted a tape record of conversation with the deceased's wife, Ms Gwendolyn Ann Fraser, who is known at Ann Fraser, conducted at 19 Dixon Drive, Duffy. Ms Fraser informed me she had been happily married to the deceased for a  
40 period of 34 years. Ms Fraser stated the deceased had contracted hepatitis A in 1972 however had not previously been affected by any serious medical conditions.

45 Ms Fraser said the deceased had suffered from a

gout condition recently and was taking medication in the treatment of that condition. The deceased had previously suffered from raised cholesterol levels. Ms Fraser stated  
5 that the deceased had led an active lifestyle and still worked full time as a painter/plasterer. Ms Fraser stated that the deceased is treated by Dr Hislop at the Chapman Medical Centre, and his last medical check in  
10 September 2002 showed no abnormalities with his health.

Ms Fraser last saw the deceased at 6.30am on 18 January as she departed her residence for her  
15 workplace at the Moorling nursing home in Red Hill. At that time Ms Fraser observed the deceased standing in the kitchen of their residence. Ms Fraser stated when she last saw the deceased he displayed no facial injuries,  
20 although he did have a pre-existing dilated pupil from a previous injury. Ms Fraser was unable to return to her home residence after the cessation of her duties at 3pm due to road closures following the fire. She attempted to  
25 contact the deceased via telephone, however was unsuccessful, and returned to her work where she slept prior to being contacted by police.

Q. And you continued your investigation on  
30 the 20th?

A. I did. About 6pm on Monday, 20 January, I attended at the Kingston Forensic Centre where a post-mortem was being conducted upon the deceased. I spoke with the forensic  
35 pathologist who was performing the procedure. She informed me that the preliminary findings indicated that there was some unusual reddish discolouration of the deceased's lung tissue. I was informed that further tests would be  
40 required to confirm the reason for this discolouration, however it was consistent with the deceased having inhaled a noxious gas or smoke. I was also informed that all head injuries sustained by the deceased had been  
45 minor in nature and his death could not be

attributed to those injuries.

5 About 1.15pm, on 24 January 2003, I conducted a  
taped record of conversation with Brian  
Corrigan at 12 Burrendong Street, Duffy. Mr  
Corrigan stated that he had resided at 12  
Burrendong Street, Duffy for a period of 15  
years with his wife, Olga. He stated he has  
10 known the deceased since he first moved to the  
address and he had known him through  
neighbourhood connections.

15 Mr Corrigan stated that, on the afternoon of  
Saturday, 18 January, he noticed that smoke in  
the area of his residence was thickening and  
that bushfires present in the north-west were  
escalating and approaching the suburb of Duffy.  
About 2.30pm, Mr Corrigan went to the  
20 intersection of Eucumbene Drive and Warragamba  
Drive so that he could better observe the  
fires. Mr Corrigan took several photographs at  
that location and observed three fire units  
present at Eucumbene Drive, who were apparently  
positioned to combat the fire. Mr Corrigan  
25 noted that police had blocked traffic from  
entering the area north of Eucumbene Drive. Mr  
Corrigan stated that he had heard no evacuation  
notice or otherwise that day.

30 About 2.35pm that day, Mr Corrigan observed  
that the deceased was approaching his location.  
Mr Corrigan observed the deceased was wearing a  
dark-coloured t-shirt, light-coloured shorts,  
35 running shoes and no hat. At that time the  
deceased appeared fresh and calm and clean,  
with no soot or dirt on his face or body and no  
visible injuries to his face. Mr Corrigan  
spoke with the deceased about the fires and  
expressed his concerns. The deceased had  
40 appeared very calm to Mr Corrigan about the  
situation and had stated that he did not  
believe the fires would pass the Cotter Road or  
enter the suburb of Duffy. Mr Corrigan spoke  
with the deceased for a period of two to three  
45 minutes and then left the area to make

preparations at his residence for the fire.

At the time Mr Corrigan left, the deceased had remained at the intersection of Eucumbene Drive  
5 and Warragamba Avenue to observe the fires. Mr  
Corrigan did not see the deceased again after  
this encounter.

10 Q. What was your conclusion in relation to  
the --

A. In my opinion there is no suspicious  
circumstances surrounding the death of Douglas  
Fraser.

15 Q. -- in terms of the police investigation?

A. That's correct.

20 Q. Are you able, from your investigation, to  
conclude over what time period the death  
occurred?

A. From the people that I've spoken to and  
evidence that I've obtained, I estimated that  
the death occurred between 4.30 and 5.30pm on  
18 January.

25 THE CORONER: And Mr Boehm saw Mr Fraser last  
at about 4 o'clock I think you said?

A. I thought his neighbour saw him at 4.30.

30 MS CRONIN: Mr Jungwirth saw him between 4 and  
4.30.

THE CORONER: Mr Jungwirth saw him at 4.30?

35 A. Between 4 and 4.30, your Worship.

THE CORONER: Mr Manns' opinion was, when he  
saw Mr Fraser at about 5.30, that he'd thought  
he probably was deceased for about an hour?

40 A. Yes.

THE CORONER: But he pronounced life extinct at  
about 6.15?

A. That's correct.

45 THE CORONER: That seems to be about the time

span, from about 4 to about 6.15, but probably about 4.30 - between 4.30 and 5.

A. That's correct, your Worship.

5 MS CRONIN: Thank you, Constable. I've got no further questions.

10 THE CORONER: Mrs Fraser, is there anything that you wish to know from the Constable, anything that you wish to ask or anything that you wish Ms Cronin to ask on your behalf of the Constable?

15 MRS FRASER: Not at the moment, thank you.

THE CORONER: Yes, thank you, Constable.

**<THE WITNESS WITHDREW**

20 MS CRONIN: Your Worship, I call Dr Lavinia Hallam.

25 THE CORONER: I don't know that counsel wish to ask any questions, but please let me know.

MR JOHNSON: No, thank you, your Worship.

MR STITT: Thank you, I have nothing.

30 MR JOHNSON: I'm in the same position.

**<DR LAVINIA ANNE HALLAM, AFFIRMED**

**<EXAMINATION-IN-CHIEF BY MS CRONIN**

35 MS CRONIN: Please tell the court your full name and current occupation.

40 A. Lavinia Anne Hallam. I'm a pathologist employed by ACT Health and ACT Pathology and I'm contracted to provide forensic services to the Coroner.

Q. And what's your professional address, Dr Hallam?

45 A. ACT Pathology, PO Box 11, Woden, 2605.



Q. I think that on about 5pm on 20 January this year, you conducted an autopsy on the body of Douglas John Fraser?

5 A. Yes, I did.

Q. And then on 20 April, you prepared a report for the Coroner in relation to the autopsy?

10 A. That's right.

Q. For the record, your Worship, I'm referring to [DJF.AFP.0098.0103]. Now, Doctor, do you have a copy of that report with you?

15 A. I do, yes.

Q. If I could just take you firstly to page 2 of your report. I'll ask you to describe the marks of injury that you observed on Mr Fraser.

20 A. Yes. I observed an injury to the head of Mr Fraser. There was an area of bruising over the left upper eyelid that extended over the left forehead and back to the posterior part of the left ear. Just above the eyebrow in the same area, there was a short laceration that was towards the margin of the left eyelid. There was also loss of skin over the right elbow. Further examinations showed that this injury was not associated with any fractures and there was no underlying brain injury.

Q. The body received no burning injuries?

35 A. That's correct.

Q. These injuries, you conclude later on, were not sufficiently severe to have caused death?

40 A. That's correct.

Q. If we could go now to page 5 of the report. Of note in the microscopy, you saw some damage to the trachea and to the lungs; is that correct?

45 A. That's correct. At the time of autopsy I

noted that the mucosa, the lining of the windpipe, was quite reddened, as was the back of the throat, and that the lungs were congested, full of blood, and were quite red.  
5 On microscopy, that reflected the changes that I saw at the time of autopsy. There was loss of the lining of the windpipe, with some congestion of blood vessels underlying that, and then in the lungs themselves there was some  
10 oedema and some haemorrhage, and I interpreted these findings as an indication of an inhalation injury.

Q. An inhalation of what?

15 A. Inhalation of smoke. Smoke has three essential components: there's heat, there's noxious chemicals such as carbon monoxide, carbon dioxide. In house fires there may be cyanide. In bushfires and vegetation fires,  
20 formaldehyde, acroleine, noxious chemicals such as those. And then there's obviously particulate which gives the dark colour, so that would be the soot.

25 Q. Going to your comment in your finding, is it true to say, Doctor, that there are a number of problems involved in physically being able to determine the cause of death of people who have died in fires?

30 A. That's correct. I think part of the problem arises in identifying exactly which factors were in play at the time and what contribution they may have made to the death of the deceased. Then, in addition, you have the  
35 problem of what occurred prior to death and, therefore, may be related to the cause of death and what has occurred after death.

40 Q. Is one of the common causes of death for people who have been in fires thermal injury with induced neurogenic shock or cardiac arrest?

45 A. One of the postulates is that thermal injury, which is the actual burning, is obviously a very stressful event. There's a

lot of pain involved. The casualties may in fact develop shock and may indeed have a cardiac arrest.

5 Q. Thermal injury can cover more than just being burnt?

A. That's correct. It can also - obviously, as I stated before, one of the components of smoke is heat, and therefore you can have a thermal injury to the mouth and the trachea, the windpipe, the larynx, and it is postulated that this sort of injury either due to the heat or due to the noxious chemicals could cause death either by shock or cardiac arrest or possibly by causing spasm of the larynx and the airways.

Q. You can have internal thermal injury but you can also external thermal injury which can increase stress?

20 A. That's correct.

Q. And that can be just getting hot through the radiant heat of the fire; is that correct?

25 A. Yes.

Q. All the kinds of thermal injury that you have just told her Worship about, how can those conditions cause cardiac arrest? Can you try and explain it to her Worship.

A. I don't think we really understand the exact mechanism. When you faint, you have what is called a vasovagal attack, and that's where the heart reflexly decreases and you fall to the floor, and then after a little while, if you feel somebody's pulse, you'll gradually feel it coming back to normal. It's postulated that maybe there's a similar mechanism such as that that is occurring.

40 Some of the confounders are that, if you have significant pre-mortem disease, such as ischaemic heart disease, we know that people with ischaemic heart disease, with big hearts, are more prone to developing a cardiac or a

heart arrhythmia, a problem with the rhythm,  
that may or may not go on to a cardiac arrest.

Q. But that's not the case with Mr Fraser?

5 A. No, it's not.

Q. So, if you're under significant heat  
stress, could that cause your heart to increase  
its heart rate?

10 A. I think if you - part of the physiology of  
shock would be - I should say blood loss -  
would be an increased heart rate to try and  
compensate. I think this is much more likely  
15 to be a cardiac arrest in this situation, that  
is a stopping of the heart, rather than an  
increase in the heart rate.

Q. So is one of the other problems involved  
in determining - sorry, I'll just go back to  
20 that.

A. Yes, sorry.

Q. If you have a person who, through thermal  
injury, goes into either neurogenic shock or  
25 cardiac arrest, would you when conducting your  
autopsy be able to find any physical evidence  
that that had occurred?

A. No, because that would be a functional  
effect and, therefore, there would be no  
30 footprints that you could really see at the  
time of autopsy.

Q. So why would you put that down as a likely  
cause of death in those circumstances?

35 A. I think because you have excluded other  
causes and that is what we are left with, the  
postulate that --

Q. Because of the circumstance he was in when  
40 he died?

A. Yes.

Q. Okay. Do people also die through asphyxia  
when they are in fires?

45 A. That's correct.

Q. And how can that occur?

A. That can either be because you're in the fire and a smoke-filled atmosphere that there is lack of oxygen in the air that you're breathing or it could be because the heat or the noxious elements within the smoke could cause, as I said before, the larynx to go into spasm or the windpipe and the airways to go into spasm, much like the airways going into spasm like you might see in an asthmatic, but in that circumstance it's due to something that someone's allergic to rather than to some noxious element in what you're breathing.

15

Q. So they go into spasms through irritation; is that correct?

A. That's correct, yes.

20 Q. And, if that had occurred, would you, on conducting autopsy, be able to find any physical evidence that that had occurred?

A. I think that you would take note of the evidence such as in Mr Fraser's case of an inhalation injury; in other words, was the trachea reddened, was the pulmonary oedema in the lungs? All of that would suggest there's been a noxious or hot substance or hot smoke in the lungs.

30

Quite often it's suggested that the actual heat of smoke wouldn't reach much further than just below the larynx, because one of the functions of your nose, for instance, when you're breathing is to bring the temperature around you up to body temperature or presumably down to body temperature, so it's been suggested that maybe the hot gases wouldn't get further down. But certainly the noxious elements in smoke could, and soot is very variable. The larger particles tend to get not much further than the larynx. The smaller particles may go right down out into the lungs and may cause irritation and, therefore, spasm of the airways.

45

Q. The fact that you found such irritation in the lungs and trachea of Mr Fraser, does that assist you into determining cause of death?

5 A. I think that would certainly - in the absence of finding anything else of significance and, as I say, I don't think the head injury was severe enough to be the cause of death, I think that's what we're left with,  
10 that this was an inhalation injury.

I suppose the problem here is the actual timeframe, whether this occurred when the fire front came through and therefore there would be  
15 very hot gases that may have caused this, or whether this could be more related to perhaps a longer time breathing these noxious gases and more of the spasm component and also maybe damage further down into the lungs into the  
20 airways causing the oedema. But I think there's good evidence that he had airway and lung changes that would be related to breathing smoke and that smoke causing some damage.

25 Q. So that is the most likely cause of death?

A. Yes.

Q. But you cannot rule out a cardiac arrest?

30 A. That's right, and obviously all these changes may ultimately have resulted in a cardiac arrest. Cardiac arrest is really the end point of a number of different ways in which people may die.

35 Q. So the thermal injury that he was obviously undergoing --

A. And the stress of the situation may all have ended with a cardiac arrest.

40 Q. And damage to the lungs and trachea may have simply added to that stress during the cardiac arrest?

A. Contributed to it, yes.

45 Q. So can you encapsulate your findings for

her Worship in relation to what you consider to be the likely cause of death in this situation?

5 A. Yes, certainly. I think we certainly had evidence of a blunt injury to the head, but, without a fracture or significant brain injury, I don't think that is related to the cause of death. That injury may either have been caused by the fall, perhaps on to the little verandah/porch area, or from some object  
10 falling on to the deceased, and that may have occurred prior to him being on the porch. But, as I say, I don't think that injury was severe enough to be the cause of death.

15 I do think we have good evidence that there has been an inhalation injury, with soot in the mouth. There was soot in the windpipe and the windpipe, the mucosa was reddened, and then there was the oedema, congestion and  
20 haemorrhage in the lungs. I think that's all good evidence of an inhalation injury. And then we have no significant pre-mortem disease. There was some very minor coronary artery disease, which I don't think would count for  
25 death.

Obviously this has been a stressful situation. In the presence of carbon monoxide, then lesser degrees of coronary artery disease may be  
30 significant. In Mr Fraser's case, we did not detect any carbon monoxide in his blood. So I think we're really left with the only positive finding being inhalation injury to the lungs, and that may or may not have been one of the  
35 factors, together with the stress of the situation, in giving rise to a cardiac arrest.

Q. Thank you very much.

40 A. Thank you.

MS CRONIN: I have no further questions.

THE CORONER: And that is your preferred opinion?

45 A. Yes.

THE CORONER: Having considered everything that you did?

A. Yes

5

THE CORONER: And ruling out and noting the internal injuries and the external injuries, because Mr Fraser's body externally was not burned.

10 A. We certainly didn't have any evidence of any external thermal injury, any burns. So we are left with either essentially, pre-mortem disease, which I didn't detect - if I can just look at my notes - any pre-mortem trauma, which  
15 we did have pre-mortem trauma, we had this head injury, but I don't think that was the cause of death. So I think we are dealing essentially with an inhalation injury in the setting of a fire and a stressful situation.

20

What I find a little difficult, perhaps if I can go on, is because of the time frame, if you've got a very hot smoke that's at the time the fire passes through, then you could

25

postulate maybe spasm of the larynx or the cardiac arrest as being more important, but I think from what I heard this morning, the fire had probably gone through and the deceased may have died after the fire had gone through, in  
30 which case I think it's much more likely the noxious soot and the soot and the noxious elements in the smoke have caused an injury to the lungs and the trachea and the windpipe and the airways, and he may well have had trouble  
35 breathing. That may have been why he wanted to go into the house. So I think overall the inhalation of the smoke, on what I found, is the most likely cause of death.

40

THE CORONER: Because there is evidence that Mr Fraser was perhaps attempting to put out spot fires or to fight the fire?

A. That's correct.

45

THE CORONER: There is some evidence of that,



that he was trying to defend his home.

5 A. Yes. We have no evidence of thermal injury, as I said, burns, and whether the small amount of smoke from a local fire would be any greater or more important than the fact that you've already been in the smoke of the main fire, I think is very difficult to decide, whether that would be an additional problem. Obviously if he's been inhaling the smoke for 10 a while, then the damage may be accumulating in his lungs.

THE CORONER: There is an accumulative effect?

15 A. Yes.

THE CORONER: So again, just in relation to the timing, the best that we can do perhaps with the timing is by evidence from witnesses who saw him alive and then found him deceased?

20 A. That's correct.

THE CORONER: Thank you. Are there any questions, Mrs Cronin?

25 MS CRONIN: No, thank you.

THE CORONER: Thank you, Dr Hallam.

A. Thank you.

30 **<THE WITNESS WITHDREW**

MS CRONIN: That's all the evidence we propose to lead for the purpose of your Worship making a preliminary finding in the inquest of 35 Mr Fraser under section 53 of the Coroners Act. Perhaps it might be appropriate for that finding to be made before we move on to the other inquest evidence so that Mrs Fraser can leave the court. (Pause)

40 THE CORONER: Just pending the ongoing inquiry into the fire, I do not intend to make any comment regarding the circumstances surrounding the death of Mr Fraser at this time, but I may 45 well do so at a later time.

But I will make a preliminary finding on the death of Mr Fraser, and that finding is this: that Douglas John Fraser died between the hours of 4pm and 6.15pm on Saturday, 18 January 2003 at his home at 23 Burrendong Street in Duffy in the Australian Capital Territory and that the cause of death was due most likely to smoke inhalation from a fire which had entered the suburb of Duffy at about 3.15pm on Saturday, 18 January 2003. Mrs Fraser, I express my sympathy to you and to your family on your loss.

MRS FRASER: Thank you.

THE CORONER: Is there any other finding that you wish me to make, Ms Cronin?

MS CRONIN: No, your Worship.

THE CORONER: Yes, you're ready to proceed?

MS CRONIN: Yes, your Worship. In relation to the inquest into the death of Allison Mary Tenner, I call Constable Christopher John Bird.

**<CHRISTOPHER JOHN BIRD, SWORN**

**<EXAMINATION-IN-CHIEF BY MS CRONIN**

MS CRONIN: Please tell the court your name, rank and station.

A. Senior Constable Christopher John Bird, currently attached to the South District Criminal Investigations Team, Tuggeranong police station.

Q. And I think you were on duty on Saturday, 18 January; is that correct?

A. Yes, I was.

Q. You were on duty?

A. On Saturday the 18th, I came in about 6pm and worked until about midnight.

45

Q. If I can take you to the 19th. You commenced work about 7am that day?

A. Yes, I did.

5 Q. And you were rostered until 3 o'clock?

A. Yes.

Q. Did you receive a communication or did the police receive a communication about 12.45pm?

10 A. Yes, they did.

Q. And were you told that they had found a body on the premises of 9 Burrendong Street, Duffy?

15 A. Yes, I was.

Q. And you were briefed in relation to that by your sergeant, Detective Sergeant McCann?

A. Yes.

20

Q. What time did you yourself go to 9 Burrendong Street?

A. About 9 minutes past 1pm, Constables Garrard, West, Perry and myself arrived at 9 Burrendong Street, Duffy, where I spoke to Constable Treleaven who was in attendance and maintaining a cordon of the premises. Constable Treleaven stated that he'd been at the premises for about 10 minutes. Detective Superintendent Johnsén was also in attendance. I observed the premises at 9 Burrendong Street to be totally destroyed by fire. There was a white Mitsubishi Magna, ACT registration YYY 982, parked underneath the carport to the right of the premises. The house on the right was also completely destroyed and the two houses diagonally behind to the right were destroyed. There was fire brigade tape marking off the premises --

40

Q. Could I just stop you there, Constable, for two purposes. Could I ask you to slow down. This is being transcribed.

A. Yes.

45

Q. We need to understand what you are saying.  
Could I also show you a map.

A. Yes.

5 Q. Does that map depict the properties you've  
just described to her Worship?

A. Yes, it does.

10 Q. And does it also show the premises at 9  
Burrendong Street marked in red?

A. Yes.

MS CRONIN: So I'll tender that map, your  
Worship. It's already on the Courtbook.

15

THE CORONER: Yes.

MS CRONIN: It's number [AMT.AFP.0097.0016].

20 THE CORONER: Which one is number 9 in this row  
here, please, Constable?

A. The one marked red on the corner.

MS CRONIN: Could you continue.

25 A. At 1.10pm, Constable Garrard and I had a  
conversation with the ACT Fire Brigade officer  
Peter Cartwright, the district officer and  
incident controller. Peter Cartwright stated  
the leading firefighter Wayne Stevens had  
30 located a badly burnt body in the bathroom on  
the western side of the house.

35 About 1.16pm, I had a conversation with John  
Tenner of 30 Blakett Close, Bathurst, New  
South Wales. John Tenner stated that he was  
the brother-in-law of the deceased, Allison  
Tenner, and that his brother, David Tenner, was  
the deceased's husband.

40 John advised police that Allison had been at 9  
Burrendong Street, Duffy, on her own yesterday  
as David Tenner resides at Richmond RAAF base,  
Richmond, New South Wales. He further stated  
that their three children were currently  
45 staying with their grandparents at Coffs

Harbour, New South Wales, and that the premises was owned by Defence Housing.

5 At 1.21pm, I had a conversation with Wayne Stevens from the NSW Fire Brigade, who stated that, at about 12.30pm, he commenced an exterior search of the premises along with the following other officers - Jim Harris, Mark Wilson, Mark Swain, Michael Packam, James Melli  
10 and Steven Gregory-Jones.

About 12.40pm, along with officers Stevens, Harris and Gregory-Jones, he commenced a search of the bathroom on the west side of the  
15 premises and located a large amount of burnt debris on the floor. They sifted through the debris and then at about 12.45pm he saw a human bone and what appeared to be a burnt body. He then immediately covered the body with a tarp  
20 and they proceeded to wet down the surrounding area as it was still smouldering. They then secured the premises until police arrived.

About 1.20pm, AFP scientific members Gates and  
25 Clissold attended the premises. Constable Garrard remained with the scientific members and made the following observations.

Forensics arrived about 1.20pm, commenced  
30 examination about 1.48pm. Initial assessment of the building shows that it was a single storey brick home with a second level that was attached to the rear half of the home. The bottom level had a wooden floor. The front  
35 area of the home contained the laundry and kitchen followed by two bedrooms. The bathroom, main bedroom and lounge/family room were at the rear of the home. The second storey of the home had collapsed. There was a pergola  
40 on the right-hand side of the building, a small metal garden shed at the rear left side of the house and garage to the right.

45 The body of the deceased was located in the bathtub in the bathroom of the premises. The

bathroom was towards the back of the house on the left side. It appeared that it was surrounded by two bedrooms. The bath was at right angles to the external wall. The bath was approximately 1.5 metres by 1 metres. The deceased was lying on her right side, her legs were bent to fit inside the bath and her arms were bent up in front of her face. She was severely burnt on the majority of her body and nil facial features were recognisable. The bone in her upper left leg was protruding from just above the knee. There was a large amount of debris inside the bathtub including glass, gyprock and tiles. Forensic members removed a watch face and part of a band from near the hand area of the deceased. A small collection of loose bones were also removed.

After some debris was cleared, it could be seen that the deceased had been wearing an underwire bra, red or pink ribbed top, green coloured lightweight pants with a floral band on the bottom, white sock and Brooks running shoes. Her right leg was not as badly burnt as the rest of her body and still had flesh and skin attached. The body of the deceased was removed at about 4.50pm. There were three towels underneath the deceased and one in her right hand that was not able to be removed. They were damp, the bathtub was plugged and a small amount of water was in the bottom. There was a small amount of congealed blood located, it was contaminated and a sample could not be taken.

Q. About 34 minutes past 1 that day you had a conversation with Mr David Tenner; is that correct?

A. Yes, I did. Also present during that conversation was John Tenner and his wife, Maree Tenner. David Tenner stated that he had not seen his wife, Allison Tenner, for about three weeks as he was based at the RAAF base Richmond, New South Wales. He had travelled from Richmond to Canberra early that morning after hearing about the fires.

During this conversation and further  
conversations that I had with David Tenner, he  
stated that his wife Allison was born on 18 May  
5 1964 in Glasgow, Scotland. She was of good  
health and was last in hospital about two years  
ago for day surgery in relation to a urinary  
tract infection. She was a non-smoker and was  
not under any medication. He believed she was  
10 home alone on Saturday, 18 January 2003 and he  
also believed no-one would have visited her on  
that day.

He further stated he last spoke to his wife at  
15 lunchtime on Friday, 17 January 2003. He  
described his wife as 165 to 170 centimetres,  
solid build with reddish brown shoulder-length  
hair and nil dentures. She would normally wear  
a wedding ring and engagement ring on her  
20 wedding finger but hadn't been wearing them  
lately due to swelling. She would always wear a  
gold chain, with a gold tear-drop shaped  
pendant. He described the pendant as gold on  
the back and green jade on the front with a New  
25 Zealand fern leaf embossed in gold on the back.  
She wore a gold watch which had a circular face  
and leather band on her left hand. She had no  
tattoos or scars on her body, and she has never  
broken any bones to the best of his knowledge.

30 On both of her feet she has a lump on the  
outside of the big toe and both of her little  
toes point outwards. He stated that their  
three children had gone to stay with their  
35 grandparents in Coffs Harbour, New South Wales  
on 10 January 2003. David Tenner also provided  
a hand sketch of a floor plan of this premises.

40 Q. You also and other police interviewed the  
neighbours of Mrs Tenner?

A. Yes, about 1.35pm Constable West attended  
number 7 Burrendong Street, Duffy and had a  
conversation with Mrs Doris Young. During the  
45 conversation, Mrs Young stated that she was  
unsure when the fires started but she believed

it was around 2 to 3pm on Saturday, 18 January 2003. She'd received no warnings that the fires had come. She remained at her house for the duration of the fires.

5

She states that she knew the deceased but was not close. She believed that she worked in an office and was aware that she had three boys who were staying with their grandparents in Queensland for the school holidays. She'd not seen the boys or the deceased since before Christmas. She was not aware that anything had happened to the deceased but thought it was odd that her vehicle was still in the driveway.

10

15

She states the deceased was a very sensible person and family orientated. She was aware the deceased's husband was in the air force and worked in Sydney. She states that she observed the deceased's husband at the front of his residence around 8 to 9am on 19 January 2003 and he was speaking with fire and police officers.

20

25

About 1.50pm, Constables Perry and West attended 103 Warragamba Avenue, Duffy, and conducted a taped record of conversation with Vlasta Dahl. During the conversation, Vlasta Dahl provided the following information. He stated that her property, located at 103 Warragamba Avenue, backs on to the premises located at 9 Burrendong Street, Duffy. Vlasta stated that she knew a lady and her husband and their three children lived at the premises.

30

35

Vlasta stated that she was not overly friendly with the family and did not often hear or speak to the lady that resided there. Vlasta stated at about 2.30pm on Saturday, 18 January 2003, she was in her backyard watering the fences and the house in preparation for the fire that was coming across Stromlo reserve.

40

45

She stated at this time they had not been asked to evacuate but to remain in their homes and prepare for the fire. Vlasta stated that, whilst she was watering the house, she saw the



deceased in the house behind her in an upstairs room. She stated the deceased was at the window and was closing the curtains at this time. Further to this she states that the  
5 deceased appeared calm and not distressed.

THE CORONER: That's about 2.30pm on Saturday?

A. Yes, it is, your Worship. Vlasta states this was the last time that she saw the  
10 deceased and she did not speak to her at this time. Vlasta stated that she evacuated the area soon after this. About 10 minutes past 2pm, Constable Perry attended 101 Warragamba Avenue and conducted a taped record of  
15 conversation with John Flannery. During the conversation, Mr Flannery stated that he did not observe the deceased at any time during the evening of 18 January 2003. He stated the fire moved extremely quickly over the reserve  
20 between 2 and 3pm.

He had approached some emergency vehicles that were parked on his street and requested what action he should take. He stated he was  
25 advised to remain with the house and take all necessary precautions that were being advertised over the radio and not to evacuate until told to. He stated the fire hit in a huge fire ball and that the houses behind his  
30 residence, being Burrendong Street, had caught alight prior to his house, which was in the path of the fire ball and located directly opposite the Stromlo reserve. He further stated that the house of the deceased had  
35 caught on fire very quickly when the fire came through, due to the second storey of the residence being timber.

He stated it was a two-storey brick building,  
40 with the second floor made from timber. He and his wife had fled from their house after it caught alight, leaving with only a couple of photographs. The sky was dark and was thick with cloud. About 2.31pm I conducted a taped  
45 record of conversation with Helen May Craven,

78 years of age of 5 Burrendong Street, Duffy. During this conversation, Helen Craven stated that she suffered from dementia and had short-term memory problems. She stated she had spoken to the deceased at the deceased's premises a few days ago. It was ascertained by other police and Mrs Craven's husband that she in fact spoke to Mrs Tenner about 10 or 15 minutes prior to the fires coming through the street.

She stated the deceased was in the lounge room collecting photos from a cabinet and putting them in piles. She asked Allison to come up to her house but she said that she would stay. Mrs Craven stated she had known Allison for about eight years and believed she was a very sensible person and mother of three children who was very calm and did not appear panicked at the time. She then returned to her house and did not see her again.

Also at about 2.31pm, Constable Jennings conducted a taped record of conversation of David Craven at 5 Burrendong Street, Duffy. During the conversation he provided the following information. David Craven has lived at his address in Duffy for about seven years and has known the deceased for most of that time. The residents of 9 Burrendong Street are David Tenner, Allison Tenner, Adam Tenner, Jason Tenner and Simon Tenner. Mr Craven described the family as an ideal family. David was in the air force and the boys were always polite and well behaved. Mr Craven used to baby-sit for David and Allison. David Tenner had recently been posted to RAAF base, Richmond, New South Wales and returned to Canberra on the weekends a couple of times a month.

On Saturday, 18 January, Mr Craven was at home, listening to reports about the fire on the radio. In the morning the radio reports suggested the fires were in the bush to the

west of Canberra, but the suburbs were okay.  
About 1.45pm, Mr Craven became a little  
concerned when thick smoke passed on the  
northern side of his house. He spoke to his  
5 wife, Helen, and suggested that she check on  
the deceased and see how she was going with  
preparations. Mr Craven was aware that the  
deceased was by herself. Helen Craven checked  
on the deceased and returned a short time  
10 later.

About that time, the electrical power supply  
cut out, so Mr Craven went to his garage to  
obtain torches and other supplies. He could  
15 see fire reflecting off the clouds of smoke to  
the north-west of his house as he entered the  
shed. As Mr Craven left his shed, a storm of  
burning embers rained upon his property so he  
quickly moved into his house. The storm moved  
20 incredibly quickly. This was at about 2pm.

He stated that a couple of minutes later he  
noticed the houses on the opposite side of the  
road, being numbers 4 and 6, were on fire. He  
25 then noticed flames coming from the front  
corner of the premises at number 9, the  
deceased's house. The flames appeared to start  
on the side of the house, which is closest to  
number 7. However, Mr Craven could not see the  
30 front of the house. Flames then passed within  
two metres of Mr Craven's house, causing all  
the windows to crack. When the fire passed  
through, Mr Craven hosed the front yard down.  
He did not leave his own premises as he thought  
35 it was going to burn down. He then called 000  
and stated:

Our house is not on fire, but it is in  
grave danger. Other houses on the  
40 street are alight.

He was informed by the fire brigade that no-one  
was available and that other suburbs were now  
being threatened. Mr Craven did not see any  
45 helicopter water bombers operating. It was

several hours later that fire trucks attended the suburb. Mr Craven stated that later that afternoon he checked on number 7 Burrendong Street because he knew the resident, Doris Young, was at home before the fire. Mr Craven did not think to check number 9 Burrendong Street because there was nothing left to check.

Mr Craven stated that he first suspected that something was wrong at number 9 when he was speaking to the fire brigade members and noticed the deceased's car was still in the driveway. Mr Craven described the deceased as being about 5 foot 5 inches tall, medium build, aged in her mid-30s with blondish shoulder length hair. The deceased was known to do an office job in Fyshwick. About 3.06pm the taped record of conversation concluded.

THE CORONER: So just this comment here that Mr Craven was speaking to fire brigade members, that's on the 18th, that's on Saturday afternoon?

A. Yes.

25

MS CRONIN: The police also spoke to firefighters who found the deceased?

A. Yes, they did. About 2.50pm, Constable West conducted a tape record of the conversation with James (Jim) Allen Harris, a New South Wales firefighter. During the conversation he provided the following information - he's a station officer at the training college in Alexandria in New South Wales. He arrived in Canberra on 7pm on 18 January 2003. They were tasked on Sunday, 19 January 2003 with conducting a search for missing persons or any hazards. He arrived at the scene at about 12.30pm and observed the area had been taped off by the Canberra fire service, however he was not aware of the reasons why. He stated he was told by a member of the public that someone was missing at 9 Burrendong Street.

45

He entered the side of the residence near the car, which was parked in a carport, located to the left of the remnants of the building and noticed some blowfly activity. Further  
5 investigation revealed this to be animal scraps or the like. He then approached the male and asked him to describe and show him the layout of the residence. He asked where the photos were kept, referring to photographs he believed  
10 the deceased had gone into the house to pack. The male pointed these out and then left the scene.

He then moved to the bathroom area of the residence and, after removing debris from where  
15 the bathroom area was, he noticed a bone which appeared to be that of a human leg. He then removed further tiles and noted a skull. He immediately departed the scene with other fire  
20 officers and did not enter the scene from that time on. He stated the deceased was located about 12.45pm. The taped record of conversation concluded about 2.55pm.

25 About 2.59pm, Constable West conducted a taped record of conversation with Wayne Andrew Stevens, a New South Wales leading firefighter of the training college. Stevens stated that he arrived with Officer Harris and commenced a  
30 search of the remains of the house. He stated that his experience of firefighting made him search the bathroom area of the residence in company with Officer Harris. After digging  
35 through debris around the floor of the bathroom area, he did not locate anything. He then checked the bath in the room and he observed a bone belonging to a human leg. He removed  
40 further debris until he observed a human skull. He then ceased the search and immediately left the area with other firefighters.

Q. The Commonwealth Medical Officer attended?  
A. Yes, about 3.46pm on Sunday, 19 January  
45 2003, Dr Emonson, the Commonwealth Medical Officer, attended the location and I showed him

the body in the presence of Constable Garrard and forensic members Clissold and Gates. About 3.55pm, Dr Emonson provided me with a signed statement pronouncing life extinct from the  
5 body and on that statement he identified the body as "unknown, presumed to be Allison Mary Tenner".

10 About 4.50pm, Coles Funeral Directors removed the body and conveyed it to the Kingston forensic centre. About 5.10pm, I gained entry to the vehicle parked in the carport bearing ACT registration YY 982. A short time later, a number of photos were located in the boot of  
15 the vehicle. These photos were given to David Tenner. About 5.30pm, along with Constable Garrard and other police, I departed the area. About 9pm I ceased duty for the day.

20 Q. Then you continued with this investigation the following day, on the 20th?

A. Yes, I did. About 7.30am on Monday, 20 January 2003 I commenced duty at the Winchester Police Centre. About 10.25am that day,  
25 Constable Garrard and I attended RFG Dentistry at 14 to 16 Brierly Street, Weston and had a conversation with Jesse Green. Mr Green stated that Allison Tenner had been a patient at RFG Dentistry since 20 July 1995.

30 According to the records, she had last been seen by Dr Griggs, who had since moved interstate. He further advised that none of the current staff had treated Allison Tenner.  
35 During the conversation, Mr Green provided me with the dental records relating to the deceased. About 10.50am, Constable Garrard and I attended 5 Burrendong Street, Duffy and had a further conversation with Helen and David  
40 Craven. Mrs Craven still could not recall any further details of the fire or of the deceased on the day of the fires.

45 About 1.43pm, Constable Garrard and I attended Unit 615 of the Waldorf Apartments, London

Circuit, Civic and conducted a taped record of conversation with Amanda Jane Taylor. During the conversation, she provided the following information. She had resided at 11 Burrendong Street, Duffy with her husband and three children since 25 March 2001. She'd known both Allison and David Tenner as neighbours but not very well.

10 She described Allison as 5 foot three inches, long black hair, roundish build, with a friendly face and voice. She knew that David Tenner was in the air force and based at Richmond and that the three children were in  
15 Coffs Harbour, New South Wales. On Saturday, 18 January 2003, she was at home with her three children and her husband was at work. She had been cleaning out her car in the driveway and at about lunchtime had a telephone conversation  
20 with her husband, who was concerned about the smoke and orange haze in the air. She told him that she was sure if there was a problem they would be notified.

25 About 1.15pm or 1.30pm, she started to get nervous about the fires, even though there had been no reported change. About 1.50pm, she made some phone calls and then went back outside and put the rear seats into the  
30 four-wheel drive. It was still smoky but she again stated she was positive if there was a need to evacuate they would have been told. She told her children to pack two bags of clothes each as she still felt there was not danger but  
35 thought she should leave just in case.

As she was putting the clothes into the car, she saw Lester Southwell from 13 Burrendong Street and she asked him if he had his hoses connected, to which he replied that he did.  
40 After this, she went back to her car and saw Allison Tenner standing on the deck of 9 Burrendong Street facing towards her. She was wearing a blue or aqua t-shirt and white pants.  
45 Allison told her she was frightened, although

her voice didn't seem panicked. Amanda Taylor told her that she was going and that Lester was still there. She then went back to packing the vehicle and, when she looked up again, Allison  
5 was gone, possibly back into her own house, but she wasn't sure. She then got into her car and drove off down the street. She remembered that she'd left her photos behind. She returned to the house, still thinking they were not in  
10 danger, and collected two boxes of photos. She could not see any sign of Allison. She then drove off down Somerset Street and, as she did so, she noticed the wind picking up and it was getting darker and thicker with smoke.

15 As she drove towards Woden, she heard on the radio that no evacuations had commenced but that, if they did, there would be evacuation centres at Phillip and Narrabundah colleges.  
20 The radio station further warned people to dampen down their homes.

Q. If I could stop you there and ask you to continue on that last paragraph.

25 A. About 2.50pm, Constable Garrard and I attended unit 516 of the Waldorf Apartments and had a conversation with David Tenner. Also present at this time were Bruce, John, Maree, Jacqueline and Beverley Tenner. A short time  
30 later everyone except David left the premises. About 3.11pm Constable Garrard and I commenced a taped record of conversation with David Tenner.

35 During the conversation he provided the following information. He resides at the RAAF base in Richmond and works at 37th Squadron, Light Support. He had been living on the base since September 2002 and would return to  
40 Canberra every few weeks to spend time with the family. He married Allison Tenner in Rockdale, Sydney, New South Wales, on 7 March 1987 and they had three children, Adam 14 years old, Jason 12 years old, and Simon 9 years old. His  
45 wife, Allison, was born in Glasgow, Scotland on



18 May, 1964 and had resided in Australia since 1969. He described her as being 160 to 165 centimetres tall, solid build but not obese, dark red to brown hair, green eyes with a slightly rounded nose. Her big toes had a pronounced bump on them, and her little toes were slightly twisted inwards. She had a single piercing in each earlobe and he was not aware of her ever breaking any bones. She'd undertaken day surgery to avoid a urinary tract infection about two years ago and, other than an episiotomy, she had not had any other medical problems. He was aware that her blood type was O negative.

He had last seen Allison about the 4th or 5th of January 2003 and had last spoken to her over the phone about lunchtime on Friday, and during that conversation he did not notice anything wrong or out of the ordinary. About 3 to 4pm on Saturday, 18 January 2003, he turned the television on and saw what was happening in relation to the bushfires in the suburb of Duffy. He then tried to phone his wife but there was no answer on either the home phone or her mobile phone.

About 9.40pm he picked up a RAAF vehicle from Richmond base and drove down to Canberra, arriving at 1am on Sunday, 19 January 2003. He stopped at Don and Gill Collins's house at 10 Fenton Street, Downer and discussed the situation with them. He then drove to the Narrabundah evacuation centre and tried to find the deceased. He then drove over to Duffy and was stopped at a roadblock where he spoke to a police woman by the name of Shona, who was later confirmed to be Constable Shona Jager, who would not let him through to see the house. This police officer then radioed through to someone who confirmed that his house was no longer standing. Some time between 2am and 3am, he returned to the Narrabundah evacuation centre where he spoke to two females by the names of Cathy and Pamela, who offered him

accommodation --

THE CORONER: Should that be am or pm, do you think, constable?

5 A. Am.

THE CORONER: Oh, I see, it's Sunday morning.

A. Yeah, he's arrived in Canberra in the morning. He then rang the other evacuation  
10 centres and the hospitals but there was no records of Allison anywhere. He went to Cathy's house at Deakin, and at about 4am she rang the local radio stations to get a broadcast for people who had seen Allison.  
15 About 6 or 7am, he wrote a note for Cathy and then left the house. He drove to the Phillip evacuation centre and, whilst there, a member of staff rang the Erindale centre for him. He then returned to the Narrabundah centre.  
20 He then returned to the roadblock at the intersection of Hindmarsh Drive and Streeton Drive and spoke to the same female police officer who agreed to escort him in a police vehicle up to his premises. He remained in the  
25 police vehicle but saw that the house was completely destroyed and that the car was still in the carport. They then returned to the roadblock and the police officer let him return to his house in his own vehicle.

30 When he arrived at Burrendong Street, he saw a number of firemen outside the house and the house had been taped off. One of the firemen pointed out a fire extinguisher was on the  
35 ground next to the car which David recognised as the fire extinguisher from inside the house. The firemen then started setting up trucks with hoses and he approached one of them and asked about the house.

40 Some time later the firemen started searching through the rubble and about three or four of them were standing around in the vicinity of the bathroom area. David stated that at this  
45 point he knew what was going on. He then saw

the firemen put some more tape around the structure of the house and he knew it was a crime scene. A short time later, his brother, John, arrived with his wife Maree.

5

David stated that the deceased would usually spend Saturday mornings going to water aerobics at Tuggeranong pool and that she goes on her own. He did not think that anyone else would have seen her or visited her on Saturday. About 4.13pm the taped record of the conversation concluded. We had a further conversation with him during which he requested that any jewellery found with his wife was to be left with her. About 4.18pm, Constable Garrard and I departed the premises and at about 6pm I ceased duty for that day.

10

15

20

Q. You conducted some further investigations over the next couple of days, did you?

25

A. Yes, I did. About 7am on Tuesday, 21 January I commenced duty at the Winchester police centre. About 4.10pm I attended the Kingston forensic centre, and at about 5.55pm Peta Wormington and David Griffiths attended. About 7.15pm a dental examination on the body of mortuary register number 015-03, CPM number 013-03 commenced. Also present were Dr Colin Rickard and Sergeant Bruce Brown. About 7.20pm, a gold necklace with a teardrop-shaped jade pendant displaying a New Zealand fern leaf was removed by Dr David Griffiths. I saw Dr Griffiths hand the necklace and pendant to Sergeant Bruce Brown, who placed it in a bag and secured it in a locked cabinet.

30

35

About 7.50pm the examination concluded and Dr Griffiths stated he was confident with the identification of the body being that of Allison Mary Tenner but that he would provide definite confirmation in the morning after he had examined the X-rays. About 8.30pm I ceased duty for the day. About 8.30am on Wednesday, 22 January 2003 I commenced duty at Tuggeranong police station. About 5.50pm that date, I

40

45

attended the Kingston forensic centre for the post-mortem examination of the deceased to be conducted by Dr Lavinia Hallam. Also present was Sergeant Bruce Brown and Federal Agent Clissold.

5

About 5.55pm, I had a conversation with Federal Agent Clissold. During this conversation, she showed me exhibits FC0310104, items 1 to 3, being the remains of a Pierre Cardin watch with leather band and some loose bones. I advised Federal Agent Clissold that the items were to remain with the body, at the request of the next of kin.

10

15

About 7.40pm, the post-mortem examination concluded and Dr Hallam stated that there was nothing inconsistent with the cause of death being due to a fire. About 8.30pm I ceased duty for the day.

20

About 12pm on Monday, 27 January 2003, I attended the Plaza Medical Centre at 5 of 48 Corinna Street, Woden and had a conversation with Dr Brenda Tait. About 12.04pm, I commenced a taped record of conversation with Dr Tait. During the conversation she provided the following information. She's been a general practitioner since 1975 and had been practising at the Plaza Medical Centre since 1986. She knew the deceased as a patient and had her first consultation with her on 15 August 1994. The deceased's health was generally good and she had been pregnant in 1995.

25

30

35

In 1998 she had suffered from anxiety and was referred to a counsellor. She was treated with 50 milligrams a day of Zoloft for anxiety. On 27 November 1998, she saw Dr Andrew Foot for a recurrent urinary tract infection due to an incomplete emptying of the bladder and had a cystoscopy and urethral dilation. She had several urinary tract infections since then.

40

45

In October 1999 she received conservative treatment for a painful right shoulder. In March 2001 she had a gynaecological check-up with Dr Bernadette Mackey. During March and August 2001, the deceased's blood pressure was borderline high and she was seen by Dr Sharon Craft. This was the last time she was seen on a professional basis.

During mid-2002, Dr Tait saw the deceased with her son due to her son suffering from an asthma condition. At this time the deceased's health was overall good with no concerns for her mental or physical health. Dr Tait further explained that the cystoscopy conducted on 27 November 1998 would be considered day surgery and is conducted under a local anaesthetic, which was performed at the John James Memorial hospital in Deakin. During the conversation, Dr Tait provided me with the deceased's medical records. About 12.21pm the taped record of the conversation concluded and I departed the premises.

Q. What conclusions did you come to as a result of your investigation?

A. In considering all of the available information, I do not believe that there are any suspicious circumstances surrounding the death of Allison Mary Tenner. It is my opinion that she was overcome by fire whilst trying to gather some personal effects prior to leaving her house as the fire came through so quickly and, as a last resort, she sought refuge from the fire in the bathtub of her premises.

MS CRONIN: Thank you, Constable. I've got no further questions.

THE CORONER: So no-one saw Mrs Tenner alive after about 2.30pm on Saturday?

A. That's right, your Worship.

THE CORONER: I think that was Mrs Dahl was the last one to have seen her.

A. Yes.

THE CORONER: Until she was found at 12.45 the following morning by the fire officer?

5 A. That's correct, your Worship.

THE CORONER: Yes, thank you. You can step down, Constable. We might take the morning adjournment.

10

**ADJOURNED**

**[11.30am]**

**RESUMED**

**[11.53am]**

15

MS CRONIN: Your Worship, I call Constable Reese Strachan.

**<CONSTABLE REESE LEWIS STRACHAN, AFFIRMED**

20

**<EXAMINATION-IN-CHIEF BY MS CRONIN:**

MS CRONIN: Please tell the court your name, rank and station.

25

A. Reese Lewis Strachan, Constable 10542, currently stationed at the City police station with the north response crime team.

30

Q. On Sunday, 19 January this year, you commenced duty at 6am?

A. That's correct.

Q. At the Winchester Centre?

35

A. Yes.

Q. And you were notified that a human body had been located at 40 Tullaroop Street in Duffy?

40

A. That's correct.

Q. And did you then attend 40 Tullaroop Street?

45

A. I did. About 5.23pm on that Sunday, 19 January, Constable Raquel Ilsley and I, in company with a number of other investigators,

attended outside 40 Tullaroop Street, Duffy in the ACT. En route to that location, I observed extensive fire damage to numerous houses in the Duffy area. Upon arrival, I observed extensive fire damage to numerous houses in the Duffy area. Upon arrival, I observed the Narrabundah Hill pine plantation on the western side of Eucumbene Drive was extensively burnt. I entered Tullaroop Street and observed it connects with Renmark Street and runs parallel south with Eucumbene Drive. I observed that Tullaroop Street then turns sharply east and runs parallel with Hindmarsh Drive.

I observed that number 40 Tullaroop Street is located on the western side next to the major bend. I later obtained a topographical image of Tullaroop Street. This image was taken prior to the January 2003 bushfires. The map indicates those houses that were destroyed or damaged on Saturday, 18 January 2003 during the Canberra bushfires.

Q. Have a look at this document, please. Is that a topographical map that you obtained?

A. Yes, it is.

Q. Could you just hold it up and show her Worship where 40 Tullaroop Street is located and how it's marked?

A. Your Worship, the red arrow here indicates 40 Tullaroop Street on the major bend here in Tullaroop Street. Eucumbene Drive runs parallel with it in a northerly direction, the street there, within the map.

MS CRONIN: I tender that in this inquest, your Worship. It's already on the Courtbook at [PBB.AFP.0096.0030].

Q. What did you observe, Constable?

A. I observed that 40 Tullaroop Street is located at block 21, section 42 of Duffy. The house had originally faced an easterly direction. I observed three large trees

located on the nature strip at the front of 40  
Tullaroop Street. I observed two of these  
trees were charred and burnt. I observed  
several small shrubs at the front of 40  
5 Tullaroop were also burnt. The garden bed  
separating the front lawn and nature strip was  
also burnt and smouldering, and I observed the  
grass on the front lawn was black and charred.

10 I observed the majority of the house had been  
burnt to ground level and now consisted of  
piles of ash, brick and rubble. I was able to  
see the house foundations amongst the rubble.  
I observed the ash was still smouldering around  
15 the foundations of the house. The majority of  
the southern brick wall remained standing. I  
observed a driveway on the southern side of the  
premises leading up a slight incline to a  
double carport. The double carport was  
20 extensively burnt but remained standing against  
the southern wall of the house.

I observed several burnt shrubs and bushes  
throughout the backyard. I observed the  
25 majority of the rear wooden fence had burnt to  
ground level and the backyard grass was black  
and charred. The driveway at 40 Tullaroop  
Street is shared with the southern neighbouring  
premises of 42 Tullaroop Street. That's on the  
30 left side. I did not see any damage to the  
house at 40 Tullaroop Street. The house at 38  
--

THE CORONER: 42?

35 A. Excuse me

THE CORONER: You couldn't see any damage to  
42. I thought you said that 40 had burnt.

A. 40 had burnt and I could not see any  
40 damage to 42 Tullaroop Street. The house at 38  
Tullaroop Street on the right-hand side, so on  
the north side, was burnt to ground level in  
the same way as 40 Tullaroop Street. The house  
on the western side of 40 Tullaroop Street,  
45 that being 4 Eucumbene Drive, remained intact



but had suffered some fire damage. The house on the south western side of 40 Tullaroop Street, that being 2 Eucumbene Drive, also remained intact but suffered some fire damage.  
5 The house on the north-western side of 40 Tullaroop Street, that being 6 Eucumbene Drive, had been burnt to ground level. The house directly east of 40 Tullaroop Street, that's across the road, which was number 43, had been  
10 burnt to ground level also.

I observed orange spray paint on the gutter at the edge of 40 Tullaroop Street. I was later informed this spray paint indicated the gas  
15 lines were checked this day. I later discovered there was no gas connected to the premises. About 5.25pm the same day, I walked up on the front lawn area of 40 Tullaroop Street. I observed two long thin lines of  
20 unburnt grass in the front lawn. This indicated to me that a hose or similar had been moved after the lawn had been burnt. I observed a green garden hose protruding from the rubble at the north-eastern corner of the  
25 house. The hose led to a tap which was fixed to the north-eastern corner of the house. This tap was in the on position. I observed a piece of melted plastic hose attachment on the ground in front of the hose.

30 I observed a wooden ladder positioned at the north-eastern corner of the burnt house. I observed the ladder was in a standing position and leaning back against some burnt and charred  
35 shrubs. I also observed a green coloured floppy hat on the ground beside the north-eastern corner of the house. This was later seized by forensics.

40 I observed rubble scattered along the northern side of the house. I walked to the north-western corner and observed the charred remains of a human body, later identified as  
45 the body of Peter Brabason-Brooke.

Q. Did you speak to anybody at the scene?

A. At this location I spoke with AFP special response and security members Constable James Guthrie and Constable Wayne Bright. They  
5 informed me they had arrived about 4.40pm that day and maintained a cordon of the site. They advised that members of the fire brigade had originally located the body and notified police. I observed a fire truck positioned  
10 next to 42 Tullaroop Street.

About 5.27pm the same day, I saw AFP forensic members Cherrone Ellis and Tracey Young arrive at the scene. I briefed the forensic members  
15 and showed them the location of the body. I saw them obtain numerous photographs.

Q. Could you describe the location and position of the body?

A. I observed the body was positioned at the north-western corner of the destroyed house. The head was pointing approximately north-west and the legs were touching the corner of the house. The skin of the deceased was burnt to a  
25 dark brown to black colour. The deceased was positioned on his right side with his head and torso angled towards the ground. The deceased's mouth was open and the tongue was swollen and protruding from his mouth. The  
30 deceased's eyes were closed. The colour of the deceased's remaining hair was unrecognisable. I observed the deceased was lying on top of a paved area in a small right-angled enclave. The enclave was paved and bordered by bricks.

35 Rising up from the edge of the bricks was an angled wall of rocks about 50 centimetres high. The deceased's head was next to the wall of rocks. I did not observe any combustible  
40 materials immediately near the deceased or in the small paved enclave.

Q. What materials were near the deceased in the enclave?

A. There was various rubble in the house,

including bricks and metal and also including the guttering. The deceased's left arm was bent approximately 90 degrees at the elbow. The left hand and fingers were clenched around a 10 to 15 centimetre long wooden stick. This was also seized. I could not see the deceased's right hand. The deceased's left leg was slightly bent with his left foot positioned against the corner of the house. The right leg was angled out about 90 degrees from the body. The right foot was bent upwards. I was able to see the bones of the deceased's legs and torso area. It appeared to me the right side torso and arm had been incinerated.

I observed remnants of a white-coloured long-sleeved shirt on the deceased's left arm. I observed an analogue white-faced Laguna brand watch with a black leather band on the deceased's left wrist. This was seized. The time on the watch was stopped at 6 o'clock.

Q. The time that the watch was stopped, what did that indicate to you in the context of your investigation as a whole?

A. In context of indicating a time at which the deceased died - and I don't think it's very accurate considering that the deceased left hand remained relatively unburnt - the white cuff of his shirt sleeve and the watch were both intact and, compared to the rest of his body, they were somewhat protected it would seem and I don't think the time at which the watch stopped indicates anything in particular about the time in which the deceased died.

Q. So it may have just been damaged and stopped later?

A. Yes. I observed the deceased had been wearing long pants, socks and boots but I was unable to discern any specific features. I observed a semi-circular piece of metal around the deceased's neck which appeared to be the headphones of a walkman-type device. I observed wire protruding from this headset. I

observed a pair of safety goggles next to the deceased's head. The arms of the goggles were out, indicating to me that they had been worn at the time of his death. I observed forensic members locate a glasses case with clip attachment containing a pair of spectacles and a metal pen next to the deceased's left hand.

I observed the guttering from the northern wall of the premises was positioned across the top of the deceased's leg area. I observed some bricks on top of the legs. This indicated to me that the brick wall was likely to have fallen after the deceased had come on to the pavers. I also observed a rectangular shaped pillar leading across the top of the enclave where the deceased was located.

I observed an anchored support in the top of the rock wall which allowed this pillar to hinge at the base. I later discovered this pillar was a vertical support for the pergola which ran along the western side of the house. I was later informed the grapevines originally grew along the majority of the pergola. I observed a large bush at the top of the rock wall which was partially burnt. It appeared this bush would have been directly next to and about the same height as the original pergola.

I observed a silver coloured metal shed behind the pergola near the back corner, that being the north-west corner. I observed a green coloured garden hose which was burnt on one end underneath the legs of the deceased. The hose continued under the rubble next to the western wall of the house. I searched through the rubble and followed the hose along the western side of the house where it connected to a tap which was fixed to the remaining brick wall at the back steps of the house. The connection and tap had not suffered any fire damage and I observed the tap was in the on position. I examined the backyard area and located a length of soaker hose next to the rear garden. This

hose was not attached to a tap.

I observed fire damage to various bushes,  
shrubs and gardens in the backyard. I observed  
5 a large portion of the rear fence had burnt to  
ground level. I observed the lawn in the  
backyard was burnt and bore a long, thin line  
of unburnt grass similar to that in the front  
yard. This indicated to me that a hose or  
10 similar had been moved from this location after  
the grass had been burnt.

I observed partial fire damage to the two  
premises directly behind 40 Tullaroop Street on  
15 Eucumbene Drive. However, the house to the  
north-west at 6 Eucumbene Drive was completely  
destroyed.

Q. You spoke to a number of people after you  
20 observed the scene?

A. Yes, about 5.47pm the same day I spoke  
with Inspector Ian Anderson and Inspector  
Darryl Dunbar of the New South Wales fire  
25 brigade. They informed me that fire brigade  
strike teams Hotel and Echo were responsible  
for checking the safety of the structures in  
the Duffy area. They had also examined the  
scene.

30 About 5.51pm the same day, whilst at the fire  
scene, Detective Senior Constable DSC Toby  
Seppings conducted a taped record of  
conversation with ACT Fire Brigade member Mark  
Crowe. Mr Crowe had been checking the safety  
35 of houses in the Tullaroop Street area. About  
4.30pm the same day he observed the house at 40  
Tullaroop Street was completely destroyed.  
Whilst he was checking the premises, he located  
the charred remains of a human body outside the  
40 north-western, rear right corner of the  
destroyed house. Mr Crowe did not touch or  
move the body or items near or around the body.  
Mr Crowe notified station officer Mark Badman  
of the NSW Fire Brigade. Station Officer  
45 Badman then notified nearby police to attend

the scene. Mr Crowe and the other firefighters placed demarcation tape around the premises.

5 Around 6pm the same day, DSC Seppings concluded the taped record of conversation with Mr Crowe. The audio tapes were later exhibited and later transcribed. I checked the transcript by listening to the tape to ensure it was a true and accurate account of the conversation  
10 recorded.

15 About 6.36pm the same day, I received a phone call from DSC Palmer. He advised me of the current location of Victor Garry Brooke, the deceased's son, and Beverley Brooke, the deceased's wife. Apparently Victor Garry Brooke had contacted the emergency hotline on this day and expressed concerns that their father may have returned to their house at 40 Tullaroop Street in Duffy. In the emergency hotline record, he describes his father as 73 years old, five feet 10 inches with balding grey hair and wearing gardening clothes, maybe moleskins and a green floppy hat. It is  
25 noteworthy the floppy green hat was located next to the ladder at the north-eastern corner of the house.

30 About 6.50pm the same day I saw Commander Andy Hughes arrive at the location. I had a conversation with Commander Hughes and briefed him regarding the situation. About 6.51pm the same day, I saw the Commonwealth Medical Officer, Dr David Emonson, arrive at the  
35 location. I showed Dr Emonson the body of the deceased. About 6.55pm the same day, Dr Emonson pronounced the body to be life extinct, and I saw him sign and complete a short statement to this effect.

40 About 6.59pm, the same day, I saw Coles Funeral Directors arrive at the location. About 7.12pm, forensic members and funeral directors moved the body on to a sheet and tarp. I  
45 observed greater and severe burning on the

underside of the deceased. It appeared the majority of his right side and front torso had disintegrated. I observed forensic members locate various items under the body of the deceased. Those items included some melted plastic, a burnt wallet, a metal buckle, a set of keys, remnants of a key holder, coins and remnants of a coin purse. I also observed forensic members locate a piece of heavily charred garden hose underneath the body of the deceased. A small portion of this garden hose was relatively unburnt. Forensic members are of the opinion the portion of unburnt hose is consistent with a hand grip, especially since they located remnants of the deceased's right-hand near the piece of hose. I advised forensic members to retain possession of all the items they had located.

Q. From your investigation, Constable, were you able to form any opinion in relation to what the deceased may have been doing immediately prior to his death?

A. Yes, police and Forensic Services were of the opinion the deceased had been attempting to fight the fire from on top of the roof or pergola on the north-west corner of the house prior to his death. The following led me to this hypothesis: there was a ladder at the north-eastern corner of the house allowing access to the roof, the deceased's green floppy hat was located on the ground near the ladder. It is possible the strong winds knocked it off.

The unburnt lines in the front yard indicate the front hose was also moved after the grass was initially burnt. The fire is believed to have originated from the north-west, where the deceased was located. The hose running along the western wall leads directly to the deceased at the north-western corner. The unburnt lines in the backyard indicate the rear hose was moved after the grass was burnt. A piece of hose was located under the deceased and marks on that hose are, in the opinion of forensics,

consistent with being protected by a hand grip.

5 There is a destroyed pergola along the western wall which would have allowed severe burning to occur to the underside of the deceased. The deceased was located in a paved and relatively protected enclave surrounded by limited combustibile material. The fire damage to the body is inconsistent with the protection  
10 offered by the enclave and paved area. The deceased suffered major fire damage to his right underside.

15 If the deceased had been in this position - that is, the protected enclave - when the fire damage occurred, then the left side of the body would have been more fire damaged rather than the right side, as observed. The disintegration of the right hand, right arm and  
20 right side torso, all on the underside, can be explained by falling from a height, be it pergola or roof, on to the right side of his body. The wooden stick located in the deceased's left arm may have come from  
25 vegetation on the pergola. It is likely the body was burning whilst on the pergola or roof and then fell to the pavement once the pergola gave way.

30 AFP Forensic Services member Cherrone Ellis later provided a statement and photographs relating to her examination of the scene and deceased. Her conclusions were very similar to my own. During the course of the scene  
35 examination, Constable Ilsley obtained digital images of the destroyed house and deceased.

40 About 7.35pm, the same day, the body of the deceased was placed in the Coles hearse. I requested that Constable Sally Jennings and Constable Donna Tankard accompany the body to the morgue for lodgment. About 4.30pm on Monday, 20 January 2003, Senior Constable Schwartz attended 40 Tullaroop Street. At this  
45 location I observed Senior Constable Schwartz



videotape the scene at 40 Tullaroop Street under my direction. And, during the course of the investigation, I also obtained site and building plans of 40 Tullaroop Street, Duffy.

5

Also during the course of the investigation, I made inquiries with neighbours and previous occupants of 40 Tullaroop Street regarding any photographs of the house. I subsequently obtained one black and white photograph taken in the 1970s by Mr Erhardt Timmel, a former resident of 4 Eucumbene Drive. The image shows the pergola along the western side of 40 Tullaroop Street.

10

15

Q. That photograph shows a covering of, what is it, a gauze-type material over the area where he was found?

20

A. That particular picture shows a photograph from quite a distance away from Eucumbene Drive side, across the top of the house, and it shows the full length of the pergola. The other photo, which I obtained later, which is a photograph taken in the 1980s by Mr Michael Smith, a previous resident of 40 Tullaroop Street, shows an image of the pergola and the north-western corner from underneath the pergola.

25

30

Q. What kind of covering is over the top of the pergola?

35

A. On top of the pergola you can see a gauze-type covering which goes along the top. You can see the support posts running along the edge of the building. There's a fascia beam which runs parallel with the roof of the house right along and numerous purloins connecting the fascia beam the house which supports the gauze.

40

THE CORONER: That is the photograph which has two persons standing in it?

A. That's correct, your Worship.

45

MS CRONIN: You then proceeded to contact the

family members of the deceased?

5 A. Yes, about 8.40pm on Sunday, 19 January  
2003, I attended the Tall Trees Motel in  
Ainslie, ACT. At this location I spoke with  
the son of the deceased, Victor Garry Brooke,  
and the wife of the deceased, Beverley Brooke.  
I advised them a man believed to be Peter  
Brooke had died at 40 Tullaroop Street in  
Duffy. I observed Mrs Brooke go into physical  
10 shock and pass out. I contacted 131444 and  
arranged an ambulance to attend the location.

15 About 9pm the same day, I notified AFP media  
liaison officer Constable Goddard that a person  
had been found deceased in Duffy. I advised  
Constable Goddard not to release the family  
name or address details. About 9.16pm the same  
day, I had a conversation with Victor Garry  
Brooke. He informed me that he generally uses  
20 the name Garry Brooke. He assisted me in  
filling out the details of the disaster victim  
identification forms.

25 At a later date, I conducted a taped record of  
conversation with Garry Brooke at City Police  
Station. He informed me that he had owned 40  
Tullaroop Street in Duffy since 1983. He  
described the house as a brick veneer,  
rectangular in shape with four bedrooms, one  
30 bathroom and an ensuite. He stated the  
boundary fences were wood and there was a  
variety of vegetation in and around the  
premises. Garry informed me the rear wall of  
the house - that is, the western wall - had a  
35 pergola along its length, where two grapevines  
were growing. The pergola was made from wood  
and connected to the roof of the house.

40 Garry stated there is a garden hose connected  
to the front right corner, the north-eastern  
corner of the house, and another garden hose  
connected to the rear wall of the house. Garry  
was of the belief that he was the last to use  
both of those hoses. He stated that he left  
45 both of them running on the lawns at the back

and front of the house.

5 Garry stated that his father, Peter Brooke, was  
a Caucasian male aged 73 years of medium build,  
about 14 stone and about 5 feet 10 inches in  
height. He stated that his father had balding  
grey hair which was combed over the top. He  
also stated that his father has a Dacron graft  
10 on his aorta from an operation he had undergone  
in years previous. Garry stated that he last  
saw his father, Peter Brooke, about 3pm to 4pm  
on Saturday, 18 January 2003 just as the  
bushfire hit the edge of Duffy.

15 Garry saw his father helping his mother,  
Beverley, load luggage into their silver Volvo  
sedan. His father was wearing a green coloured  
floppy hat, a light-coloured long sleeve shirt,  
heavy cotton gardening trousers, a Laguna brand  
20 analogue watch, a set of radio headphones, and  
old lace-up leather shoes. He further stated  
his father usually carried a set of reading  
glasses in a vinyl case in his top pocket.  
Garry cannot remember if his father was wearing  
25 safety goggles but recalls there was a pair in  
the garage.

Garry informed police that, on Saturday, 18  
30 January 2003, he awoke late at 40 Tullaroop  
Street after sleeping in. He observed the  
weather conditions gradually worsened as the  
wind increased and the temperature rose to  
between 30 and 40 degrees Celsius. About  
midday he ate leftover pizza with his parents.  
35 After lunch, Garry and his father, Peter, made  
preparations for the bushfires by watering the  
garden and the house. Garry stated that he  
used a wooden ladder to fill the downpipes and  
guttering around the house. Garry could not  
40 recall where he had left the ladder last.

Some time between 3pm and 4pm, Garry observed  
large amounts of burning embers blowing into  
his property on the strong hot winds. Garry  
45 hosed embers using the garden hose in his

backyard. About this time Garry believes he saw his parents preparing to evacuate by packing their vehicle in the carport. Garry cannot recall if the doors of the house were  
5 locked. After realising his parents were evacuating, Garry went into the carport and opened the roller door manually because the electric motor had no power.

10 About this time Garry believes he saw a fire in the front garden of 42 Tullaroop Street, next to the nature strip. Garry remembers attempting to put out these fires using the hose from the front of his house. Garry was unsuccessful due  
15 to the intensity of the flames, so he left the hose lying across his front lawn. About this time, Garry reversed his car, a white Saab sedan out of the carport. He observed heavily congested, slow-moving traffic on Tullaroop  
20 Street. After waiting a short period for a break in traffic, Garry drove on to Tullaroop Street and parked his car next to the driveway of number 43, on the other side of the bend. Garry waited in his car whilst his parents  
25 reversed their Volvo down the driveway. The next thing Garry remembers is looking back up the street and not being able to see his parents' silver V olvo.

30 About this time, Garry got out of his vehicle and walked around the bend of Tullaroop Street to where he saw his parents' silver Volvo pointing in a northerly direction and parked close to the driveway of 38 Tullaroop Street.  
35 Garry walked to his parents' car and saw his mother, Beverley, sitting in the driver's seat. Garry found this strange because his mother had not driven for many years. Garry asked his mother where his father was and she told him  
40 that his father had gone looking for him. Garry took this to mean that his father had gone down the street to look for him. He observed that his mother had difficulty moving the car.

45

Garry observed fire erupting everywhere around them so he decided to turn the Volvo around for her. He got into the Volvo and turned it around so it was facing the other way. He  
5 explained the gears and pedals to his mother and then got back into his own car after avoiding some flames outside 43 Tullaroop Street. He watched his mother drive the Volvo slowly passed him. He followed his mother in  
10 his own car as they slowly crept along Tullaroop Street looking for his father. Garry looked up all the side streets nearby and could not locate his father. At this point the traffic was banking up behind. They both drove  
15 out to the corner of Hindmarsh Drive, where Garry spoke with two uniformed police officers. Garry told them that his father had walked off somewhere on Tullaroop Street. Garry states the police officers told him that fire brigade and  
20 police were at locations throughout Duffy, making sure that everyone was picked up.

Some time later, Garry and Beverley Brooke drove to the evacuation centre at Phillip. At  
25 the evacuation centre, Garry filled out a form registering himself, his mother and his father. He stated that he wrote "missing" next to his father's name. Some time later, Garry and Beverley drove to Canberra Hospital and made  
30 inquiries as to his father's whereabouts. They returned to the Phillip evacuation centre and discovered it had moved to Narrabundah college.

Garry and Beverley then attended Narrabundah college and met with Trish and Helmut Frei, residents of 2 Eucumbene Drive. The Freis told  
35 Garry that his house was destroyed by the fires. Garry told the Freis that his father, Peter, was missing and had walked off on  
40 Tullaroop Street. Garry then made inquiries with his insurance company to arrange accommodation.

Garry made further inquiries with Red Cross  
45 staff, who explained that all the registrations

were still being processed. He drove his mother to accommodation in Ainslie where they stayed the night. The next day, Sunday, 19 January 2003, Garry rang various people in  
5 attempts to locate his father. He stated at about 4pm that day he got through on the emergency hotline number and spoke to a female person. She told him that she would contact the police, and I later obtained a copy of the  
10 emergency hotline record, which was completed on Sunday, 19 January.

Garry added that he and his father had worked as volunteer firefighters on a couple of  
15 occasions. He was of the belief that his father had fought more fires than himself, however does not believe that his father received any specific training. The tapes from the record of conversation with Garry Brooke  
20 were later exhibited and transcribed.

After assessment by ambulance staff, Mrs Brooke was able to provide me with a brief account of the events surrounding the last time she saw  
25 her husband, Peter Brooke. Beverley explained the family had been making preparations prior to the fire arriving. Late in the afternoon, she realised nothing more could be done so the whole family decided to leave. Beverley got  
30 into their Volvo with Peter Brooke. She states that he reversed down the driveway past the burning bushes at the front of 40 Tullaroop Street.

At this point, Beverley explained they turned left on to Tullaroop Street and parked. Beverley asked Peter where Garry was. Peter replied by stating he was going to look for Garry. Peter apparently told Beverley to get  
40 in the driver's seat. Beverley saw Peter get out of the vehicle, however she lost sight of him in the smoke, flames, noise and confusion. Moments later, Beverley spoke with Garry, who had walked up to the car. Beverley and Garry  
45 reasoned they would find Peter by driving

slowly down Tullaroop Street.

5 After searching the nearby streets  
unsuccessfully, they stopped on the corner of  
Hindmarsh Drive and Wyangala Street where Garry  
spoke with police about Peter. Beverley and  
Garry then drove to the Phillip emergency  
centre and recorded Peter as missing. Mrs  
10 Brooke later provided a written account of the  
events of Saturday, 18 January 2003. After  
notifying Garry and Beverley Brooke at Tall  
Trees Motel on Sunday, 19 January 2003, I made  
certain inquiries as to the physical health of  
Peter Brooke. Garry Brooke informed me that  
15 Peter suffered hypertension, for which he had  
been prescribed medication. I was shown  
certain medication of Peter Brooke's which had  
been packed in preparation for the evacuation.  
Those medications included Noten, Tazac, Karvea  
20 and some Solprin, the first three were  
prescribed by Dr Robert Allan, his  
practitioner.

25 On Monday, 20 January 2003, Constable Ilsley  
contacted Trish Wilks from Family Services and  
requested they provided the necessary  
assistance to the Brookes. About 5.45pm on  
Tuesday, 21 January, 2003, Constable Ilsley  
attended Tall Trees Motel in Ainslie once more  
30 and spoke with Garry Brooke and Beverley  
Brooke. Constable Ilsley seized several  
personal items of the deceased for the purpose  
of DNA examination. Constable Ilsley also  
seized the original house plans of 40 Tullaroop  
35 Street.

Q. You made some inquiries also in relation  
to Mr Brooke's medical history?

40 A. I did. About 11.30am on Tuesday, 21  
January 2003, I attended the John James  
Hospital in Deakin, ACT. At this location I  
seized the medical records of the deceased.  
Those records confirmed the deceased had  
undertaken an operation whereby a Dacron graft  
45 had been placed on his aorta. About 11.45am

the same day I attended the Curtin dental chambers. At this location I spoke with Dr Rickard and seized the dental records of the deceased. I completed a seizure record, and I  
5 later gave these records to Coroner's officer Sergeant Bruce Brown for the purpose of assisting with positive identification.

10 About 12.05am the same day I attended the office of Dr Allan and Associates General Medical Practice, Corinna Street, Woden in the ACT. At this location I spoke with Dr Robert Allan, the deceased's general practitioner. He provided me with the deceased's medical file.  
15 At a later date I conducted a tape record of conversation with Dr Allan. Dr Allan informed me that Mr Brooke had been attending his practice in Woden for about five years as a regular patient. He last saw Peter Brooke on 7  
20 January 2003 as part of his regular three-month check-up.

Dr Allan advised that Peter Brooke suffered from high blood pressure and heart disease,  
25 which required constant medication. He stated that Mr Brooke was very competent at self-medicating and always filled out a diary. Apparently Mr Brooke also produced that diary on each visit. Dr Allan stated that, on his  
30 last visit, Mr Brooke had confessed he was experiencing increased blood pressure with emotional excitement. Dr Allan increased Mr Brooke's Karvea medication from 150 milligrams to 300 milligrams.

35 Dr Allan is aware that Mr Brooke had undergone operations for his prostate, hernia repairs and an aortic aneurism. Dr Allan advised that, during his aortal operation, a Dacron graft was  
40 placed over his aorta to repair damage. Despite the history of high blood pressure, Dr Allan was of the opinion that Mr Brooke was of sound health for a 73-year-old man. The taped record of conversation with Dr Allan was later  
45 exhibited and transcribed.



About 12.30pm on Tuesday, 21 January 2003, I also attended the office of Dr David Tridgell, University Avenue in the city. At this  
5 location I seized Peter Brooke's optometry records. About 3pm the same day I attended the medical records department of Calvary Hospital. At this location I also seized Peter Brooke's hospital records. I later received Peter  
10 Brooke's Canberra Hospital records from the Coroner's office.

Q. You went and attended the deceased's post-mortem; is that correct?

15 A. That's correct. About 4.55pm on Tuesday, 21 January 2003, I attended the Kingston Forensic Medical Centre. About 5.55pm the same day, I had a conversation with Dr David Griffiths, the dental pathologist. Sergeant  
20 Bruce Brown and Dr Colin Rickard were also in attendance. About 6.06pm the same day I saw Dr Griffiths begin his examination of the deceased. About 7.13pm the same day, the dental examination was complete. About 7.16pm  
25 the same day I gave Sergeant Brown the dental records of the deceased. Dental examination concluded the body was that of Peter Brabason-Brooke.

30 About 5.50pm on Wednesday, 22 January 2003, I once more attended the Kingston Forensic and Medical Centre. At this location I spoke with Sergeant Bruce Brown and pathologist Dr Lavinia Hallam. Dr Hallam then conducted an autopsy on  
35 the body of the deceased. Toxicology was later conducted by ACT Government analyst Peter Smith. About 6.55pm the same day I observed an artificial graft on the deceased's aorta. Dr Hallam later provided a report where she  
40 concluded the cause of death was due to the effects of fire.

On Thursday, 23 January, 2003, I was advised by the Coroner's officer that the Coroner, your  
45 Worship, was satisfied that dental matching

amongst other things confirmed the identity of the body as Peter Brabson-Brooke.

5 Q. Did you and other police make a number of inquiries with the deceased's neighbours about what happened that afternoon on the 18th?

10 A. Yes, on Sunday, 19 January 2003, Constable Shane Scott and DSC Toby Seppings spoke with Allan Latta, a resident of 60 Eucumbene Drive. He stated that late Saturday afternoon he helped the Millburns at 38 Tullaroop Street get out of their house as the fire approached. At this time Mr Latta observed that number 38 was on fire at the rear. He was unable to provide  
15 any information about number 40 or its occupants.

I later conducted a taped record of  
20 conversation with Mrs K. Millburn, previously the resident of 38 Tullaroop Street in Duffy. Mrs Millburn informed me that her family had known the neighbours the Brookes for about eight years. Mrs Millburn described the Brookes as a close loving family and good neighbours.  
25 Mrs Millburn stated that at about 2.10pm on Saturday, 18 January, she was watering down her backyard and house when she observed Mr Peter Brooke over her side fence.

30 She recalls Mr Brooke wearing a long-sleeved white shirt, but was unable to recall if he was wearing a hat. Mrs Millburn stated she previously worked as a registered nurse and was aware of Mr Brookes' heart condition and  
35 hypertension. She observed that he seemed normal and did not appear to be anxious or unwell. Mrs Millburn spoke with Mr Brooke quickly regarding the approaching bushfires. Apparently Mr Brooke agreed it would be prudent  
40 to water down his own backyard and house as well.

About 3pm the same day, Mrs Millburn states  
45 that her daughters heard the alert siren on the radio. It was about this time that Mrs

Millburn noticed the water pressure had gone in her water hose and the wind and embers were getting worse. About this time a friend of the family, Mr Allan latta, attended their house and told them to get out. Mrs Millburn backed her car down the driveway and observed Garry Brooke standing on a ladder at the front right corner of his house. At his time she saw a silver car in the driveway of 40 Tullaroop Street. Mrs Millburn and her daughters left the area in her car. Mr Bruce Millburn and Mr Latta stayed for a short period and then left in another vehicle. Bruce Millburn was unable to provide any other information. The tape from the record of conversation with Mrs Millburn was later exhibited and transcribed.

About 4.58pm on Monday, 20 January 2003, Constable O'Meagher attended 42 Tullaroop Street Duffy and had a taped record of conversation with resident Edwina Houg. Mrs Houg stated she was alone in the house on the afternoon of Saturday, 18 January 2003. Mrs Houg continually monitored the smoke and haze outside from her window. About 2pm that day, she saw Peter and Garry Brooke watering their backyard at 40 Tulleroop. About 3.25pm she left her house with her dog and got in her vehicle. As she left, she saw the Brookes's Volvo sedan parked in the driveway. Mrs Houg did not see Beverley or Peter Brooke. Mrs Houg did not see any houses on fire at this time, however she saw lots of embers flying through the air. She was unable to provide any further information.

About 5pm on Monday, 20 January 2003, Senior Constable Lyddiard spoke with Robert Munro, the resident of 4 Eucumbene Drive. The back of Mr Munro's residence joins with the north-west corner of 40 Tullaroop Street. I later conducted a taped record of conversation with Mr Munro. He stated that he can see the northern wall of the Brookes' house from his backyard. However, he is unable to view the western wall because of a large screen of

vegetation in the north-west corner of the Brookes' property. Mr Munro was unable to see the majority of the Brookes' roof.

5 About 3.30pm on Saturday, 18 January 2003, Mr  
Munro observed the fire front in the forest  
opposite his house. He described the wind as  
very fast and the ambient temperature as hot.  
About this time, Mr Munro observed a police  
10 officer come past the front of his house and  
advise him to leave. Mr Munro's family then  
left the area. Mr Munro stayed behind at his  
house in order to fight the fire. He stated  
that between 3.30pm and 3.45pm he fought spot  
15 fires in his front yard. It was about this  
time he went into his backyard and observed his  
gazebo was consumed in flames. Mr Munro  
attempted to douse the flames in his backyard  
with his garden hose.

20  
Mr Munro then observed a large fire ball  
travelling south down the rear fence lines of  
the houses. He saw the fire ball engulf the  
bushes and fence at the north-west corner of  
25 the Brookes' property. A short time later Mr  
Munro observed the gable on the northern wall  
of the Brookes' house catch alight. It was  
about the same time Mr Munro observed the  
south-east corner of the house at 6 Eucumbene  
30 Drive catch alight. Between 4pm and 4.15pm, Mr  
Munro believes he was busy putting out fires at  
6 Eucumbene Drive and his own property. About  
4.15pm, Mr Munro saw the roof of the Brookes'  
property collapse. He estimated the Brookes'  
35 house burnt down in about 15 to 20 minutes.

Between 4.15pm and 5.15pm, Mr Munro stayed in  
the corner of his carport because the flames in  
his front and rear yards were too fierce to  
40 fight. About 5.30pm, Mr Munro was able to move  
around again and put out fires on his property  
at 6 Eucumbene Drive. By this time Mr Munro  
states that the Brookes' house had been totally  
destroyed. Mr Munro did not observe any of the  
45 Brooke family on Saturday, 18 January 2003. Mr

Munro did not become aware of Mr Brookes' death until days later.

5 About 5.15pm on Monday, 20 January 2003,  
Constable Marriott had a conversation with  
Peter Wheelan, the resident of 39 Tullaroop  
Street, Duffy. Mr Wheelan stated that he  
arrived home about 3.45pm on Saturday, 18  
10 January 2003. He observed the house at 43  
Tullaroop Street was already alight. Mr  
Wheelan stated that his front lawn soon caught  
alight. About 4.15pm, he observed two men in  
blue overalls knocking on doors in the area.  
He was unable to provide any further relevant  
15 information.

About 5.17pm on Monday, 20 January 2003,  
Constable O'Meagher attended 2 Eucumbene Drive  
and had a taped record of conversation with  
20 resident Helmut Frei. Mr Frei informed police  
that he and his wife were present at 2  
Eucumbene Drive on Saturday, 18 January 2003.  
Mr Frei stated that, at about 2.30pm, the power  
to the house ceased, and about 2.45pm he  
25 observed the fires just down Eucumbene Drive  
toward Cotter Road.

About 3.10pm Mr Frei observed his wife leave  
the area. A short time later Mr Frei spoke  
30 quickly with a police officer who ran past his  
front door. The police officer told him that  
it was time to go. Mr Frei made some  
last-minute checks of his property. He  
observed sparks flying through the air. He saw  
35 the trees across the road were ablaze. Mr Frei  
left the area by car just as the bushes at the  
front of his property caught alight. Mr Frei  
later attended the Phillip evacuation centre  
and saw Beverley and Garry Brooke. Mr Frei  
40 states that the Brookes told him that Peter had  
walked away after they left their house. Mr  
Frei did not see Peter Brooke that day.

45 About 5.40pm on Monday, 20 January 2003, DSC  
Palmer and Constable Ilsley attended 32

Tullaroop Street, Duffy and spoke with residents Greg and Ethne McLeod. Apparently they returned home about 3pm on Saturday, 18 January 2003. They observed heavy smoke and embers in Tullaroop Street. About 10 minutes later they heard someone on a loud speaker telling residents to evacuate. They did not see this person.

5  
10 Mr and Mrs McLeod were having difficulty breathing and their eyes were stinging. They observed neighbouring trees exploding in flames. About this time they left the premises. They were unable to provide any further information about 40 Tullaroop Street or its occupants.

15  
20 About 5.40pm on Monday, 20 January, Constable Marriott spoke with David Welch of 41 Tullaroop Street, Duffy. He stated at about 3.30pm he observed embers in Tullaroop Street. About 3.45pm, his wife and children left the area. About 4.30pm, he observed the house at 43 Tullaroop Street was well alight. Mr Welch was unable to observe 40 Tullaroop Street. He observed some police in the street between 4.30pm and 5.20pm. He then evacuated the area. He was unable to provide any information about 40 Tullaroop Street or its occupants.

25  
30 On Monday, 20 January 2003, Constable Lohead spoke with Kai and Andre Detto of 34 Tullaroop Street. They recall that at about 5pm on Saturday, 18 January 2003, the house at 38 Tullaroop Street had burnt to the ground. The Dettos were unable to provide any information about number 40 Tullaroop Street or its occupants.

35  
40 On Monday, 20 January, DSC Petropoulos spoke with Roger O'Sullivan of 48 Tullaroop Street, Duffy. Mr O'Sullivan advised at about 4pm on Saturday, 18 January 2003, he was driving on to Tullaroop Street with his family. At this time he observed that number 40 was well alight. He

was unable to provide any further information about 40 Tullaroop Street or its occupants.

5 On Monday, 20 January 2003, DSC Petropoulos spoke with Roland Lofthouse of 47 Tullaroop Street. Mr Lofthouse advised at about 3pm on Saturday, 18 January 2003, he was at home. About this time he heard a public address speaker repeat the words "evacuate the area".  
10 He saw people in the street watering down their houses. He also saw police vehicles in the area. Mr Lofthouse was unable to provide any further information about 40 Tullaroop Street or its occupants.

15 On Tuesday, 21 January 2003, Senior Constable Lyddiard spoke with Mr and Mrs Flynn of 8 Eucumbene Drive. They stated at about 3.30pm on Saturday, 18 January 2003, they observed the  
20 fire approaching through the forest and decided the leave the area. The Flynns did not return until the next day.

25 Subsequent inquiries located the residents who were initially unavailable for questioning. I located Mr Garry Henness, previously of 6 Eucumbene Drive, Duffy, who had been there in excess of 10 years. He stated that about  
30 midday on Saturday, 18 January 2003, he returned home and observed a group of firefighters and police having a meeting in the forest across the street from his home. About this time he started watering down his home and some of the timbers stored outside his house.

35 About 3pm, Mr Henness observed a firefighter pull up in his driveway in a Subaru four-wheel drive. The firefighter told him the fire front was out of control and to advise his neighbours  
40 to evacuate. Mr Henness advised his neighbours of this information. At this time Mr Henness observed fires burning about 150 metres east of his location in the pine forest. He observed burning embers flying through the air on strong  
45 hot winds. Mr Henness stated that he and his

family got in their car and entered the congested traffic. He stated that visibility was extremely poor due to the thick smoke. Mr Henness was unable to provide any information about the houses backing on to his property. Mr Henness returned the next day to find his home had burnt to the ground.

Q. What other inquiries did you make, Constable?

A. I later made inquiries with members of Operation Parrel regarding the location of police members in the Duffy area during the late afternoon of Saturday, 18 January 2003. They informed me that Constable Richardson and Constable Young were performing traffic direction at the intersection of Wyangala Street and Hindmarsh Drive. They also informed me that Constable Apostoloff and Constable Laidlaw were performing traffic direction on the intersection of Wyangala Street and Burrinjuck Crescent. I spoke with those police officers and they were unable to recall anyone matching the description of Garry or Beverley Brooke, and/or their vehicles.

I also made inquiries with Operation Parrel concerning any member present on the bend in Tullaroop Street. To date, I am unable to identify any such person. I compiled a request to all of ACT Police requesting any member who may have information regarding the Brookes and their vehicles in the Duffy area on Saturday, 18 January 2003. No relevant information has been forthcoming.

I made inquiries with Telstra through AFP operations monitoring and intelligence support regarding the telephone line subscribed to 40 Tullaroop Street, Duffy on the day of the fires. It was reported that no phone calls were made during the day on Saturday, 18 January 2003.

Q. What conclusion did you come to in your



investigation?

5 A. Police investigations indicate that, at the time of his death, it would appear Mr Brooke was on the roof of his house using a hose. Investigating police were of the opinion that Mr Peter Brabason-Brooke died about 4pm as a result of the effects of fire and there are no suspicious circumstances surrounding the death.

10

Q. How did you arrive at the time of 4pm?

A. Based on Mr Munro, the resident backing on to his property who saw the house burn down between the times of 3.45pm and 4.15pm.

15

Q. So the timeframe is some time between 3.45 and 4.15?

A. That is correct.

20

THE CORONER: Yes, I think Mr Brooke said he saw the roof collapsed at 4.15pm.

A. Approximately. It was about 3.45pm that he was fighting the gazebo fire and then some time after that he saw the fire ball come down and light up the side of the house.

25

THE CORONER: And from what you observed, you suspect that Mr Brooke may well have been on the roof of the house or the gazebo at about that time.

30

A. Yes, the roof, yes.

Q. It collapsed?

35

A. It appears that way, especially given the burns underneath his body.

MS CRONIN: I have no further questions, your Worship.

40

THE CORONER: And the house belongs to Garry?

A. That's correct.

THE CORONER: And Mr Peter Brooke and his wife were living in the house?

45

A. They were both living with Garry. They

had helped him in buying the property earlier on and the arrangement was that they lived with him there.

5 THE CORONER: Thank you, Constable. You can step down.

**<THE WITNESS WITHDREW**

10 THE CORONER: Are you proposing to move on to the next one?

MS CRONIN: Yes, your Worship.

15 THE CORONER: What I would prefer you to do, and I probably should have asked you to do this before you moved on to Constable Strachan, is just for completeness and for the public record, just to put on the public record  
20 excerpts from the autopsy finding.

MS CRONIN: Your Worship, I was proposing to recall the pathologist at the end of this.

25 THE CORONER: In relation to the three?

MS CRONIN: Yes. Does your Worship want me to do that?

30 THE CORONER: No, at the end, whenever it is convenient.

MS CRONIN: I call Constable Gregory Booth.

35 **<CONSTABLE GREGORY IAN BOOTH, SWORN**

**<EXAMINATION-IN-CHIEF BY MS CRONIN**

MS CRONIN: Please tell the court your name, rank and station.

40 A. My full name is Gregory Ian Booth. I'm a constable with the Australian Federal Police, currently attached to the Territory Investigation Group, South Response,  
45 Tuggeranong Police Station.

Q. Constable, on 18 January this year, you were on a rostered day off?

A. That's correct.

5

Q. And about 7.30pm you received a phone call from Sergeant Innes asking you to go to the Winchester police station?

A. That's correct.

10

Q. About 6.45pm on the 18th, communications were notified of the death of a female at the Stromlo forestry?

A. That's correct.

15

Q. What did you do in relation to that notification?

A. Following receiving a briefing from Detective Sergeant Innes, about 9.30pm on Saturday, 18 January 2003, Detective Constable Kathryn Richens and I attended a cottage at R NB 113 Cotter Road, Stromlo forestry settlement, Stromlo, ACT. At this location police spoke to uniformed member Senior Constable Melita Zielonko, who informed Constables Booth and Richens that they had spoken to the NSW Rural Fire Brigade Inspector Langdon Gould, who had shown them the body of a deceased person in the yard of a cottage at RMB 113, Stromlo forestry settlement.

20

25

30

Uniformed members were approached by a number of persons who identified themselves as being residents of the Stromlo forestry settlement and, to that end, suggested the female person who resided in the destroyed premises as being Dolly McGrath, aged in her late 70s. Mr Mark Graham spoke to uniform police and told them that he had last seen Dolly McGrath in her yard hosing down her house. Mr Graham stated they were working as volunteers trying to save houses in the settlement in the face of the oncoming fire front.

35

40

45

Mr Graham further stated he was unsure of the

time exactly but believed it was mid to late  
afternoon when he and the people he was helping  
left the settlement when it became apparent the  
fire front was too close. They left the  
5 settlement for a period of about one half hour  
and, on their return, discovered a large number  
of the premises at the settlement had been  
razed by fire. Cottage 7 remained intact and,  
upon return of Mr Graham and the others, the  
10 body of the deceased was located in the yard of  
the cottage whose yard backed on to number 7.  
The house at this address had been razed to the  
ground by fire.

15 Q. Can you tell your Worship what you  
yourself observed at the scene?

A. Constable Richens and I were shown by New  
South Wales Rural Fire Service Inspector Gould  
to the area where the deceased person was  
20 located, your Worship. At this time police  
observed the body of a female person lying face  
down on the ground, she was lying on her left  
side and both her arms were drawn up to the  
area of her face. She was wearing what  
25 appeared to be a cream-coloured t-shirt,  
mustard-coloured leggings, and she was observed  
to be wearing a black sandal on her right foot.  
The deceased was observed to be not wearing any  
jewellery or any other items which may aid in  
30 her identification. The deceased was otherwise  
unidentifiable due to the burns sustained to  
the body.

There was an amount of fluid on the ground  
35 adjacent to the nose of the deceased. Further  
police observed pieces of burnt timber wall  
studs adjacent to the body, with one actually  
lying across the torso of the deceased. Police  
observed the premises to be entirely destroyed  
40 by fire.

Q. Could you describe for your Worship where  
the body was located in relation to the remains  
of that house?

45 A. Your Worship, I observed the deceased to

5 be lying approximately three metres away from what remained of the premises. The structure remaining was a brick chimney and she was lying about three metres away from that in the direction of cottage 7. I know that area to be the rear yard of the deceased's premises.

Q. So which was the deceased's premises, number 7?

10 A. No, number 7 was the one - that was Bill Todkill's premises. Her premises was --

THE CORONER: It says 113.

15 A. 113, but the numbering system at Stromlo forestry settlement isn't consistent. It's all over the shop.

THE CORONER: So her address was 113?

20 A. That's correct.

Q. But it was adjacent to the cottage number 7?

A. That's correct.

25 Q. And she was found three metres from what's left of the structure of her premises?

A. Yes, in the backyard, your Worship.

MS CRONIN: Could you continue.

30 A. The premises are believed to be of a timber weatherboard house on a timber bearer and joist flooring. On the premises the remaining structures were two brick chimneys and the brick foundations. There was an amount  
35 of corrugated iron believed to be from the roof of the premises. There was a large amount of rubble with the only items being identifiable being the bathtub and the internal wires of the  
40 mattress.

Police are of the understanding there were 23  
premises at the Stromlo forestry settlement, of which 20 had been razed to the ground by fire. Power lines were down and the area around the  
45 settlement was denuded of any vegetation.

At 11.20pm on Saturday, 18 January 2003, Dr David Emonson attended and pronounced life extinct. At 12am on Sunday, 19 January 2003, AFP Forensic Services member Ms Serena Buxton attended and conducted an examination of the scene and at this time took a series of photographs of the deceased in situ.

5  
10 Q. Just slow it down.  
A. Sorry.

15 Q. At 12.45am on Sunday, 19 January 2003, Coles Funeral Directors attended the location of the deceased whereupon the deceased was conveyed to the Kingston Forensic Medical Centre. At that time, a post-mortem examination was to be conducted on the deceased at a date that was yet to be advised to me by Sergeant Bruce Brown. At the time it was unclear as to the cause of death of the deceased, however it was suspected her death was attributable to the bushfires in and around the ACT during the dates and times specified previously.

20  
25 Q. Of course that's now been done, the post-mortem?  
A. That's correct.

30 Q. At that point, what inquiries did you and the police make in relation to what had happened to Ms McGrath on the afternoon of 18 January?

35 A. About 6.20pm, Sunday, 19 January 2003, I spoke to a female person on the telephone that identified herself as Wendy Farrawell, the natural daughter of the suspected deceased person, being Dolly McGrath. I informed Mrs Farrawell as at this time and date the female deceased had not yet been identified. There was to be a post-mortem examination of the deceased at 6pm on Monday, 20 January 2003, and police hoped to identify the deceased via dental records. If the identity of the

deceased was unable to be established, then other lines of identification would need to be followed, including DNA.

5 Mrs Farrowell was provided with contact details for myself, and I was the case officer in relation to the death of the female person at Stromlo, and, to that end, any inquiries should be directed to me. I later became aware  
10 Constable Shane Scott had attended an address in Florey about 10am on Sunday, 19 January and had spoken to a female person who identified herself as Michelle Taylor. Ms Taylor informed Constable Scott she had an aunt who resided at  
15 the Stromlo forestry settlement. Further she stated she believed the deceased person to be her aunty, Dolly McGrath. Constable Scott later attended the deceased's residence at the Stromlo forestry settlement and collected a  
20 number of items with a view to having them examined for fingerprints in order to identify the deceased.

About 12.30pm on Monday, 20 January 2003,  
25 Detective Constable Richens and I attended the Stromlo forestry settlement and conducted a taped record of conversation with William Edward Gordon Todkill, date of birth 13/10/54, who relayed the following details.

30 Mr Todkill and his family were out and returned to their house about 2pm because there was thick smoke. His partner, Peggy Leatherhand, and son, Matt, collected personal items and  
35 went to a friend's house in Weston. Mr Todkill, along with Mark Graham and Kevin Short, started hosing down his house. About this time the ACT Forestry depot across the road from his premises started to catch on  
40 fire.

Mr Todkill stated between 3pm and 3.30pm he, Mark Graham and Kevin Short, decided to leave the Stromlo forestry settlement as the area was  
45 well on fire, including the depot, the NSW

Rural Fire Service camp and the deceased's garden shed. Mr Todkill stated at the time of his departure there was thick smoke and fire balls in the trees approaching from the west  
5 down Mount Stromlo. He noted the wind was strong, however to him it appeared to be swirling. Mr Todkill went to see his wife in Weston and returned to the Stromlo forestry settlement between 5 and 5.30pm the same day.

10 Upon his return, Mr Todkill noted his cottage was intact when Mr Graham said to him - he said, "I hope Dolly got out okay." Mr Todkill stated he did not know Dolly was still there at  
15 the time the fire went through and, to that end, went over to Dolly's and had a look around. Mr Todkill stated they found the body of a deceased person lying on the ground adjacent to the back fence of the property.  
20 They noted that the chimney was still standing when she was in what was referred to as her vegetable garden. He then used his mobile phone and contacted ACT police.

25 Prior to his departure, Mr Todkill had spoken to members of the NSW Fire Brigade, who had set up a camp on the oval east of his residence. The members of the NSW Fire Brigade were in the process of evacuating their camp when the  
30 conversation between Mr Todkill and were saying things along the lines of - they said, "Get out." However, Mr Todkill was uncertain if the members of the NSW Fire Brigade were talking to him and his colleagues or amongst themselves.

35 In relation to the suspected deceased, Mr Todkill stated he did not recall seeing the suspected deceased on the day of the fire. He knew the suspected deceased as Dolly McGrath  
40 who lived at Cottage 5, RMB 113. The cottage was located on the corner block next door to Mr Todkill's. The boundaries were separated by a laneway. The cottage faced north-west. There was a gate on the west side with the driveway  
45 and another small garden. There were no other



5 gates or exit points to the yard of the cottage. The rear door to the premises was on the southern side. The suspected deceased lived alone and kept to herself and was the owner of a yellow coloured Ford Laser.

Q. At that point she was the suspected deceased, but she's now known to be the deceased?

10 A. That's correct.

MS CRONIN: Is that a convenient time, your Worship?

15 THE CORONER: Yes. We'll adjourn until 2 o'clock.

**ADJOURNED** [1.00pm]

20 **RESUMED** [2.05pm]

MS CRONIN: I recall Constable Booth.

25 THE CORONER: You're still on the oath that you took this morning.

A. Thank you, your Worship.

MS CRONIN: Before we proceed, can I ask you to correct some evidence that you gave earlier before the lunch adjournment.

30 A. Certainly.

Q. You said the number for Ms McGrath's house was 113.

35 A. That's correct.

Q. Is that in fact the number of the whole area?

40 A. Your Worship, in relation to the questions you asked regarding the actual address of the premises of the deceased, I stated there was no numbering convention. However, from rereading the statement, I've been able to ascertain that the deceased's cottage was Cottage 5. Mr  
45 Todkill's cottage was Cottage 7 and the entire

Stromlo settlement is RMB 113 Cotter Road,  
Stromlo Forestry Settlement.

5 Q. So did you, on 20th January, with  
Detective Constable Richens, interview a man  
called Mark Graham?.

10 A. That's correct, we did. In a taped record  
of conversation with Mark Allan Graham  
conducted on Monday, 20 January 2003, Mr Graham  
stated in that taped record of conversation his  
address was 7 of 113 Stromlo settlement, Cotter  
Road, Duffy, ACT. It had been demolished on the  
18th of January 2003 and was currently residing  
at the Kambah Inn, which was emergency housing.

15 THE CORONER: So he was a neighbour to Mr  
Todkill?

20 A. This is a problem with the numbering  
system. There is no consistency with the  
numbering system. I think Mr Todkill was number  
9.

THE CORONER: Anyway, you're quite confident Ms  
McGrath was at number 5?

25 A. I am confident Ms McGrath was at number  
five and every time I spoke to somebody about  
what premises they were in, they reaffirmed  
there was no convention. It was either Dolly's  
place or Bill's place. So he was currently  
30 residing at the Kambah Inn Emergency Housing.

35 On Saturday, 18 January 2003, Mr Graham was at  
the Stromlo settlement with Bill Todkill and  
Kevin Short. He was aware of a large fire front  
approaching the Stromlo settlement, however he  
initially couldn't see it because of the pine  
trees and thick smoke.

40 As the New South Wales fire brigade tankers  
were leaving the area of the Stromlo  
settlement, they spoke to Mr Graham and said  
words to the effect of - they said, "Go now."

45 Mr Graham and the others had decided they were  
going to stay, with the view to saving Bill

Todkill's house. At the time they had overalls and a hose and felt saving Mr Todkill's house was achievable.

5 During the week prior to the 18th of January, Mr Graham had observed 10 to 30 tankers at the settlement. On 18 January 2003, there were only a few. He felt the fire front was moving quickly towards the Stromlo settlement when  
10 black leaves started landing in his yard and he states he knew the fire was 'spotting'. He noted visibility was hazy and it started to get dark. Their efforts in relation to fighting the fire were hampered by low water pressure.

15 He noted no flames were initially visible to him. He could see houses across the road up to 80 metres away. The smoke thickened and then he heard a roar and saw the trees were alight.  
20 There was a spot fire near Bill Todkill's rear yard in the laneway. Then there were flames everywhere. The depot and the administration centre across the road were alight, and then everything ignited, including the trees to the  
25 north-west of the settlement, the oval and the New South Wales bushfire brigade's forward command.

The decision to contain the fire at  
30 Bill Todkill's house was made on the basis of Todkill's premises being closest to the fire hydrant. New South Wales fire brigade left a hose for the group. However, Mr Graham noted it wasn't long enough, and although they had  
35 other hoses they had no adapter to join them because New South Wales and ACT hoses are not compatible.

Mr Graham stated he could see a person in the  
40 yard next door watering. The person was hosing the house, there was thick smoke, and from the shape of the body he assumed it to be the resident of the premises, being Dolly McGrath. Further he states that at the time he noticed  
45 this person was about the same time the New

South Wales bushfire tankers were leaving. He noted the female person did not appear to be holding anything over her face, she was about 30 metres away from him and visibility was about 10 metres.

In relation to the female person known to Mr Graham as Dolly McGrath, Mr Graham stated he knew she lived next door to Mr Todkill, their yards were separated by a laneway, she had main gates opening into the driveway, and she may have had a small exit gate at the front of her house.

Mr Graham stated he knew Dolly McGrath reasonably well. She was independent, active, would walk around the settlement with her two silky terriers. He was aware that she owned a Ford Laser hatchback which she kept in an enclosed shed in her yard.

Mr Graham was not aware as to Dolly's preparedness in relation to evacuating the Stromlo settlement. Mr Graham had no inclination of how close the fire was and was not aware if anyone had told other residents, including Dolly, to go. The main focus was on wetting the house. He recalled seeing someone in a uniform getting people out of the premises being number 12 because they are deaf.

When the main fire front hit, it came from the direction of the Mount Stromlo Observatory and Mr Graham noted there were fire balls setting everything alight. Fire was engulfing 30-foot tall trees, flames were twice as high as the depot, hot embers were flying horizontally to the ground and everything was burning in the wind.

Mr Graham stated the only person he saw was a mechanic for ACT Forestry, Mr Paul Graham. Mr Paul Graham parked his van at the depot and got a tanker out of the depot and parked it on the oval. The van Mr Paul Graham had driven to

the depot was destroyed by fire. At this time Mr Graham stated Bill Todkill decided they should leave. They drove in a car which they had prepared, ready to leave.

5

Mr Graham stated that they had stayed about 15 to 20 minutes after the New South Wales fire tankers left. They drove past the depot that was on fire and when they got onto the Cotter Road about 200 to 350m away, everything was crystal clear. There was no discussion about evacuating other residents.

Mr Graham recounted when the fire came through he thought he had made the wrong choice staying behind to fight the fire. Further, he had fought fires as a volunteer but had never seen anything that fierce. Messrs Graham, Todkill and Short returned an hour later, at which time Mr Graham recalled seeing a female person who he thought to be Dolly McGrath about an hour to an hour and 15 minutes earlier. Mr Graham and the others walked next door and found the body of a deceased person on the ground.

25

Mr Graham described Dolly McGrath as an elderly female, about five foot tall, short, stocky build. She had lived at the settlement for about 20 to 30 years and her husband was ex-forestry. He was unaware of evacuation plans for the settlement.

Q. You also had a conversation with the deceased's niece, Kerry Taylor?

35 A. I did. About 1pm on Thursday, 23 January 2003, I conducted a taped record of conversation with Kerry Taylor at 36 Karnie Crescent, Kambah. Ms Taylor identified herself as being a niece of the suspected deceased, 40 being Dolly McGrath - the suspected deceased was her mother's sister.

Kerry Taylor relates she had a close relationship with the suspected deceased and 45 had seen her within the last fortnight. Ms

Taylor stated she had become aware of the fires herself when she saw the thick smoke, turned on the radio and heard the warnings. She recalled she telephoned the suspected deceased at about  
5 2.20pm on Saturday, 18 January 2003. Ms Taylor related she was able to verify the time with a horse race she had followed at 2.30pm.

10 During her telephone conversation with the suspected deceased, she stated the suspected deceased was unaware of the danger. Further, the suspected deceased told Ms Taylor she had seen nothing on the television, which she had been watching during the day.

15 The suspected deceased stated she was unconcerned as there were people up in tents - she was referring to the New South Wales Rural Fire Service - and they had not said anything  
20 to the residents of the settlement. During the conversation the deceased seem unconcerned with the fire, but stated to Ms Taylor she would get some things together in order to leave. Further, she was going to turn the radio on.

25 In relation to Dolly McGrath, Ms Taylor stated the following to me: she was slightly deaf and sight impaired but not to any great extent; she was physically active, but was showing some  
30 signs of fragility; she still did her own gardening, et cetera, however the yard contained a lot of vegetation and there was also a lot of mulch and firewood around the house. She described Dolly McGrath as being  
35 5 foot 2 tall, seven stone, dried skin and "as bright as a button". She lived alone but had two dogs, which were terriers, and a cat. She was able to drive and had a vehicle in good working order. Ms Taylor related that she had  
40 sold her a white two-door Hyundai some time previously.

Q. Can you tell your Worship what inquiries you made to identify the deceased?  
45 A. Your Worship, I conducted numerous

inquiries in relation to the identification of the deceased. It was established that fingerprints and dental records were unable to be used for the purpose of identification. To  
5 that end, arrangements were made for me to collect DNA samples from the deceased's natural brother, Mr Pat Bourne, and the deceased's daughter, Mrs Wendy Farrawell.

10 About 2pm on Wednesday, 22 January 2003, I met with Mrs Wendy Margaret Farrawell, date of birth 29 October 1944, at the Stromlo forestry settlement. Mrs Farrawell identified herself to  
15 me as the deceased's natural daughter. I then obtained a sample of her DNA using DNA sample kit number A600054399. Following the collection of this sample, I lodged it with the AFP forensic services for examination and  
20 comparison with the DNA sample obtained from the deceased.

About 3.45pm on Thursday, 23 January 2003, I attended 36 Marlock Street, Rivett, where I spoke to the male resident, Mr Patrick Neil  
25 Bourne, date of birth 13 September 1943. Mr Bourne identified himself to me as the natural brother of the deceased. I obtained a sample of Mr Bourne's DNA using DNA sample kit A600054400. I later lodged this sample with  
30 AFP forensic services for examination and comparison with the DNA sample obtained from the deceased.

On Monday, 3 February 2003 I received  
35 notification from Vanessa Hodgeson of the AFP's biological criminalistics department on behalf of the forensic's case officer Ms Jo Lee, which in part stated:

40 The DNA results strongly support the contention that the deceased remains 13/03 are of Dorothy McGrath.

45 Q. From your investigation, would you conclude that Ms McGrath died some time after

the fire front went through Mount Stromlo  
settlement on 3pm on Saturday the 18th?

A. I would.

5 Q. Can you say from your investigations how  
long after that may have occurred?

A. I can't say with any degree of certainty,  
no.

10 Q. I have no further questions, your Worship.

THE CORONER: Do you have a date of birth for Ms  
McGrath?

A. It's in here your Worship.

15

THE CORONER: I think you stated she was in her  
70s.

A. That's correct, your Worship. .

20 THE CORONER: The statement from Ms Barnicoat  
suggests that Ms Dolly McGrath was born in  
August 1976.

A. I can verify that from the hospital  
records that I have obtained from Canberra  
25 Hospital.

THE CORONER: Yes, thank you. You can step down.

MS CRONIN: I recall Dr Lavinia Hallam.

30

**<DR LAVINIA HALLAM, ON FORMER OATH**

**<EXAMINATION-IN-CHIEF BY MS CRONIN**

35 THE CORONER: You're still under the oath that  
you took this morning. Please be seated.

MS CRONIN: On 22 January this year, at 6pm, you  
performed an autopsy on the body of Alison Mary  
40 Tenner is that correct?

A. That's correct.

Q. And on 2 June you prepared a report for  
the Coroner as a result of that?

45

A. Yes.



Q. Your Worship the autopsy is the report numbered AMT.AFP.0097.0178. Do you have a copy of that with you?

5 A. Yes, I do.

Q. If I could take you to page 6 of the pathology report. You say that there was both gross and histological evidence of smoke inhalation. Can you tell the court what evidence you saw?

10 A. There was soot in the mouth, in the throat, the oesophagus, down the windpipe and in the peripheral airways of the lung. In addition to that, we also sent some blood for carbon monoxide estimation, which came out at 15 58% for carboxyhaemoglobin, and that is also very good evidence of smoke inhalation.

20 Q. As a result of those findings, have you formed an opinion about the cause of death in relation to Ms Tenner?

A. Yes, I think that Ms Tenner died from smoke inhalation. I could find no evidence of any pre-mortem natural disease and, although its' obviously difficult on a very burnt body, I could find no evidence of pre-mortem injury. And I think therefore - I think the most likely is that she died from smoke inhalation, and I believe that the burns were probably post-mortem.

Q. Thank you, doctor.

35 THE CORONER: You found concentration 58% saturation of carboxyhaemoglobin, and you say levels exceed 50% are considered life threatening?

A. That's correct, your Worship.

40 MS CRONIN: You also I think on the 22nd of January at 6.30pm you performed an autopsy of Peter Brabason-Brooke.

A. That's correct.

45

Q. And on 6 July you prepared a report for the Coroner of the findings of your report.  
A. That's correct.

5 Q. The report is on the brief at PPD.AFP.096.0128. Do you have a copy of that with you, doctor?  
A. Yes, I do.

10 Q. You say in your report that Mr Brooke had a history of hypertension and heart disease, is that correct?  
A. That's correct. That was the information that was provided to me with the report to the  
15 Coroner's officer.

Q. And having that history, was he physically more vulnerable to the stressors of the fire, the heat, the smoke and those kind of stressors  
20 than a person without that history?  
A. Yes, that's true. Also the findings at autopsy fully support that Mr Brooke had quite severe vascular disease both of his aorta, which is the main vessel from the heart taking  
25 blood to the rest of the body, and he also had the history of the aortic aneurism repair which goes with that, and he had severe coronary artery disease and ischemic heart disease, and any stressors, taking together with the fact  
30 that there was 15% carboxyhaemoglobin would put additional stress on the heart.

Q. You say 15% would put stress on his heart. Can you explain to her worship why it is the  
35 lower level would have the significance in the case of Mr Brooke when you said 50% is life threatening.

A. 50% is life threatening in somebody without any preexisting heart disease. If you  
40 have pre-existing heart disease, it is accepted that levels above 10% may aggravate your heart disease. The carboxyhaemoglobin means there is less blood carrying oxygen around the body and, if that blood going to the heart is carrying  
45 less oxygen, obviously there will be more

stress on the heart.

5 Q. So did you form an opinion as a result of performing a autopsy as to what caused the death of Mr Brooke?

10 A. Right, in conclusion from my findings I found that Mr Brooke had significant pre-mortem natural disease in the form of coronary heart disease and ischemic heart disease. Certainly you could postulate this could be aggravated by the stress and the smoke inhalation. As a result, he may well have suffered a cardiac arrest, which is a well-known complication of ischemic heart disease and coronary artery disease.

15 From what I heard this morning, the investigations suggest that the deceased was on the roof. I think it is conceivable that he had a cardiac arrest, a heart attack on the roof. He may have collapsed there and that perhaps is the reason why the body was burnt on the right side - maybe he was lying on that side, the fuel was underneath him and therefore the burns would then, therefore, be post-mortem. It would be very difficult to be sure that he hadn't received some burns pre-mortem. But he is an excellent candidate for suffering heart attack in these circumstances.

20 Q. And you heard the evidence that the bush on the corner where his body was found was in fact burning.

25 A. That's correct, yes.

30 THE CORONER: So, doctor, in relation to Mr Brooke, if he did suffer a heart attack whilst he was on the roof, and then fell, would death have been fairly quick after that?

35 A. I would say yes. One could very well postulate he had a heart attack and, if he did, death would be more or less instantaneous.

40 THE CORONER: So he may well have died on the roof even before he hit the ground?

A. Yes.

THE CORONER: And therefore would not necessarily have experienced the burning that subsequently followed after he fell to the ground?

A. Yes, I think that's correct.

MS CRONIN: I think the evidence was the burning may well have occurred on the roof because the fuels --

A. The burning appears to be predominantly along the right side of the body, and that would suggest that fuel was under the right side. So my understanding is that he may have been on the roof, that the roof caught alight and the body had been burnt on the roof and the whole thing had collapsed.

THE CORONER: And fell after the roof collapsed?

MS CRONIN: Yes, your Worship.

THE CORONER: And likewise I should have asked you, with Mrs Tenner, if the cause of her death as you say most likely was smoke inhalation, again, would her death have been a rather quick event?

A. I don't know whether actual death would have been quick because you've obviously got to take time to breathe in the smoke and to get the levels of carbon monoxide up to that sort of level. But I believe she probably died before the direct effect of the flames. So I think she probably died before the burning, from the smoke inhalation. Does that answer you?

THE CORONER: Yes, it does. Yes, thank you. Ms Cronin?

MS CRONIN: If we go now to - on 20 January, you performed an autopsy on Ms Dorothy McGrath at 5:30 in the afternoon, and on 2 June you prepared a report for the Coroner in relation

to the findings of that autopsy.

A. That's correct.

Q. Do you have a copy of that before you?

5 A. I do.

Q. That's DMC.AFP.0095.0047. If you go to page seven of your seven-page report, you say that there was gross and histological evidence of smoke inhalation. Could you tell her Worship what the evidence was that you found in your autopsy?

10 A. Just excuse me a minute. Yes, again, Ms McGrath had evidence of soot in her mouth, and down her windpipe. Not so obviously in her lungs. In combination with that, the carboxyhaemoglobin was 19%.

Q. With a woman of Ms McGrath's age and medical history, would the saturation of 19% have, by itself, been life threatening?

20 A. I think in Ms McGrath's case it's much more problematic because she didn't have any pre-existent heart disease that I could detect at autopsy. For a lady of her age she had very good coronary arteries and there was no scarring of the heart. So I think it's of much less importance in deciding what her cause of death was than in Mr Brooke's case.

30 Q. But it would constitute a contributing stress?

A. It's certainly evidenced that she had inhaled smoke.

35 Q. In your findings you say that death is presumably related to either thermal injury or smoke inhalation, as discussed above. Do you have an opinion as to which of those causes of death is more likely?

40 A. I think, again after hearing more of the evidence about the circumstances, I think in Ms McGrath's case my findings would perhaps go much more with a direct thermal injury, a direct effect of the flames and the heat from

the fire, and that the smoke inhalation was contributory but to a much lesser extent.

5 Q. And all of these factors on the body end up causing the same result, a cardiac arrest, is that correct?

A. Yes, that's the --

10 Q. Can you tell your Worship that you've come to the conclusion it's more likely to be direct?

15 A. Having heard, your Worship, that the evidence directly from the policemen - we did discuss it at the time of the autopsy but obviously where things have become a lot clearer - finding Ms McGrath in that situation in the open at Stromlo, I think it's much more likely that, as the fire came across, she was caught up directly in the fire and therefore  
20 the burns were probably contributing to her cause of death in Ms McGrath's case.

THE CORONER: You say that primarily because she was outside and because her body was so badly  
25 burnt?

A. Yes, and thinking back about it and obviously crystalising things to come to this inquest, I think her burns - unlike the other two that were severely burnt, quite a few of  
30 their burns probably occurred post-mortem and therefore - I mean, you had charring of the limbs and very severe burns whereas with Ms McGrath it was almost as if she received the severe burns but that her body wasn't slowly  
35 burning somewhere. So that again would fit more with a fire front coming through burning maybe her clothes, the surrounding fuel, vegetation, what have you, but not being in a situation as in a house where you may have had a very  
40 intense fire for a longer period.

THE CORONER: Or other fuel around it?

A. That's correct, yes.

45 MS CRONIN: But it's still a possibility that

she may have died of cardiac arrest due to heat stressors and smoke inhalation. We can't discount that?

5 A. I think anybody that was burnt severely -  
the end result will be that the stress, the  
pain, the actual burns must put an incredible  
stress on your heart at the very end and that  
most people that die in burns I think probably  
10 die of a cardiac arrest. If you survive for any  
length of time and are in hospital, of course  
other factors come into play.

Q. I have no further questions.

15 THE CORONER: Again, it's probably a difficult  
question for you, but would she have suffered  
much prior to her death? I accept that it is  
probably something difficult for you upon which  
to speculate but, given her age and I suppose  
20 the severity of her burns, is it likely that Ms  
McGrath would have suffered for any length of  
time?

A. I think her death would have been pretty  
quick. I think they are very severe burns and I  
25 wouldn't imagine that she would survive more  
than a few minutes.

THE CORONER: These are often important issues  
for the family to consider.

30 A. Yes.

THE CORONER: Thank you, doctor. Do you have any  
other questions?

35 MS CRONIN: No, your Worship.

THE CORONER: Thank you, doctor, you're excused.  
Ms Cronin?

40 MS CRONIN: That's all the evidence we propose  
to present at this phase of the inquest, your  
Worship. I would point out to your Worship that  
in the investigations into the death of Alison  
Tenner some of the residents stated the  
45 firestorm came through, in their recollection,

about 2 o'clock. The evidence before  
your Worship in relation to the inquiry from Mr  
Cheney is that that was actually shortly after  
3 o'clock, if that would assist you in  
5 determining the time of her death.

THE CORONER: Is there any other evidence you  
wish to put before me?

10 MS CRONIN: No, your Worship.

THE CORONER: Again, I will make interim  
findings. In relation to Allison Mary Tenner, I  
find that Allison Mary Tenner died on the  
15 afternoon of Saturday, 18 January 2003 inside  
her home at 9 Burrendong Street in Duffy in the  
Australian Capital Territory. The house was  
destroyed by fire, the cause of death was most  
likely smoke inhalation from a fire which had  
20 entered the suburb of Duffy at about 3.15pm on  
Saturday, 18 January 2003.

In relation to Peter Brabason-Brooke, again I  
make an interim finding that Peter  
25 Brabason-Brooke died on the afternoon of  
Saturday 18 January 2003 at his home at 40  
Tullaroop Street in Duffy in the Australian  
Capital Territory. The house was destroyed by  
fire, the cause of death was most likely a  
30 heart attack, which he suffered as the effect  
of a fire which had entered the suburb of Duffy  
at about 3.15pm on Saturday, 18 January 2003.

And, in relation to Dorothy McGrath, also known  
35 as Dolly McGrath, I find that Dorothy McGrath  
died on the afternoon of Saturday, 18 January  
2003 at her home at Cottage 5, Stromlo forestry  
settlement, RMB 113 Cotter Road, Stromlo, in  
the Australian Capital Territory. The cottage  
40 was destroyed by fire. The cause of death was  
the effects of a fire and most likely thermal  
injury from a fire which had entered the  
Stromlo forestry settlement at about 3pm on  
Saturday, 18 January 2003.

45



Are there any other findings that you wish me to make Ms Cronin?

MS CRONIN: No, your Worship.

5

THE CORONER: I extend my sympathy to the families of those persons.

10 MR LASRY: That completes the first phase of the inquest. I was proposing to be a little more specific about some of the matters I said yesterday. If it's convenient to you and to the parties, I propose that our conclusions on the issues from this point on would be provided in writing to your Worship and to learned friends by Friday, 28 November with some detail as to the way in which we would expect the balance of the hearings to be conducted.

15  
20 And, if it was convenient to the court, I would suggest that your Worship convene in effect a directions hearing for Monday, 15 December at which any issues or any debates that might arise from our proposed list of issues could be discussed and, where necessary, resolved by you. I was originally proposing that some date be placed on some response from our learned friends, but it's for us to tell them the issues and the way in which we're proposing to conduct them and, if they have any views to express, they can tell us before the 15th. If not, they can tell us from the bar table on the day. If those dates are convenient, that's the timetable I propose.

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30  
35

THE CORONER: That's a suitable date from my perspective. Mr Begbie, is that 15 December date suitable?

40 MR BEGBIE: I should foreshadow I don't think I will be appearing in the matter at that stage. So I have no objections or positive statements either way.

45 THE CORONER: Thank you. Mr Johnson, is that a

suitable time?

MR JOHNSON: That's suitable.

5 THE CORONER: It's not intended that the matter  
proceed to hearing then.

MR JOHNSON: That's understood.

10 THE CORONER: Mr Stitt?

MR STITT: That's fine.

15 THE CORONER: Based on that, this hearing is  
adjourned until Monday, 15 December at 10  
o'clock.

**MATTER ADJOURNED AT 2.41PM UNTIL 10am MONDAY,  
15 DECEMBER 2003**

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TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE  
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

INQUEST AND INQUIRY

INTO

THE DEATHS OF DOROTHY MCGRATH,  
ALLISON MARY TENNER,  
PETER BROOKE, AND DOUGLAS JOHN FRASER,  
AND THE FIRES OF JANUARY 2003

DIRECTIONS HEARING

CANBERRA

DAY 9

10.43 AM, MONDAY, 15 DECEMBER 2003

THE CORONER: This is the directions hearing into the January 2003 fires. Yes, Mr Lasry. I should apologise to those people who were waiting as well. It was always my intention to  
5 start this hearing at 10 o'clock, but I understand the Chief Coroner had a directions hearing as well this morning that was supposed to start at 9:30 and he was a little bit late in starting.

10

MR LASRY: That's so. I should just explain that we all became in a sense involved in that matter because it had been proposed, as your Worship may know, that the 2001 inquiry be  
15 amalgamated with this inquest and inquiry. At the directions hearing, his Worship made it clear that he didn't favour that course and, as I understand it, subject to some things which have to occur between now and then, it's  
20 intended that that inquiry will commence on 27 January. I tell your Worship that because --

THE CORONER: 27 January?

25

MR LASRY: 27 January. Against that background, your Worship, in relation to this matter, can I say a couple of things about what has happened since we were last hear. Probably the most important from our point of view is that, as we  
30 indicated we would do, we have provided to the represented parties on 24 November 2003 an outline of the issues for what we've described as phase 2, and I understand your Worship has been provided with a copy of that.

35

THE CORONER: Yes, I've seen a copy of that.

40

MR LASRY: We've had some responses from, I think, two of the parties in relation to those issues, although none of those nor anyone else seems to take significant exception with the general process. I should indicate that the issues list represents exactly that - it's a  
45 list of issues, not a program of evidence. And, so armed with that list, we now expect to be in

the position to provide the brief for this next phase of the inquest over the next week, and I think I can say certainly, subject to being authorised to say that by my learned friend Mr  
5 Woodward, who has done an amazingly good job putting this together with Ms Drew particularly, certainly before Christmas and probably over the next week or so. There are some things that will be missing from that  
10 brief, and I can identify those if it becomes necessary.

This has been done, your Worship, with a view to commencing this matter on or about 9  
15 February, and I'll give that background and refer to that date because perhaps that's the first issue that should be settled at this direction's hearing as to whether that's going to be a feasible starting date. It seems to us  
20 that it should be. Our estimate of the brief is something of the order of 450 or so documents. We think that, applying an average of about three pages per document, that will convert into something of the order of 1,500 pages, so  
25 by many standards it's not an enormous brief.

That, however, does not include - those numbers don't include all the statements which have been obtained, and the definition of the word  
30 'statement' has been a pretty broad one, and many of these statements, which will include questionnaires and other responses, may ultimately turn out to either be not relevant to some of the issues or repetitive of other  
35 statements. So that process, the process that we're about to embark on or are embarking on at the moment, is to some extent a culling of these statements, and they will be provided as they're completed.

40 The other thing I should say about time, your Worship, is we indicated in our memorandum to the parties that, on consideration of the brief and your Worship's consideration of the  
45 brief, subject to what may occur, that we would

ask your Worship to consider - and I don't think it means making a decision today - firming a date beyond which, in the absence of some reason to keep going, you will stop - in other words, a date beyond which you will hear no further evidence in order to keep the inquiry constrained and obviously to keep it relevant.

10 Notionally we have in mind that we would ask you to consider not taking any further evidence beyond 30 June, possibly unless there were particularly good reasons to do otherwise. And our estimation of the brief and our estimation of the issues based on phase 1 and the material that we have to answer suggest that that should be ample time to complete the matter if we start in the first week or so of February.

20 Your Worship, those are the broad matters to be mentioned in relation to the brief itself and the logistics of commencing the inquiry. As I said earlier, we don't regard the issues list as a program and, indeed broadly, our expectation is that the program of witnesses that we would follow would essentially be to start with senior officers who are witnesses - people such as Messrs Lucas Smith, Bennett, Castle, Koperberg, Keady and also the Chief Minister in the first group of witnesses to be called, being the senior ESB and New South Wales witnesses. We would expect that in relation to the evidence to be given by those witnesses that, in effect, all of the issues would be canvassed with them because those witnesses are relevant to just about all the witnesses.

40 We'd then move, in effect, down the scale, your Worship, to the ACT Service Management Team; to the incident management team at Yarrowlunla and then to fire controls in the field; firefighters, which may well be a selective or representative sample because we will be endeavouring to avoid duplication as we

5 go; police witnesses, including Mr Murray to start with and Ms Newton, and then a representative sample; several of the residents, in effect a representative group of the residents; and then three experts.

10 It's intended at this stage that the three experts will be Mr Cheney, to be recalled on the issue of fuel management; Mr Trevor Roach, the former chief officer of the Victorian Country Fire Authority on issues of systems of command, control and application in the ACT, the suppression effort and also community safety and education; and Mr Justin Leonard, 15 who your Worship may recall from phase 1 from the CSIRO in relation to house design and features of it that may have contributed to loss of houses. We're optimistic we'll be able to have access to him and be able to produce 20 his evidence.

25 THE CORONER: On the last occasion there was some issue about Mr Leonard not receiving funding or perhaps not being able to complete the project on which he was currently engaged. Is there any progress on that?

30 MR LASRY: I gather there has been some progress. Although, as I understand it, his survey which he commenced - the completion of that survey - it's not clear to us whether it has been completed or, if it hasn't been, when it will be. But we expect that the work that he does do and will do between now and being 35 called, which will of course be towards the end of the evidence, will be of sufficient value to assist you on those issues. At the moment I think that's all I can say. I gather there's been some progress in relation to the support 40 for him.

45 I should say, your Worship, in relation to witnesses that we would expect to have a list of witnesses in much more detail than I've outlined, because I've really only outlined

categories, compiled probably this week and to the parties this week.

5 THE CORONER: Is that just for the first part of it perhaps, the start of it, or a complete list?

10 MR LASRY: It would be close to a complete order of witnesses we're hoping we can prepare. Orders of witnesses in any case have to be treated with a degree of flexibility, but they will follow that broad approach that we've identified, and it seems to us that the value of that is, by the time we move down through 15 the scale, the main issues that your Worship will need to consider will be clear and it will enable us to be more selective - and I say this in consultation with the parties, of course - about what further witnesses actually 20 need to be called which will again be of separate assistance to you. We think that's probably the most effective way to identify the issues and evidence we need to put before you in relation to them.

25 We do say to your Worship and to our learned friends that, although at the outset of this inquest I submitted to your Worship, and your Worship agreed, that only counsel assisting 30 will call the evidence. That doesn't mean that we believe we have a monopoly on knowing who all the relevant witnesses are. And, if the parties are of the view that there are other witnesses who are not on our list or not within 35 our knowledge who for some reason should be called, of course they should approach us and, whilst we will call the witness, we would certainly be amenable to other relevant witnesses that for some reason aren't in our 40 database.

THE CORONER: I think that was discussed and canvassed at the start of the inquiry as well that, if parties do have other people they wish 45 called, and particularly in the field of expert



witnesses, if that information could be provided to counsel assisting, it can certainly be canvassed as to whether that person should or should not be called.

5

MR LASRY: Your Worship, that broadly is an outline of the matters that seem to us to be appropriate to raise today. As I say, I suspect my learned friend Mr Johnson may feel at the moment at least under some pressure to make submissions to your Worship about the commencement date, and there may be others who want to make submissions about that. I know that from Mr Johnson because he's told me privately that he would have a difficulty starting on the 19th and I think --

10

15

THE CORONER: On the 9th.

20

25

MR LASRY: On the 9th, sorry. When we left that conversation, he indicated that the 16th wouldn't be a problem, and a week either way isn't going to make a significant difference, subject to your Worship's convenience of course. If your Worship pleases.

THE CORONER: Thank you, Mr Lasry, that's very informative, thank you. Mr Archer?

30

35

40

MR ARCHER: The representation is the same but the face is different, your Worship. I now appear for the Commissioner of Police in relation to this matter. Your Worship, we are one of the parties that corresponded with Mr Lasry about the issues list. We said in that correspondence, and we make the point now, that it's difficult to be too firm in relation to our view in relation to things when we don't have the brief, we don't have the list of witnesses, we don't have prioritisation of issues as yet.

45

I'm not sure if it's my friend's intention to gather again before the commencement date. There would seem to be something to be gained

by that, once the parties have the brief  
available to them and a list of the witnesses  
--

5 CORONER: Have another directions hearing?

MR ARCHER: Yes. When we corresponded with Mr  
Lasry, we raised a number of issues in relation  
to a proposed issues list. But we're very much  
10 in the dark in relation to what the brief  
contains in relation to those issues, and it  
doesn't seem to be particularly useful now to  
agitate arguments about whether or not those  
issues should be the subject of examination by  
15 your Worship or not.

Certainly our general approach is that the  
issues list was a very sensible approach to the  
issues that arise and the brief of evidence  
20 that we anticipate will be provided to you.  
But, in relation to the finer detail of those  
issues, we certainly at this stage are not in a  
position to be firm in relation to what, if  
any, additions or qualifications should be made  
25 to that issues list.

In relation to the start date, your Worship,  
the date suggested by my friend so far as my  
comments are concerned is a suitable date. And  
30 generally the AFP are anxious for this matter  
to be expedited and to be finished within a  
reasonable time that allows all the parties to  
examine the witnesses in a way they see fit.

35 THE CORONER: That certainly is the general  
feeling amongst all here, that it start and be  
completed and concluded as soon as possible and  
within the timeframe, I suppose, and with due  
consideration to the number of issues that have  
40 to be raised. But the start date of 9 February  
is suitable to you and I suppose you will have  
an opportunity, Mr Archer, to examine the  
matters in the brief when the brief is provided  
and, if there is some issue that you wish to  
45 raise or some extra comment you wish to make,

that opportunity will be given to you.

Whether or not we have another directions here  
is something that we can consider and decide  
5 later in January or through mid-January. I'm  
certainly not concerned about that. If it's  
needed that we have one, then we will just set  
a time. If it's suitable to everybody, we will  
have one and, if not, we can discuss matters  
10 informally by you getting in touch with counsel  
assisting and matters might be resolved in that  
way.

MR ARCHER: It may become clearer when we have  
15 the brief and the witness list, and so on, your  
Worship. So we can remain in contact with my  
learned friend.

THE CORONER: That's certainly advisable, Mr  
20 Archer.

MR LASRY: Can I just say something about the  
issue that my learned friend Mr Archer raised?  
I think the word 'prioritisation' at one stage  
25 was probably my word in a sense that I was  
foreshadowing to our learned friends that a  
time might come when I would urge your Worship  
to fix a completion date and, therefore, there  
may be some need to prioritise the issues.

30 As my learned friend Mr Woodward pointed out to  
me, I think in truth the prioritisation that  
will occur is more prioritisation of witnesses  
than issues. The issues that have been  
35 developed have been primarily developed from  
the phase 1 evidence, which is now a matter of  
public record - it's why we did it that way. So  
my learned friend in a sense can be informed by  
an examination of that evidence, although I  
40 take his point that, without access to what is  
in phase 2 brief, there are some specific  
matters that can't be perhaps finalised.

45 He's written to me in relation to two of the  
issues - and only recently, I might say. I'm

happy to discuss them with him. In one case we've got a matter to discuss and in another case I agree with them. They're relatively minor in the sense that I am confident those  
5 sorts of comments can be accommodated and the issues I hope will largely disappear once everybody has got the brief.

10 CORONER: I'm sure that will happen.

MR ARCHER: I just had one thing about the completion date - there must be some confidence that otherwise the evidence will be completed by 30 June. But, if it's the case that as of  
15 that date the evidence is not complete, then in the interests of fairness we certainly wouldn't urge upon you a process by which the hearing just stops on a particular date and the evidence is left in an untested formula in  
20 relation to some significant issues. While we agree with the approach of trying to get this inquest finished in a reasonable time, there is a question ensuring that some sort of procedural fairness is accorded to the parties  
25 in relation to how the evidence is taken.

CORONER: I accept that, and I'm sure Mr Lasry accepts that as well.

30 MR LASRY: Yes.

THE CORONER: It's not a question come 30 June, if we're not finished before that, we will just stop there. If there are issues that need to be  
35 canvassed, that time will be provided to do that. Mr Johnson?

MR JOHNSON: Firstly, as to the issues list, we've had an opportunity to consider it and  
40 there is nothing that we wish to urge to be added or taken from the list. It would seem to in general terms summarise issues that appear to arise.

45 There is some clarification which will we'll be

5 seeking, which I won't be seeking right now,  
but perhaps by way of illustration I mentioned  
the other day to senior counsel assisting the  
term "worst case wild fire event" is used from  
time to time on page 5 at the end of paragraph  
2.6 as being the measure against which certain  
things would be tested. We would seek some  
clarification as to the precise meaning of that  
term, although we note that, in evidence, Mr  
10 Cheney, at page 255 of 9 October, spoke of the  
"worst possible scenario". It may be that it  
has that meaning, but that is a matter upon  
which we will seek some clarification in  
writing. I think that's the best way of doing  
15 it to understand precisely the way that term is  
being used by counsel assisting.

Beyond that, we don't seek to put anything  
further in relation to the issues as it stands.  
20 Clearly the brief and the witness list are of  
some importance, and the content of the brief -  
we can apprehend what some of it may be but  
there may be other parts which we will be  
seeing for the first time. And the witness list  
25 - it has been indicated to us that a number of  
senior officers of the Territory will be called  
earlier in the inquest, and we understand that  
and we don't seek to put any submission that  
any change in order occur.

30 If I could at this stage turn to the starting  
date, as has been indicated by Mr Lasry, there  
has been a hearing which finished a short time  
ago before the Chief Coroner in relation to the  
35 2001 inquiry in which a number of options were  
canvassed given the close proximity of these  
two hearings into related subject matter. After  
submissions were heard, it was the ruling of  
the Chief Coroner that the inquiry into the  
40 2001 fires proceed and proceed with the hope of  
finishing prior to this inquiry starting.

THE CORONER: So that's between 27 January and  
whatever date we start?  
45

MR JOHNSON: There are a number of procedural steps that need to be taken in relation to that inquiry because there's not a coronial brief as such - there are a number of overview  
5 statements - and I won't seek to take this court into the detail of that inquiry as it's a separate inquiry.

10 Could I put this submission, though - it is true last week when I talked to Mr Lasry I indicated a personal preference for the 16th. I did in fact come to Canberra today in a position where the 9th would have been  
15 acceptable but, having regard to the 27 January starting date of the other inquiry, which adds another factor now - we have that inquiry which will commence and, although there are overlapping issues, there are discrete issues, as the Chief Coroner made clear, and the  
20 Territory's legal team is going to have to effectively be seeking to appear in one inquiry and prepare for this one.

25 We're conscious that the early witnesses at this inquiry will be senior officers of the Territory. We will do our best to deal with those two events one in action and one in preparation, but I would ask that not before  
30 the 16th of February be the starting date in those circumstances. It is a little unclear at this stage how long the 2001 inquiry will take, starting on 27th, but it's hoped that it may not run for the full duration. But at this  
35 stage it is simply not clear and I would ask then that it not be before the 16th for this inquest on the basis that that will hopefully allow that inquiry to finish, or at least get as far as it's going to get, and for us to turn  
40 our attention to the proper preparation of this inquiry in regard to the fact that senior ACT officers will be early witnesses.

45 THE CORONER: Did the Chief Coroner give you an indication of the number of witnesses that were proposed to be called to his inquiry?

MR JOHNSON: No.

5 THE CORONER: It may be that that inquiry is completed in a matter of days.

10 MR JOHNSON: It is hard to tell because one of the issues is that there is a general statement prepared on behalf of the Territory, a general response, which has raised a number of issues from persons who are presently unidentified who have commented on certain things. In the first instance, it's going to be necessary to identify who those persons are, a process by which a directions has been made by the Chief Coroner, which itself will throw up the number of witnesses that are likely to be required.

15 THE CORONER: Any indication as to when all of this is going to happen?

20 MR JOHNSON: There will be a further directions hearing at 3:30 next Monday, 22 December, before the Chief Coroner. By that stage there would have been an exchange hopefully between the Territory and Mr Parry, who's been providing certain assistance to the Chief Coroner in relation to that matter. So by 3.30 next Monday afternoon there should be greater clarity as to how many people there are, although all that will do, it's anticipated, is identify how many people there are and who they are. The next step will be the taking of statements from those persons, and that will probably be best done by the AFP, and that will need to be done --

25 THE CORONER: None of those have happened as yet?

30 MR JOHNSON: No. All of this was canvassed before the Chief Coroner, and I'm not seeking to recanvass it hear.

35 THE CORONER: I understand that.

MR JOHNSON: The parameters of that inquiry at this stage are still a little unclear - hopefully a little clearer next Monday - but  
5 it's against that background I ask not before 16 February, with respect to this inquiry, which of course involves further party, senior and junior counsel assisting. And, of course, as it is one that has interests and resources  
10 going far beyond the other inquiry, there is a need for some certainty as to a starting date for this inquiry.

THE CORONER: There is, and that's my concern.  
15 If there are issues in the 2001 inquiry that just keep being pushed - I'm concerned that this one might never start, and I say that quite openly here.

20 MR JOHNSON: I'm not urging that; I'm inviting the court in effect to fix --

THE CORONER: And I'm not planning to do that, Mr Johnson.

25 MR JOHNSON: And I wouldn't be urging the court to. The Territory and those acting for the Territory are keen to see this matter start and proceed to finality hopefully - beyond any date  
30 of a notional time such as 30 June, we would hope that the hearing of this matter may proceed in such a way that such deadlines may not need to be activated.

35 But I would ask, though, that 16 February be fixed as the starting date for this matter to seek to accommodate the particular and perhaps in this inquiry peculiar interests of the Territory because of the other inquiry that  
40 will need to be dealt with, together with the preparation for the commencement of this one, which will clearly affect the Territory's interests from day one. So I ask not before 16  
45 February.



And, as to the finishing date issue, it is perhaps at this stage theoretical to even discuss it, but we would be conscious that among other things - and this is a point that's  
5 been raised by Mr Archer - if there were issues that were outstanding which perhaps may need section 55 of the Coroners Act attention, clearly they would have to be dealt with. But, as I understand what counsel assisting is  
10 saying, there would be some outer limit put on the inquiry. We hope that would not be necessary but, if it did need to be considered, of course obviously there would be some flexibility to deal with the section 55 type  
15 issues, but at this stage I wouldn't seek to put it any further. It's hypothetical.

THE CORONER: I accept that. As I say, the concern I have about delaying the start is I  
20 don't consider it desirable to start - I would prefer to start as soon as possible, and at one stage we're talking about 2 February then it became 9 February, now it's the 16th. I do accept the difficulty that you have with the  
25 other inquiry supposedly starting on 27 January.

My concern is that, if something happens at the directions hearing next Monday that further  
30 puts back the start date of that inquiry, then I don't want to be locked into, again, you coming before me and saying, "We can't start on the 16th now because the 2001 inquiry is not going to start until some time in February,"  
35 because that's not desirable. The 2001 inquiry is just that. Those fires happened in December 2001; this is now December 2003, and it's not desirable to have this inquiry put back and adjourned and delayed because of the other one.  
40 And yet, having said that, I do understand that there is some correlation, or I suppose some links, between the two and some desirability to have the hearings completed in that one prior to this one.  
45

MR JOHNSON: I certainly would not be urging the court to fix a date saying we would put it back. This has been the principal inquiry, if I could use that term. It obviously is a major  
5 tragic inquiry involving death. If this court fixed a starting date, whatever happens in the other inquiry, if that ends up with two cases running from time to time at the same time, we will have to deal with that. I would not be  
10 coming back to this court saying that we would ask that this inquiry be put back because we have to meet the other inquiry, which is still in its infancy.

15 THE CORONER: I was hoping that you understood that, Mr Johnson.

MR JOHNSON: I did, and that's why I was asking your Worship to fix 16 February as a realistic  
20 and immovable starting date on the basis that it is inevitable that there's going to be a substantial focus of the Territory's resources to deal with this other inquiry to an extent, acknowledging there are overlapping issues, but  
25 there are still different issues. But if it's done on the basis of a definite 16 February starting date, it would be my belief that that would allow the fair progress from everyone's point of view of the other inquiry and the fair  
30 progress from the Territory's point of view of this inquiry, bearing in mind the significant early witnesses. I wasn't putting the 16th as a type of bid for a later date so I could come in at a later time to push it back. I won't be  
35 doing that.

THE CORONER: I understand that.

MR JOHNSON: I would ask that it be the 16th on  
40 the basis of that being the date. The other matter will have to be progressed as best as it can having regard to the directions that have been given in it. I think they were the only matters which I would seek to raise at this  
45 time, your Worship. Obviously there will be

some further discussions and communications  
with counsel assisting.

THE CORONER: Yes.

5

MR JOHNSON: Of course, we do look forward to  
the coronial brief and the witness list as we  
think it will further aid the preparation of  
the matter. Looking at it briefly in  
10 conjunction with the issues list would be of  
particular assistance to try to focus attention  
with a view to having an expeditious hearing  
before your Worship.

15 THE CORONER: I should just ask, before you sit  
down: there was an issue I wrote to  
Mr Mitchell about some statements that were  
still outstanding. Do you know whether all of  
those statements have been provided now,  
20 Mr Johnson?

MR JOHNSON: I know, your Worship, that some 63  
statements have been provided as at the end of  
last week. If there are particular statements  
25 that your Worship is referring to, I will seek  
some instructions. I know that statements were  
provided, several last week --

THE CORONER: Some of these statements have been  
30 outstanding for some considerable period of  
time, and I think the expectation of the people  
preparing in Mr Lasry's team is that these  
statements were to have been provided some time  
ago. I will make arrangements to have a list  
35 drawn up for you when I know the exact details.  
I am just not familiar with what result was  
achieved from the letter that I wrote to  
Mr Mitchell. He did reply to me. This is just  
3 December I wrote --

40

MR JOHNSON: 30 September?

THE CORONER: I wrote to Mr Mitchell on  
25 November and he replied on 3 December. You  
45 may not be aware of that. I would just say if

there are any statements that still need to be provided, then it is imperative that they be provided because a lot of these statements now have been a long time coming.

5

It is just going to make it difficult for you, I suppose, Mr Johnson but also for everybody else who is involved in this inquiry if certain issues are delayed because statements which need to be provided or facilitated through the ACT Government Solicitor are not provided. So if there is an issue about that, I will get counsel assisting or somebody on his behalf to get in touch with you.

10

15

MR JOHNSON: I will be happy to talk to counsel assisting on that as soon as your Worship adjourns. It has certainly been my understanding - as I say, 63 statements were provided over some time and some considerable effort has been put into it. I wouldn't want the court to think there has been sitting on hands --

20

25

THE CORONER: No, but we have run out of time now for that. If counsel assisting is saying that his plan is to have the brief to all interested parties by the end of the week, then it's imperative that any outstanding matters or any outstanding statements be provided so that everyone does have the benefit of those statements.

30

35

MR JOHNSON: Yes. If I may take that matter up with counsel assisting after the hearing.

THE CORONER: Thank you. Yes, Mr Stitt.

40

MR STITT: Thank you, your Worship. 9 February is a suitable date for my client to resume. We've got nothing to say about that. The phase 2 issues list is a list with which we have no comment or objection. I've discussed that with my learned friend Mr Lasry, and we think that it's a suitable issues list.

45

Obviously we will await the brief and the coronial material, together with the list of witnesses, but our view is that it would be an efficient way to deal with phase 2 if it could be dealt with by way of issues. And I understand the difficulty that can be created by witnesses, such as the more senior witnesses, that would obviously transgress from one issue to another but, in terms of preparation and in terms of appearance, it would assist us if we could have matters where witnesses were dealing with the same issue, because it may be that my client doesn't have to be here all the time.

THE CORONER: That's right.

MR STITT: We can't make a decision about that until we know how the issues are to be joined together and how they are to be dealt with, because it would be inefficient and a waste of money for us to be sitting here all the time if we don't know what issues are in truth to be dealt with, or when they are to be dealt with, or what the witnesses are.

We do have issues that concern us, because my client has previous arms, but I don't think there is anything that can be usefully done now until we see the brief. Perhaps I could even have a talk to my learned friend to see if there is some way in which these issues can be put together and dealt with as an entity but, apart from that, we have no other submission to make.

THE CORONER: Thank you, Mr Stitt. So 9 February is suitable to you. Likewise, if we decided to start on the 16th, that would also be suitable. I do agree with you that it is desirable to consider the matters by way of issues and I think that's the plan, is it not, Mr Lasry?

MR LASRY: It is not quite the plan, but I am

conscious of the fact that Mr Stitt is in perhaps --

THE CORONER: -- a different position

5

MR LASRY: -- quite a different position from Mr Johnson, for example, and he has, as I follow it, a fairly discrete interest. Whilst we won't be calling witnesses issue by issue generally, we will certainly endeavour to accommodate him by calling those witnesses who, after speaking to him, are obvious as being witnesses affecting his client at the same time.

10

15

I think he's right that it would not be necessary for his client to be present and represented throughout. There are probably some other people in a similar category, and we will try to accommodate that. But to start with at least, we do want to see if we can identify how the issues develop through those senior witnesses. And that will, in a sense, set a further course for the rest of the evidence.

20

25

THE CORONER: Yes. Anybody else?

MR WALKER: Could I seek leave to be heard? My name is Walker and I appear with Mr Erskine for the state of New South Wales.

30

THE CORONER: Mr Walker.

MR WALKER: The state of New South Wales had a department called the National Parks and Wildlife Service which has now disappeared.

35

THE CORONER: The service has disappeared. What has happened to the service?

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MR WALKER: Its functions and staff, I think, are now part of the Department of Environment and Conservation and in fact I appear instructed by the legal officer in that department. The Rural Fire Service is also one of the agencies for the state and its officers

45

are also instructing me. We have been in  
correspondence with my learned friend and those  
instructing him for which we are grateful, and  
in particular we are grateful for having been  
5 given the document entitled "Phase 2 issues  
list".

Your Worship, you are, of course, conscious of  
the fact that our police and our coroner in New  
10 South Wales have already looked at the fires in  
which your inquiry has expressed an interest as  
to part of them. We're very anxious not to  
duplicate anything and we're very anxious as  
the state not to lend ourselves in the exercise  
15 of canvassing the New South Wales coronial  
process and its outcome.

On the other hand, as I hope you've been  
informed by counsel assisting and your other  
20 officers, we have already provided a deal of  
material. And I have instructions to repeat  
and continue offers of assistance in terms of  
provision of material. For example, I  
understand that the RFS has made available, I  
25 hope, an exhaustive list - certainly it can be  
an exhaustive list - and complete paperwork of  
the entire contemporaneous record of the  
firefighting at the outset as I understand the  
McIntyre's Hut fire is an intended focus.

30 So far as concerns our participation otherwise,  
however, there are some matters that Mr Lasry  
and I have already discussed which have been  
the subject of correspondence but which seem to  
35 have been brought to a head by this phase 2  
issues list - most of which of course I have no  
concern whatever and wouldn't seek to be heard  
about. Your Worship, I'm also conscious as I  
stand in this particular place that you've got  
40 ground for granting leave under section 42 -  
and at the moment I'm not asking for it.

THE CORONER: To you, Mr Walker?

45 MR WALKER: Yes.

THE CORONER: You haven't sought it.

5 MR WALKER: That is right. As I say, at the  
moment I'm not asking for it. However, I trust  
you will indulge me so that I can point out why  
from the phase 2 issues list there may be some  
matters which are germane to whether such an  
application should be made and therefore, of  
10 course, as to whether or not you be minded to  
grant it. I should say from the state's point  
of view that we are very anxious to avoid  
duplication not only of what has been done but  
of the money that has been spent.

15 Those who are aware of the New South Wales  
inquest - inquiry, I should say - will know  
that it was of a much smaller scale in terms of  
time and witnesses than I think any of the  
20 proponents that I'm aware of in this very  
different inquiry and inquest. However, on my  
instructions, so as to give you a scale of the  
thing and why our concern is as sharp as it is,  
the estimate is that it is almost \$300,000 that  
25 that cost the New South Wales agencies. You can  
appreciate that, when we hear about my learned  
friend putting a backstop reference of 30 June  
after a start in February, we are talking about  
a scale of things which doesn't hold any great  
30 attraction and is not something which we would  
wish to participate in, as it were, with an  
open cheque.

35 Could I come to the phase 2 issues list. The  
first one is 1.4 which gives the history of the  
bushland in the Brindabella National Park and  
the Commonwealth lease, being something with  
which you are already familiar and which is  
plainly of interest to you. The word  
40 "circumstances" - clearly the word "cause" in  
section 52 are sufficiently wide for me not to  
want to say anything further about the first  
sentence of 1.4.

45 The second sentence, however, of 1.4 is one



which means that we have to refer to it before  
coming to the ones that concern us most. The  
second sentence of 1.4 says that something  
called the "significance to be attached to  
5 issues 1.5, 1.6 and 1.7" - which is where we  
are concerned - "may be tempered by the  
evidence adduced in relation to this issue".  
Now I'm not complaining about language because  
issues, as my learned friend pointed out in his  
10 opening remarks this morning, need to be drawn  
with some care so as not to foreclose things as  
they move along in an inquiry.

It is enough to note that the history during  
15 the Commonwealth lease of that bushland goes  
back quite a few years, and in the explicit  
effect between 1.4 and 1.5 and 1.6 and 1.7,  
that link means that we have been told - that  
we the state of New South Wales - there is  
20 something in the nature of history of  
administration by New South Wales officers of  
New South Wales territory under New South Wales  
national parks funded by New South Wales  
taxpayers which would appear at least  
25 contingently to be the subject of an issue.

Therefore I then come to 1.5, 1.6 and 1.7,  
which can of course be put together. I don't  
complain about them being separated. That is  
30 quite suitable, with respect. And they are  
admirable in their bluntness. 1.5 asks a  
question of adequacy in relation to the  
government of New South Wales, so does 1.6.  
"Adequate" is the word in 1.5 of plans. That  
35 is administration under a statute - at least  
one statute, maybe two.

1.6 asks "was enough done" - that has to do  
with administration under a statute and has, no  
40 doubt, to do with the deployment of resources  
funded by New South Wales taxpayers under New  
South Wales parliamentary appropriations.

1.7 then brings to a head the events of earlier  
45 this year - brings to a head that history which

we can see from 1.4 appears to be the whole of the history in relation to the national park. It uses - in particular in its second sentence - twice the word "better" in relation to  
5 planning and implementation, both of which are qualified by that word "better", which means again that questions of New South Wales government are raised by those issues.

10 Now I can complete what I wanted to say about the text of the issues by then going to 4.1, which is broken into several issues. Whether something in 4.1.1 relates to the government of New South Wales we're not sure, but maybe it  
15 does. I don't need to dwell on it. 4.1.2 is certainly asking a question about the conduct of New South Wales officers, as does 4.1.3. But 4.1.3 goes past the events of, say, 24 hours and again reaches back into matters of  
20 government administration.

The second sentence of 4.1.3 again uses this notion of adequacy and, as you are well aware, that involves trade-offs in terms of costs and  
25 benefits and policies as set both by parliament and by the executive arm of government. So we've have got adequacy of "prediction and planning" and of "logistics and resources". Now, on any view of it, that has to do with  
30 what New South Wales taxpayers are funding to be in particular places at particular levels. Then it says "training and consideration of firefighter safety and welfare". All of that but for the second clause in that second  
35 sentence would be in exactly the same category as I have already addressed on; namely, issues that on their face - and I stress on their face - would appear to be looking into elements of the New South Wales government.

40 The second clause of that second sentence of 4.1.3, however, says that the inquiry - my interpolation - under issue 1.4:

45 "Will be undertaken from the perspective of the capacity of ACT

agencies to influence the activities  
of the NSW agencies in these areas".

5 And it may be that that rider is  
enough to allay the concerns, which are  
otherwise real concerns, of an important aspect  
on the part of the state of New South Wales.

10 I confess I don't quite know what "the  
perspective of the capacity of ACT agencies to  
influence the activities of New South Wales  
agencies" entirely encompasses - again, I don't  
criticise the drafting at all - because we do  
15 know that other issues about which I want to  
say nothing do include liaison, and that is  
obviously of great importance to you. I think  
we have already delivered some material in  
relation to it and we will continue to do so  
upon request.

20 However, if it is thought that that rider to  
4.1.3 might involve enlisting your statutory  
power to make comments upon matters of public  
health and safety in a report given to the ACT  
25 Attorney-General, then the jurisdictional  
question is made even more concrete by that  
approach than has been in the others.

30 Now I want to generalise our concerns in  
relation to our participation in your  
jurisdiction in light of that issues document.  
It is clear, in our submission, that whatever  
extent of extraterritorial inquiry you have, it  
is all going to be bounded by the  
35 constitutional restriction; namely, for the  
governing of the territory in section 122 of  
the Constitution - nothing in the  
Self-Government Act can rise above that,  
nothing in the Coroner's Act of 1997 can rise  
40 above that, and nothing obviously in relation  
to section 122 of the Legislation Act 2001 will  
permit a rising above that.

45 I suppose the simplest way to put it,  
your Worship, is that it can't be and it won't

be in a nation which is a federation of states with one enclave, the national capital territory, required to be inside the territories of one of those states, it cannot  
5 be that the government of ACT includes officials making suggestions for the better government of New South Wales, including by criticism of governmental action of New South Wales in the past.

10 One of the reasons why that must be so has to do, of course, with the notion of responsible government and the powers of the parliaments to enact laws and vote money for the expenditure  
15 on certain programs. The ACT Legislative Assembly does not have power to administer New South Wales national parks and the New South Wales parliament does not have power to regulate the readiness for bushfire attacks in  
20 the ACT, to use two obvious examples in this case.

Now in the Coroner's Act the power is given to you in relation to public health and safety  
25 comments and recommendations is clearly limited by section 122, as it happens both of the constitution and coincidentally in the Legislation Act 2001 - that is to do with public health and safety in the ACT. But  
30 equally that is true of every other topic of potential comment or recommendation by you in relation, for example, to the hazard reduction approach; that is hazard reduction in the ACT not in New South Wales any more than it is in  
35 Queensland or South Australia.

If we are right in that, and I volunteer then that the matter does not come adorned with a long line of authority. Government agencies in  
40 this country have not normally tried to take it upon themselves the task of commenting adversely on agencies in a bordering locality. If we are right, notwithstanding there being no authority about such matters except the text of  
45 the statutes and the constitution, as you have

heard, then we don't need to be involved much at all and shouldn't be in the interests of the New South Wales taxpayers in the integrity of the New South Wales coronial system, which has  
5 worked as far as we're concerned, and obviously in the interests of expedition which several times your Worship has understandably expressed in this proceeding.

10 There is of course, as Mr Johnson already mentioned, a different context in that there is always section 55 of your act, and that may necessarily involve any number of people at the end of the process. I don't need to say  
15 anything more about section 55 except that it is there as an ultimate guarantee in relation to procedural fairness. We are, however, concerned in relation to the kind of cross-examination rights which we might obtain  
20 were we to seek leave, however limited, under section 42.

We see that there are two topics - and you will have gathered from what I have said that there  
25 are two topics that concern us. The first is McIntyre's Hut where the New South Wales Coroner has refuted any suggestion that what is called in the issues before you "a more aggressive approach" is one which was so much  
30 more appropriate to be adopted as to call for any criticism of the people who risked their life and limb that night and day. And he, in fact, expressed some rather scathing criticism of those who were otherwise inclined. It is not  
35 a matter of how many choices were there of what to do; it was a matter of whether something not done was so much more appropriate than that which was chosen to be done that it fell for the coroner to make a finding, a criticism or a  
40 recommendation. In New South Wales there is no jurisdictional problem at all. That was done on the merits. I have never understood that this inquest and inquiry was as it were to mark the work of the New South Wales coroner.  
45

THE CORONER: Was to what, I am sorry?

MR WALKER: Mark the work of the New South Wales coroner. I have never heard that suggestion.

5 From which it has seemed clear to us that, on  
that first issue of McIntyre's Hut, unless and  
until we saw material presumably in a coronial  
brief suggesting that there is somebody with  
evidence of weight - and I do stress of weight  
10 - with both expertise, experience and knowledge  
of the detailed events who had something to say  
about the conduct of our officers that we would  
not wish to be there. Except, of course, that  
any of those officers who were called to give  
15 evidence before you would naturally seek leave  
to be represented as witnesses and the state of  
New South Wales would have Mr Erskine,  
Mr Pritchard or whoever else will be appearing  
who will no doubt seek leave on those occasions  
20 to speak to the witnesses. I don't need to  
bother you about that now.

So the McIntyre's Hut exercise is one which may  
well involve extraterritorial jurisdiction for  
25 you in this sense that your concern in the ACT  
will involve how did the fires start which came  
to the ACT and therefore will necessarily  
involve something about the human intervention  
or lack of intervention during that fire itself  
30 causing circumstances probably being wider - we  
don't have to make a concession about it. I'm  
not making a submission. To the contrary of  
that. But as soon as it gets into criticism of  
the administrative operations of a New South  
35 Wales agency, then we certainly have a  
jurisdictional problem, and we do not intend to  
as it were act as if we accept there is  
jurisdiction by participating in an exercise of  
that kind.

40  
THE CORONER: What you are saying if there was  
to be criticism then that raises a  
jurisdictional issue. If there was to be praise  
that doesn't raise the jurisdictional issue. If  
45 I understand what you are saying, I am

prohibited from making any comment at all about what happened in New South Wales if I'm looking at what happened in the ACT?

5 MR WALKER: No, not at all. May I say it is not a matter that calls for any facetious comment. This is a serious jurisdictional matter about government in authority. It is not for your Worship --

10 THE CORONER: This is an inquiry into a fire. This is an inquiry into a fire in Canberra.

MR WALKER: That's right. That is my point.

15 THE CORONER: As long as you understand that, Mr Walker, because that is what this inquiry is all about.

20 MR WALKER: Your Worship, comparative material from around the Commonwealth of Australia and from around the world will no doubt form part of the expert material before you in a number of different areas. Comparative material from  
25 anywhere around the country or around the world may call for comment not statutory comment - and I have only been talking about statutory - may call for comment or findings by you about the virtues you see in the California system or  
30 the disadvantages you see in the system used in the south of France or whatever.

So, of course, your jurisdiction in relation to an ACT fire may very properly involve  
35 statements by you in ordinary English comment about the way other places and how other places do things. One of the most valuable sources for the recommendations you may end up making. I'm not talking about that.

40 It will already have been clear to counsel assisting that the New South Wales agencies have already provided and have expressed themselves willing to continue to provide  
45 assistance of that kind and, if I may say so

with respect, you are most welcome in any greater focus or repetition of requests you make in that area.

5 Now I am taking about a statutory comment of  
the kind that is in a report to the ACT  
Attorney-General and which obviously is part of  
the old coronial jurisdiction to say, following  
the death or a fire, "This is how things were  
10 done here, they should be done differently in  
order to prevent a repetition of the tragedy" -  
obviously an integral and important part of the  
coronial jurisdiction.

15 My point is simply this: that in this country  
there are political boundaries across which  
that jurisdiction cannot travel. That's my only  
point. So in answer to your Honour's question,  
have you jurisdictional praise but not blame?  
20 May I make this clear: I am only talking about  
statutory comments, whether they are praise or  
blame. And whether using the Service and  
Execution of Process Act or otherwise to burden  
imposed upon New South Wales of participation  
25 by way of summons witnesses who are officers  
paid by our taxpayers and who have positions  
and offices that they are to discharge under  
our statutes, that is a burden which makes it a  
real question of governmental authority and  
30 statutory limits and jurisdictional limits to  
contemplate this inquest and inquiry looking at  
the way in which New South Wales officers  
discharged their duties in New South Wales.

35 You will notice I have said nothing, for  
example, about Commissioner Koperberg who is in  
one of the early parts of the witness list that  
my learned friend has referred to. That is  
because liaison between ACT and New South Wales  
40 I've said nothing adverse about at all. I  
entirely accept that is a very important matter  
for your Worship to be looking at. I hope that  
it remains the case. It certainly is still on  
offer that anything we can do to assist in  
45 putting together the brief and responding brief



in that regard, we will do so. And  
Commissioner Koperberg will certainly be a  
witness. If there are any of his other senior  
officers in that area then, again, the offer is  
5 open.

THE CORONER: You mentioned two concerns.  
McIntyre's Hut was one.

10 MR WALKER: The second one was hazard reduction.  
We have not seen anything, not a syllable, to  
suggest there is anybody who without hindsight  
proposes what else should have been done which  
would've had any material effect on the outcome  
15 last January. I do stress without hindsight  
because presumably we are not in the game of  
saying, "This fire started on such and such a  
day, had that bush burned let me see six months  
before, then it would not have burnt as  
20 fiercely." No-one is going to do anything quite  
so silly as that, I assume. But we have not  
seen anything --

THE CORONER: From what? The New South Wales  
25 inquiry or in the information prepared for this  
inquiry?

MR WALKER: No, for this inquiry.

THE CORONER: That is because you're not a party  
30 to this inquiry, Mr Walker.

MR WALKER: We have been told that is because we  
need first to show that we see that we have  
interest, apply under section 42 and then  
35 everything will be revealed. Now there is an  
alternative approach. That's an approach that  
comes from your statute and it is one we would  
urge on you.

40 Under section 42, there is an application for  
leave. It's the second alternative that I'm  
addressing on: namely, leave to a person who in  
your opinion has a sufficient interest in the  
subject matter of the inquest or inquiry. New  
45 South Wales simply doesn't have a sufficient

interest so long as we are simply in a cooperative fashion providing the kind of assistance which we have done, will do and will continue to do.

5

However, we would have an interest of a technical jurisdictional kind, which would not be given effect to here, obviously, if something beyond jurisdiction were being done.

10

That leaves only one other possibility: an interest because there is a field of inquiry within your jurisdiction - I stress within your jurisdiction - upon which we would wish to cross-examine and to make suggestions to counsel assisting as to witnesses.

15

Hazard reduction is the one which, as you know, holds out the larger scope for numbers of witnesses and for amount of evidence. It has been the subject of a parliamentary inquiry in New South Wales. It is the subject of a Council of Australian Governments inquiry. And it is not a subject matter that we wish to spend any further time, trouble and money on in what will be, depending on your count, a third or fourth inquiry on the topic in the last three or four years of which New South Wales has been apprised.

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That therefore suggests that section 51 could be used to streamline these matters and to remove, to the greatest extent possible, participation expensively and unnecessarily of New South Wales in this inquest. But section 51 sits alongside section 42 and doesn't require somebody to either have sought or been granted leave under section 42 in order for you to give that access.

35

40

We would simply ask that in particular on the two issues I've talked about - namely, any proposed criticism of New South Wales officers in relation to McIntyre's Hut and, second, the so-called "adequacy" to pick one word from the issues document of the hazard reduction

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approach in the Brindabella National Park -  
that we be given access under section 51 on the  
ground that your Worship is well and truly  
satisfied that, if within jurisdiction, the  
5 state of New South Wales has sufficient  
interest. And then we're in a position to make  
a decision about section 42 without having to  
guess.

10 Normally this would not be a problem but, given  
this jurisdictional difficulty, it is important  
that we see the nature of the material. If we  
see the nature of the material, it may well be  
we don't have to really trouble you again,  
15 except obviously when witnesses are being  
represented. That would be for all sorts of  
reasons a good outcome in the sense that you  
want your inquest to finish as expeditiously as  
possible, and we obviously wish you the best  
20 there. We have done our parallel process; we  
are involved in the COAG inquiry; and we are  
still working through implementing what the  
parliamentary inquiry in Sydney produced in any  
event in relation to hazard reduction.

25 So your Worship will see from the point of view  
of resources, the jurisdictional point really  
does raise a question of some governmental  
moment. So my application is that you give us  
30 access to the material of the kind I have  
referred to under section 51 and that we make  
an application under section 42, if we are so  
advised, at the first opportunity which I  
presume is when you resume on whatever day you  
35 fix. And again may I repeat: I trust that  
your Worship and those assisting you will take  
us up on anything that needs to be done in  
relation to other assistance.

40 We are late in having supplied some material  
about some officers' names and contact details.  
I think we have belatedly partially responded  
to a request about that. I'd certainly invite  
through Mr Lasry those assisting him to be in  
45 touch with us about that. Otherwise, naturally

I have nothing to say about the matters that were raised before you this morning.

THE CORONER: Thank you, Mr Walker.

5

MR LASRY: Your Worship, we have always been anxious to the New South Wales agencies take part in this inquest because we took the view that the McIntyre's Hut fire, which on the evidence we have heard so far seems to have caused the bulk of the damage in the ACT, began in New South Wales. We are always conscious of the fact that the border between New South Wales and the ACT had the potential to provide in effect a legal obstacle or may in fact provide a legal obstacle or perhaps an obstacle of federation or the creation of the ACT to what otherwise might be a more efficient fire suppression process in the ACT.

20

We always took the view that it was artificial - and I don't suggest my learned friend Mr Walker is saying this - to say that the fire really only came within your jurisdiction once it crossed the ACT border, and I understand he's not saying that. We've exchanged views both verbally and in correspondence, and that began with a proposition which my learned friend put to me with which I agreed, which was that it would be outside your jurisdiction for you to make recommendations about the functions and operation of New South Wales government agencies.

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The issue of comment is more problematic, and, in my submission, in a sense at this stage perhaps this debate is premature because, as my learned friend rightly points out, he does haven't access to the phase 2 brief, although he does have access to some aspects of the phase 1 brief, and it may be within the end, according to the scheme that he proposes, that indeed it is the sensible course to provide him and those instructing him with the material that he seeks pursuant to section 51.

The reason to some extent that we've hesitated about agreeing to that in the past is because we hope that, given the level of technology in this courtroom, the New South Wales agencies might make an application for leave to take part on the basis that it seemed to us they'd have a sufficient interest by reason of the issue of fuel reduction in the Brindabella Ranges and the fact that the McIntyre's Hut fire commenced in New South Wales and a significant number of New South Wales fire personnel were involved in what occurred in January of this year.

I had hoped that perhaps by virtue of the ability of the systems within this court to be providing evidence in effect in real time to those instructing our learned friends that they would be able to in effect become aware as evidence was going to be called which affected them and take part to the extent that they needed to. Mr Walker has made it fairly clear that that's not an application he proposes to make unless he's provided with information under section 51 and then decides that it's necessary, if he does, to make an application under section 42.

In a sense, your Worship, from our point of view that is perhaps better than not having any New South Wales participation at all. The other part of the hesitation we had in originally agreeing to a proposal like that was not so much to deal with Mr Walker in particular but generally we were anxious to avoid circumstances arising where large numbers of people made applications under section 51 for the information but were not going to be participating in the inquest. I think your Worship accepted initially the proposition that the brief and the information in this case really should only be made available to those parties who sought and obtained leave to appear.

5 However, having had the benefit of hearing Mr Walker in person on the matter - and I say that somewhat flippantly because I had read the submission that he made to the New South Wales Coroner, so I had some idea of the nature of the argument, although I was unaware that it was going to be raised this morning until he got to his feet - I think on reflection our view is, your Worship, that you should in these particular circumstances accede to the request for information to be provided under section 51 and enable the agencies that my learned friend represents to make an informed decision about whether to public an application under section 15 42.

20 As he realises, I'm sure, and as I think I've told him perhaps not in the clearest of terms because this argument was a new one to me when it was first raised, the issues list has set out to ensure that your Worship is in a position to have as much information as is relevant in relation to these fires, including 25 their origin in New South Wales, where that's appropriate, and to be able to inform the people of the ACT as to the things that you are required to inform them of and to make constructive and worthwhile comments and 30 recommendations where your jurisdiction permits it.

35 As to the issue of comment, that may be an argument to be had later when it becomes apparent what comments for example we would be urging you to make as a result of the evidence that's produced before you. I'm not sure that it's going to be possible to resolve the issue now, but it will be a matter for him and a 40 matter for us, I suppose, to see how the evidence develops and, if we have to have the detailed debate as to whether a particular comment can or can't be made, well then at some point no doubt we will have it, and I assume 45 that is part of the process that my learned

friend contemplates.

In relation to the McIntyre's Hut fire, I should say this - we as counsel assisting you  
5 did not take part in that inquest. I've read aspects of that inquest. I've got some idea of the material that was put before the inquest and, as I have informed those instructing my  
10 learned friend, we do not propose to revisit the inquest in the sense of making submissions to you, for example, that Mr Milanovic was either correct or incorrect in the findings he came to.

15 You are examining that fire in the context of being the Coroner in the ACT where that fire, commencing as it did in New South Wales, burnt into Canberra. Your view about the cause and  
20 origin and initial response to that fire, as I think I said in the course of opening some time ago in October, may or may not coincide with the view that your Worship came to in that inquest. We've pointed out to those  
25 represented by my learned friend that already there is some evidence which at least on the face of it would appear to be at odds with that finding, and primarily it's the evidence of Mr  
30 Cheney which you heard in detail during the course of the first phase and, in an electronic form, that evidence has been provided to those instructing Mr Walker and they would be aware, I assume, that his views as expressed in the  
35 course of his evidence to you, would at least on the face of it seem to be different from the view expressed by the New South Wales Coroner.

That is not to mark the work of the New South  
40 Wales Coroner, as my learned friend puts it; it is simply you conducting your separate inquiry in this Territory in relation to fires which had a significant effect, particularly on Canberra. Again, that may or may not be a  
45 debate that needs to be resolved at some further distance from here once all the evidence in relation to that has been provided

and those instructing my learned friend have had an opportunity to understand all the evidence that is available in its complete form.

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So, with some regret that New South Wales won't be a represented party under section 42 at this stage but nonetheless anxious to have their input - and I acknowledge their cooperation that we've had so far, and I also acknowledge and welcome the comments that my learned friend has made during the course of his submissions this morning - on balance, we invite your Worship to accede to their request under section 51.

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THE CORONER: I probably don't share your concern in relation to the jurisdictional issue, Mr Walker. My prime focus and statutory obligation is to determine, if I can, the manner and cause of death of the four persons who died in the ACT and the cause and origins of the fires in the ACT. Now, as those fires as they did start, or some of those fires started, in New South Wales, I certainly don't concede or see myself restrained from looking at what caused those fires.

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Now, my inquiry is into the fires in the ACT and into the deaths of those four persons, as I say. Had you, representing the New South Wales Parks and Wildlife Service as it was and the Rural Fire Service, sought to have leave granted at the start of this inquest, that leave would have been granted to you, Mr Walker, or to somebody else representing those organisations. But it is your choice, or the choice of those organisations, as to whether or not they seek to be represented.

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I do accept that there are issues that certainly do impact on those organisations, those New South Wales organisations, and on that basis I will grant permission under the provisions of section 51 of the Coroners Act of

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the ACT for those organisations, or you  
representing those organisations, to have  
access to certain information. And, when the  
time does come, Mr Walker, that you wish to  
5 seek leave, or that somebody representing those  
organisations wishes to seek leave, then an  
application can be made on that basis. But  
perhaps if you let counsel assisting know  
beforehand that will happen, other parties can  
10 be alerted to that as well.

I too want to acknowledge that right from the  
start cooperation has always been given, and it  
was given by the police, the person in charge  
15 of the investigation on behalf of the police  
Sergeant Barnicoat to approaching the New South  
Wales authorities, and that cooperation was  
given from the start, and also myself  
approaching the New South Wales Coroner because  
20 it is a question of working in cooperation with  
one another.

Fires know no boundaries and, likewise, two  
jurisdictions - Canberra is an island  
25 surrounded by New South Wales and it's naive to  
think that what happens here that we can cope  
with and deal with on our own and likewise that  
what happens around us is no part or no fault  
of us. We are an island, we accept this and  
30 this is the way we've always lived. So you can  
have access to that information as it relates  
to the McIntyre's Hut and to the hazard  
reduction. If there is any other area you feel  
might be useful, just let the counsel assisting  
35 know and you can arrange for you to have that  
information.

MR WALKER: Thank you, very much, your Worship.  
And may I make it clear that I appear for the  
40 state of New South Wales, just the niceties to  
say NPWS has disappeared, so it will be the  
state, but those are the two agencies  
historically.

45 THE CORONER: Likewise if the state of New South

Wales decides not to seek leave to appear,  
certainly on a witness by witness basis leave  
will be granted to counsel to represent those  
witnesses.

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MR WALKER: Thank you very much your Worship.

10 THE CORONER: Just in relation to the start, I  
think the only other issue is the starting  
date. Do you wish to be heard on that? I do  
have some sympathy with Mr Johnson.

MR LASRY: So do I.

15 THE CORONER: It's not his fault. It would be  
different if it were his fault.

20 MR LASRY: He said not before the 16th, and I  
simply advise your Worship to remove the words  
"not before", indicating that you will start on  
the 16th.

25 THE CORONER: Is that going to be inconvenient  
to you, Mr Stitt, if we start on the 16th?

MR STITT: No, your Worship.

THE CORONER: Mr Archer?

30 MR ARCHER: No, your Worship.

35 MR COONAN: Your Worship, I'm David Coonan and  
I'm representing the ACT Sustainable Lands  
Group. First, I'd like to provide apologies for  
John Lowe as he is not able to be here today. I  
just wanted to draw your attention to the fact  
that we did provide some additional issues to  
counsel and that we would prefer the 16th  
because we're involved in the 2001 inquiry and  
40 we believe that there is material from that  
that would be beneficial to this inquiry.

45 THE CORONER: Thank you very much for that, Mr  
Coonan, thank you. So I'll say that this  
inquiry will then start on 16 February at 10

o'clock. Just in relation to the end date, it's not proposed that we - if we don't complete this inquiry, if it is not completed by the 30th, I don't propose to just stop sitting and hearing evidence on the 30th, and I'm sure that's not what Mr Lasry meant. But the plan is to proceed as expeditiously as we can in an effort to have at least to have all the evidence called by the 30th, and I would indeed hope before the 30th. I suppose that's something we see and determine as we go along. It's rather difficult at this stage to predict a smooth passage of something like this.

The only other issue I would say, or the only other I suppose matter for consideration, is whether we sit four days a week or whether we sit five days a week. I think I might have a preference - and it's more for counsel's convenience - if we sit four days, whether that's starting Monday afternoon and finishing Thursday or Friday afternoon or Friday lunchtime, or whether we start on Tuesday or whether we start on Monday and finish Friday.

That's something that I don't want to make any comment about now but I would ask all of you to consider that. If indeed it's felt that we perhaps start sitting five days a week in the first part and then, if it becomes too onerous or if it there are issues and counsel wishes to have additional time to brief witnesses or discuss matters with certain witnesses, we can be flexible about that as well. I won't make any direction or make any indication as to how we will proceed in regards to that now, but, if you do consider all of that, give some thought to it, we can discuss that on the next occasion.

So it's adjourned. If there is a need, Mr Archer, to have another directions hearing, we'll see. At this stage I think possibly matters can be resolved simply by counsel discussing and bringing matters to my

attention. So we adjourn until 16 February at  
10 o'clock.

[MATTER ADJOURNED AT 12.10pm UNTIL MONDAY, 16  
FEBRUARY 2004]

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