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TRANSCRIPT OF PROCEEDINGS

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

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MRS M. DOOGAN, CORONER

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CF No 154 of 2003

INQUEST AND INQUIRY

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INTO

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

CANBERRA

35

DAY 8

10.04 AM, THURSDAY, 16 OCTOBER 2003

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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?

15 MRS FRASER: Yes. I'm Mrs Fraser.

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

20 MRS FRASER: No, that's fine.

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

25 MRS FRASER: No.

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

30 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

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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.

Q. Where did you go to?

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

Q. Did you go there?

A. Yes, I did.

45

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?

20

A. Yes, she did. About 7.14pm that evening, Ms Tracey Young from AFP Forensic Services 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 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 30 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 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 appears to Ms Young that the deceased was 35 fighting fire in the rear yard and neighbouring 40 45

properties.

Ms Young noted that rigor mortis had set throughout the body and lividity appeared 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 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 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 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 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 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 isolated spot fires visible on surrounding properties.

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

described?

A. Yes, it does.

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

A. That's correct.

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

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

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

A. I was. Senior Constable Williams briefed
me of the situation and escorted me to the rear
20 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.

I observed evidence of an isolated grass fire
present in the rear yard of 23 Burrendong
35 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

30 dirt on his face, arms, hands and clothing. I 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 hosing out the front of his residence during
- 45

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 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 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 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.

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 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.

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 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 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 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 15 that he needed help next door. Mr Jungwirth 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.

About 1.15pm, on 24 January 2003, I conducted a taped record of conversation with Brian

5 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 known the deceased since he first moved to the
10 address and he had known him through neighbourhood connections.

Mr Corrigan stated that, on the afternoon of Saturday, 18 January, he noticed that smoke in

15 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 intersection of Eucumbene Drive and Warragamba
20 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, running shoes and no hat. At that time the
35 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 and Warragamba Avenue to observe the fires. Mr Corrigan did not see the deceased again after this encounter.

Q. What was your conclusion in relation to
10 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.

Q. Are you able, from your investigation, to conclude over what time period the death
20 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?
A. Between 4 and 4.30, your Worship.

35 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?

A. Yes.

40 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.

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 20 on Mr Fraser.

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 25 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 30 injury was not associated with any fractures and there was no underlying brain injury.

Q. The body received no burning injuries?

A. That's correct.

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

A. That's correct.

40 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?

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, 45 are more prone to developing a cardiac or a

heart arrythmia, 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 to be a cardiac arrest in this situation, that
15 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.

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?
A. That's right, and obviously all these
30 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?

A. Yes, certainly. I think we certainly had evidence of a blunt injury to the head, but,

5 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.

A. Thank you.

40 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.

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

5 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.

10 Obviously if he's been inhaling the smoke for a while, then the damage may be accumulating in his lungs.

THE CORONER: There is an accumulative effect?

A. Yes.

15 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 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
5 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,
10 18 January 2003. Mrs Fraser, I express my sympathy to you and to your family on your loss.

MRS FRASER: Thank you.

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

MS CRONIN: No, your Worship.

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

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

<CHRISTOPHER JOHN BIRD, SWORN

<EXAMINATION-IN-CHIEF BY MS CRONIN

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

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

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

40 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
25 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
30 Johnsen 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
35 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.

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

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 Blackett 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.

At 1.21pm, I had a conversation with Wayne
5 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.

The body of the deceased was located in the
45 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 5 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 10 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 15 watch face and part of a band from near the hand area of the deceased. A small collection of loose bones were also removed.

20 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 25 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 30 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.

35 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, 40 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 45 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 35 three children had gone to stay with their 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.

Q. You also and other police interviewed the 40 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 conversation, Mrs Young stated that she was 45 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 20 residence around 8 to 9am on 19 January 2003 and he was speaking with fire and police officers.

About 1.50pm, Constables Perry and West

25

attended 103 Warragamba Avenue, Duffy, and conducted a taped record of conversation which Vlasta Dahl. During the conversation, Vlasta Dahl provided th following information. He stated that her property, located at 103

30

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.

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 40 coming across Stromlo reserve.

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,

45

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
5 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
10 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
15 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
20 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
25 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
30 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
35 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.
40

On Saturday, 18 January, Mr Craven was at home, listening to reports about the fire on the radio. In the morning the radio reports
45 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 alright.

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
5 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
10 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,
15 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.

20 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
30 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
35 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.
40

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
15 residence and, after removing debris from where 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 through debris around the floor of the bathroom
35 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 further debris until he observed a human skull. He then ceased the search and immediately left
40 the area with other firefighters.

Q. The Commonwealth Medical Officer attended?

A. Yes, about 3.46pm on Sunday, 19 January 2003, Dr Emson, 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 Emanson 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".

About 4.50pm, Coles Funeral Directors removed 10 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 YYY 982. A short time later, 15 a number of photos were located in the boot of 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.
- 5 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 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
- 10 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.
- 15 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 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 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
- 30 thought she should leave just in case.
- 35 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 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
- 40 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. 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
5 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
10 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.

15 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
20 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
25 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,
30 arriving at 1am on Sunday, 19 January 2003. He
stopped at Don and Gill Collins's house at 10
Fenton Street, Dower and discussed the
situation with them. He then drove to the
Narrabundah evacuation centre and tried to find
35 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.
40 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
45 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. He

20 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.

10

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.

15

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

20

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.

25

About 7.50pm the examination concluded and Dr Griffiths stated he was confident with the identification of the body being that of

30

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

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

5 Clissold.

About 5.55pm, I had a conversation with Federal Agent Clissold. During this conversation, she showed me exhibits FC0310104, items 1 to3, 10 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.

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 20 duty for the day.

25

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 30 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 35 1995.

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 40 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.

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
- 5 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.
- 10 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
- 15 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
- 20 Tait provided me with the deceased's medical records. About 12.21pm the taped record of the conversation concluded and I departed the premises.
- 25 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
- 30 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
- 35 the fire in the bathtub of her premises.

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

- 40 THE CORONER: So no-one saw Mrs Tenner alive after about 2.30pm on Saturday?
- A. That's right, your Worship.
- 45 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]

15 **RESUMED**

[11.53am]

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

20 **<CONSTABLE REESE LEWIS STRACHAN, AFFIRMED**

<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.

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

A. That's correct.

Q. At the Winchester Centre?

A. Yes.

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

A. That's correct.

40 Q. And did you then attend 40 Tullaroop
Street?

A. I did. About 5.23pm on that Sunday, 19
January, Constable Raquel Ilsley and I, in
45 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
5 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
10 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.

15 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
20 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
25 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
30 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
35 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].
40
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
45

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 left side. I did not see any damage to the house at 40 Tullaroop Street. The house at 38

30 --

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, 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 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 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 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.
- 15 20 25
- 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 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.
- 35
- 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 the body of Peter Brabason-Brooke.
- 45

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?

20 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 deceased's eyes were closed. The colour of the deceased's remaining hair was unrecognisable.
30 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?

45 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 5 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 10 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.

15 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 20 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 25 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 30 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 35 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 40 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 45 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
5 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
10 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
15 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
20 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
25 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.

30 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
35 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
40 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
45 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 brigade. They informed me that fire brigade 25 strike teams Hotel and Echo were responsible for checking the safety of the structures in the Duffy area. They had also examined the scene.

About 5.51pm the same day, whilst at the fire 30 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 40 the charred remains of a human body outside the 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 45 of the NSW Fire Brigade. Station Officer 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 tape s 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.

About 6.36pm the same day, I received a phone
call from DSC Palmer. He advised me of the
15 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
20 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.

About 6.50pm the same day I saw Commander Andy
30 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

5 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

10 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

15 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.

20 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

25 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

30 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.

35 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

40 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.

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 combustible material. The fire damage to the body is inconsistent with the protection offered by the enclave and paved area. The deceased suffered major fire damage to his right underside.

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 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 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.

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 examination, Constable Ilsley obtained digital images of the destroyed house and deceased.

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 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.

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

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

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.

30

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

A. That's correct, your Worship.

35

MS CRONIN: You then proceeded to contact the

family members of the deceased?

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 5 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.

About 9pm the same day, I notified AFP media liaison officer Constable Goddard that a person 15 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.

At a later date, I conducted a taped record of 25 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.

Garry stated there is a garden hose connected 40 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 45 both of those hoses. He stated that he left both of them running on the lawns at the back

and front of the house.

- 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 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.
- 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 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 safety goggles but recalls there was a pair in the garage.
- Garry informed police that, on Saturday, 18 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. 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 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 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 o 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
35 college and met with Trish and Helmut Frei, residents of 2 Eucumbene Drive. The Freis told 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.

35 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 45 had walked up to the car. Beverley and Garry reasoned they would find Peter by driving

slowly down Tullaroop Street.

After searching the nearby streets unsuccessfully, they stopped on the corner of
5 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 Brooke later provided a written account of the
10 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.

On Monday, 20 January 2003, Constable Ilsley
25 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?

A. I did. About 11.30am on Tuesday, 21
40 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.

About 12.05am the same day I attended the
10 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 placed over his aorta to repair damage.
40 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.

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

A. Yes, on Sunday, 19 January 2003, Constable Shane Scott and DSC Toby Seppings spoke with Allan Latta, a resident of 60 Eucumbene Drive.

10 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 conversation with Mrs K. Millburn, previously 20 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
5 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 this time she saw a silver car in the driveway of 40 Tullaroop
10 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
15 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
20 Street Duffy and had a taped record of conversation with resident Edwina Houng. Mrs Houng stated she was alone in the house on the afternoon of Saturday, 18 January 2003. Mrs Houng 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
25 parked in the driveway. Mrs Houng did not see Beverley or Peter Brooke. Mrs Houng 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.
30

35 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
40
45

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'
35 property collapse. He estimated the Brookes' 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.

About 5.15pm on Monday, 20 January 2003,
5 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 January 2003. He observed the house at 43
10 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,
20 Constable O'Meagher attended 2 Eucumbene Drive and had a taped record of conversation with 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.

About 5.40pm on Monday, 20 January 2003, DSC
45 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 5 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.
- 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 15 further information about 40 Tullaroop Street or its occupants.
- About 5.40pm on Monday, 20 January, Constable Marriott spoke with David Welch of 41 Tullaroop 20 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 25 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.
- 30 On Monday, 20 January 2003, Constable Lochead 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 35 Tullaroop Street had burnt to the ground. The Dettos were unable to provide any information about number 40 Tullaroop Street or its occupants.
- 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 45 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 fire approaching through the forest and decided to leave the area. The Flynns did not return until the next day.
- 20
- 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 midday on Saturday, 18 January 2003, he
- 25 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.
- 30
- 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 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
- 40
- 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.

5 Q. What other inquiries did you make,
10 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.

15 15 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
20 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
25 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
30 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
35 been forthcoming.

I made inquiries with Telstra through AFP operations monitoring and intelligence support regarding the telephone line subscribed to 40
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.

45 Q. What conclusion did you come to in your

investigation?

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.

30

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.

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

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

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, 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.

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.

35 There was an amount of fluid on the ground 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

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 5 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?

A. That's correct.

20 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 mattress.

40 45 Police are of the understanding there were 23 premises at the Stromlo forestry settlement, of which 20 had been razed to the ground by fire. Power lines were down and the area around the settlement was denuded of any vegetation.

At 11.20pm on Saturday, 18 January 2003, Dr David Emeson attended and pronounced life extinct. At 12am on Sunday, 19 January 2003, 5 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.

10 Q. Just slow it down.

A. Sorry.

Q. At 12.45am on Sunday, 19 January 2003, Coles Funeral Directors attended the location 15 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 20 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 25 previously.

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 Farrarwell, the natural daughter of the suspected deceased person, being Dolly McGrath. I informed Mrs 40 Farrarwell 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 45 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 Farrawell 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 fire.
40

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 well on fire, including the depot, the NSW
45

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 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

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 5 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.

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

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 Todkill's cottage was Cottage 7 and the entire

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

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

A. That's correct, we did. In a taped record
of conversation with Mark Allan Graham
conducted on Monday, 20 January 2003, Mr Graham
10 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?

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

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

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.

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
35 approaching the Stromlo settlement, however he
initially couldn't see it because of the pine
trees and thick smoke.

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

Mr Graham and the others had decided they were
45 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
- 5 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
- 10 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.
- 15 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
- 20 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
- 25 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
- 30 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
- 35 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.
- 40 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
- 45 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.

10

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.

15

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?

20

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, being Dolly McGrath - the suspected deceased was her mother's sister.

Kerry Taylor relates she had a close relationship with the suspected deceased and 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 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.

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 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 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 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 AFP forensic services for examination and comparison with the DNA sample obtained from the deceased.

On Monday, 3 February 2003 I received 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:

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

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 Hospital.

25 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 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
10 inhalation. Can you tell the court what evidence you saw?

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

20 Q. As a result of those findings, have you formed on 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
25 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
30 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?

15 A. That's correct. That was the information that was provided to me with the report to the Coroner's officer.

20 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 than a person without that history?

25 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 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.

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

40 A. 50% is life threatening in somebody without any preexisting heart disease. If you 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.

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

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
10 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.

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

A. That's correct, yes.

35 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?

40 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.

THE CORONER: So he may well have died on the
45 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 10 of smoke inhalation. Could you tell her Worship what the evidence was that you found in your autopsy?

A. Just excuse me a minute. Yes, again, Ms McGrath had evidence of soot in her mouth, and 15 down her windpipe. Not so obviously in her lungs. In combination with that, the carboxyhaemoglobin was 19%.

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

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 25 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 40 death is more likely?

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 45 direct effect of the flames and the heat from

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

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

A. Yes, that's the --

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

A. Having heard, your Worship, that the
evidence directly from the policemen - we did
15 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
20 caught up directly in the fire and therefore
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
die of a cardiac arrest. If you survive for any
10 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
15 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.

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
25 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
30 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.

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.

MR LASRY: We've had some responses from, I
think, two of the parties in relation to those
40 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
list of issues, not a program of evidence. And,
45 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 15 to commencing this matter on or about 9 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 20 to be a feasible starting date. It seems to us 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 25 three pages per document, that will convert into something of the order of 1,500 pages, so by many standards it's not an enormous brief.

That, however, does not include - those numbers 30 don't include all the statements which have been obtained, and the definition of the word '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 35 to some of the issues or repetitive of other 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
- 5 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
- 15 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
- 25 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
- 30 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
- 35 would be canvassed with them because those witnesses are relevant to just about all the witnesses.
- We'd then move, in effect, down the scale,
- 40 your Worship, to the ACT Service Management Team; to the incident management team at Yarrowlumla and then to fire controls in the field; firefighters, which may well be a selective or representative sample because we
- 45 will be endeavouring to avoid duplication as we

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 5 the residents; and then three experts.

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, 10 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.

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

MR LASRY: I gather there has been some progress. Although, as I understand it, his 30 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.

I should say, your Worship, in relation to witnesses that we would expect to have a list 45 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?

MR LASRY: It would be close to a complete order of witnesses we're hoping we can prepare.

10 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 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 --

THE CORONER: On the 9th.

20 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 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 35 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 40 witnesses, we don't have prioritisation of issues as yet.

I'm not sure if it's my friend's intention to gather again before the commencement date.

45 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
15 issues should be the subject of examination by 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 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.

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

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

25 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
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

5 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 sorts of comments can be accommodated and the issues I hope will largely disappear once everybody has got the brief.

CORONER: I'm sure that will happen.

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15
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25 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 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 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 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.

35 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 canvassed, that time will be provided to do that. Mr Johnson?

40 MR JOHNSON: Firstly, as to the issues list, we've had an opportunity to consider it and 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

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 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 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. 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 - 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.

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 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 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.

Could I put this submission, though - it is
10 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 acceptable but, having regard to the 27 January
15 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.

We're conscious that the early witnesses at
25 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 the 16th of February be the starting date in
30 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 stage it is simply not clear and I would ask
35 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 our attention to the proper preparation of this
40 inquiry in regard to the fact that senior ACT officers will be early witnesses.

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 15 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.

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

25 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 30 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 35 probably be best done by the AFP, and that will need to be done --

THE CORONER: None of those have happened as yet?

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

45 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 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 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. 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.

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.

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 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.

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 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 February.

45

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 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 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 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 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 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 doing that.

THE CORONER: I understand that.

MR JOHNSON: I would ask that it be the 16th on 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 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 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.

10 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?

25 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 that your Worship is referring to, I will seek some instructions. I know that statements were provided, several last week --

30 THE CORONER: Some of these statements have been 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 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 --

35

40 MR JOHNSON: 30 September?

45 THE CORONER: I wrote to Mr Mitchell on 25 November and he replied on 3 December. You 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 20 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 --

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 30 any outstanding statements be provided so that everyone does have the benefit of those statements.

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 45 it's a suitable issues list.

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, 10 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.

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 20 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.

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 35 Wildlife Service which has now disappeared.

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

40

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 45 of the agencies for the state and its officers

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 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 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 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 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 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.

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 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 ground for granting leave under section 42 - and at the moment I'm not asking for it.

THE CORONER: To you, Mr Walker?

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 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.

10
15
20 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 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
30 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 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 10 issues, as my learned friend pointed out in his 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".

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

I confess I don't quite know what "the
10 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 know that other issues about which I want to
15 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.

Now I want to generalise our concerns in
30 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.

I suppose the simplest way to put it,
45 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 act as if we accept there is jurisdiction by participating in an exercise of that kind.

40
45 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 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.

15 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.

35 So, of course, your jurisdiction in relation to an ACT fire may very properly involve 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 --

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

MR WALKER: No, for this inquiry.

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

35 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
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

15

counsel assisting as to witnesses.

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

20

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.

25

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.

30

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

- 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.

10

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.

15

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

5 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

10 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.

15

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

20 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

25 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.

30 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

35 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

40 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

45 appear.

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
5 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
10 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
15 whether to public an application under section 42.

As he realises, I'm sure, and as I think I've told him perhaps not in the clearest of terms
20 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.

As to the issue of comment, that may be an argument to be had later when it becomes
35 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
learned friend, we do not propose to revisit
10 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
origin and initial response to that fire, as I
20 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
represented by my learned friend that already
25 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
Cheney which you heard in detail during the
course of the first phase and, in an electronic
30 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
course of his evidence to you, would at least
on the face of it seem to be different from the
35 view expressed by the New South Wales Coroner.
- That is not to mark the work of the New South
Wales Coroner, as my learned friend puts it; it
is simply you conducting your separate inquiry
40 in this Territory in relation to fires which
had a significant effect, particularly on
Canberra. Again, that may or may not be a
debate that needs to be resolved at some
further distance from here once all the
45 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.

5

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
10 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
15 your Worship to accede to their request under section 51.

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,
25 in New South Wales, I certainly don't concede or see myself restrained from looking at what caused those fires.

Now, my inquiry is into the fires in the ACT
30 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
35 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.

40

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

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.

5

MR WALKER: Thank you very much your Worship.

THE CORONER: Just in relation to the start, I think the only other issue is the starting
10 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.

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

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

25

MR STITT: No, your Worship.

THE CORONER: Mr Archer?

30

MR ARCHER: No, your Worship.

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
35 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.

THE CORONER: Thank you very much for that, Mr Coonan, thank you. So I'll say that this
45 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.

15 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.

20

25 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 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.

30

35

40 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

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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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