

TRANSCRIPT OF PROCEEDINGS

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

MRS M. DOOGAN, CORONER

CF No 154 of 2003

CANBERRA

INQUIRY INTO INQUEST AND INQUIRY
THE DEATH OF DOROTHY MCGRATH,
ALLISON MARY TENNER,
PETER BROOKE, AND DOUGLAS JOHN FRASER
AND THE FIRES OF JANUARY 2003

DAY 90

Tuesday, 18 October 2005

THE CORONER: Are you ready to proceed? Mr Roche,
thank you.

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<TREVOR MICHAEL ROCHE, SWORN AND EXAMINED

<CROSS-EXAMINATION BY MR WATTS

10 MR WATTS: Q. Mr Roche, the Country Fire
Authority has a jurisdiction which covers
a certain area; is that so?

A. That's correct.

15 Q. It covers both urban and rural firefighting
within that area; is that so?

A. That's correct.

20 Q. The organisational structure is a part of
unitarian structure, not divided, as in the ACT,
between the Fire Brigade and the Bushfire Service?

A. Within the CFA it is not. Certainly within
Victoria it is.

25 Q. Within the CFA, it looks after both bushfires
and urban fires within the area of its
jurisdiction; is that so?

A. That's right. But not for the whole of
Victoria.

30

Q. No, I understand that, but the difference
between the CFA and, say, the ACT, it doesn't have
a different Fire Brigade for towns and a Bushfire
Service for country areas within the whole area
looked after by the CFA?

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A. That's right.

Q. When you were with the CFA, did you have some
experience as a planning officer?

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A. Depends what you mean as "experience". I've
certainly done planning in relation to fires.
I've conducted planning in relation to a CFO's
commitment to various major incidents, and I have
done significant planning in relation to

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management, budget and overall functions of the
CFA.

- Q. I think that is a bit broader than I am asking about. Simply planning in terms of a particular bushfire - let us stick to bushfires - a bushfire incident, have you ever been a planning officer trying to predict the future of the fire?
- 5 A. I've never been a designated planning officer, but I've conducted the planning role in the CFA prior to the introduction of ICS.
- 10 Q. In terms of planning what you might do as an organisation to deal with a fire, or a series of fires, what you need to try to work out is when the fire might get somewhere?
- A. Yes.
- 15 Q. Where it might go to?
- A. Yes.
- Q. And how it might get there, in terms of speed and intensity and so on?
- 20 A. Yes.
- Q. Were you present last year when I asked Mr Cheney some questions about planning and fire spread?
- 25 A. I could only assume so, Mr Watts. I can't recall the specific nature of your questions, but I was certainly here during a good part of Mr Cheney's evidence and cross-examination.
- 30 Q. I take it that you would not disagree with the proposition that forecasting the future of the fire, the bushfire, is a matter that can be subject to a wide margin of error?
- 35 A. It certainly is subject to a margin of error.
- Q. Taking into account a lot of variable factors such as weather, fuel load, terrain, wind strength and so on?
- 40 A. Yes.
- Q. All of which can be difficult to forecast with any degree of accuracy?
- A. Yes.
- 45 Q. You might recall Mr Cheney himself was, I think the term used was "surprised" by some of the

things that happened with these fires?
A. Yes, I do.

Q. Do you recall him surprised by the Flea Creek
5 fire that came through between Bendora and
McIntyre's Hut?
A. Yes.

Q. I think he was surprised about the intensity
10 of the fire that came through there?
A. I don't think he was so surprised about the
intensity as he was about the speed of the travel
of the fire.

15 Q. In terms of fire prediction, of course, the
speed at which a fire might come and arrive can
make a big difference to how you fight it and your
planning?
A. Yes.

20 Q. On the 16th, you made comment in your report
about the incident action plan of the Fire
Brigade?
A. Give me the page, please.

25 Q. Yes. Page 52, if you would like to turn to
that.
A. Yes.

30 Q. As you will know from your reading of the
material, an Incident Management Team, so-called,
was established after the Fire Brigade briefing by
Mr Peter Lucas-Smith of the Fire Brigade senior
officers on the 16th.

35 A. That's correct.

Q. And a group was formed which included Michael
Collins looking after planning; do you recall
that?
40 A. I can't recall the specificity of the people
but certainly I recognise there was a considerable
number of people.

Q. Peter Cartwright was in charge of planning,
45 Peter Newham was in charge of logistics and so on.
Can I firstly suggest to you this: although the
term "Incident Management Team" is used, it was

not really in any sense an Incident Management Team because there was no incident actually to manage at that point in time.

5 A. I'm not quite sure of the point of your question.

Q. Don't worry about the point. What I'm asking you is this: An Incident Management Team under the AIIMS system is normally set up. For example, 10 if you have a bushfire out at Bendora, you have an Incident Management Team whose job is to manage that incident, being that bushfire.

A. Yes.

15 Q. As of the 16th, after the Fire Brigade meeting, there was no fire in the urban area for the Fire Brigade to manage; that's true, isn't it?

A. Yes.

20 Q. Can I suggest to you that the intention of that group was simply to start planning for what might happen days down the track.

A. Yes.

25 Q. I think Mr Prince, if you heard his evidence - did you hear his evidence?

A. No, I didn't.

Q. I think he told us that it was really not so 30 much an Incident Management Team, it was a group to get together to start planning. Have you read Mr Collins' statement?

A. I believe so.

35 Q. Have you read the report that I think he authored, which he terms the report of the Incident Management Team which was prepared after the fires, setting out what was done after the 16th?

40 A. I don't recall it specifically. But I believe I may have.

Q. Early in the piece, that group of people produced the document you referred to as the IAP?

45 A. That they referred to as the IAP.

Q. Yes. I'm sorry, I am not trying to suggest

they didn't. Can I again suggest to you that although the term "IAP" was used, it really wasn't, again, an incident action plan, there being no particular incident to manage at that point in time.

5 A. I wouldn't agree with that suggestion.

Q. What was the incident that you were suggesting they were managing, being no urban fire at that point in time?

10 A. In my experience, it is not unusual to establish an Incident Management Team in preparation for an incident. I can give you an example. In the last 24-hours, I was contacted by people who didn't know I was up here to begin to put together an Incident Management Team and an incident action plan for an exercise involving counter-terrorism in Victoria. Now, that Incident Management Team was formed and would have produced an interim incident action plan, and that's quite normal when forecasts or circumstances arise where either an impact is imminent or may be likely to occur. And I think that that's good planning.

25 Q. But I'm suggesting to you that it was not a plan directed, at that point in time, to any particular urban incident - any urban fire at that point in time.

30 A. I haven't seen any other plan developed by the ACT Fire Brigade in planning for possible impact of the fire into the cities and suburbs.

Q. You are not suggesting for a moment, are you, that that incident action plan is in any sense a summary of all that was being done in terms of planning and preparation at that point in time?

35 A. I'm not aware of what other planning was done, sir.

40 Q. That's why I asked you whether you had read the report of the planning section.

A. Yes.

Q. Because if you read that, it sets out in some detail --

45 A. I'm aware of a number --

Q. -- a significant amount of items that was done by all of the members of that planning group.

A. That's correct.

5 Q. There was a vast amount - and I use that word deliberately - of work being done from the 16th from that group in preparation for what might happen down the track?

A. That's correct.

10

Q. Can I suggest to you that your criticism of the IAP is, in a sense, unfair, in that it doesn't then go on to set out all of the other work that was being done by the Fire Brigade to prepare for the fires that they were told might come.

15

A. I don't agree with you.

Q. You then, at page 108, criticised the Fire Brigade for having its own Incident Management Team.

20

A. That's correct.

Q. As I have suggested to you, and as you know, the Fire Brigade had its own responsibilities to deal with the fires when they became structure fires in the urban area; that's right, isn't it?

25

A. It certainly has unique and discrete responsibility in that regard, yes.

Q. Can I suggest to you that what they were doing, in having their own Incident Management Team - I am here using that term because it is a convenient term - was simply fulfilling their obligations to get prepared for structure fires that might occur within the urban area.

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35

A. That's true in part.

Q. It is true completely, isn't it?

A. It's true in part to the extent that, in my view, they shouldn't have been acting in isolation.

40

Q. The preparation for what the Fire Brigade might do, being done by the Fire Brigade, is simply carrying out their statutory responsibility, I suggest to you.

45

A. In part, that's correct.

- Q. Mr Roche, could you turn, please, back to page 107. I want to take you down to about point 6 in the third paragraph where it starts "It is also evident"; do you see that?
- 5 A. "it is also evident that the senior officer of the brigade" - is that it?
- Q. "... senior officer of the Fire Brigade lacked any comprehension of the extent to which
- 10 a wildfire can impact an urban area."
- A. That's correct, yes.
- Q. Could you please tell this inquiry upon what evidence in the brief do you base that assertion?
- 15 A. The incident action plan which committed the resources of the ACT Fire Brigade without any consideration of any other resources.
- Q. You say they lacked any comprehension. You
- 20 mean that they had no comprehension whatsoever; is that what you are suggesting?
- A. That's correct. On the basis, your Honour, if they had of had a comprehension, they would have realised that with the potential impact of that
- 25 fire, they would have been overwhelmed initially and continuing on for a number of days.
- Q. Mr Roche, of course, that depends, doesn't it, on exactly what they thought was going to arrive
- 30 at the suburbs?
- A. That's correct. Their comprehension of what was going to happen.
- Q. Can I suggest to you that it is an extravagant
- 35 statement by you to suggest that they had no understanding whatsoever?
- A. I don't agree with you, sir.
- Q. Have you read the statements of the Fire
- 40 Brigade officers who were out at Duffy on the day that the fires hit?
- A. Yes, I have.
- Q. Many of those people were very senior Fire
- 45 Brigade officers, were they not?
- A. Yes, they were.

Q. Are you suggesting that each one of those Fire
Brigade officers had no comprehension whatsoever
of the extent to which a bushfire can impact on an
urban area?

5 A. I'm suggesting collectively the ACT Fire
Brigade had no comprehension of what was likely to
occur.

Q. So if the Fire Brigade officers at Duffy have
10 expressed a view that in terms of being very
surprised by what struck, you would say that they
had no understanding at all?

A. I just repeat my last answer, sir.

15 Q. Station Officer Buckley, who was there, a Fire
Brigade officer for 13 years, says in his
statement:

20 "Nobody in their wildest dreams could have
predicted this."

You say Station Officer Buckley had no
understanding whatsoever?

25 A. I'm not analysing each individual. I didn't
analyse each individual officer's or employee's
position. What I have said is that collectively
the ACT Fire Brigade had little or no
comprehension of what was going to occur.

30 Q. Mr Roche, the collective comprehension of a
Fire Brigade simply comes from an individual
comprehension of the members of the Fire Brigade,
does it not?

35 A. In essence, yes.

Q. If Station Officer Wilkie, who was out there,
who was a very experienced Fire Brigade fighter,
said, "No-one could anticipate the ferocity with
40 which this firestorm struck", you would say he
lacked any comprehension also?

A. Yes. I think he has admitted that by saying
he had no idea.

Q. District Officer Thornthwaite, you'd say the
45 same about him?

A. What were his comments?

Q. He was the district officer in charge of setting things up out there.

A. I'm aware of that.

5 Q. I'm suggesting to you this: You are simply starting your reasoning from the fire that arrived, knowing the fire had arrived, and then making your comments with the benefit of
10 hindsight, having regard to what in fact arrived, not what could have been anticipated by reasonable firefighters.

A. That's not correct.

15 Q. At the bottom of page 52, where you talk about the inevitability of being rapidly overwhelmed, I suggest to you that when the Fire Brigade went out to Duffy, it was not, and could not have been, reasonably apparent to those persons who went out there that they would be rapidly overwhelmed.

20 A. It should have been, sir.

Q. You are suggesting that they should have been able to know and understand exactly what firestorm was about to hit?

25 A. I didn't say that. What I believe they should have understood, and that analysis is premised on the fact that anybody with any knowledge at all of the major wildfire that is likely to impact on a suburban area or a residential area, would know
30 that multiple houses will be threatened. Given the extent of fires that were threatening the ACT at that particular time and the likelihood of deteriorating weather on the 17th and 18th, then it didn't take much to work out that a significant
35 portion of the suburbs of Canberra could have been impacted and therefore, in my view, a planning should have indicated that the ACT Fire Brigade would be overwhelmed and required more resources.

40 Q. Mr Roche, no-one is arguing with you, I think, the proposition they should not have realised that the fire was to impact suburbs. In fact, they were out there before the fire arrived.

A. That's correct.

45 Q. I'm suggesting to you this: There was no way that they could have predicted, on the information

they had, that a firestorm of the nature that arrived could have arrived, would have arrived?

5 A. That may be so, but by the same token they should have been able to anticipate there would have been significant impact in multiple residential areas. I'm not suggesting that they should have been aware that there would be a firestorm as such.

10 Q. When you start to criticise them for the way they fought the fire at Duffy, can I suggest to you that you are - in fact, in the way your report is prepared - criticising them for being overwhelmed when that firestorm arrived?

15 A. That's correct. Except the difference is, as I have already qualified, and I believe they should have been able to anticipate that there would have been impact in multiple residential areas, multiple residences and, therefore, their

20 resources would be overwhelmed. Now, the fact that there was, as you put it, a firestorm, I can forgive them for perhaps not anticipating that, but they should have still have anticipated multiple areas, multiple residences being

25 impacted.

Q. Can I suggest to you that they did anticipate that and that's what they were preparing for?

30 A. I don't believe that that's the case.

Q. Have you read the statements of Mr Darrell Thornthwaite and Station Officer Turton as to how they went about trying to deal with the fire before it arrived?

35 A. Yes, I have.

Q. Do you know what resources exactly they had out there in Duffy on the day?

40 A. I don't recall exactly, but I recognise that it was a number of pumpers and a number of tankers.

Q. Can I suggest to you there were three pumpers, considerable tankers?

45 A. I wouldn't necessarily disagree with that, sir.

Q. The plan was, was it not, to place the appliances along Eucumbene Drive?
A. Yes.

5 Q. The initial tactic was to set up a water curtain across the front of the houses; do you recall them doing that?
A. I recall that was one of their tactics, yes.

10 Q. That is an appropriate way to deal with likely impacts of fires on those houses?
A. Not under those conditions, no.

Q. They abandoned it, didn't they, because it
15 didn't work?
A. Yes.

Q. Then they commenced to wet down the houses; do you understand that?
20 A. Again, in the first row of houses, I don't think that is an appropriate strategy.

Q. Are you suggesting that they shouldn't have stationed the pumpers in the first row of houses?
25 A. Perhaps not.

Q. Just left those houses to burn as the fire arrived; is that what you are suggesting?
A. One of the difficulties --
30

Q. Is that what you are suggesting?
A. No, I'm not.

Q. That's what would have happened?
35 A. Perhaps.

Q. You would have put them, what, back in Somerset Street or somewhere like that?
A. I think you have got to realise --
40

Q. I am asking you the question - where would you have put them?
A. I would have stationed them at such a position where they were safe, they were protected and in
45 such a position where they could then move and carry out whatever work that was needed to be done after the initial impact of the fire.

Q. Can I suggest to you that they were in fact safe, no-one was hurt?

A. I've seen heaps of road accidents through carelessness where nobody got hurt, but
5 nevertheless whether the actions taken that led to that were wise in the circumstances is questionable.

Q. Your criticism, can I suggest to you, of not
10 taking the pumpers in the first row of houses depends upon your knowing the nature of the firestorm that ultimately came through?

A. That's not correct. It's based on my
15 knowledge of what occurs in a major wildfire under those weather conditions and when residences come under significant ember attack.

Q. You have criticised the Fire Brigade for not having greater resources out at Duffy.

20 A. I'm sorry?

Q. You have criticised the Fire Brigade for not having further resources there?

A. I'm criticised the Fire Brigade for not
25 planning for the acquisition and deployment of additional resources on the urban interface.

Q. What additional resources would you have placed, ignoring the fire that arrived, before
30 when you were planning - ignoring what arrived - what additional pumpers and tankers would you have put out there and where?

A. I would have sought significant additional support from other jurisdictions.
35

Q. In terms of quantities, how many pumpers do you think they should have put out there?

A. I haven't done that measurement, sir. Certainly well in excess of what they had.
40 Probably in the vicinity of - I would have had a preference for tankers, because again the recognition that generally the water supplies would fail in that area along with the significant fire would make pumpers virtually redundant, so
45 additional tankers. In my experience, I would have somewhere between 50, 60, even 100 tankers down that urban/rural interface and I would have

obtained from other jurisdictions, given the forecast that was beginning to become evident on Wednesday, the 15th.

5 Q. On Wednesday, the 15th you would have called in 50 extra tankers?

A. No, I would have called in extra support of pumpers and tankers. Given the time and space.

10 Q. Tankers are not designed for urban fires, are they - structure fires?

A. Yes, they are. That's a very narrow point of view that is premised on what might be the case in the ACT. But in - generally, in other

15 jurisdictions, the majority of urban firefighting outside of the metropolitan area is undertaken by tankers, and very efficiently.

Q. Outside the metropolitan area?

20 A. Outside of the immediate metropolitan area.

Q. We are not outside the immediate metropolitan area, are we?

25 A. I think you are trying to draw a string in your bow that isn't there Mr Watts. With greatest respect, tankers are fitted, from other jurisdictions, with a significant urban firefighting capability, and in some cases will equal or exceed some of the jurisdiction pumpers.

30 And, of course, they carry an extra amount of water so that when water supplies fail, your Honour, as they did in this case, and pumpers are unable to operate, the tankers can still continue to operate.

35

Q. Do you know how long the water in a tanker lasts when being discharged at maximum rate from a tanker?

40 A. Anybody that would be fighting a fire under those circumstances, discharging at maximum rate somewhere between 900 and 1,000 litres a minute on some tankers, down to 450 litres on others, depending on the capacity of the tanker, some 2,000 litres, some 3,000 litres, some 4,000
45 litres.

Q. Can I suggest to you what you are saying - I

am putting this to you - that a tanker of 3,000 litres will last only less five minutes?

A. If you were discharging at full pressure, that's correct.

5

Q. In fact, can I suggest to you that having tankers out there, as you suggest, would have made no impact on this fire?

A. That's a ridiculous assumption. In many other parts of Australia, sir, major fires in buildings are fought with just one tanker, because that's all brigades have. In many parts of Australia, they also make good saves with that one tanker with limited water.

15

Q. Are you aware of how quickly the houses at Duffy ignited?

A. Yes, I am.

20

Q. Can I suggest that it would have been impossible to deal with many more houses than were in fact dealt with with all your tankers in place?

A. I don't agree with you.

25

Q. To use those tankers for structural fires would need breathing apparatus?

A. Not at all. I've never seen a wildfire fought certainly in Victoria by firefighters wearing breathing apparatus, your Honour.

30

Q. The way you fight a housefire, is it not generally, is for the fire officer to go inside with breathing apparatus on?

A. If you are talking about in a purely urban environment with one house, that's correct.

35

Q. Mr Roche, with each of these houses in Duffy, you deal with them one at a time as individual houses, don't you?

A. No.

40

Q. If they are alright inside, you need to go inside to fight the fire?

A. You have to make choices as to whether you are even going to fight the fire in a situation like that. Whether you like it or not, that's some of the hard choices that have to be made when you've

45

got major urban interface impacted by fire. You
can't deal with 600 houses at the one time. You
have to make choices. And to suggest that the
Fire Brigade is going to put people, resources
5 into each house, each individual house when it
catches on fire, is just not worth contemplating.

Q. The 50 tankers that you have talked about, you
would have placed them other than in Eucumbene
10 Drive or Warragamba Avenue, too, I suppose?

A. I would have placed them where they are likely
to do the most effect.

Q. What does that mean?

15 A. Exactly what I said.

Q. You have done no analysis, have you, of
exactly what strategy should have been in place to
fight this fire at Duffy and where those tankers
20 or pumpers should have been put?

A. Yes, I have.

Q. You tell me where they should have been put?

A. I told you where they should be put. They
25 should be put in a safe area in the immediate
vicinity of the fire, where they are able to move
to attack what they considered as priority
structures once the fire impacted. To stand there
bravely spraying water around, as was - can be
30 exhibited during this fire, is an absolute waste
of time and effort, and again imports
a significant misunderstanding of what happens
during a wildfire on an urban/rural interface.

35 Q. Can we come back to answer the questions,
please. We have established, have we not, from
what you have told us, that you wouldn't have put
anything in Eucumbene Drive or Warragamba Avenue.
Where would you have put them?

40 A. Not initially, I wouldn't have.

Q. Where would you have put them?

A. I would have put them at intersections
immediately in the road behind those particular
45 areas where the firefighters were protected
initially from the impact of the ember attack and
then able to move under a coordinated structure,

which wasn't in place, to be able to select properties that were capable of being saved.

5 Now, unfortunately, not all properties are capable of being saved in those circumstances, and to suggest otherwise and to suggest a deployment strategy ought to be premised on protecting every house under those circumstances is just not going to work.

10

Q. I don't think anyone is suggesting it.

A. I think you were.

15 Q. I am asking what you what your strategy was. You know perfectly well that there were houses in two or three streets behind the main street that caught fire quite quickly?

A. What do you term as "quite quickly"?

20

Q. Within minutes of the firestorm arriving?

A. I would have to review that evidence to agree with that. Not necessarily agreeing that that was the case. In fact, I don't think it was the case.

25

Q. May I suggest to you this, I think you may agree with this: That any house that is alight, well alight inside, could not be fought by the use of a tanker?

30

A. Any house in those circumstances that was not alight, your Honour, I wouldn't even try to defend it. It is too late. And there are more important tasks of moving resources onto properties that can be saved. It's an unfortunate reality of wildfire in an urban environment.

35

Q. Mr Roche, do you remember on the last occasion that we had a discussion about - you know at Duffy two of the tankers caught on fire. You have made comment about that in your report.

40

A. I don't recall tankers catching on fire, sir.

Q. I withdraw that. Pumpers, Bravo 3 and Bravo 5 - you know about that?

A. Yes.

45

Q. To your knowledge, how many firefighting appliances were destroyed during these fires?

A. I recall only one, I think, Mr Watts, that was destroyed. There were a number disabled.

5 Q. When you talk, on page 123, about the destruction of a firefighting appliance, you are talking about Bravo 3; is that so? You see the fourth paragraph?

A. I've said destruction of a firefighting appliance, one.
10

Q. The one you are talking about is the one at Duffy, Bravo 3?

A. I believe so. To my knowledge, there was only one destroyed.

15 Q. When you told us on the last occasion, at page 7561 that:

20 "In my report I have made no comment about those pumpers being burnt."

That was wrong, wasn't it?

A. Yes.

25 Q. Do I take it, from what you have said this morning, that your only comment about that burning pumper relates to it being where it was rather than any latent defect which should have been known?

30 A. I've not made comment on the latent defects which existed, in my report.

Q. Have you overnight read the statement of Mr Willimott?

35 A. Yes, I have, sir.

Q. You accept, if that is correct, the Scania 4 pumpers of the type that was burnt, destroyed, there had been no, within the ACT anyway, experience of problems of that nature?

40 A. I don't necessarily - sorry, I don't necessarily agree with that analysis. Could I explain, your Honour?

45 Q. I'm not asking you to explain. I'm asking you to answer this: If what Mr Willimott has said in his statement is correct, would you agree with me

that he, at least, had no knowledge of any defect with the Scania 4 pumpers of the kind that occurred with Bravo 3?

5 A. He was well aware of a defect with Scania pumpers involving the ignition of the paper filters in the air intake.

Q. Have you read that statement?

10 A. I certainly have.

Q. You are aware, aren't you, of the significant difference in design between the Scania 3 and Scania 4?

15 A. That's correct.

Q. The Scania 3 has what might be called a snorkel-type air intake?

A. Yes.

20 Q. That has caused problems in the past, hasn't it? That is the one that had caused problems?

A. The problem with the Scania pumper, your Honour --

25 Q. Just answer the question, please.

THE CORONER: I would like to know the difference.

MR WATTS: He is not answering the question. Your Honour can ask him a question or somebody else can ask him a question. I am asking him the difference between these two pumpers and his knowledge of them.

30

35 THE CORONER: I thought that is what Mr Roche was going to do, explain the difference between the two pumpers, based on his knowledge. I would certainly like to know the difference.

40 MR WATTS: Q. Go on.

A. I am aware that there are two models of Scania pumper, a series 3 and series 4. I am also aware that they draw their air supply for the engine from two different locations. Series 3 derives

45 the air intake from a snorkel which comes up the back of the cabin and appears over the top of the cabin. The later model draws its air from down

lower in the bumper bar area, behind the headlights of the vehicles.

5 Both of the vehicles have, in the ACT, suffered ignition and destruction of the paper air filters which fitted to those particular models, regardless of where the air is inducted in the vehicle. Bravo 3 was destroyed when the paper air filter ignited, subsequently collapsing the
10 plastic ducting and the engine failed due to a lack of air. The vehicle was subsequently burnt. I'm not sure whether that was because of the fire in the air filter or because of the continuing ember attack that it came under.

15 The series 3 has a different air intake, still manufactured from plastic, although it draws its air from a different location. Both models have paper filters, and that is shown in photograph 15
20 of Mr Willimott's statement.

Following ignition of the paper filter on the type or series 3 pumper, modifications were made to that pumper to the air intake to limit the
25 ingestion of material which would cause the paper filters to be ignited. I understand those modifications involved fitting fine mesh screens to the air intake to prevent the ingestion of material.

30 The series 4 pumper was not similarly modified, albeit I guess on the mistaken assumption that because it drew air from a different location, the same fault was not likely to occur. But the cause
35 of both incidents was the same. In my view, the ACT Fire Brigade were aware that the ingestion of burning material could ignite paper filters, and when they purchased the series 4 should have looked at that particular aspect of the vehicle.

40 Q. Mr Roche, when I spoke to you on the previous occasion, you didn't even know there were Scania 3 and Scania 4 pumpers in the ACT, did you?

45 A. No, I didn't. But I knew the ignition of the paper filters caused both incidents.

Q. You, would never regard yourself as an expert

in the design of Scania trucks?

A. Absolutely not.

Q. Nor the design of air filters?

5 A. No.

Q. I put it to you that it is reasonable for
a fire authority, when purchasing a vehicle for
the specific use as a fire pumper, to rely upon
10 the expertise of the selling company and not have
to make modifications themselves?

A. That's not correct. I'm aware of many, many
instances, and your Honour, I sat on the CFA
equipment design committee for some 12 or 14
15 years. I'm aware of many, many incidents where it
was not possible to buy cab chassis off-the-shelf
that suited fire specifications and therefore
following the purchase of a new cab chassis new
modifications were undertaken. That is in answer
20 to your question, sir.

Q. Mr Roche, can I suggest to that you that is
completely irrelevant to the answer. You are
suggesting there that you must modify them when
25 there is an obvious problem. I suggest to you
there was no obvious problem and no way of knowing
there was a problem before it occurred.

A. I disagree with that. The ignition of the
paper filters on the trucks was known. Just
30 because it happened to take air from a different
location, the filter structure was still exactly
the same.

Q. You knew, before reading the statement, did
35 you, that the filter structure was exactly the
same?

A. No, I didn't.

Q. Can I suggest to you that it was reasonable
40 for them to assume, when they bought it, that that
would not cause such a problem?

A. I don't agree with that. I think if it is
a known problem on a particular cab chassis, that
you buy another one and then you look to see
45 whether in fact there is something different about
it that would either ameliorate or minimise it
occurring or you do something about it. If one

vehicle required a fine mesh screen to prevent the ingestion of material then I suggest the next one did as well.

5 Q. Despite the fact it was a markedly different design?

A. Yes.

10 Q. Scania have now modified those --

MR WATTS: No, the Fire Brigade has modified them, your Honour.

15 THE CORONER: I am looking at Mr Willimott's statement saying that Scania has now undertaken various research and following that research has made some modifications and produced and developed different parts. After the 2003 fires.

20 MR WATTS: Q. Mr Roche, would you turn to page 52 of your report, please?

A. Yes.

25 Q. If you go to the second last paragraph which commences "Among the more extreme examples".

A. Yes.

Q. Firstly, can I ask you, examples of what?

30 A. Sorry?

Q. Examples of what?

35 A. The development of the incident action plan indicated quite clear to me that there was a lack of knowledge within the ACT Fire Brigade of major fire behaviour associated with a wildfire.

Q. You assert they appear not to be exposed to any training, none at all. Do you adhere to that?

40 A. In relation to impact of major wildfire, no.

Q. You don't now adhere to that statement that you have made?

45 A. I would have assumed that all firefighters throughout Australia have some basic training in wildfire behaviour. It's a part of their induction training and recruitment training.

- Q. Your statement is incorrect then, is it, in your report?
- A. In relation to that basic training, yes, it is, sir.
- 5
- Q. This one extreme example is not an extreme example of anything?
- A. I'm sorry?
- 10
- Q. This one extreme example that you have told us about is not an extreme example of anything, is it?
- A. That's your view. Not mine.
- 15
- Q. On the last occasion, Mr Roche, I asked you some questions in relation to pages 38 and 39 of your report. Do you recall that?
- A. No, I don't.
- 20
- Q. On page 39 you list a number of matters.
- A. Yes.
- Q. Can I firstly ask you this: Have you prepared for us or do you have somewhere a list of what you say were normal pre-season preparations?
- 25
- A. Have I prepared a list of normal - no, I haven't.
- Q. On page 38 you tell us in the middle of the paragraph:
- 30
- "... the evidence suggests that little if anything was done in the lead-up to the season by either ESB or the DUS over and above normal pre-season preparations."
- 35
- I am asking you where we would find what are normal or abnormal pre-season arrangements?
- A. Would you repeat that, please?
- 40
- Q. On page 38 you see the paragraph commencing "Despite this recognition"?
- A. Yes.
- 45
- Q. You tell us:
- "... little if anything was done in the

lead-up to the season by either ESB or the DUS over and above normal pre-season preparations."

5 A. Neither did the evidence of Mr Lucas-Smith, Mr Graham, Mr Ingram.

Q. Sorry, I am just asking you about your comment - not my words, they are yours, Mr Roche.

10 A. Yes.

Q. I am asking what you say are normal pre-season preparations. Where can we see within your report what the normal ones are?

15 A. It isn't in there, sir. I've suggested a number of things in my view should have been done.

Q. I'm aware of your suggestion that things should have been done, Mr Roche. I am asking you to tell us where you distinguish between what is normal and what is abnormal. You can't do it from the report, can you?

20 A. Not what's normal, no. I would have taken that for granted but, unfortunately, obviously I shouldn't have.

Q. You might recall on the last occasion I put to you that a number of things were done which I suggested to you indicated that there was a state of preparedness and things were being done in preparation for the fire season.

30 A. I don't doubt that there was a state of preparedness for the fire season.

35 Q. Did you read Mr Bartlett's supplementary statement?

A. Yes, I have.

Q. I don't want to take up too much time. The things I put to you on the last occasion are listed there.

40 A. Yes.

Q. Do you agree with me they indicate there was a consciousness, at least in Forests of the need to get things prepared for the fire --

45 A. Yes, I do. And I was not in receipt of this

information at the time I completed that report.
This is new evidence. Had I of known that at the
time, I may have taken a different view.
Particularly in relation to Mr Bartlett's
5 statement, it also raises a question as to why
those personnel weren't used when they could have
been on the 8th and 9th.

10 Q. I don't think, Mr Roche, you are in a position
to comment, are you, on whether they were or were
not used?

A. They were not used on the 8th and 9th. I am
in a position to comment on that. The fact of the
matter is that the 19 members of the RAFT team
15 were not used for that purpose on the 8th and the
9th. That's according to Mr Bartlett's
statement - his earlier statement and his
evidence.

20 Q. I think others may take this a bit further,
Mr Roche, but can I suggest to you the statement
of Mr Ingram likewise indicates that quite
a number of things were being done with
a consciousness of the forthcoming fire season?
25 A. Yes, sir. Yes, sir.

Q. That was another bit of evidence of which you
were not aware when you made your statement?

A. That's correct. With the exception that
30 Mr Ingram's attachments indicate that the things
that were being done weren't any different to what
was being done the year before with the exception
of the timing.

35 Q. I see. That is just part of the normal
preparations?

A. I would suggest so, in the ACT. I say that,
your Honour, on the basis of his check sheets, if
you like, that are there in relation to equipment,
40 helicopters, et cetera, were the same the year
before. In relation to Mr Graham's list of things
to do, if you like, was really an exact duplicate
of the year before, with the exception of it
occurring perhaps a few weeks earlier.

45 Q. We don't want to get into arguments about
definitions. Can I take it from your report that

when you use the word "normal" on page 38 and then
in this list of items on page 39, are you
suggesting that none of these items on page 39
should not be done in the ordinary course of
5 events but only in an abnormal season? You are
not suggesting that are you?

A. Some of them would be done to a different
extent. For instance, in a normal season,
I wouldn't expect repositioning. The plant might
10 occur. Certainly in the year that was being
faced, I have a view it should have been.

Q. Hiring of heavy plant, you wouldn't agree,
would be something you would do only in an
15 abnormal year, is it?

A. That's right. You may hire additional plants
in an abnormal year.

Q. When we look at this list, we can't say what
20 would be regarded as normal and abnormal. It is
all a question of degree, isn't it, Mr Roche?

A. To some extent, yes.

MR WATTS: Thank you.
25

THE CORONER: Thank you, Mr Watts. Mr Archer, are
there any questions you wish to ask Mr Roche?

<CROSS-EXAMINATION BY MR ARCHER
30

MR ARCHER: Q. The AFAC document that has been
canvassed with you to some degree, were you
involved with the preparation of that?

A. Not directly, Mr Archer. Certainly from time
35 to time, the issues were discussed and possible
options for a policy were discussed, but in terms
of actually finally developing the proposal and
putting it before AFAC, I wasn't certainly at AFAC
level in my role in the operations subcommittee
40 were asked to comment. So from that point, I did
have impact at that end - I guess at the beginning
and the end but not necessarily in the middle.

Q. It has been fairly clearly established that
45 you agree with the principles of the document?

A. Yes, I do, sir.

Q. In respect of the document, is it fair to characterise it as a risk management document; is that what it is about?

5 A. I don't know that I would necessarily characterise it in that way. It is certainly a document that is aimed at minimising harm and loss of life to people. In that sense, if that is a risk management, it is certainly a risk management approach.

10 Q. "Risk", I think, is defined as likelihood versus consequences. I think that is the official definition of it.

15 A. That's correct.

Q. In relation to the AFAC documents, it seems the general approach is, given some pre-conditions, it is an acceptable risk if those preconditions are in place for people to stay with their houses because that protects them and they protect their houses?

20 A. Not only that. I think it is also predicated on the fact that it is a lesser risk for people to stay with their homes at the last minute than it is to leave.

25 Q. Those preconditions are set out in the document fairly clearly, "Concepts of defensible space"?

30 A. Yes.

Q. People need to take preparation action in relation to that matter?

35 A. Yes.

Q. Planning in all of those aspects is an important part of the approach of the document.

A. Yes.

40 Q. In relation to the role that a fire authority has, and that would also have an impact on the householders themselves, information and warnings are very important?

45 A. Yes.

Q. If those pre-conditions, if I can put it that way, are not met, or they are not met at an

optimal level, I suggest to you therefore the risk that may attend staying at your house is increased?

A. Increased, yes.

5

Q. In fact, I think the document says on its face that people - page 270 of that document:

10 "People who have not undertaken adequate preparations and who choose not to leave may put their life or other lives at risk by remaining."

A. I'm sorry, would you just --

15 Q. I will say that again:

20 "People who have not undertaken adequate preparations and who choose not to leave may put their life or other lives at risk by remaining."

That's what the document says?

A. That's correct.

25 Q. In respect of that document and in respect of the role played by my client on that day in question, namely the 18th, can I take you to page 162 of your report?

A. Page?

30

Q. Page 162. There is a line that Mr Whybrow took you to yesterday. The third last paragraph, the line commencing:

35 "However, the evidence suggested that this position was not widely known throughout the AFP at the time of the January 2003 fires."

40 That statement is not footnoted. Can you just tell me where it was or from what information or what evidence it was that you - I withdraw that question as for the moment. In relation to that sentence, at what point of time do you say that that held true? You say at the time of the
45 January 2003 fires.

A. Yes, that's my belief.

Q. That went over a two-week period. Are you saying at start or the middle or the end?

A. I am saying as of the 18th, on the Saturday.

5 Q. In respect of that, you say the AFP.
A limited number of them have been called in
evidence in these proceedings and there is
a greater number of statements from officers which
are in the courtbook to which no reference has
10 been made. From what source did you derive that
conclusion that the document was not well known?

A. Perception on the basis of the actions that
were taken by police on the ground and also
initially by Ms Newton. It seemed to me that her
15 actions were premised on not fully understanding
the purpose of the policy or of the suggested
position.

Q. So it is your view that her actions were not
20 consistent with the document; is that what you are
saying?

A. Not entirely consistent.

Q. You say "not entirely". Where does the
25 departure come?

A. I think the fact that she initially, without
question, as I recall it, was entertaining
evacuation of the suburbs and then following
a discussion she had with Mr Murray, I think,
30 where the indication was quite clearly, or
instructions were there was to be no evacuation
without the authorisation of the Fire Brigade,
which is implicit within the policy or within the
position that the Fire Brigade or the fire
35 authority should make the decision in terms of
authorising evacuation.

Q. So, to the extent that she contemplated it at
40 some point of time, doing it without reference to
the Fire Brigade, that was inconsistent with the
policy?

A. Yes.

Q. To the extent that later on, that position was
45 modified to a position where the authority of the
Fire Brigade or a fire combat authority was to be
sought, that was consistent with the policy?

A. Yes. Except can I say, I have concern that
consultation occurred at the last minute on the
ground with a relatively junior officer and was
not necessarily known to those looking at
5 a strategic view of what was occurring.

Q. Sometimes that's the case, isn't it, the
realities of firefighting put people having to
make decisions on the ground?

10 A. Absolutely. But, nevertheless, that needs to
be immediately passed to those who have got the
strategic overview. Because all of a sudden, you
are going to have a flood of people that may not
be known to your senior fire commanders that they
15 have to deal with and can significantly interrupt
their overall fire suppression strategy.

Q. That may well be, but the point I make, and
I think you agree with it, is that sometimes
20 perfection can't be there and decisions have to be
made quickly in light of the reality?

A. Yes, yes, sir.

Q. In respect of the decision that was taken, you
25 describe that at a number of points in your report
as an endorsement of a decision previously made.
You talk in those terms, "endorsement" - the
decision taken by the AFP was endorsed by
something?

30 A. Yes.

Q. Could I read - I don't have a casebook
reference - the interview with Mr Darryl
Thorntwaite of 1 October 2003, at page 24 of that
35 document. This is his account of the conversation
that occurred with Mr Lines:

"Q. So what was the decision there, was the
decision to evacuate, or?

40 "A. I told Chris that we wouldn't do it until
the fire front moved through and we could
re-assess it. And then when the fire front
hit us, eventually I went around and saw
Chris and he said, 'So what do we do now?'
45 and I knew the infrastructure was all
starting to impact upon it, we had lost
electricity, there was power cables down,

there was so many houses burning in the suburb. I really didn't have an appreciation at that time of exactly how deep it had penetrated and I said, 'Chris, just evacuate anyone you can. Just clear Duffy if you can.' And that was more of assessment from what had actually happened than it was as being sort of a cautious thing."

10 That's what he said?

A. Yes.

Q. That's what you characterise as an endorsement?

15 A. Yes.

Q. Would you buy a joint decision?

A. Would I buy a joint decision?

20 Q. Yes.

A. It depends what price you are selling it for. My only concern there is again, I'm not aware, your Honour, as to whether Mr Thornthwaite was fully familiar with the policy. I've no doubt that under the pressure of the time, that in the absence of perhaps knowledge of the strategic issues affecting that fire, that that decision was made. I've no doubt at the time they agreed on it.

30

Q. But it would have been fair enough for Mr Lines to rely on that advice?

A. Absolutely.

35 Q. Could I take you to page 165 of your report? I'm particularly concerned with the third paragraph. It says this:

40 "In my view, the Chief Minister was placed in an invidious position on the question of whether to declare a 'state of emergency', that would not have arisen had the AFP and the ESB adequately addressed the position of the AFAC position paper through the Emergency Management Committee or other appropriate forums."

45

In relation to the last four words, "or other appropriate forums", would that include the SMT?
A. No. Opportunities that may have presented them in a formal or informal sense for senior
5 management of the ESB and senior officers of the AFP involved in Canberra policing to have that discussion and reach agreement as a matter of course well before the incident occurred. In my
10 perusal of the information that was available to me through the minutes of the Emergency Management Committee, I could find no reference where that discussion had occurred and, therefore, fundamental agreement reached before the event.

15 Q. You are saying that on your reading of those minutes, there was no discussion in relation to evacuation procedures in the AFAC document?

A. That's right, and on the basis I formed that
20 view not only on that but on the basis of the discussion that subsequently had to ensue between various officers from the bureau and the police at the time that the declaration was being contemplated. Had that discussion - had those
25 issues been resolved beforehand then it would have been clear cut, or more clear cut, as to what the decision ought to have been, rather than having an argument at the time.

Q. In relation to your contact with the AFP for
30 the purposes of your participation in this inquiry and that preparation of your report, it is, as described in your statement, that for the purposes of gathering information you had contact with a number of investigators that were attached to
35 the Coroner's office?

A. To Operation Parrel, yes.

Q. But you had no direct contact with Mr Murray?

A. No, sir.
40

Q. Ms Newton?

A. No, sir.

Q. Mr Lines?

A. No.
45

Q. Mr Kirby?

A. No.

Q. Mr Wynn?

A. No. I was not an investigator, Mr Archer.

5

Q. Can I take you to page 162 of your report under the heading "The police role in the evacuations".

A. Yes.

10

Q. The first paragraph under that subheading, "The conduct of the AFP during the fires", says this:

15

"In general terms, in my opinion, the AFP conducted their primary obligations in a responsible and cooperative manner, having regard to the dearth of pre-impact information and warnings provided to both the police and the community."

20

A. Yes.

Q. Is that a conclusion to which you adhere?

A. Yes.

25

Q. Could I also draw your attention to a paragraph at page 120 of your report, the paragraph beginning "Consistent":

30

"Consistent with the overall failure of the SMT to recognise the impending threat to substantial assets in the ACT and the urban area of Canberra, I believe that the AFP was not adequately informed. The Chief Police Officer had been briefed on the extent of the fires and actions being taken in a meeting on 16 January. At this time, he was not provided with any information or assessment that would have caused him to consider that there was a threat to the suburbs of Canberra. Other than the appointment of a Liaison Officer and activities consistent with the position of the fires at that time, the police took no further action. Given the circumstances and the lack of a more relevant assessment, I would not expect any other reaction."

35

40

45

Is that a conclusion to which you now adhere?

A. Yes, sir.

5 Q. I think you have had experience in not so much
managing - perhaps you did manage in that way -
mock emergency events to test the readiness of
agencies in jurisdictions outside of Victoria?

A. Yes, I have.

10 Q. For example, I think you were involved in
Operation Minotaur in the vicinity of Canberra?

A. Yes.

15 Q. There may have been others that you mentioned
to me the other day that you were involved with?

A. Counter-terrorism exercises both here, Sydney
and West Perth.

20 Q. In relation to an event, whether it be a fire
or a terrorist event, obviously there is going to
be a lead agency which is going to have the
greatest degree of expertise in that particular
area?

A. Yes.

25

Q. Other agencies are going to play a support
role when dealing with that particular crisis?

A. That's correct.

30 Q. In relation to a fire, the obvious proposition
is that the fire combat authority has the lead
role?

A. Yes.

35 Q. Other agencies, such as the police, the
Ambulance Service and so on, play a support role?

A. Yes.

40 Q. And will do things as directed by the lead
combat authority?

A. If we are talking about - I just need to
differentiate between the actual operations, the
combat of the incident compared to the recovery.
I mean, they are two phases and there will be

45 different - normally, different lead agencies,
albeit that those operations might be running in
parallel. But they are certainly two different

lead agencies. But for all intents and purposes, for the suppression activity of the fire, actually fighting the fire, yes, there would be a lead agency, which normally would be the fire service.

5

Q. But in relation to the events that go to the support of that role, fighting the fire, the police, for example, might be tasked with closing some roads to stop egress and access to those particular areas?

10

A. Yes.

Q. In relation to those decisions, they will be told by the lead agency that that's a necessary precondition for their effective combat operations on a particular day?

15

A. Yes.

Q. In this particular event, the SMT took the lead role in determining planning matters; do you agree with that?

20

A. Yes.

Q. And it seems, particularly towards the end, there were a significant number of agencies that were coming along to SMT meetings to hear information and to get direction in relation to what they should be doing.

25

A. Yes. Not the only source of direction, though, I venture to say.

30

Q. But in relation to significant strategic issues they were going to the SMT to get direction in relation to what to do?

35

A. I can't comment on that. I don't know whether that was the only - in fact, whether they were being given direction there, whether those planning meetings were information, but certainly there were opportunities and avenues where the police were given, I suspect, appropriate advice as to the actions that they should take. But how that occurred, for the -- the mechanism for that physically occurring, I don't know.

40

Q. It was open for any of the agencies to go to people in other agencies to talk to them and get advice in relation to what they should be doing?

45

A. I would have thought so.

Q. In fact, in relation to the AFP, particularly on the 17th and 18th, there is evidence of them
5 going to the ACT Fire Brigade, Mr Prince, for example, to get advice in relation to what action they should be taking?

A. Yes.

10 Q. That is, independent of any decision-making within the SMT, they were going behind that to other people to get advice as to what should be done?

A. Yes.

15

Q. In relation to the SMT process, it seems to have been a process of decision-making by - to say committee is perhaps being unfair, but there was a large number of people involved in talking over
20 information, and the minutes seem to suggest at the end of it some strategic direction or plan was agreed for that day or following days?

A. It's probably a reasonable assessment, not necessarily the way it should work.

25

Q. No, I'm not saying it is good or bad. I'm just saying that's the way it did work.

A. Yes.

30 Q. In relation to the messages that agencies might take from the SMT, they had to make, I suggest to you, some judgments about what message was actually coming out of the SMT by looking at the minutes, going to senior people,
35 listening to what senior people said at the meeting or hearing the decisions that were actually arrived at and were entitled, I suggest to you, to rely on those decisions as a basis for their actions on that day or following days?

40 A. I can't make comment on that because I didn't analyse those actions to that extent, but if you are suggesting that was their sources of information, I've got no reason to disagree with that, although again it is not an appropriate way
45 in which to manage the transfer of information or presentation of directions to other agencies, if that is what was occurring.

Q. Is that your impression of what was occurring?
A. To some extent, yes. But I would not be - I
am not in a position to make comment on it.
I certainly wouldn't be saying there weren't other
5 forums or other conversations and more specific
directions given. I'm not able to answer that.

Q. From what I have said in relation to the 18th,
for example, in addition to what might have been
10 discussed at the SMT, there was a process at play
on that day, the 17th and 18th, whereby, for
example, the AFP went to the ACT Fire Brigade
outside of the context of the SMT to get some
advice in relation to what they should be doing?
15 A. Yes.

Q. Therefore, they synthesised information from
various sources to develop a plan?
A. The police?
20 Q. Yes.
A. Yes.

Q. In relation to what they might take out of the
25 SMT process, I take it that it should be something
more sophisticated than looking at the colour of
a person's suit or whether or not they have black
marks on their face, suggesting they have been out
in the field, or what you know about their CV.
30 That is not going to be the basis on which you
would draw or make your decisions about what
advice or what information you are going to act
on?
A. No.
35

Q. It has to be something a bit more
sophisticated than that?
A. Yes.

Q. I suggest to you that there are some
operational complications or even perhaps dangers
that may arise that are from too readily adopting
the position taken by one player in such a forum
rather than waiting for the outcome of the meeting
45 to be known, that to simply act on the view of one
person can create complications?
A. Yes.

Q. That is because the SMT might ultimately come to one view, and if you simply adopt the view taken by the person in the nice suit, then you might be acting at variance from what the SMT
5 might agree?

A. Yes.

Q. As far as strategic issues are concerned, it is, I suggest to you, important that leaders of
10 organisations can talk to each other in relation to those strategic issues openly, not to necessarily second-guess an SMT process but, for example, to ensure they are reading off the same sheet?

15 A. As long as the two leaders are the appropriate people to be having those discussions.

Q. So far as the SMT process in other jurisdictions is concerned - I think the SMT, for
20 example, exists in Victoria or existed in Victoria as a part of the AIIMS-ICS structure; is that right?

A. No.

25 Q. Not at all?

A. I think, your Honour, as I have outlined in my report, in most jurisdictions there will be a team of people in the corporate headquarters that have similar roles to, or reflect the roles of the
30 people who are in the IMT managing the fire. That's for the purpose of - if the logistics man in the field wants something and he has a contact who is, a logistics person in the head office to obtain resources or in terms of the operations
35 people to get additional support, et cetera, but the Incident Management Team who have the responsibility for the fire have that responsibility and accountability. It is not second-guessed or overridden, necessarily, unless
40 on key strategic matters by anybody else.

Q. Those key strategic matters that you referred to last in that reply, are they matters that are appropriately within the province of the SMT?

45 A. Yes, and I guess I'm really limiting them to such matters as policy and determination of the priority allocation of resources. If you have got

finite resources in a jurisdiction then obviously the top level of the organisation has to be the ones that are finally determining the allocation of those resources. Whilst an Incident Management
5 Team may say it wants A, B, C and D, it goes to the SMT or equivalent, and ask for those resources. And whether it gets them or not is a matter for the distribution of priorities. But the IMT is the one that is running the fire.

10

Q. In relation to a command and control issue, if a direction is given in relation to an evacuation by somebody in an elite combat authority, that direction is not to be second-guessed by people
15 who are tasked with implementation of that direction?

A. No, sir. By the same token, before that direction was given, I suggest there was a degree of consultation, saying, "Look, we think an
20 evacuation should occur", so one is talking to the senior police officer who is going to implement it, "What is your view of the world in terms of resources? Have you got the resources? Have you got the people? Where are you going to send them
25 to?" It is no good saying, "Evacuate", without considering the implications of that. Under normal circumstances, I believe there would be some discussion before the decision was made to say, "Yes, evacuate."

30

Q. That discussion having taken place and everybody in agreement, it is a desirable thing to do. It is not then for those who may be tasked with the implementation of the decision to
35 second-guess it?

A. No.

Q. Can I take you to page 163?

40 THE CORONER: Mr Archer, I note the time.

MR ARCHER: This will be the very last matter.

45 Q. The paragraph immediately above "Future incidents":

"The evacuation of people during a wildfire

is a contentious issue for police, the fire services and the community. The actions of the AFP in seeking to evacuate people was, as I understand the evidence, predicated on
5 a lack of confidence concerning the level of knowledge existing within the community on the steps necessary to protect themselves and their property. The fact that an Officer of the ACT [Fire Brigade] endorsed the
10 evacuation adds weight to the decision of the police. In these circumstances, despite the studies concerning the perils of late evacuation, it is difficult to criticise police for the actions that they took on
15 18 January."

Is that a conclusion to which you adhere?
A. Yes.

20 MR ARCHER: Yes, thank you.

THE CORONER: We will take the morning adjournment.

25 SHORT ADJOURNMENT [11.27am]

RESUMED [11.52am]

30 THE CORONER: Mr Archer, had you finished your cross-examination?

MR ARCHER: Yes, I had.

35 <CROSS-EXAMINATION BY MR McCARTHY

MR McCARTHY: Q. Can I take you to page 36 of your report, please. Do you see at about three-quarters of down the page a paragraph that begins:

40 "Key personnel from NSW National Parks and Wildlife were well aware of the conditions..."

45 Do you see that paragraph?
A. Yes.

Q. You go on to say that:

5 "Also the New South Wales Rural Fire Service
certainly understood the implications that
the above factors presented in relation to
the 2002/03 fire season as did key
operational personnel from the ACT Bushfire
Service."

A. Yes.

10

Q. Over the following number of dot points, if
you like, you set out various evidence which makes
plain that the Bushfire Service appreciated the
risks that they were exposed to coming into that
bushfire season.

15

A. Yes, sir.

Q. Then, over on page 38 of your report -
Mr Watts took you to this earlier, I think - you
stated:

20

"In my opinion, had the ESB Risk Management
Unit undertaken even a cursory assessment ie
risk analysis, it would have been clearly
evident that the likelihood of significant
fir or fires was almost certain.

25

Do you see that?

A. Yes.

30

Q. That is an opinion that you have had since
mid-2003; isn't it?

A. It's an opinion I formed following --

35

Q. I withdraw that. It is an opinion that you
had within a few weeks of your being contracted to
provide expert evidence in this matter?

A. No.

40

Q. Could Mr Roche please be shown exhibit 0105.
If it is not ready to hand, I have a copy. It is
a minute that Mr Roche wrote to counsel assisting
on 18 September 2003. If you look at paragraph 6
of that minute --

45

A. Yes.

Q. -- it states:

"... fires of 2001 and the observations by
ESB and Rural Fire Service since that
5 occurrence should have served to further
consolidate the outcomes of even a cursory
risk assessment leading up to January 2003
the occurrence of major or even catastrophic
wild fires was highly likely."

10 A. Yes.

Q. That is essentially the same opinion you
expressed there that you express in your report,
isn't it?

15 A. Yes, it is.

Q. Why did you tell the Coroner two questions ago
that you didn't have that opinion back in
September 2003?

20 A. I formed the view that that was the case and
that view may well have changed once I --

Q. Mr Roche, if you let me finish the question --

25 THE CORONER: Just let Mr Roche finish.

THE WITNESS: Thank you, your Honour. I formed
the view earlier in the piece that there were
particular issues as explained there, and I hadn't
30 consolidated that view. I hadn't started writing
my report, nor would I until I had considered
some - I don't know how many pages of evidence
there was in the brief, some 7,000 or 8,000 pages
or more and 7,000 pages of transcript. Once I had
35 that then I had no difficulty in concurring with
that initial view formed. People form initial
views all the time and may not commit it to
writing in the final analysis until there is some
corroboration based on the evidence that that was
40 in fact the case.

MR McCARTHY: Q. I will repeat my question.
I asked you earlier whether or not the opinion
that you had expressed there on page 38 was an
45 opinion that you had had within a few weeks of
being contracted to provide expert advice, and you
said no. You then acknowledge that paragraph 6

reflects essentially the same things that are stated in your report as are put there back to counsel assisting in writing in September 2003.

A. That's correct.

5

Q. My question was: Why did you tell the Coroner that you did not have the opinion then when the fact is otherwise?

A. I've just explained.

10

Q. Mr Roche, you have given an explanation as to why it is that you subsequently held the same view. I'm asking you why did you tell the Coroner that you did not have the same view back in September 2003?

15

A. I just explained that.

Q. With respect, you did not. You gave an explanation as to why it is that this subsequent evidence concurred with that opinion. My question is: Why did you tell the Coroner that you did not have that opinion in September 2003?

20

A. I have no further comment to make on that statement.

25

Q. Does that mean you are not answering the question?

A. I have explained why and the circumstances. I don't intend to explain any further.

30

MR MCCARTHY: I press the question, your Honour.

MR LASRY: Your Honour, in my submission, the witness has explained the difference between what he described as a provisional view and a final view. This is just becoming an argument between the witness and counsel. His position is that he has explained it. Mr McCarthy wants to debate it with him. That isn't really assisting you, with respect. You can make your own assessment of his explanation.

35

40

THE CORONER: I don't think anything can be gained by pressing the point.

45

MR MCCARTHY: There is a significant point here. To explain why it is that he held the same opinion

in his report that he held in September 2003 is one thing. To say that he didn't have that opinion in September 2003 on his oath is quite another.

5

THE CORONER: Is there something you want to put to Mr Roche as to why --

MR McCARTHY: I have questioned him several times.

10

THE CORONER: Is there some position that you feel he has adopted that he shouldn't have adopted? Is there something you want to put to him as to why he has taken that view? I can't understand why you are pressing it either, I must admit.

15

MR McCARTHY: The point is, your Honour, that Mr Roche has demonstrated in exhibit 0105 that he has had an opinion about this from before any of the evidence was before him. He chose to tell your Honour that that was not the case. In my submission, I am entitled to explore why it is that he chose to answer a question contrary to the fact.

20

THE CORONER: Is there anything else you want to add, Mr Roche?

A. No, your Honour.

25

Q. I think you understand where Mr McCarthy is trying to get to.

A. Yes, your Honour.

30

Q. Is there anything more you want to say?

35

A. No, your Honour.

MR McCARTHY: Am I left with the fact that there is no explanation?

40

THE CORONER: Presumably.

MR McCARTHY: Q. Is that your position, Mr Roche? You don't have an explanation as to why you chose to answer the way you did?

45

A. I have made my explanation, Mr McCarthy.

MR McCARTHY: I don't press it.

Q. Mr Roche, in the paragraph above, you there assert --

THE CORONER: Of that exhibit?

5

MR MCCARTHY: Sorry, I am on page 38 of your report. You there assert - I am reading the paragraph beginning "Despite this recognition". Do you see that paragraph.

10 A. Yes, I do.

Q. You assert that despite having all of the knowledge listed on the previous pages, 36 and 37: "Despite this recognition of the expected severity of the 2002/03 fire season, the evidence suggests that little if anything was done in the lead-up to the season over and above normal pre-season preparations."

20 Is that right?

A. Yes. I think I have subsequently accepted --

Q. Bear with me and listen to my questions, please --

25 A. -- on the additional evidence that was put before me that I didn't have at the time that needs to be modified. I think I made that clear earlier on under cross-examination.

30 Q. Mr Roche, if you could hear my question out, that is the position you stated in your report, isn't it?

A. That's correct.

35 Q. You say in the paragraph that the evidence suggests that little if anything was done over and above normal pre-season preparations. That is what you state, isn't it?

A. That's what I stated at the time, yes.

40

Q. You then on at page 39 to give examples of the action that should have occurred?

A. That's correct.

45 Q. These are examples of the things that you say

that should have been done but weren't done in light of the expected severity of the season?

A. They are some of the things that could have been done, yes.

5

Q. That should have occurred and that you say were not done in light of the severe season to be expected?

A. On the evidence available to me at the time, that's correct.

10

Q. When you say on the evidence available at the time, that's at the time you wrote your report?

A. That's correct.

15

Q. And you stand by that?

A. Yes, I do.

Q. Let us look at number 1. You say here that what should have occurred, and it didn't occur, was concentrated initial and ongoing community education and awareness campaigns; is that right?

20

A. Yes.

Q. In your evidence, you have acknowledged that in recognition of the approaching severe fire season, members of ESB went out to Chauvel Circuit and gave a face-to-face community briefing with people in that area of Chapman?

25

A. That's correct.

30

Q. You also gave evidence that that was a good example of the kind of thing that should be done?

A. Yes, that's correct.

35

Q. How do you say that these things should have occurred and weren't done when that is an example of something that was done?

A. Unfortunately, that was the only example of that nature that was done, and I believe was insufficient.

40

Q. Mr Roche, just bear with my questions, please.

You have told the Court that these things should have occurred and were not done; correct?

45

A. That's right.

Q. Now I've taken you to an example of something that did occur, was done, was illustrative of the kind of thing that you think should have occurred; agreed?

5 A. Yes.

Q. Therefore, it is not --

A. I don't - sorry, go on, sir.

10 Q. It must follow that steps were taken of the kind that you say were not done?

A. It must follow, Mr McCarthy, that one visit to one location is not what I consider to be a concentrated initial and ongoing community awareness campaign.

15 Q. It would be more accurate therefore, would it not, to say that is the case, namely, things were done but, in your opinion, they were not sufficient?

20 A. And I have mentioned in my report later on that visit to that location, Mr McCarthy.

Q. Mr Roche --

25 A. I have acknowledged that it occurred.

Q. Mr Roche, I am simply putting to you that where you assert these things were not done, it is contradictory in fact to say that, when things were done, even though if you didn't think they were good enough?

30 A. I don't agree. "Concentrated" is the opening word in that paragraph. A concentrated campaign I don't believe occurred.

35 Q. Mr Roche, that's an illustration of something. I am putting to you that things were done; it is just that you didn't think they were good enough; is that fair?

40 A. I think that's what I have said there. "Concentrated".

Q. You would agree that things were done but you don't think were good enough?

45 A. I have already acknowledged that.

Q. Mr Phillip Walker took you to some documents

regarding some other steps that were taken.
I hand you a couple of volumes. These are the two
volumes that were prepared by GSO that you have
seen earlier. You have seen one of them. You
5 might like to look at other one.

THE CORONER: By whom were these prepared?

MR McCARTHY: These were the documents prepared by
10 the Government Solicitor's Office and earlier
provided to counsel assisting.

THE CORONER: These are the documents you
15 presented last week?

MR McCARTHY: Indeed.

THE WITNESS: I didn't have these documents. When
I prepared this report, they weren't known to me
20 nor was the content known to me.

MR McCARTHY: Q. Could you turn to tab 84,
please. If you look through, this is headed "An
important bushfire message", specifically to
25 a householder in 12 Wattle Street, Lynham; do you
see that?

A. Under tab 86?

Q. 84.
30 A. Not in my book.

Q. I am sorry, Mr Roche. My understanding is
that they were tabbed the same.
A. There is a letter which I was cross-examined
35 on and spoke about yesterday which is under
tab 86.

Q. And the following is "An important bushfire
safety message"?

40 A. Yes, that is correct.

THE CORONER: Could I ask, that letter under 86 is
sent to somebody in Lynham. I haven't seen these.
It is a bit of a mystery to me.
45

MR McCARTHY: I am sorry. I had understood that
these were already in the brief. The document

itself is [ESB.GSO.0005.0269].

THE CORONER: What is the date of that?

5 MR MCCARTHY: There was a signed copy on
17 January 2002, signed by Mr Wood and Mr Quinlan,
Minister of Emergency Services and Minister for
Urban Services - the other way around.

10 Q. That was a document that was available and in
the brief before you wrote your report, wasn't it?
A. I don't know, sir.

Q. Just cast past, if you wouldn't mind, the
15 following tabs. You would agree with me that they
set out various information provided to the
residents of Canberra about preparing for
bushfire?

A. Tab 87 is a document with limited circulation,
20 I think, to half a dozen people. Tab 88 is
a document that was, I assume from the heading,
available to only helpline staff and contractors
in the ACT.

25 Q. The following document, "To the Householder,
Our bushland neighbour"?

A. In my book, tab 87 is headed "Being good
neighbours in the bush capital" and attended
obviously some sort of presentation of some nature
30 given to, as I say, half a dozen people.

Q. The following one?

A. Is headed "Bushfire fuel management in the
ACT. Information for helpline staff and
35 contractors". I would assume not generally
available to the public.

Q. It sets out various information about hazard
reduction?

40 A. Yes, it does.

Q. And the following document is headed "To the
Householder, Our bush land neighbour"?

A. Yes.

45

Q. It offers "An invitation to work with us to
manage bushfire fuels at Gossan Hill Nature

Reserve"?

A. Yes.

5 Q. It sets out maps and diagrams and all the work that is going to be done to Gossan Hill?

A. Yes.

Q. The following does the same thing for Aranda, bushland that became a nature park?

10 A. Yes.

Q. The following one does the same for the MacArthur Hill area?

A. Yes.

15

Q. And the next one for Cooleman Ridge?

A. Yes.

Q. And the last one for the Waniassa Hill area?

20 A. Yes.

Q. At the following tab is a document headed "Bushfire protection works moves to Bruce"?

A. Yes.

25

Q. It sets out various details that were going to occur for hazard reduction in that area?

A. Yes.

30 THE CORONER: What are dates for these?

MR MCCARTHY: The last one is dated 31 January 2002. It has a code number [AFP.GSO.0084.0463].

35

Q. Mr Roche, would you accept from me that irrespective of whether you think those steps were good enough, they do constitute community education awareness campaigns about the bushfire risk?

40

A. No, I couldn't.

Q. How do you characterise them?

45 A. The [AFP.GSO.0084.0463] is purely, as I would read it quickly, information for that community on what bushfire prevention works are being done in their area, purely for information. The same for

all those other documents that you read out for Waniassa Hills, Aranda Bushland, et cetera. In my mind, they convey a clear bushfire message aimed at individuals.

5

Q. They do, don't they?

A. They are just for information. What the agencies are obviously doing in those areas.

10 Q. Are you seriously suggesting a document headed in bold, capital letters "To the Householder, Our bushland neighbour, an invitation to work with us to manage bushfire fuels" is simply an information document? Is that really what you are saying?

15 A. The majority of it is. It says "Environment ACT will commence fire hazard reduction work near your home", et cetera. Unfortunately, my view is that people will read that and they won't go much further. Certainly it goes on in an attempt to
20 enlist their cooperation. In my view, it is not directed enough to personalise the risk I have talked about.

Q. I understand your point, Mr Roche.

25 I understand that you do not think it was good enough. I am simply putting to you that irrespective of whether you think it was poor, good or otherwise, it did have the character of informing people about the risk of bushfire, badly
30 or otherwise.

MR ARCHER: What is date of this particular document? It is a bit difficult to follow.

35 MR McCARTHY: January 2002.

THE WITNESS: I don't know I would agree with that characterisation.

40 MR McCARTHY: Q. They are not telling them that there are bananas for sale, are they?

A. Nor apples or oranges.

Q. It is informing them about "An invitation to
45 work with us to manage bushfires fuels", isn't it?

A. Yes.

Q. It is, therefore, giving them information about the risk of bushfire, isn't it; badly or otherwise?

A. It's asking them to clean up their homes.

5

Q. Mr Roche --

A. I don't know - I'm trying to read it. And bearing in mind I have not seen this before, your Honour, I am trying to read this and see where it talks about the risk to major bushfires in the ACT. If I could have a minute to read it. I haven't - as I said, I haven't seen this document before.

15 THE CORONER: Just take a moment to read it then, Mr Roche.

THE WITNESS: Thank you. Yes, Mr McCarthy, I agree it does highlight a bushfire risk.

20

MR MCCARTHY: Q. Thank you. Can you come back to tab 86? It is a document headed "An important bushfire safety message". It is on the screen at the moment, I believe.

25 A. Yes.

Q. If you could read the first paragraph it says:

"Bushfires that recently occur in the ACT serve as a reminder to all of us of the destructive potential of bushfires to life, property and the biodiversity of our environment. With so many of us in the ACT living near bushland areas it is important that as a community we work together to protect our urban, natural and managed environments. This year with the bushfire season still in progress and the continuing extremely dry weather conditions we need to be particularly vigilant."

That is a bushfire message, isn't it?

A. Yes, it is, sir.

45 Q. You say you were not aware of any of these documents at the time you wrote your report?

A. Not that one, no.

Q. Mr Roche, if you weren't even aware of the documents that were in existence regarding bushfire warnings to the public, on what basis did you say these things were not done?

5 A. I was given a group of documents that I understood to be the extent of the material distributed by the ESB and in my view it was not sufficient. The fact that these weren't in there I can't answer that, Mr McCarthy.

10

Q. This document was in there - it is headed [ESB.GSO.0005.0269, and Mr Castle was taken to it, as best as I can recall in his evidence.

15 A. I don't recall that evidence of Mr Castle, but all I am saying, in the bunch of material that I - that was given to me, as to the extent of the material used by the ESB, I don't recall that or the following documents. Certainly this "Being good neighbours in the bush capital" I have not
20 seen. I don't recall the bushfire fuel management one in the ACT.

Q. If you don't know of these things, why do you assert that the things were not done?

25 A. On the balance of the evidence that was provided to me and which I considered was the extent of the material that was available, then that's the view I formed.

30 Q. Mr Roche, it was in evidence. Why did you not pay any attention to that in asserting in your report --

35 THE CORONER: Mr McCarthy, all Mr Roche is saying is in the pile of papers he was provided with, he didn't receive that information.

MR MCCARTHY: I understand that, your Honour.

40 Q. The question I am asking is: Would it not have been better to say just that, namely, "On the material that I have been provided, I have not seen anything to establish that", et cetera? Would that not have been a better way to put it.

45 A. That was one way it could have been put.

Q. Why did you choose, therefore, to assert that

it hadn't been done?

A. What I think I've asserted, it hadn't been done. What I said, "the assigned level of risk would warrant immediate treatment to ameliorate
5 the level of risk and to ensure both the organisation and the community were well informed and prepared. Examples of the action that should have occurred would have included" - I haven't said it wasn't done. On the balance of the
10 evidence that was available to me, these are the things that I considered ought to have been done, and on the balance of evidence, I didn't consider what was done to be sufficient.

15 Q. Mr Roche, you gave evidence right at the beginning of my cross-examination to say your report must be read and understood that these are things that should have occurred and didn't occur; correct?

20 A. Without looking at the transcript, I'll take your word for it.

Q. Would you agree with me that things were done, now that I have brought them to your attention, it
25 is just --

A. I have said earlier on this morning that on the available evidence, particularly under Mr Watts' cross-examination, that there were things done that I wasn't aware of. I have
30 already indicated with this knowledge now I am aware that additional things occurred.

Q. Mr Roche, that makes the very first point in your report wrong, doesn't it?

35 A. On the evidence that was available to me at the time? My view, no, it doesn't. Subsequently, yes, it does.

Q. The fairer way to put it is things were done, it is just that you didn't think they were good
40 enough?

A. At the time, yes.

Q. Let us look at the next one, Mr Roche. You
45 say there:

"Action that should have occurred that wasn't

done is deliberate and specific advice to response and support agencies, governments and utilities."

5 Agreed?

A. On the evidence available to me, that's the case, yes.

10 Q. Mr Roche, one of the documents on which you relied and to which you referred in establishing that the ACT Bushfire Service was well aware of what they were facing was the Phoenix Imperative; correct?

A. Yes.

15

Q. The substance of your second point is that we should have done more or should have given advice to response and support agencies about that information. That's the substance of it, isn't it?

20

A. That, and other information.

25 Q. The Phoenix Imperative sets out the kind of information that you say should have been distributed; agreed?

A. I would have to refer back to the Phoenix Imperative.

30 Q. It is a document that, you write in your own report on page 36, sets out the nature of the risk that the Territory faced, doesn't it?

A. I have included a very, very small extract from that paper, yes.

35 Q. I understand that. I am simply saying it is a piece of evidence to which you refer in your own report to demonstrate the awareness of the risk that they faced; agreed?

A. Yes.

40

Q. You are saying in the second square point that this is the information that ought to be shared around; agreed?

A. Yes.

45

Q. Look at tab 20 in your bundle of materials. At that tab do you have a document headed

"Bushfire Council Project Proposal"?

A. No. I've got "Notes from meeting of 20 June ACT Department of Urban Services and Emergency Services Bureau".

5

Q. Just bear with me, Mr Roche. Can I give you a set that follows the numbering that I have. At tab 20, you have a document headed "Bushfire Council Project Proposal"?

10 A. No. I have a document "Notes of meeting of 20 June ACT Department of Urban Services and Emergency Services Bureau".

15 Q. Perhaps the confusion is which tab we are talking about. The tab number is in the front and the document is behind the tab.

A. Unusual way, but, yes, I have got it now.

20 Q. You do have the tab and the document. It is headed "Bushfire Council Project Proposal"?

A. Yes.

Q. It has a barcode [AFP.GSO.0026.00] - I don't have the last number.

25 A. Yes, I have.

Q. That document, in the preamble to it, states:

30 "The idea followed the recent execution to Namadgi National Park. On the day Rick gave us a hand out and discussed what he called the Phoenix Imperative, some thoughts on the Namadji fire age bottleneck."

A. Yes.

35

Q. He pointed out:

40 "In the recent history Namadgi rarely carried fire and when it did they were often very large wildfires, over 20,000 hectares. The park is in a vicious cycle. By keeping fire out most of the time we are endorsing the occasional very large wildfire."

45 Agreed?

A. Yes.

Q. This is a document that was put to members of the Bushfire Council; do you accept that?
A. I assume so by the heading. I don't know.

5 Q. And Peter Capling is the author of this document. As I understand it, he is from CSIRO.
A. I don't know, sir.

10 Q. Would you accept, therefore, that the Phoenix Imperative was circulated to various agencies?
A. I don't know that.

15 Q. Would you accept from that document it was certainly given to the Bushfire Council?
A. Yes, I would.

20 Q. I put to you, Mr Roche, therefore, that the advice of the Phoenix Imperative which sets out the kinds of things that you say should be disseminated was disseminated to the Bushfire Council?
A. Yes.

25 Q. So why do you say on page 39 that the dissemination of information didn't occur? That's an example of the information being disseminated.
A. I don't class the Bushfire Council as a response or support agency or a government utility.

30 Q. So there is an exception to your paragraph; is that what you are saying?
A. I don't class them - they don't fall into that characterisation of what I term "response and support agencies, government and utilities".

35 The Bushfire Council, which as I understand it, is part of the Emergency Services Bureau.

40 Q. So you don't regard them as somebody that needed to be told?
A. I did say that.

45 Q. Come back to page 37 of your report. You see the second thing you refer to as evidencing an awareness of the severity of the oncoming fire season is the minutes of the Land Managers Fire Liaison Group dated 15 August 2002.

A. Yes.

Q. A copy of that document to which you have referred in your own report you will find behind
5 tab 22.

A. Yes.

Q. Present at that meeting was Neil Cooper from
10 ACT Forests, Steve Amos from Canberra Urban Parks
and Places, Bill Woodruff from Parks, Tony Graham
from ESB, Brian Murphy from Citiscape, Peter
Lucas-Smith from ESB, Wayne Shaw from the Fire
Brigade and Anna Farnham from Parks; do you agree?

15 A. Yes.

THE CORONER: What is the date of that meeting?

MR MCCARTHY: 15 August 2002. It is in the brief
but unfortunately, my copy doesn't have a barcode
20 number. I can assist - the number is referenced
in Mr Roche's report [AUS.AFP.0400.0110].

Q. Mr Roche, would you accept that those various
25 people do represent support agencies, governments
and utilities?

A. No, I don't.

Q. They are not people whom you think should be
told either?

30 A. That's not what I said.

Q. Mr Roche, the Bushfire Service draws many of
its personnel from Parks and Forests, does it not?

35 A. That's correct.

Q. The purpose of telling those agencies is for
the purpose of informing them about the risks that
they face in that bushfire season; correct?

40 A. Yes.

Q. So when you talk about response and support
agencies, those are the very agencies that need to
be told, are they not?

45 A. Response agencies, yes.

Q. So why did you say a minute ago that they are
not?

- A. I certainly accept that they are response agencies, should have been advised and were advised, but I have seen no evidence that support agencies, governments and utilities were advised.
- 5
- Q. Mr Roche, you rely upon those minutes to demonstrate an awareness of the risk; agreed?
- A. Yes.
- 10
- Q. And the very document that you rely upon demonstrates that response agencies are being informed about the risk?
- A. Yes.
- 15
- Q. So, why do you say, therefore, when that document proves the very point, that these things didn't occur?
- A. I'd accept that the statement in relation to response is not right, but it is in relation to supporting agencies, governments and utilities.
- 20
- Q. Mr Roche, you have also, back in your own document, referred to the Namadgi burn scenario in November 2002.
- 25
- A. Yes.
- Q. Which the land management agencies and ESB conducted for the very purpose of preparing for this?
- 30
- A. Yes.
- Q. You would accept also, therefore, that is more evidence of the fact that the response agencies were - the concern about the bushfire season was brought to the attention of the response agencies?
- 35
- A. Yes.
- Q. Mr Roche, what do you characterise as "support agencies"?
- 40
- A. Utilities, ACTEW, et cetera. I talk about those agencies responsible for recovery, for looking after personal well-being of the community.
- 45
- Q. ACTEW AGL as a utility are a support agency?
- A. Yes.

Q. Look behind tab 21. I was referring you to a letter dated 12 August 2002 from Maxine Cooper from Environment ACT, the Executive Director, to Mr Wayne Harris, General Manager, Water and Sewerage ACTEW AGL.

5 A. Yes.

Q. The opening paragraph says:

10 "In June this year you and Dr Alan Wade from ACTEW Ecowise attended a field visit to the Cotter Catchment area within the Namadgi National Park with two members of my staff to discuss the potential water supply
15 implications of a catastrophic fire event within the catchment area."

A. Yes.

Q. It goes on to deal with the things that they should do, "and the consequences of such an event would pose to your corporation's ability to supply high quality water"?

20 A. Yes.

Q. That's an illustration, is it not, of providing advice to the support agencies and utilities that you have identified?

A. Not specifically. And the other thing I note - I was not aware of this letter, your Honour -- I note on the top of it it has got "Not in the brief".

Q. That's quite right. My question is, it's an illustration of the kind of information that you say should be provided to the utilities that you identify?

35 A. Could I read it, sir?

Q. Certainly. I have read the passage.

40 A. I would like to read the whole letter.

THE CORONER: And that is by Maxine Cooper.

MR McCARTHY: Dated 12 August 2002 to ACTEW AGL.

45 THE WITNESS: Yes, I have read it, thank you.

MR McCARTHY: You accept it constitutes advice to the support agencies and utilities that you have identified.

5 A. No, I don't. I think it is more a letter about seeking support, financial support for the bushfire CRC, as I read it - certainly talks about an inspection and the purpose of that inspection to look at the impact on the catchment area. It doesn't talk about the conditions that prevailed.
10 And I don't know what was discussed during that visit, so I don't necessarily agree with your interpretation.

Q. Notwithstanding what Ms Cooper --

15 A. Sorry.

Q. You are not prepared to accept, despite Ms Cooper writing to the fact that they met "to discuss the potential water supply implications of a catastrophic fire event within the catchment area"?

20 A. Of a catastrophic fire event. Not that it was likely to occur this year or next year. I would have thought that was a part of good planning that should occur in any year, not just as a result.
25 There is no mention in there of the conditions that were prevailing. There is no mention in there of perhaps additional things that need to be done or is a request for money.

30 Q. Mr Roche, were you aware of that letter at the time?

A. No, I wasn't.

35 Q. Why do you assert that these things were not done when you are not aware of what was done?

A. I don't know whether you were here, Mr McCarthy, at some stage of my evidence, I explained to her Honour as to the process which
40 I - whether like it or not - had to undertake. That was to write a report on the basis of the evidence that was available to me at the time. That's what I did.

45 Q. I understand that. My question was --

A. This material that you are presenting to me is new material, and it says quite clearly on the top

it was not in the brief, Mr McCarthy. To suggest that I could have taken this into account, when I have never seen it before and it wasn't in the brief, I'm afraid I couldn't do that.

5

Q. I understand that, Mr Roche. What I am simply asking you is: Would it not have been better - (a) you had search options, one you could have asked for any of this information; is that so?

10 A. I could have asked, yes -- yes, I could have.

Q. You certainly asked a lot of other information be provided, didn't you?

A. Yes.

15

Q. Why didn't you ask for this kind of information to be provided?

A. I broadly asked for all information that I believe was relevant, and if it was part of the brief then I generally reviewed it. If it wasn't in the brief, having made the request for information that was forming a part of the brief and might inform me and people knew what my brief was, then I fail to understand what else I could have done.

25

Q. What you could have done, I suggest, before you write a report asserting that things were not done, to ascertain and ask the specific question of whether or not there is anything to demonstrate that these things have been done?

30

A. I could have done that, your Honour, in relation to every single step I took. That wasn't my brief. I wasn't an investigator. I couldn't go out and interview people. That wasn't a part of the process that I was able to undertake.

35

Q. I accept that. My question therefore is: If you do not have this information and you choose not to ask for it, why do you then go ahead and make an assertion in your report that it wasn't done when the fact was otherwise?

40

A. I would have thought that if it was important enough, knowing the breadth and the scope of this inquiry, that it would have been in there.

45

Q. Mr Roche, we are not responsible for putting

the brief together. If you want to make --
A. Neither am I, Mr McCarthy.

5 Q. If you want to make assertions about things
that weren't done, as opposed to saying, "I have
seen no evidence to suggest that", for example,
why don't you ask for the information?

A. I am sure her Honour will make up her own mind
regarding that issue.
10

Q. I will repeat my question: Why do you choose
to make assertions about things that were not done
without finding out the facts?

A. I believe I had the relevant facts.
15

Q. But you didn't, did you?

A. I believe I did have.

Q. Mr Roche, you didn't, did you?

20 A. There is certainly additional information that
since - interestingly - since I submitted my
report that all of a sudden has come to light that
I can't -- unfortunately, I didn't have a crystal
ball, I couldn't see that that might occur.

25 Q. Mr Roche, you also assert that there was no
deliberate and specific advice provided to
government, don't you?

A. Deliberate and specific advice, yes.
30

Q. That's your evidence. That is the report you
write, that that never occurred; isn't that the
situation? That's what you are asserting?

A. Yes.
35

Q. Yet, within the brief and what was referred to
expressly in this courtroom was the resolution
passed by the ACT Legislative Assembly. The
documents of [ESB.AFP.0110.0834], if that document
40 could be brought up. This records the fact, does
it not, that on 13 November 2002, the commencement
of the very fire season that we are talking about,
the ACT Legislative Assembly notes that:

45 "The fast approaching summer contains
bushfire conditions that are anticipated to
eclipse those of 2001-2002 with severe

weather conditions likely to exacerbate a desperately dry situation".

Do you accept that?

5 A. Yes.

Q. That demonstrates, does it not, the Government and certainly the entire Legislative Assembly was informed about the risk that they faced?

10 A. Yes.

Q. So your report stating something that should have occurred that didn't in that respect is wrong?

15 A. Yes.

Q. Indeed, the proper conclusion to draw, I suggest, is that these documents demonstrate that it was quite clear not only that ESB and its agencies aware of the oncoming fire season but they did provide deliberate and specific advice to the response agencies and the utilities and government?

20 A. It would appear that way, Mr McCarthy, yes, but I haven't seen anything about support agency.

Q. Mr Roche you identified ACTEW AGL as a support agency and I took you to a document to illustrate that.

30 A. No, I didn't. I identified that as a utility. I explained what I considered to be the support agencies and those who look after the human resources and welfare of people, the evacuation process, the police, et cetera.

35

Q. Do you say the police weren't told as well?

A. No, I'm saying they were support agencies. I'm aware the police were told. I'm certainly not aware of any other evidence that other agencies from government who would be expected to be involved were informed adequately.

40

Q. So you weren't aware of any of that?

A. I wasn't aware that they were. I'm not aware that they were.

45

Q. So if you are not aware that they were, why

have you asserted in this report that they were not aware?

A. Because I'm not aware that they were.

5 Q. Do you not pick the difference between not knowing one way or another whether an agency has been informed, as opposed to writing a report to the effect that they were not informed?

10 A. If the evidence demonstrated otherwise I wouldn't have written it, Mr McArthur.

Q. Mr Roche, this is not a board game where we work with the documents and then we work from there.

15 A. Unfortunately, that was my task. I didn't set that task. I worked - I had to work with the documents that were given to me.

20 Q. So you take the view in writing your report that you were given this material and if you can't find anything in there to demonstrate something was done or not done then you conclude to the contrary; is that right?

25 A. That's the only option I have. And on a number of occasions I have premised my comments with "on the evidence that is available to me". I may not have in this case but in many other cases I have.

30 Q. That is not premised here, is it?

A. It is not here.

35 Q. That premise would have been a very significant qualification to place on these assertions about what wasn't done?

A. Yes, it would have.

40 Q. Look at the next square box down. You say something that should have occurred and didn't was possible adjustment to the weight of attack criteria; do you see that?

A. Yes.

45 Q. That is something else that you say was not done?

A. That's right.

Q. When it comes to weight of attack, the general pattern within not only the ACT but in all jurisdictions is to work with a different grading of fire danger, isn't it?

5 A. Sorry, Mr McCarthy?

Q. Both within the ACT and in all jurisdictions, the general pattern is to work by grading a fire danger ranging from blue, as I understand, through

10 to red -- blue, green, yellow, orange and red?

A. Whatever. I understand what you are saying. Some agencies use that process. Some agencies use it on a day by day basis. Some agencies have it in SOPs.

15 Q. During a bushfire season, the ACT adjusts its weight of attack by reference to those criteria; doesn't it?

A. Yes.

20 Q. Depending on the rating that is given, more crews and more firefighting resources are made available - are stood up?

A. Yes.

25 Q. I suggest to you that where one is trying to manage a severe fire season, you will, more frequently than not, acknowledge that severity by raising it as a red or orange day, to mean very

30 high or extreme fire danger?

A. Normally, that is the case.

Q. That's what occurred, for example, on 7, 8 and 9 January, didn't it?

35 A. Which I believe is insufficient.

Q. I'm saying that is what occurred on that day?

A. That's correct.

40 Q. They didn't rate it blue or green, did they?

A. No, they didn't.

Q. And they used a recognised, acknowledged flexible system to ramp up the resources' availability by reference to the danger that existed?

45 A. I don't think it was a flexible system.

Q. It is, by definition, flexible to be rated from blue up to red, is it not?

A. Based on normal conditions, absolutely.

5 Q. So what are you suggesting when we get to red? We add up a platinum or gold or something to try to suggest it is really serious so we need to go off the scale? Is that what you are suggesting?

10 A. I'm not suggesting that, no. Commonsense would tell me that on the conditions - and there is ample evidence before your Honour - this was a unique year. It wasn't a normal year. The weight of attack that the ESB used didn't change from year to year. What I'm suggesting to you in
15 that paragraph is that possible adjustment should have occurred to that normal standard weight of attack based on the severity of this particular year.

20 Q. Mr Roche, you have given evidence that you sat here and listened to the bulk of the evidence that has been given; agreed?

A. Yes.

25 Q. You would recall that a number of witnesses came along and told the Court that they recognised the severity of the fire danger that they faced, agreed?

A. Yes.

30 Q. And they were available to be called upon?
A. Yes.

35 Q. Irrespective of whether they were stood up, in recognition of that danger, weren't they?

A. Yes.

40 Q. And I put to you that for that reason, that is exactly the kind of adjustments to weight of attack that were done.

A. I don't agree with you, Mr McCarthy.

45 Q. What do you think those people were doing when they were ready to be deployed, if needed?

A. They weren't deployed.

Q. I didn't ask about that. I'm simply saying

that they were ready to be deployed if needed, weren't they?

A. As they would have been in any year. The point --

5

Q. Mr Roche --

A. For the sake of repeating myself, your Honour, what I have said there is that there was a standard weight of attack. I understand that. I understand it is a very good system that serves a number of jurisdictions well in the normal average year, if you like. These were special circumstances. Regardless of people coming along and saying, "Look, I'm available" and they may or may not have been from day to day, my belief is that there should have been some adjustments to that weight of attack; in other words, varying the standard.

20 So on this day, under these circumstances, we've got a critical year on our hands. We've got extreme fire danger forecast. It's not the same as extreme fire danger the year before. The outcome is likely to be quite different. So our response ought to be varied.

25 Q. I put to you, Mr Roche, that everybody realised that. A lot of people were ready to be deployed even if they weren't formally stood up in recognition of the very thing there you were talking about.

A. Why was the response less than the rate of attack?

35 Q. The question is: These people were available, were they not?

A. I don't know that. I assume that a number of people were available. For instance, certainly I recognise that from Mr Bartlett's perspective, there were a number of people in ACT Forests that were available. I recall Mr Sayer saying that he was available, and others. Still didn't alter the weight of attack, and in fact the weight of attack was less than the standard operating procedure.

45

Q. Two minutes ago, you acknowledged that a number of people who recognised the danger were

ready to be deployed; agreed?
A. Yes.

5 Q. That is an adjustment to the weight of attack
by reference to the severity of the season,
irrespective of whether they are deployed or not?
A. I don't agree with you.

10 Q. What are they doing if they gave evidence that
they recognised the season and were ready to be
deployed?
A. Yes.

15 Q. You don't agree that that means that they are
ready to be deployed; is that what you are saying?
A. I don't agree that the weight of attack was
adjusted so they were deployed. In fact, the
evidence says that they weren't.

20 Q. Mr Roche, in the next one you suggest that
what should have occurred and didn't was an
increased access to aircraft?
A. Yes.

25 Q. How many aircraft were available?
A. My understanding, from Mr Ingram's
additional --

30 Q. I asked you how many aircraft --
A. My understanding, from Mr Ingram's additional
statement was that the standard number of aircraft
were contacted were contacted again in that year -
that is one, two, three, four - four small
aircraft and one helicopter. I wouldn't presume
35 that that was all of the available aircraft in the
area.

40 Q. Until you received Mr Ingram's statement a few
days ago, did you know how many aircraft we had?
A. Sorry? I'm aware of what aircraft the ESB had
contracted in terms of the helicopter.

45 Q. Until you received that statement, were you
aware --
A. Not of that information and the -- number and
the specifics, no.

Q. If you didn't know how many aircraft were available to be utilised by ESB, how can you possibly make the conclusion that we needed to increase it?

5 A. I can recall -- it may have been in Mr Ingram's evidence when he was asked about what additional steps were taken. I don't recall him responding positively in relation to additional aircraft.

10 Q. If we had 20 helicopters and 10 fixed wing aircraft ready to be deployed from sun up to sun down, do you think that would be good enough?

A. I think that is a bit over the top.

15 Q. If we did have that many, would you think that was good enough?

A. I think that additional aircraft were required.

20 Q. Mr Roche, listen to my question.

A. Will you listen to my answer, please, Mr McCarthy. I have indicated to you that additional aircraft -- in my view, arrangements

25 should have been made to secure or to ascertain, sorry, the availability of additional aircraft. Now, what number to me is irrelevant at the time.

Q. Mr Roche, if we had 20 helicopters and 10

30 fixed wing aircraft, would you have thought that enough?

A. Before the event?

Q. Yes.

35 A. More than enough.

Q. If that --

A. I know you couldn't have got them.

40 Q. If that would have been more than enough, why do you say that we should have increased the aircraft?

A. Because -- are you suggesting to me that there is evidence to say that that was available?

45 Q. What I am suggesting to you is without having any idea how many we have, it is impossible to

draw a conclusion that we should increase it.

A. No. I have said that increased access to aircraft, not necessarily engage but access to aircraft, either through additional arrangements
5 or at least a register of call when needed aircraft.

Q. If we had access to 20 helicopters and 10 fixed wing aircraft from sun up to sun down for
10 the whole bushfire season, would you think that would be enough?

A. More than adequate.

Q. Therefore, if we had that many, there would be
15 no need to increase them, would there?

A. Correct.

Q. How were you able to say that we should increase access to aircraft without knowing what
20 we had already?

A. I don't believe you had that many.

Q. You have told this court that you didn't know what we had.

25 A. I don't believe you had that many. Now, if I am wrong - if you are suggesting to me you had that many, I'm pleased to adjust that statement.

Q. Mr Roche, I'm not suggesting what we had.

30 A. Well, that's the proposition you are putting to me.

Q. I am not. I am putting to the proposition that it is quite impossible for you to criticise
35 the Territory and to say they should have increased the access to aircraft when you didn't even know what we had. Would you accept that?

A. No.

40 Q. You also say that what should have occurred and didn't was the hire of heavy plant; agreed?

A. And prepositioning, yes.

Q. Let us start with heavy plant.

45 A. Yes.

Q. How many plant did we have available?

A. I'm only aware of two dozers.

Q. Now you know from Mr Ingram's statement that there was quite a bit more, don't you?

5 A. No. My understanding is that there was only two dozers contracted. They were contracted by, as I understand it -- the evidence -- ACT Forests, one of which was a D4, which was subsequently not available at the time of the outbreak of the
10 fires.

Q. Look at Mr Ingram's statement, in particular go to annexure DI3. This is a list of equipment, plan and materials, address various places from
15 which they can obtain graders and bulldozers. Do you accept that?

A. If they were available, yes.

Q. Mr Roche, I am not asking you on what is
20 available. I am saying there is a list demonstrating that nine graders or bulldozers ranging from a D5 up to a D8 and various cat graders were there with phone numbers and organisations that were listed on that list to
25 provide that material.

A. That is a list of phone numbers, where to contact people who own those dozers, the same as I could have looked up the phone book and found that out.
30

Q. There are nine pieces of heavy plant recognised and listed on the database of ESB available, which is more than two, is it not?

35 A. No. I don't agree with your analysis of that, Mr McCarthy. My understanding of this list is it is a list of equipment whereby ESB or BFS, or whoever it was, could have tried -- I emphasise tried -- to obtain that equipment during - in the event of a fire. I have seen nothing in this that
40 says it was available -- unfettered availability to the BFS during the season.

Q. This is a question about what you say should have occurred that didn't in preparation for the
45 season. Correct?

A. Yes.

Q. Whether or not a particular grader or particular dozer might be available or not on a particular day is a matter to deal with when the time comes, is it not?

5 A. No. You can't rely on something, you can't have a strategy that relies on the availability of equipment just because it might be available. Because Murphy's Law says that when you need it, it is not available.

10 Q. Mr Roche, Mr Ingram writes in his statement "the available plant" -- that's what he refers to it as.

A. If the BFS or ESB had unfettered availability, in other words, whenever they wanted those machines they were available, then in fact I'm incorrect, Mr McCarthy. But I don't believe that's the case.

15 Q. You don't know either way, do you?

A. I don't believe it's the case.

Q. You don't know either way, do you?

A. No, I don't.

20 Q. You don't know either way, do you?

A. No, I don't.

25 THE CORONER: I note the time, Mr McCarthy. We will take the luncheon adjournment.

LUNCHEON ADJOURNMENT [1.01pm]

30 RESUMED [2.06pm]

MR MCCARTHY: Q. Mr Roche, in the course of your preparation for writing your expert report, you liaised closely with various members of the AFP, did you not?

35 A. I liaised with them. I'm not sure what your definition of "closely" is. I liaised with them as I believed was necessary.

40 Q. And you had access to the documents that the AFP held, didn't you?

A. Yes, I did.

45 Q. If you could come back to tab 21 of the first volume of materials, this is the document which you pointed out on several occasions "Not in

brief".

A. Only on the basis of what is written on the document.

5 Q. I don't take issue with you, Mr Roche. Do you have that?

A. Yes, I have.

Q. Down the bottom is a number, AFP.0044.37?

10 A. Yes.

Q. That is one of the documents that had been provided by the Government Solicitor's Office to the AFP for the purpose of the investigation; do you agree?

15

A. I have got no reason --

Q. You accept that?

A. I accept, that yes.

20

Q. You said you had the access that the AFP had. This, therefore, was a document to which you had access, wasn't it?

A. Yes.

25

Q. When you say that you didn't take this into account because it wasn't in the brief, it was still available to you, wasn't it?

A. Technically, you are correct.

30

Q. Mr Roche, before lunch - I'm returning to page 49 of your report - the next thing that you say should have occurred and have said in evidence today that didn't occur is that there was no inspection and familiarisation for primary and secondary access routes through high risk vulnerable areas, et cetera; do you see that?

35

A. Yes.

40 Q. If you could look, please, at the document behind tab 29. Do you see that document headed "Subject: Namadgi National Park presuppression plan"?

A. Yes.

45

Q. That document has an AFP number stamped at the bottom right hand side, AFP.009928.

A. Yes.

Q. That was a document available to you, wasn't it?

5 A. Technically.

Q. It also has at the top a reference, which I hope is a brief reference, [AUS.AFP.0035.0016].

A. Yes.

10 Q. That was in the brief, wasn't it?

A. That would give an indication it was, yes.

Q. Do you accept from me it was in the brief?

15 A. Yes.

Q. The whole purpose of this document was to provide an update on the progress of the Namadgi National Park presuppression plan and to indicate that more efficient access and egress areas and more better access to water points is required. Do you accept that?

20 A. Yes.

Q. It then goes on with the background as to what they were doing - do you accept that - to deal with that problem?

25 A. Yes.

Q. Then the status is that:

30 "Namadgi National Park presuppression plan will be available for use by ACT Parks and Conservation Service and the agent's representative and the Emergency Services Bureau by close of business Friday, 29 November 2002".

35 A. Yes.

Q. Would you accept from me that that document did overrun by that date but nevertheless was finished in December 2002?

40 A. Yes.

Q. It addressed the problems dealt with in "Purpose", namely, that these things needed to be done?

45

A. Yes.

Q. Mr Roche, I put to you that that deals exactly with the kinds of things that are required in
5 terms of inspection, familiarisation, secondary access, fuel loads, combat scenarios, et cetera, as you say were not done.

A. Not my view it doesn't. It is not an inspection. It is a document that says "This
10 appears to have been undertaken" and the purpose of that particular dot point, your Honour, is that it was my view that there should have been an on-ground inspection - an on-ground inspection, as it says there, and familiarisation of those
15 things.

Q. Mr Roche, it nowhere says "on the ground", does it? Does it?

A. I don't take that document to be as the result
20 of an inspection.

Q. Did you take into account the fact that the ACT Government had prepared a Namadgi National Park presuppression plan when you stated that
25 these things should have occurred?

A. I think in fact there was a plan by the Parks Service which I recall reviewing.

Q. I simply ask you: Did you take that
30 presuppression plan into account when writing into your report that this is something which should have occurred and which you have said in evidence hadn't occurred?

A. I took the plan into account and I still
35 believe that the inspection didn't occur.

Q. So you take the view that to prepare a presuppression plan, to deal with the things which are set out in that report nevertheless
40 doesn't constitute conducting an inspection and familiarisation and preparation of access routes through the areas?

A. Exactly. It doesn't substitute for inspection at all. You can be given anything you like in
45 writing. The purpose of that comment is I believe people should have actually have had a look on the ground what was there and understood the

environment in which they were going to be required to work. I don't think that document indicates that at all, Mr McCarthy.

5 Q. Mr Roche, surely you would accept that the preparation of a plan necessarily involves looking at these places and working out how you are going to get there and where things are?

A. Does it say that?

10

Q. The plan represents the culmination of that work?

A. Not necessarily, no. I don't accept that.

15

Q. Do you think they just dream it up?

A. I accept that it may have been prepared by somebody who had some knowledge of the environment in that particular area. I don't accept that it substitutes for an inspection on familiarisation of primary and secondary access routes throughout those areas. I don't accept that at all. I think there is a significant difference between those who have the responsibility to carry out fire suppression in that area to have a look at it compared to a document that someone prepared, and we don't know - I don't know who it was prepared by - Geoff Wells - I have never heard of him and my understanding is he hasn't appeared here.

20

25

30

Q. Mr Roche, a preparation plan necessary records the very things you are talking about, does it not?

A. Yes, it does.

35

Q. The next thing you say that should have occurred which didn't occur, which you told us in court today didn't occur, was that we should have been looking at the availability of foam, maps and firefighting equipment; do you see that?

40

A. Yes, sir.

Q. On what basis did you say that the Territory should have increased the level of foam ability but didn't?

45

A. I believe the normal course of activities in a year like that, that those settings should have been available for access to increased levels of

consumables available.

Q. I understand.

5 A. I wasn't aware, and there was no evidence to
suggest to me, and in fact in Mr Ingram's evidence
there was no evidence to suggest that had
occurred. Subsequent to that, I have seen
Mr Ingram's second statement which indicates that
10 those things did occur and, therefore, I accept,
your Honour, that that is not an accurate
statement.

Q. It is wrong, isn't it?

15 A. It is not an accurate statement, Mr McCarthy.

Q. What was the question I originally asked you?

A. Did I have knowledge of whether it occurred.

20 Q. No. What I asked you was why you wrote in
your report that this thing should have occurred
and then tell her Honour that it didn't?

A. Because at the time, I had gone to great pains
to explain to you, on the evidence that was
25 available to me, there was no evidence that said
that it did occur.

Q. Thus you concluded to the contrary; is that
correct?

30 A. That's correct.

Q. Do you normally conclude things adverse to
people's interest when you do not know either way?

35 A. I don't think that's a general thing that I do
at all.

Q. But that's what you have done here, isn't it?

A. That's what I have done in this particular
case, yes.

40 Q. Why do you do that?

A. That's what I did, Mr McCarthy.

45 Q. I asked you: Why do you conclude things
contrary to the interests of the ACT when you do
not know one way or the other --

MR LASRY: That is an unfair question. The

witness said a number of times he had certain information available to him. He acted on that information. He makes a correction now in view of subsequent information.

5

THE CORONER: You are just arguing, Mr McCarthy.

MR McCARTHY: I am simply trying to ascertain why it is that the witness asserts that things were not done without knowing either way --

10

THE CORONER: He has explained it. He has explained it about four times now and you keep on asking the same question.

15

MR McCARTHY: Q. Mr Roche, perhaps I would ask the same question regarding the maps. On what basis do you say that the Territory should have increased the quantity of maps and yet tell her Honour that it didn't happen?

20

A. On the same basis I just explained - the same thing in relation to firefighting equipment.

Q. Should we understand from that that you didn't know what they had but nevertheless chose to conclude that we haven't done it?

25

A. No. I chose to - in the absence of evidence that there was appropriate access to increased levels of consumables, including foam, maps and firefighting equipment, I believe it hadn't been done. Subsequent, as I have now explained, on the basis of Mr Ingram's evidence, I now understand that those things had been done.

30

Q. You couldn't find on the evidence that any of this had been done and thus concluded it hadn't occurred?

35

A. I'm not sure that Mr Ingram wasn't asked that during his evidence.

40

Q. I'm asking you. Should we understand that with respect to that, you couldn't find any evidence that this had been done and thus concluded that it hadn't?

45

A. Yes.

Q. And now you know otherwise?

A. That's correct.

Q. Do you say the same thing about the next one, namely, preplanned arrangements for crew welfare and the reception of external support? You concluded that hadn't been done on the evidence available and now say otherwise?

5

A. I say the same thing about the next four dot points now, Mr McCarthy.

10

Q. So all of those, you now agree, are wrong?

A. No, I don't.

Q. I thought that is what you just said, with great respect?

15

A. No. I said that I assumed that in the absence of evidence to the contrary, that those things had not occurred.

Q. You now accept, in the presence of further evidence, that those things had occurred?

20

A. No, I don't.

Q. We can do this the slow way or we can do it the quick way, Mr Roche.

25

A. I am happy whatever way.

Q. You said with respect to the remaining four dot points the same position applies; namely that you could not find any evidence that these things had been done and thus concluded that they had not; is that right?

30

A. That's correct.

Q. You now accept that, in the face of new evidence, that is not so?

35

A. That's not what I said.

Q. Let us go back to the start then. Do you accept now that with respect to crew welfare and the reception of external support, that those things were done contrary to your previous understanding?

40

A. Not in my view, no.

45

Q. Look at Mr Ingram's statement at paragraphs 10-13.

A. Sorry? Page?

Q. Do you have Mr Ingram's statement?

A. Yes, I have.

5

Q. Go to paragraph 10.

A. Yes.

Q. There he states:

10

"Catering for ACT fire fighters is undertaken by the ACT Emergency Service ... At the time of the 2003 fires the Bushfire and Emergency Services were administered within one arm of
15 ESB. The arrangements for firefighting catering support were in place with the SES and had been tested in a campaign fire situation during 2001."

20

It goes on about some of the recommendations that were referred to and were addressed prior to the 2003 fires?

A. Yes.

25

Q. He then goes on about a catering trailer and each being equipped with:

30

"... cutlery, crockery and general non-retail perishables. They all also had ESB Order
Books which permitted them to attend at retail outlets to purchase supplies. They could obtain gas, petrol and ice at a service station, food from Woolworths, fruit from a market - whatever they needed. As the 2000
35 fires progressed arrangements tended to be that ES staff provided to the headquarters logistics area a list of all the supplies required to keep the catering trailers going, and those supplies were purchased centrally
40 and delivered as required. We also established an arrangement for volunteers from the public (who wished to help to make sandwiches et cetera and these were distributed as required. The ACT fed all of
45 the Bushfire Service, ambulance, Fire Brigade and the New South Wales and Queensland task force members during the whole 2003 fire

event".

Then it goes on about the welfare support that was provided. That included a volunteer support
5 officer was working on welfare issues throughout the entire event, speaking with staff and ensuring that welfare matters were dealt with" et cetera, et cetera.

10 Do you accept, therefore, in light of that new material, that arrangements were in place to deal with welfare?

A. Certainly from the catering aspect I do. Not
15 in terms of the accommodation. I saw no evidence to suggest that that was pre-planned at all.

Q. Read paragraph 14, please.

A. It says that it occurred, Mr McCarthy. My dot
20 point there was talking about pre-planned arrangements, not January 2003, when it happened. What it is talking about is those arrangements for crew welfare. I accept that catering was in hand. I see no evidence regarding the reception and
25 accommodation, for instance, of those people that was planned prior to the event in the knowledge that because of the year there was a likelihood that external support might be required.

Q. So you are seriously suggesting that
30 everything went smoothly during the fire but nevertheless there was no planning for it; is that what you put?

A. No, I am not suggesting it went smoothly.
35 I have no knowledge whether it went smoothly.

Q. Mr Roche, paragraph 14 states:

"The volunteer support officer organised the
40 accommodation for New South Wales firefighters and Queensland firefighters and was able to do so without delays. Arrangements were made with the motel for flexible meal times."

45 It goes on about a troop carrier:

"We used private coach companies to move

people around as required. The basic arrangements for transport worked smoothly, permitting changeover in the field."

5 I suggest to you, Mr Roche, it all went pretty smoothly in that regard.

A. It would seem that way, Mr McCarthy, yes.

10 Q. You are not seriously suggesting that where everything went smoothly, things were not ready for that to occur, are you?

15 A. I see no evidence of preplanning that was done to make that happen. The fact that it went well is - no doubt, ESB should be congratulated for that, but it may have been good luck rather than good planning that that occurred. That's a lesson for the future.

20 Q. You are saying that we should plan all these things even though all the arrangements are in place for them to happen?

25 A. Well, I've seen no evidence that the arrangements were in place to accommodate and receive external support - support external to the ACT. I have not seen that, your Honour. In my view, that needs to occur in a small jurisdiction that has a finite resource, given the year that they were looking at that there was every
30 likelihood that they would have required some external support. If you are going to require external support, then to keep those people happy and to ensure that the operation flows, then they need to be accommodated and all of those things. I have seen no evidence to suggest that that
35 occurred.

Q. You suggest they should have been booking out hotels in advance of the fire; is that what you suggest?

40 A. No, not at all. They should have checked with various hotels as to what their accommodation rates were over that particular period, what other opportunities there were within the Territory to accommodate large numbers of people.

45 Q. Mr Roche, I want to deal with the next two points, where you talk about assessment personnel

availability for sustained operations. The next one you deal with is validations refresher or additional training. I will deal with those together; all right? Basically, talking about the capacity of personnel to deal with the fire; correct?

5 A. Yes.

10 Q. You are saying there that these things should have occurred and you told court it didn't; is that right?

A. That's correct. No evidence to suggest that they didn't.

15 Q. Could you please turn to tab 68 of your second volume?

A. Yes.

20 Q. The opening paragraph reads as follows - the document is headed "Bushfire Emergency Services. Subject: Future incident management training", would you agree?

A. Yes, sir.

25 Q. The opening paragraph states:

"Bushfire Emergency Services section has recently conducted an evaluation of incident management training it provides with a view to providing more relevant and timely training for people who may be assigned to an Incident Management Team. As a result of this evaluation, the following changes are made."

30

35 It lists various dot points, does it not?

A. Yes, sir.

40 Q. It is prepared by Mr Graham and dated 16 August 2002?

A. Yes.

45 Q. That document demonstrates that they were turning their minds to additional training in that area, doesn't it?

A. Yes, sir.

Q. So it constitutes an example of doing the things that you say were not done?

A. Assuming that they were conducted, yes, sir, you are correct.

5

Q. The following tab, 69, is headed "ACT Bushfire and Emergency Services". The next says:

10 "ICS and pre-season training plan for September and October 2002."

Then it sets out pre-season training programs scheduled for the period October 2002 and lists a number of training programs on certain dates to occur; do you agree?

15

A. Yes, it does.

Q. Do you accept that if that training occurred, that was another example of doing the things that you say should have occurred?

20

A. Correct.

Q. At the next tab, tab 70, is a list of all of the overview of the ICS overview training given on certain dates to certain people, is it not?

25

A. Yes, sir.

Q. That would suggest, does it not, that those people received the training in accordance with those programs?

30

A. Yes, sir.

Q. So, as a matter of fact, not just prospect, the step was taken to deal with the things that you say should have occurred?

35

A. That's correct.

Q. At tab 72 is a list of those people who received ICS advance training - the second group of them received that training between 2-4 October 2002?

40

A. Yes.

Q. Another group between 8-9 October 2002?

45

A. Yes.

Q. And another group between 14 and

16 October 2002?
A. Correct.

5 Q. That involved both volunteers for the Bushfire Service?
A. Yes.

10 Q. And departmental brigade officers?
A. Yes.

10 Q. About 25 of them?
A. If you say so, yes.

15 Q. About that?
A. Yes.

20 Q. Similarly, some ESB administrative staff received this training?
A. Yes.

20 Q. More volunteers for the Emergency Service received the training?
A. Yes.

25 Q. And the Fire Brigade also received some training in ICS, didn't they?
A. Yes.

30 Q. Those are all examples of people receiving the kind of training that you say should have occurred on page 49?
A. Correct.

35 Q. Had you had that information at the time, you would not have expressed the opinion there that you do?
A. Correct.

40 Q. If you go to tab 73, there is a list of officers who may assist the Service Management Team for the 2002/2003 bushfire season.
A. Yes.

45 Q. There is a list of about --
A. A number. I will take your word for it.

Q. Between 16 and 18 people trained to be

incident controller?
A. That's correct.

Q. About 15 as operations officer?
5 A. Yes.

Q. About 25 as planning officer?
A. Yes.

10 Q. And about 15 as a logistics officer?
A. Yes.

Q. Would you agree with me that that is a very
fair and reasonable number of people to be trained
15 in those areas in the event of that bushfire?
A. From this jurisdiction, yes.

Q. So that for all practical purposes, they had
taken the step that you say should have occurred
20 in that paragraph?
A. Correct.

Q. Do I understand from your earlier evidence
that the only reason you asserted that these
25 things had not been done is because you hadn't
found out that information?
A. That information was not available to me, yes,
sir.

30 Q. Thus you concluded it hadn't been done?
A. That's correct.

Q. At the bottom of the page you say that
specific briefings and discussions with support
35 agencies, particularly the AFP, should have
occurred.
A. Yes.

Q. I take it from your evidence earlier today you
40 now agree that those things did occur with the
AFP?
A. With the AFP, yes.

Q. So that's not correct either?
45 A. No, sir. It is in respect of the support
agencies.

- Q. Mr Roche, if you turn to page 53 of your report.
A. Yes.
- 5 Q. You there refer to a number of people who were burnt over by the advancing fire.
A. Yes.
- 10 Q. When you were asked about this you gave examples of Mr Neil Cooper and Mr McNamara, as I recall?
A. Amongst others, yes.
- 15 Q. Mr Sayer was another one who was burnt over, wasn't he? Do you remember him?
A. I don't recall that one.
- 20 Q. Mr Arthur Sayer went through a gate with his brother in a car, in his vehicle?
A. Yes, I do. I do recall that. Yes.
- 25 Q. You talk about here, as I understand it, that those burnt over situations couldn't have arisen from anything but inadequate training and situation analysis and poor command?
A. Yes.
- 30 Q. You give those people as examples of that event?
A. Amongst others, yes.
- 35 Q. Mr McNamara, I think you would agree with me, is a very experienced firefighter?
A. He's - appears on evidence to be an experienced firefighter.
- 40 Q. He was never even burnt over, was he?
A. He was certainly trapped for a period of time.
- 40 Q. Mr McNamara went to his house in an endeavour, with a number of people to help him, to save his house; agreed?
A. As I recall it, yes.
- 45 Q. He certainly was doing that on his own initiative, wasn't he?
A. Oh, well, I don't know. I can only assume

that, yes.

Q. Do you accept that from me?

A. Yes, I do.

5

Q. He certainly wasn't under anybody's command to go to the house and try to save his own home, was he?

A. I don't know.

10

Q. Would you accept from me that he went there on his own initiative to try and save his house?

A. I can imagine that might have been the case, yes.

15

Q. As a result, his situation did not arise from command, poor or otherwise?

A. Yes.

20

Q. He went to the house and did what he could to protect his house, ultimately unsuccessfully?

A. That's correct.

25

Q. He organised a burnt out or blacked out area to go to in the event that troubles arose. They walked out of the house. Do you remember his evidence about that?

A. Yes, I do. Remembered walking out of the house.

30

Q. Kept his calm, kept his nerve, saw the situation he was in. Quietly realised the game was up and walked slowly out of the house?

35 A. I'm not sure he quietly realised, it but he certainly exited the house slowly, relatively slowly, as I recall his evidence.

Q. At all times, he remained calm and collected, didn't he?

40 A. I can't recall that - those particular attributes.

45 Q. He did everything right with respect to preserving his own welfare when he was no longer able to save his house?

A. I would have to review his evidence to concur with everything, right.

Q. Let me put it this way - he walked out of the house, walked out onto the blacked out area and waited for the fire front to pass; do you accept that?

5 A. That would be a logical approach to take, yes.

Q. A sensible course of action that one would take?

A. Yes, sir.

10 Q. A systematic example of an experienced firefighter in a situation where a fire is approaching him?

A. Not necessarily systematic of an experienced firefighter but certainly systematic of a person

15 who had a good idea of what to do.

Q. In fact, he came away from that incident without injury as a result of his training and good sense?

20 A. Without physical injury, yes, you are correct.

Q. So where you say you give him as an example of a burn over that occurred by reason of inadequate training, that's not right, is it?

25 A. No.

Q. Nor is it an example of a failure to make a good situational analysis, because he analysed exactly the right thing to do?

30 A. Correct.

Q. So Mr McNamara is not an example of that at all, is he?

35 A. Correct.

Q. You then suggested that Mr Neil Cooper was another example of somebody who was burnt over because of inadequate training, lack of situational analysis and poor command?

40 A. Correct.

Q. He also is a very experienced firefighter; would you agree with that?

45 A. Yes, I do.

Q. He also was in a situation where he was in an

open paddock in a vehicle?

A. Yes.

5 Q. He also made a very good analysis of the situation he was in and it was because of that analysis that he was able to escape from that fire without injury; would you agree with that?

10 A. On one interpretation, the fact that he was there, yes. The question arises as to whether - if a proper analysis had of been done, whether he should have been there in the first place.

15 Q. You are not seriously criticising the way in which Mr Cooper got out of that situation, are you?

20 A. No, I'm not. Not once he was there. I am perhaps on the basis of why he was there in the first place, how he got himself into that situation. Certainly I agree with you once he was in that situation then he took appropriate steps.

Q. He wasn't there because of a command, was he?

25 A. Someone must have told him to go there in the first place.

Q. No, that is not right, Mr Roche.

30 A. Well, if he wasn't told to go there and he was operating as a part of the firefighting effort then there was obviously a breakdown in command.

Q. Mr Roche, I fully accept that on 18 January, the afternoon, things were stressed to the max. I don't think that is in dispute.

35 A. I don't disagree with that, sir.

Q. Mr Cooper, of his own volition, was doing what he could to help whom he could where he could; do you agree with that?

40 A. Yes.

Q. He was not under command when he acted?

A. I don't necessarily agree with that interpretation.

45 Q. He wasn't there under the direction of anybody, was he?

A. He was obviously there at the direction of his

agencies, otherwise he wouldn't have been there.
If he was getting paid to be there, if he was
operating as a member of --

5 THE CORONER: Excuse me, please. I don't
appreciate people laughing in this courtroom when
a witness is giving evidence, I am looking at you,
Ms Prosser, in particular and also you, Mr Walker.
Please show the witness a bit of courtesy and
10 a bit of respect. Continue, please, Mr McCarthy.

MR MCCARTHY: Q. Mr Roche, you have acknowledged
that on that afternoon the situation was one of
high stress?

15 A. Yes.

Q. Mr Cooper has given evidence at length that he
was doing what he could of his own volition in his
capacity as a senior firefighter to help whom he
20 could where he could?

A. I have no doubt about that.

Q. So, by definition, he was not doing things
under the command of anybody, was he?

25 A. I don't agree with that. I mean, someone must
have told him to go to work and someone must have
told him to report and do something. He didn't
just get out of bed in the morning, your Honour,
and say, "I think I will go and fight a fire
30 today", did he? I can only assume that he was
given some direction of what his objectives were
and where he might want to execute those
objectives. If everybody acted alone in these
circumstances then we would have anarchy.

35

Q. This is not about getting up in the morning,
taking a pay and going to work, is it? This is
a situation --

40 A. That's what you seem to be suggesting,
Mr McCarthy.

Q. I am not. This is about a burn over.

A. That's correct.

45 Q. I am talking about the situation that he was
not in the place he was when he was burnt over as
a result of a direction or a command. That's all.

A. I don't know that.

Q. Would you accept his evidence that that is the case?

5 A. I've not seen his evidence to that extent.

MR LASRY: There is an appropriate way to do this and it is that if my learned friend wants to put Mr Cooper's evidence - rather than put it in
10 summary form, he should take him to the evidence. I am sure he has the references there. Let us be referred to what Mr Cooper actually said.

THE CORONER: Do you have that reference,
15 Mr McCarthy?

MR MCCARTHY: I do. I am happy to accord with what my friend has said.

20 Q. The statement is at [ESB.AFP.0110.1132].

THE CORONER: Is it the statement or is it the evidence that he gave?

25 MR MCCARTHY: I beg your pardon, your Honour. I am reading from the statement. The barcode number was incorrect. The final number was 1112. I am going to page 21 of the statement, which is at 1132.

30 Q. Let me read to you paragraph 65:

"At this stage I left the Stromlo depot" - this is on the afternoon of the 18th - "went
35 back to Huntley where I felt I could fill some sort of useful role in an attempt to assist the units on site by providing the senior person (Oscar) to guide operations. By this stage I was beginning to feel helpful
40 as we are getting our arses kicked no matter what we did. I knew that there was going to be some intense fire activity in this area very soon and there were few resources on site. The radio was jammed with traffic and
45 units were straying everywhere. I felt it was imperative to use some of my training to try to calm things down and regain some sort

of structured control. It was my impression
by this stage all structured control that
ever existed had disappear and there was
little action being undertaken in any
5 structured manner."

That was the situation Mr Cooper faced that
afternoon?

10 A. A breakdown of command and control.

Q. Would you accept now that when he was in the
situation he was in, he was not under command?

15 A. In the absence - as command and control had
broken down, yes, I agree with you.

Q. And faced with a fire coming at him - I am
reading from paragraph 67 on the following page:

20 "I tried to burn a patch of ground to give us
an area of safety but there wasn't enough
fuel to light a new fire and the winds were
too strong picking up rocks with enough force
to break car windows"."

25 Paragraph 68:

"Our only option was to face the vehicles in
the directions of the flames and leaving it
to the very last minute I drove straight
30 through the fire with The Rivers command unit
driving next to me. I couldn't see anything.
I just kept steering straight and headed
through to where the gate was."

35 Would you accept, Mr Roche, that Mr Cooper used
his experience and training and behaved in a way
that caused him to survive?

A. Yes, I do.

40 Q. So he, too, is not an example of someone who
is burnt over because of inadequate training or a
lack of situation analysis?

A. I don't necessarily agree with you.
I certainly agree with you where he stated it, as
45 command and control had broken down that he had
made decisions in isolation.

Q. He was burnt over.
A. I think that is made quite clear from those paragraphs there.

5 Q. Let me go back again. You said he wasn't under command; correct?
A. Not directly, yes, that is correct.

10 Q. You accepted it was his training - a minute ago - that caused him to think about what to do and how to escape the fire front?
A. To get him out of trouble once he got into trouble, yes.

15 Q. It was his analysis of the situation that also caused him to escape that fire front?
A. Once he got into trouble, yes. Your Honour, my analysis of that situation was that the
20 situational analysis and training, et cetera, should be designed to try to minimise people getting into that problem. Certainly I agree that once he got in there, that his training got him out of trouble, but my view is --

25 Q. I suggest you to, Mr Roche, that Mr Cooper, as a very, very experienced firefighter - one of the most experienced firefighters in the territory; would you accept that?
A. I accept he is very experienced from the point
30 of view of the Territory's breadth of exposure, yes.

Q. Thank you for that concession. Would you accept that the reason he found himself in the
35 situation he was in was because of the sheer scale of the fire that was running in from the mountains?
A. That's how he got there, yes.

40 Q. And that the situation was a function of the fire, not his lack of training; do you accept that? The situation he found himself in was a function of the fire coming, not his lack of training?
45 A. I don't think that's the case in isolation. I think it is a combination of both.

Q. The primary reason he was in that position was because of the sheer speed and scale of the fire?

A. I don't accept that. One of the reasons.

5 Q. Mr Sayer was also burnt over that day.

A. I don't believe I've made comment about - or I considered Mr Sayer's situation. But I certainly was aware of it following his evidence.

10

Q. So you don't suggest in any way that he was burnt over due to the things you talk about?

A. I would have to go back and look at his evidence.

15

Q. I will tell you what his evidence was and then you can answer. Firstly, his call sign was Oscar 3; a very senior firefighter in the ACT; do you accept that?

20 A. In the ACT, yes.

Q. He been in firefighting and fire management from when he was about 13 years old:

25 "I was born in 1953 and I will soon be 50. I grew up in the Tidbinbilla Valley from the age of 9. My parents were managers of the property. I started as a crew member at the end of a hose and just worked my way up
30 through the ranks over the years. The type of positions I worked in were as a crew member, tanker driver, light unit driver and then a deputy captain and I was captain of Parks and Conservation brigade for many
35 years."

Do you accept that with 42 years working as a firefighter in the ACT, he qualifies as "experienced"?

40 A. Yes.

Q. He was burnt over that day - Mr Sayer. This is what he had to say about it - Mr Sayer was with his brother trying to go through a gate. Do you
45 remember that?

A. No, I don't.

Q. He was taken to his evidence before the break about the fires that raced across the grassland and went across the top of his vehicle. You don't remember that at all?

5 A. I can't recall that at all, I'm afraid.

Q. He spoke about the fire. The fact that the fire came across in 1-2 minutes before coming across his vehicle. He estimated the distance that the fire travelled in one to two minutes was 1.7 kilometres. Would you accept that's a pretty fast fire?

A. I think he may have overestimated it.

15 Q. Were you there, Mr Roche?

A. No, but I have never heard of fires - no evidence of any fires that have travelled at that rate. It is an unheard of rate statistically over my life in the fire services.

20

Q. I asked him that evidence. Had he ever seen a fire travel that fast in 37 years of experience? Do you know what his answer was? "I have never experienced that in my entire firefighting career."

25

A. I have no doubt he experienced a very, very rapid spread of fire.

Q. Her Honour reminded us of his evidence that he estimated the fire travelling at 150 kilometres an hour at one stage. Mr Roche, do you accept that where a fire is travelling that fast and can travel the best part of 2 kilometres in one to two minutes, that is beyond the scope of what constitutes a burn over arising from anything other than the fire?

35

A. I don't accept in any way that the fire travelled at 150 kilometres an hour. I do not accept that, your Honour.

40

Q. Mr Sayer had 37 years of experience of firefighting in the mountains at the Namadgi National Park and certainly that was his estimate and certainly he acknowledged that he had never experienced a fire that fast either.

45

A. Your Honour, it has been my experience that people who are - there is plenty of written

evidence about this - there are people who are confronted with fires or are involved with firefighting under very difficult, confused situations will often overestimate the rate of travel of the fire. As I said, I have never ever heard of that particular rate of travel. If that was in grassland, then in fact the recorded fastest rate of travel of a grass fire in Australia was back in 1977, 18.9 kilometres per hour in Strathewen in Victoria. That is the fastest ever recorded, and that is a long way from 150 kilometres an hour.

Q. Mr Roche, irrespective of whether that is right or wrong, when Mr Sayer records the fire being nearly 2 kilometres away at the time he endeavoured to go through a gate, do you accept that?

A. I accept that's what he thought it was, yes.

Q. In that time, however long it was, to get through a gate, the fire reached him and went over his vehicle?

A. Yes.

Q. Would you accept from me, or do you agree that that situation did not arise from Mr Sayer's inadequate training?

A. Not necessarily.

Q. Do you accept that he wasn't under the command of anybody at the time that he did that?

A. If he was acting on his own initiative as a private citizen, yes, I do.

Q. And do you accept that his analysis of what occurred arose from the fact that in 37 years of firefighting, he had never ever experienced a fire at anything approaching that speed before?

A. I don't doubt that.

Q. So it is understandable, with that level of experience of how fires behave, and that this fire behaved so contrary to any fire that he had ever experienced in his life, that that's what caused the situation to happen, not a matter of things that you put in your report, with respect to

Mr Sayer?

5 A. As I have said, I didn't consider Mr Sayer's situation in my analysis, probably on the basis, and I can't recall exactly, that he wasn't acting as a firefighter at the time. He was acting as a citizen, as I recall it. He was somewhere in the vicinity of nil desperandum.

Q. At Tidbinbilla Valley.

10 A. He doesn't fall into that category at all.

Q. He is another person who isn't illustrative of the point you make?

15 A. Well, no, because he wasn't a firefighter; he was just a private citizen, as far as I am concerned, when he was acting in those circumstances.

Q. If you could turn to page 68 of your report.

20 A. I just add, your Honour, there are a number of other burn overs.

Q. Mr Roche you can add what you like when you like. For the moment, I prefer you to just answer my questions, if you like?

25 A. If you want to avoid what happened, yes, sir.

Q. Turn to page 68 of your report. If I could take you to the third paragraph, you say there:

30 "It appeared to me from the evidence that in recent years there has been a tendency within the ACT to withdraw from firefighting activity overnight ostensibly for safety reasons."

35 A. That's correct.

Q. You then go on to talk about:

40 "Whilst concern for firefighter safety must always be a priority, a 'risk averse' attitude ... is viewed as sufficient to justify a withdrawal from firefighting is equally concerning."

45 Do you see that?

A. Yes, I do.

Q. When you say further up in the passage that they withdrew ostensibly for safety reasons, do we understand you to mean not that they withdrew for other reasons but they were unduly risk adverse;
5 is that how we should answer it?
A. That's not what I said.

Q. That's how I am asking the question.
A. No, not at all.

10 Q. So you think they withdrew for safety reasons?
A. I think they did. I think they withdrew for reasons of safety that the incident controller assessed were, on her experience, of concern to
15 her at the time.

Q. In other words, ostensibly for safety reasons, you maintain that was the reason. You don't
20 ostensibly, in my understanding of the word, suggest this is ostensibly why we did it, but we actually did it for some other reason; that's not the case, is it?
A. No.

25 Q. What you are querying is the soundness of the judgment about the safety concern?
A. As I have stated earlier on, but also emphasise I don't blame Ms Arman for making that
30 decision at all.

Q. I understand that. What I am driving at is if we are correct to understand that she assessed that to be a safety concern and withdrew for that
reason?
35 A. Yes.

Q. You would accept that making a judgment about a fire ground involves a whole raft of different issues, does it not?
40 A. Yes, it does.

Q. If one is on a flat football field where there is a fire then the risks that you need to consider for the safety of the firefighters are very
45 different from what they might be in the mountains?
A. Yes.

- Q. Likewise, the time of day is a significant issue?
- A. Yes - or is an issue.
- 5 Q. An issue?
- A. Depending on the location. On the football ground, I don't think it is a significant issue.
- 10 Q. I am simply saying that the ground and the terrain at which you are making that judgment is a significant issue.
- A. Yes, it's another factor.
- 15 Q. And the time of day is an issue one has to think about? It is an issue - I am not trying to say it is persuasive or determinative.
- A. Yes. It is a factor.
- 20 Q. The nature of the ground underfoot is something which has to be taken into account?
- A. Yes.
- 25 Q. Also, one has to look at the nature of the vegetation within which you are working?
- A. Yes.
- 30 Q. If it is a grass fire, that's very different from a heavily forested fire. If it is a grass fire, it is a very different thing to put out a fire in a heavily timbered area?
- A. Not necessarily.
- 35 Q. The nature of the vegetation that is on fire is an issue to take into account?
- A. Yes.
- 40 Q. All of those things are unique to the fire ground where the fire is happening, aren't they?
- A. Yes.
- 45 Q. So a great deal of responsibility rests upon the field commander in charge of whoever is working on that fire ground to make those judgments; is that right?
- A. Yes.
- Q. So what to do or what not to do rests very

much on the field commander; correct?

A. Yes.

5 Q. In that situation where that field commander
needs to make that decision, it becomes quite
wrong for others who are not there to make
directions about what they should or shouldn't do?

10 A. For want of not wanting to disagree with you
again, I think that there is always an opportunity
for people who may not be there to say, "Have you
thought about this? Have you thought about that?"
And, "Look, I disagree with what you are saying.
Would you please re-evaluate it" --

15 Q. Let me rephrase it. I accept that you may
seek advice and say, "Well, look, this is the
situation I am in. There is this and there is
that." You may take that advice, but ultimately,
the person who is the field commander in charge of
20 those people on that fire ground needs to decide
whether or not to fight this fire is a safe thing
to do or otherwise; isn't that right?

A. Yes.

25 Q. If I could take you to tab 55 of the
materials. Do you agree with me that this is
a series of pages - I am not going to take you to
every one of them - that was a document headed
"Lessons to be learnt from the deaths of four
30 firefighters during the Thirty Mile fire
10 January 2001". This happened in the States.

A. Yes.

35 Q. At the top of it, if you will accept from me,
it was something used in the pre-season workshop
ESB?

A. Yes.

40 Q. The first page deals with the fact that the
fire started as a result of an abandoned cooking
fire which was reported by an aircraft, reported
at 9.26pm that night?

A. Yes.

45 Q. Over the page, it talks about a 21-person crew
being dispatched. They were there to mop up what
was seen as a reasonably mild fire; do you see

- that?
- A. Yes.
- 5 Q. Over the page, it deals with the fact that few of the firefighters failed to recognise they were in a life threatening situation until they were overwhelmed by the fire?
- A. Yes.
- 10 Q. And four of the six firefighters died in one of the groups they were in?
- A. Yes.
- 15 Q. If you could flick through a few pages, you will see a document headed "An overview of the fire".
- A. Yes.
- 20 Q. Which notes that there was no dramatic change in weather conditions.
- A. Yes.
- 25 Q. In fact, when one looks at the weather on the following page, the winds were calm, at 8 kilometres-10 kilometres an hour, the temperature was high, 35 degrees, and the elevation was at 1100 metres.
- A. Yes.
- 30 Q. That is descriptive of a fairly benign fire, isn't it?
- A. Yes.
- 35 Q. The fuel conditions, abundant dry surface fuels and continuous crown fuels; yes?
- A. Yes.
- 40 Q. Those conditions are somewhat similar, in broad terms - I'm talking broad terms - to what they faced at Bendora that night?
- A. With exception to temperature and relevant humidity, which are significant factors. I don't know the other factor, which I would need to understand what is the long-term preincident
- 45 conditions were.
- Q. I am simply trying to say, when one talks from

one end of a scale to another --

A. Sorry.

5 Q. -- with respect to a scale from 1 to 10, these conditions are relatively similar to what they faced at Bendora. I am not saying they are exact.

A. I can't say that without properly reading the whole lot of the document.

10 Q. If you flick through, notwithstanding those conditions, four firefighters died in that fire in relatively benign conditions. Would you flick through to the page headed "Thirty Mile fire objective strategies and tactics"?

15 A. Yes.

Q. It talks about fight fire aggressively but provide for safety first?

20 A. Yes.

Q. Initiate actions based on current and expected fire behaviour?

A. Yes.

25 Q. Recognise the wind?

A. Yes.

30 Q. I'm going through quite a way - if you could flick through to a page headed "What are the US messages for us", if you could find that page. I am sorry, they are not in any way numbered or identified.

A. Yes.

35 Q. The third and fourth dot points that they make:

40 "Expressly to be learned from this are: Many deaths and injuries on the fire ground occur during small fires, during mop up or during reasonably favourable weather conditions..."

A. Yes, correct.

45 Q. "... and don't allow crews that are lacking sleep to work on the fire ground."

A. Yes.

Q. You accept they are all correct things that one should do?
A. Yes. But they shouldn't be read in isolation, and they are not - I think, with respect, your
5 Honour, those things are things to consider. They are not rules, that if you can't meet them, you don't do it, because if you did it you would never fight a fire. They are things that during any
10 firefight, along with a range of other factors you consider while you are making your decision.

Q. I accept that. The following pages deal with the incident. I won't take you through that. I am sure you are more than familiar with it.
15 A. Yes, I am.

Q. Then it deals with the lessons to be learned from Ku-ring-gai. Agree?
A. Yes.

20 Q. One of the things in the messages in that:

"Conditions were described as ideal, textbook and benign. A seemingly innocent fire killed
25 four firefighters and three others suffered between 70per cent and 85 per cent burns."

Do you see that?
A. Yes.

30 Q. The following page says:

"The lesson to be learned from all of this is if in doubt, pull out."

35 The second last page?
A. Not on my folder it doesn't.

40 Q. Sorry, which page are you on? The second last or last?
A. Second last. It says "Closer to home - Ku-ring-gai lessons". There are three messages.

45 Q. Keep going down to the bottom of the page.
A. Sorry, it has faded.

Q. The lesson for all of these things is "if in

doubt, pull out"?

A. Correct.

Q. You would agree with that, wouldn't you?

5 A. Yes, I do. Hence I didn't blame Ms Arman for making that decision.

10 THE CORONER: Mr McCarthy, if you are going to move on to something else, we will take a very short adjournment.

SHORT ADJOURNMENT [3.05pm]

15 RESUMED [3.11am]

MR McCARTHY: Two things, your Honour. Firstly, I understand there is a consensus on everyone's part to try to finish this afternoon. I am endeavouring to do my very best to achieve that.
20 I will run past 4 o'clock. I am trying to get to a situation where I am aiming at quarter to 5. I will do my very best. I understand everybody is happy with that. If we are prepared to sit on, it is in everyone's practical interest, especially
25 Mr Roche's.

Mr Whybrow wants to take a few minutes of your time to tender a statement.

30 THE CORONER: Just on your first point, I am certainly content to sit on.

MR WHYBROW: I hand up a spreadsheet indicating the formal statement from Ms Dee Watson. I have
35 the statement of Ms Watson. She is available to give evidence, if anyone requires her. The second document I failed to tender yesterday.

40 Secondly, there was some discussion about Mr Nicholson's subsequent report that was not provided to the parties until recently.

THE CORONER: That was that extra part of the report.

45 MR WHYBROW: I don't think copies have been formally provided to your Honour.

THE CORONER: I don't have one.

MR WHYBROW: If that could form part of the tender
which is the exhibit to Mr Nicholson's report. If
5 that print out that was handed up yesterday and
that report form the one. Thank you, your Honour.

THE CORONER: The statement of Ms Dee Watson,
dated 17 October 2005 and the accompanying sheets
10 of analysis that she prepared will become
exhibit 0118.

EXHIBIT #0118 - STATEMENT OF MS DEE WATSON DATED
17/10/2005 AND ANALYSIS, ADMITTED WITHOUT
15 OBJECTION

THE CORONER: The extra document relating to
Mr Nicholson's report - his report being
exhibit 0099 - that can become part of that
20 exhibit.

EXHIBIT #0099 - ADDITION TO EXHIBIT - EXTRA
DOCUMENT RELATING TO MR NICHOLSON'S REPORT,
ADMITTED WITHOUT OBJECTION
25

MR MCCARTHY: Q. Mr Roche, could you go to
page 72 of your report, please.
A. Yes, sir.

30 Q. There you express the opinion that the Bendora
fire could have been contained in 24 hours and
secured prior to the deterioration in weather
conditions, et cetera; do you see that?
A. Yes, sir.

35 Q. You still hold the view that it could have
been contained within 24 hours?
A. Yes, sir.

40 Q. That map immediately above the paragraph is
drawn from Mr Cheney's material.
A. Yes, sir.

45 Q. If you could go back to the map on page 67.
A. Yes.

Q. That identifies the fire within the bounds of

those various roads and trails, et cetera, at the time when you believe it could have been contained?

A. Yes.

5

Q. Go back to page 66. The paragraph which identifies "The initial response to this fire occurred", et cetera.

A. Yes.

10

Q. You note that when they arrived there, the fire was about 50 metres to 100 metres off Wombat Road?

A. Yes.

15

Q. Up a steep embankment?

A. Yes.

20

Q. At that time, you would agree that the fire was burning in a north-north-west direction away from Wombat Road up the hill?

A. I'm not sure about that. The wind change, I think, by that time had occurred and - I can't be sure about that.

25

Q. I'm not disputing the fact that the fire was also burning back and expanding generally but the prevailing direction at the time was in the north-north-west direction, heading away from Wombat Road?

30

A. I can't be certain of that.

Q. Would you accept it from me that that's the case?

35

A. No. With respect - I mean, I would have to have a look at the weather conditions and perhaps confirm with Mr Cheney's report. Whilst there would have been some passage of the fire uphill due to the slope, it would have generally followed more particularly the wind at that time. I just can't recall what the wind was at that time. So I'm not meaning to be difficult again, Mr McCarthy. I'm just saying that I can't one way or the other verify that.

45

THE CORONER: Do you have a reference to your belief for that, Mr McCarthy?

MR McCARTHY: I must say it is something I have always understood to be the case. If I have to go and find the references, I am happy to do it. I am not in a position to do it now. Certainly the prevailing direction of all these fires at that time was in a north-north-westerly direction. The fire certainly swung around in days to come. At that stage, the fire was burning up the hill. I am pretty sure Odile Arman gives that evidence. I didn't really understand it was in dispute and not that I'm suggesting that Mr Roche should know that.

THE CORONER: Do you have access to some information yourself, Mr Roche, on that point?
A. I'm not sure. I'm just checking. It may have tended that way, Mr McCarthy, given that the wind was calm, a light easterly drift, according to Mr Cheney.

Q. Certainly the Bureau of Meteorology report at page 17 - [MLI.DPP.0005.0023] - notes north-westerly winds developed over the ACT and was heading up that hill. All right?

A. What time was that? I don't think that is right, in terms of the time that you are talking about in relation to this particular map. This particular map, we are talking about 9 o'clock at night.

Q. I understand that.

A. I don't think there were north-westerly winds then.

Q. I put to you that the fire was burning predominantly in a north-westerly direction, like all of the fires during that initial ignition time.

A. I'm sorry, I can't verify that one way or another.

Q. Do you accept, at least from the map on page 67, in comparison to the map on page 72, that the fire predominantly burnt in a north-north-westerly direction when you look at the expansion of the fire when you look at the comparison between the two maps?

- A. Looking at it generally, it seems to have expanded on all perimeters.
- 5 Q. I'm simply saying that the predominant burn direction was to the north-north-west.
A. No, I can't see that.
- 10 Q. It was burning in that direction, wasn't it?
A. Amongst others, yes.
- 15 Q. Along Wombat Road, there was vehicular access; do you agree?
A. Yes.
- 20 Q. On that basis, they could get tankers and crews down along Wombat Road to control that burning towards that road?
A. Yes.
- 25 Q. But heading up the hill towards Bendora Break, you would accept that the evidence was that that break was not traffickable to any vehicle?
A. That's correct.
- 30 Q. In order to obtain access along Bendora Break for the purposes of building a containment line they needed, first, to put a dozer through to clear that break?
A. If containment was going to be achieved through a dozer at that stage, that's correct. But there were other alternatives on that evening.
- 35 Q. If you look at the photograph on page 66, do you accept that depicts the fire at 2100 hours, or 9pm, on that night?
A. Yes, I do.
- 40 Q. In order to put an effective containment line around that fire, one would need a reasonably solid form of break between the fire and that kind of vegetation?
A. Say it again, please?
- 45 Q. You are not going to stop a fire like that from continuing to burn just with a rake, are you?
A. Yes, you are. I've seen it done hundreds of times.

Q. Are you trying to tell the Court that firefighters, by putting a rake around that fire, are going to stop it from continuing to burn?

A. That's correct.

5

Q. I suggest to you that the only way one could effectively control that fire was to use the roads that are depicted on the map at page 72.

A. Not at all.

10

Q. So you maintain that just with a rake hoe crew, they could have brought a fire like that under control?

A. Would have got an initial containment line around it, yes.

15

Q. So you didn't contemplate even that they make use of Wombat Road, Bendora Break and such roads, they just go into the bush with a rake?

20

A. Certainly they should have been concentrating on the north-eastern flank initially, yes.

I mean, even if they had worked the north-eastern flank right up to Bendora Road or that top road - I just can't recall the name of that now - the

25

Bendora Break or whatever.

Q. Bendora Break was the obvious place to put in a containment line which would control that fire?

A. Subsequent, yes - subsequently, yes. Opening up that break.

30

Q. On page 73, in the middle of the page, you make the point that the deployment of heavy machinery should have been ordered ready to commence work at first light on 9 January?

35

A. Yes.

Q. The purpose of that was to clear Bendora Break to create a containment line to stop it going over?

40

A. Yes.

Q. The fire would be contained by Bendora Break being cleared, working as a containment line for the north-north-west?

45

A. Yes.

Q. And Wombat Road would be used as a containment line to control it from coming south and east?

A. Yes.

5 Q. The end result, on your analysis, is that the Bendora fire would have been kept within the boundaries that are identified on the map on page 67?

A. Yes.

10

Q. You are saying that by getting in the dozer, clearing Bendora Break and then using the access roads to the south and the east, the fire can be contained?

15 A. As a subsequent strategy of the hand trail, yes. That's what the second paragraph says:

"The subsequent strategy should have been to deploy heavy machinery over subsequent operational periods... "

20

Q. But you accept that in all practical terms, the containment of the fire depended upon having those containment lines built around those tracks and trails and roads?

25

A. That's insurance. That's the insurance policy.

Q. And you accept that there is - withdrawn --

30 A. The point I'm making, once it got past the 8th --

Q. Mr Roche, just bear with me. You say on page 72 that the initial commitment of at least three RAFT teams with tanker and light unit support would have been necessary in order to provide the operational ability to bring that fire within those containment lines?

35

A. Yes.

40

Q. At that time on 8 January, and through the night of 8 January, the only way in which they could bring tankers or light units in was along Wombat Road; agreed?

45 A. Along?

Q. Wombat Road?

A. And the - sorry, yes.

Q. The fire, as you say on page 66, was 50 metres to 100 metres off the track up a steep embankment.

5 A. Yes.

Q. In order to make any use of those tankers or light support unit, you had to run a hose from the appliances on that road?

10 A. You would need to run more than one hose.

Q. I am saying that is the point from which the hoses needed to run.

15 A. Yes.

Q. We have a situation, first, where you have hoses running 50 metres to 100 metres up the track to get to the point of origin of the fire?

20 A. Not necessarily, no.

Q. To get to the bottom southern-most side of the fire?

25 A. You are assuming that the strategy was also to hand trail the bottom of it. I wouldn't have hand trailed the bottom of it at all. I would have hand trailed, as is suggested here, up off Wombat Road, up that flank and then let it burn back to the road. I wouldn't have wasted my effort. In fact, I would have probably lit it up off that
30 road to burn up toward it to take that bit out, and all I had to concentrate on initially was the left hand side - right hand side of the fire.

35 Q. In order to access the fire north of Wombat Road, you first had to have hoses that would reach it; agreed?

A. No, because I wouldn't have necessarily be running hoses up in that area.

40 Q. Why do you need tanker and light unit support if you are not going to have any hoses?

A. To ensure that I have contained it satisfactory and mopped it up quickly at Wombat Road.

45 Q. The purpose of the tankers and light units is not to try to bring the fire under control it is

simply to control the fire once it reaches Wombat Road and that's all?

A. That is one option for its utilisation, yes.

5 Q. What other options were there?

A. It may be, part of it, as the night went on, was accessible to tankers. That may have been an option for the Incident Controller to say it is a bit easier than running a hand trail.

10

Q. I am pointing out to you the tankers and light units only had access along Wombat Road and they could only use that equipment to control the fire in that southern and eastern flank; correct?

15

A. And the western flank.

Q. And the western flank, if you like?

A. Yes, correct.

20

Q. As far as Bendora Break is concerned, to bring that under control, as you rightly say, they needed to deploy heavy machinery to commence work before first light the following day?

A. As a subsequent strategy, yes.

25

Q. In your report, on page 74 you talk about the fire crossing Bendora Break to the north on the afternoon of 9 January?

A. Yes.

30

Q. The idea you had in mind is that the bulldozer or the grader or probably the dozer would have gone up Bendora Break and cleared it through the morning of the 9th before the fire reached the Bendora Break?

35

A. And that area would have been taken out, mopped up with - possibly light units would have traversed that track they had put in.

40

Q. The end result was the containment of this fire depended upon the dozer clearing Bendora Break to allow vehicular access to it before it crossed the break?

45

A. No. That was the security line. Containment initially was dependent on crews working that night to put a hand trail up in that area.

Q. If the fire was burning in a north-north-westerly direction of the type that is depicted on page 66, I suggest to you it would have been a dangerous proposition trying to put
5 a containment line at the head of the fire; do you agree?

A. I don't.

Q. You think it is all right to put firefighters
10 in front of a fire burning as it is on page 66?

A. Yes. As the night wore on, the humidity would have increased, the fuel moisture of the fuels would have increased and the fire would have dropped significantly in intensity.

15 Q. You are seriously suggesting - as I understand it, after working on this case for quite a while, one of the first things one knows about firefighting safety is do not confront a fire at
20 the head of it?

A. I'm not aware of that particular principle. There are always circumstances that may arise during the course of any fire where, due to fire behaviour, reduction in fire behaviour, access,
25 et cetera, that you do get across the head of it. In some cases you don't have a choice. That is your only option.

Q. The evidence about people saying you work up
30 the flanks of the fire to pinch the fire out and you don't take it head on - you don't agree with?

A. You work - if you continue to work up the flanks then that is all you will do until the heavens open. Sooner or later, you have to come
35 around the head of the fire.

Q. The idea of it is to pinch out the fire at the top, is it not?

A. Not always. It is to get a trail around it.
40 Now, you may not - my interpretation of pinching it is to narrow the head until you get to a point. In some cases, that will work. In other cases, eventually you have to come around the head of it.

45 Q. I suggest to you, Mr Roche, that the only practical way of being able to control the Bendora fire burning north towards Bendora Break was to

secure Bendora Break; do you accept that?

A. No.

5 Q. So you are seriously suggesting that they could have gone up into the bush with rakes and cleared a trail through the rocks and vegetation that existed around that fire and stopped it?

A. It happens in other jurisdictions.

10 Q. I'm asking about this Bendora fire.

A. Yes.

Q. You are suggesting they could have gone up in there and Bendora Break wasn't a consequence?

15 A. That's not what I said, Mr McCarthy.

Q. I'm saying that the control of Bendora fire one had to be at Bendora Break; do you accept that?

20 A. Yes, I do.

Q. Your evidence about the fact that they could have contained Bendora Break is built upon the fact that they should have cleared Bendora Break before the fire crossed it; correct?

25 A. Obviously. A bit late to clear it once it is crossed. You have to fall back to another line.

Q. Your understanding of all of that is built upon Mr Cheney's understanding that the fire crossed Bendora Break some time on the afternoon of 9 January and that they should have had the thing cleared before that happened; correct?

30 A. No. My analysis of that is - if I can --
35

Q. Certainly.

A. My analysis on that is based on the fact of where the fire was, based on the resources that, in my view, they could have deployed. It is based on the weather that had occurred and was forecast to occur and the fact that then the Bendora Break would ensure that that fire was absolutely secured. But it is not unusual to put a hand line around a fire initially as a control strategy and then back it up later on with a bulldozer for security.

40
45

Q. I'm simply saying that in order to achieve that, they needed to get Bendora Break secured before they crossed the line. Agreed? I think was your answer.

5 A. Yes.

Q. I am saying that at page 72, your analysis of the control on that line is built upon the fact that it crossed Bendora Break to the north on the
10 afternoon of 9 January and they should have had a dozer in beforehand to achieve that result.

A. And should have had the hand line in, yes.

Q. You cite Mr Hayes' statement at paragraph 31
15 for the proposition that the fire crossed Bendora Break --

A. Could I have that up, please, your Honour?

Q. Yes, you may. To speed this up, if I could
20 change it somewhat - Mr Roche, the evidence of Mr Hayes - you might recall he was the field incident controller on the morning of 9 January.

A. I'll take your word for it.

Q. He was the first on the fire ground at dawn
25 that day?

A. I'll take your word for it, Mr McCarthy, yes.

Q. His evidence is that the fire crossed Bendora
30 Break somewhere between midnight and 3am on the morning of 9 January; do you remember that?

A. No, I don't recall that.

THE CORONER: Are you looking at the transcript of
35 the evidence given by Mr Hayes?

MR McCARTHY: I am.

THE CORONER: What page are you looking at? I
40 have it here and I can pass my copy down to Mr Roche.

MR McCARTHY: Q. If I could take you to page 3906
45 of the transcript, he was shown an extract of Mr Cheney's report regarding the crossing of Bendora Break by that fire.

"Q. Do you recall that?

"A. Yes.

"Q. You were asked about it" --

5 A. Sorry, what page?

Q. Page 3906, at line 13.

A. Yes.

10 Q. He says:

"The fire crossed Bendora Break between
midnight and 3am, certainly the early hours
of the morning."

15 A. Yes, I do.

Q. Your own evidence, as I understand it, and
what is stated in your report, is that they could
not have gotten a dozer to Bendora Break before
20 dawn on the 9th; do you agree with that?

A. That's reasonable, yes.

Q. So that in order to start to clear Bendora
Break that it waited till dawn to start?

25 A. Yes.

Q. By that stage, the fire had crossed the break,
hadn't it?

A. Yes.

30

Q. So when you say in your report that the fire
crossed Bendora Break to the north on the
afternoon of 9 January, that's not correct, is it?
I'm not blaming you for it, I'm simply saying it
35 is not correct.

A. That would appear not.

Q. As a result, the fire would have beaten the
ability to clear Bendora Break before it got away
40 to the north?

A. If the hand trail hadn't been put in, yes.

Q. Mr Hayes gave evidence further down page 3906
regarding the terrain that existed to the north.

45 A. Yes.

Q. The question was:

"Q. As I understand it, when you got to the fire ground, the fire that had crossed the Bendora Break heading in a north-west direction was burning in what you describe as
5 long fingers of fire?

"A. Yes.

"Q. And over to the west I think you were telling the Court it was quite inaccessible?
10 "A. Yes, very inaccessible.

"Q. You yourself could not even get to that side of the fire?
"A. I could only look at it from the western
15 side from Mt Franklin Road.

"Q. So you couldn't even reach the fire?
"A. No."

20 Do you see that?
A. Yes.

Q. What I suggest to you, Mr Roche, that the capacity in any real sense to control the fire to
25 the north and north-west heading towards Bendora Break was not possible in the time they had to do it before it crossed the break?

A. I don't agree, for a couple of reasons, your Honour. You are talking about the impassable
30 section of that fire being to the west. I'm not talking about the west. I'm talking about the north-eastern or eastern side, for a start.

Q. Mr Roche, I do not dispute with you they may
35 have been able to control it on Wombat Road to the east or to the south or even to the west. I am simply saying with respect to the north getting across to Bendora Break, that was one area where it was not practical or possible to control that
40 fire by reason of the additional information not stated in your report, namely, that the fire crossed Bendora Break much earlier than you had previously understood. That's all.

A. And across the Bendora Break in the absence of
45 the hand trail.

Q. And in the absence of being able to clear it

before the fire crossed it?

A. As I said, my strategy was not - the clearing of the Bendora Break was not the initial dependent strategy. The hand trail was. The hand trail
5 wasn't put in and, therefore, in the absence of that, the fire crossed the Bendora Break, which then made it more difficult. That is not to say that the strategy should not have continued to be the Bendora Break, because it was easily
10 accessible, even though it had crossed it, and then hand trail a little bit or bull doze a little bit that it had crossed over.

There are a number of alternatives that were
15 available.

Q. Once it had crossed Bendora Break, it was heading off towards Moonlight Hollow Road, wasn't it?

20 A. Yes.

Q. There was no way they could control that fire until it got to Moonlight Hollow Road?

A. Not necessarily. The ground toward the top of
25 that area was levelling out, so the speed of the fire would have significantly reduced as it came up to the crest or the more level ground, and the shading shows that. In fact, the Bendora Break still could have been constructed further to the
30 north-east, providing an additional secure line.

Q. Mr Roche, you have heard Mr Hayes' evidence of the scale of the fire he faced that day?

35 A. Yes.

Q. There was no practical way at all that he could have controlled that fire heading north, was there?

A. I think once the night and the morning of the
40 8th passed without action then the task was becoming more difficult.

Q. Mr Roche, let us move on. If you come across to page 76, you there in the last paragraph put
45 the proposition regarding the Stockyard Spur Fire where you say - I am reading from the bottom paragraph, the second line:

"Had access been more readily gained and resources dispatched ... there was in my judgment an excellent chance that this fire could have been contained overnight."

5 A. That's right.

Q. That opinion is prefaced on the fact of had access been more readily gained, isn't it?

A. That's correct.

10 Q. You also accepted on the previous page that Mr Gray, who was the field incident controller, had difficult access and you do not criticise him for his inability to actually locate the fire?

15 A. That's correct.

Q. So that you make no criticism of him of being able to find the thing, let alone fight it?

A. I make no criticism of him withdrawing in the absence of his inability to find the fires.

20 Q. The statement is:

"Given the lack of information ... the difficult access and his inability to actually locate the fire ..."

- you make no criticism of him to withdraw?

A. That's correct.

30 Q. So we have a situation where Mr Gray couldn't even find the fire?

A. Yes.

35 Q. And you make no criticism of him for withdrawing?

A. Yes.

40 Q. If he couldn't find it, he certainly couldn't access it, could he?

A. No.

Q. You also accept, as stated in your report, that the Stockyard Spur Trail was inaccessible to any form of vehicle?

45 A. Sorry, would you take me to that, please?

Q. Go back to page 75, the second paragraph:

"The map showed an access track leading in the general direction of the fire ...

5 However, he was unable to locate this track. It was subsequently ascertained that he was in the correct location, but the track had not been maintained for a number of years and was overgrown."

10 A. Yes.

Q. You accept, therefore, the track was not accessible to vehicles?

A. No.

15 Q. Mr Gray couldn't even find it, let alone use it?

A. That's right. He couldn't find it. He didn't say he couldn't use it. He couldn't find it.

20 Q. Mr McNamara did find it the next day and he couldn't use it. Do you accept that the track was inaccessible?

A. No. No.

25 Q. You don't?

A. No.

Q. Do you think Mr McNamara's crew walked in when they could have driven?

30 A. I don't know which direction they came in from. Whether they found the origin of the track and came in along that or whether they walked in through the bush, I don't know.

35 Q. Mr Roche, you have said you have been here throughout the evidence; is that right?

A. Yes.

40 Q. You will recall therefore, that Mr McNamara gave lengthy evidence, both orally and in his statement, about the fact that they were only able to drive in about 400 metres along Stockyard Spur Trail and then had to walk the rest of the way

45 because they could not drive any further; do you remember that?

A. Yes.

Q. Would you accept that if that is the fact, they did not have vehicular access?

A. Not according to Mr Gray at transcript 3696, who indicated in his evidence in the inquiry "the field incident commander, Mr Gray, advised that had he been able to ascertain the location of the fire, he could have driven to the site in a light unit." I can only go on the evidence that Mr Gray gave, Mr McArthur.

10 Q. Mr McNamara was the one doing it the next day and he couldn't use his vehicles to get in and they walked, didn't they?

A. Yes.

15 Q. He gave evidence about how once the crew got there, they were pretty knocked up and had to have a bit of a break before they set to work; do you remember that?

20 A. I seem to recall that, yes.

Q. So that even to get to the fire was a fairly arduous task, wasn't it?

A. From where he came into it, I'd assume so.

25 Q. Mr McNamara had an arduous task to get there from the way he came in and Mr Gray couldn't get there at all from the way he came in; do you remember that?

30 A. No.

Q. Do you accept that?

A. I don't think he said that. He couldn't find the fire. He said once he did locate it, that he believed that he could have driven to the site in a light unit. That's at, as I said, transcript 3696.

35 Q. I'm reading through the report. It says he provided a situation report and advised that he did not think he could reach the fire that evening - transcript reference 3696. We will look at the evidence another day. I am happy to accept that Mr Gray did not get there that night and Mr McNamara only got there after an arduous walk. Do you accept that --

40 A. Yes.

45

Q. -- for the purposes of getting to the fire that access was not possible in any practical sense?

5 A. According to Mr McNamara, yes. Not according to Mr Gray.

Q. You also accept that the ESB did not have any capacity to repel firefighters rappelling out of helicopters to slide down ropes to the fire?

10 A. That's correct.

Q. That option of getting there wasn't open to them either, was it?

15 A. Not by rappelling.

Q. The next day when the crew did walk in, they worked arduously for the bulk of the day, didn't they?

20 A. Yes.

Q. Because of where they had to get to, they had to use dry firefighting techniques, didn't they?

25 A. Yes.

Q. When you look at the photograph on page 77 of your report, you would accept that that displays extremely thick vegetation?

30 A. At that particular point, yes.

Q. And that to construct a containment line through that sort of scrub with hand tools would be a long and arduous task?

35 A. It would have been a difficult task but of course with the assistance of chainsaws as well, that would have been made easier.

Q. I accept that.

40 A. Not suggesting it is an impossible task at all.

Q. What I'm suggesting to you, Mr Roche, is that when you take all of these various factors on board, namely difficult access, thick vegetation, inability to bring any sort of vehicle to the fire

45 ground, the practicalities of reaching that fire and containing it were significant, were they not?

A. It wasn't an easy task, Mr McCarthy. I am not

suggesting it was.

Q. Really, when we read the paragraph where you state had access been more readily obtained, you
5 are saying that if they could have done these things then they had an excellent chance of putting it out; correct?

A. If they had been able to access it that night, they would have had an excellent chance of
10 rounding it up, yes.

Q. But they couldn't could they?

A. That's correct, yes.

15 Q. They couldn't, could they?

A. No, they didn't.

Q. Mr Gray couldn't even locate the fire, could he?

20 A. That's correct.

Q. Thus they could not get there, could they?

A. There are options available to him to locate the fire, as I pointed out in my report.

25

Q. I am suggesting to you that they couldn't locate it, far less access it; is that not correct?

A. From the ground, not -- not from the air.
30

Q. They couldn't rappel in, could they?

A. No.

35 Q. You can't fight a fire unless you can get to it?

A. And there are options for them to be able to get to it. Mr Gray, as I have indicated in the report, had been able to get in the helicopter and have a quick look, and in his own statement later
40 he admits once he discovered where it was, he could have driven to it. The helicopter was there. It was trying to direct him in and he was unable to orient where the helicopter was in relation to the fire. All the helicopter had to
45 do was put down on the track, in the grass alongside it, pick him up, have a look -- bang, he was there.

Q. I put to you, Mr Roche, that they did not obtain access that night, did they?

A. They did not.

5 Q. Mr Gray, who was sent there, couldn't even locate it?

A. From the ground, that's correct.

10 Q. And you make no criticism of him for that, do you?

A. I make no criticism - I didn't say that. I make no criticism of him for withdrawing. I think there are other options that he could have taken.

15 Q. The difficult to access and his inability to actually locate the fire, "in my opinion, his decision to withdraw cannot be criticised"?

A. That's correct.

20 Q. I am saying don't you think it is a fairer statement to say that given the facts rather than the hypothesis of what might have been, the more accurate statement is they could not access the
25 fire and thus they did not have the chance to put it out, rather than had they been able to do something then a different scenario would have existed? Do you understand the point?

30 A. I don't necessarily accept that what you are saying is correct and what I'm saying is incorrect.

Q. I put to you, Mr Roche, the fact is they couldn't get to the fire and as a result they
35 couldn't put it out. Do you accept that?

A. Yes.

Q. Mr Roche, for the purpose of preparing your report, you were engaged in August 2003; correct?

40 A. I think that is about right. It was a long time ago.

Q. By September, October and November 2003, you had held firm views about what had occurred with
45 respect to those fires, didn't you?

A. I held views, yes. Not set in concrete.

Q. They were very firm views about what occurred?
A. Not set in concrete.

Q. I'm asking you if you held firm views about
5 what occurred.
A. I had a view of what occurred, yes.

Q. I say it was a very firm view, wasn't it?
A. I don't necessarily agree with that. On all
10 factors, on all the views I had formed about
everything, it was not set in concrete.

Q. You had very detailed, firm views about what
had occurred in September, October and November
15 2003, didn't you?
A. No.

Q. You did?
A. No, no.
20

Q. When you set about assisting the AFP with
their inquiries - didn't you?
A. Yes. At the request of the AFP.

Q. You took it upon yourself to write a whole lot
25 of detailed and specific questions to put to key
witnesses, didn't you?
A. No, I did not.

Q. You didn't do that?
A. I didn't set about doing that at all. I was
30 asked by the AFP - I was forwarded statements and
I was asked by the AFP to prepare questions, which
I did.
35

Q. And you provided them with large numbers of
very detailed questions to put to those witnesses
to elicit evidence, didn't you?
A. I put to them a number of questions.
40 I wouldn't say that they were, in all cases,
a large number. But certainly there were a number
of questions that I put - that I asked for them to
be put, in the knowledge that it was up to them,
your Honour, as to whether they put them or not.
45 It was entirely for them to determine. In
a number of cases they didn't use them.

Q. The fact is, you wrote long and detailed memos to the AFP setting out the kinds of questions that you wanted asked, didn't you?
A. That I believe were appropriate to ask, yes.

5

Q. And those questions went into considerable detail in order to obtain the kind of information you wanted to obtain, didn't they?
A. To obtain information, yes.

10

Q. Not just obtain information, obtain the information that you wanted to obtain?
A. In some cases that's correct.

15

Q. In many cases?
A. That's correct.

Q. In fact, I suggest to you that those questions were precise in their formation and directed the proposed witness to give the kind of evidence that you wanted to obtain; is that right?
A. No.

20

Q. Let me give you some examples of the questions you put to Mr Hayes:
A. "Was he surprised that there were no resources on the fire overnight?"

25

Q. Would you agree, Mr Roche, that that question evinces a view that you think that there were inadequate resources on that fire overnight?
A. You might look at it that way.

30

Q. That's a fair way to look at it, isn't it?
A. It's one way of looking at it, yes.

35

Q. Do you think it is fair?
A. It is one way of looking at it.

40

Q. I asked whether you it was fair.
A. I don't necessarily think it is fair, but it was one way of looking at it and one way - your interpretation is one interpretation of what the outcome it was that was desired.

45

Q. Your next question:

"In his opinion, if the fire had been resourced at night would this have contributed to early containment of the fire?"

5

That plainly evinces your view that that should have occurred and that you wanted to obtain information to support that view that you held; would you agree?

10 A. I don't agree. Quite a straightforward question to say if you did something, what would be the outcome at that particular time? Quite a straightforward question, I would have thought.

15 Q. Mr Roche, I suggest --

A. I could have equally asked if you didn't put anything on it, what do you think the outcome would have been?

20 Q. You didn't, did you?

A. I didn't.

Q. You asked the question to elicit the answer you wanted to get.

25 A. I don't believe that. I don't think that's the case.

Q. The next question:

30 "Ask him if he accepts if the fire escaped the containment lines the previous days' work would have been negated."

That's a view you held, isn't it?

35 A. What day are we talking about?

Q. 9 January.

A. Which fire?

40 Q. Bendora fire.

A. I don't think there was any work undertaken. I'm not sure. I would have to look at that question again and the context and the part of his statement from which it was asked because the question doesn't sound right to me -- because there was no action undertaken on the night of the 8th, so how could the work have been overtaken?

45

Q. Let me read the next question you asked to be put:

5 "Put it to him that if: 'if the fire escaped the containment lines overnight it was possible, if not highly probable, that a fallback position would have to be adopted the next day adding to the size of the fire and length of containment line
10 unnecessarily."

A. Straightforward question.

Q. Do you think that is a straightforward question?

15 A. Yes. What is going to happen if it gets away?

Q. So you think it is appropriate to direct the AFP or to request the AFP to put it to him that, open quotes, and then put that to him, do you
20 think that is the appropriate course to take, is it?

A. If they chose to take that course, yes. That's the information I wanted, was if that occurred, what would occur?

25

Q. I put it to you, Mr Roche, that you were asking the police to put to Mr Hayes that very question, weren't you?

A. Yes.

30

Q. The question itself was designed to establish that fact, wasn't it?

A. Designed to establish the information on what would have occurred had that action have occurred or not occurred.

35

Q. That's not what it says.

A. I think it does.

40 Q. It says:

"Put it to him if: 'if the fire escaped the containment lines overnight it was possible, if not highly probable, that a fallback
45 position would have to be adopted the next day adding to the size of the fire and length of containment line unnecessarily"?

A. Yes.

Q. That is not seeking his information; that is seeking his adoption that that was true.

5 A. I don't agree.

Q. Your next question:

10 "Put it to him isn't a key function of a planning unit to obtain intelligence from field commanders (himself) during a shift to enable them to develop a plan and appropriate resourcing for the next shift, ie in this case a night shift."

15 A. Yes.

Q. That is designed to ask him to acknowledge that that is true, isn't it?

20 A. To confirm that, yes.

Q. That's the view you held?

A. Well, it's a fact.

Q. That's the view that you held?

25 A. It is a fact in accordance with ICS planning.

Q. That is a view you held, isn't it, fact or otherwise?

30 A. What view is that, Mr McCarthy?

Q. The matter that you wrote:

35 "Put it to him 'isn't a key function of the planning unit to obtain intelligence, [et cetera]."

That's a view that you held, isn't it?

A. That's the role of the planning unit, Mr McCarthy. It's not my view. That's a role

40 under ICS of the planning unit.

Q. Do you think that is right or not?

A. That is -- it is the role of the planning unit. Yes, I do. And is it reasonable to ask him

45 whether he knew what the role of the planning unit was? Yes, it is.

Q. So you had this opinion, built on fact or opinion as the case may be, that's the view you held about a key function of the planning unit, is it?

5 A. It it's not a view that I held, Mr McCarthy. That is a function of the planning unit. Now, if you like, we can transgress back to all of the ICS information and I can take you to the manual, I can show you what the role of the planning unit

10 is. So it is not my view.

Q. You don't think that?

A. I do.

15 Q. Then it is your view, surely?

A. Not a view in isolation, Mr McCarthy.

Q. I am not asking about whether you are the only one who thinks it. I am asking whether or not

20 that is your view of the role, the function of the planning unit?

A. I agree that the role of the planning - that that is the role of the planning unit, as set out in the Australasian Fire Authorities Council

25 training material.

Q. Why cavil with the question?

A. Because I don't like your line of questioning, that's why.

30 Q. I'm sorry if you don't like the line of questioning. I am simply asking you, if you hold a view that that represents a key function of the planning unit, why do you choose to deny it?

35 A. I guess I am mistrustful of some people, Mr McCarthy.

Q. Is it fair to say that you think that represents a key function of the planning unit?

40 A. That certainly represents a key function of the planning unit, yes.

Q. So that was your view?

A. Yes.

45 Q. You asked the police to put it to him that that was a key function; correct?

A. To ask him whether he acknowledged that was a key function, yes.

5 Q. The purpose of that was to obtain evidence from Mr Hayes that he thought that, irrespective of what you thought; correct?

A. I thought it was a key function so I was asking him to confirm whether he thought it was a key function.

10

Q. The purpose of the question was to elicit from him evidence to support that view that you held; correct?

15 A. To support the function of the planning unit, yes.

Q. The purpose of the question was to elicit from him evidence that that was the key function of the planning unit?

20 A. Yes.

Q. You go on, at the end of the statement, to say:

25 "Note, from my assessment of Mr Hayes' statement from approximately 3.10pm on the 17th the fire progressively breached a number of containment lines. It appears all active
30 firefighting was progressively suspended and resources were withdrawn to the Bulls Head stages area."

That represented your view at the time, didn't it?

35 A. No.

Q. What does it represent?

A. It represented my interpretation of what the evidence in the statements suggested had occurred.

40 Q. Mr Roche, I put to you that it would be much more appropriate simply to put to him a question like: Ask him what he thinks is the key function of the planning unit. Do you not agree that is a preferable way of going about obtaining
45 information?

A. That's one way.

Q. But the way you close to do it was to put propositions to him and hope that he would agree with them; agreed?

A. I didn't hope for anything.

5

Q. You wanted him --

A. I put questions to him to see what his answer was. In some cases, the answer may have been confirming what, as you put it, my view was. In other cases, it may not have been.

10

Q. I am simply suggesting to you that if you want to find out Mr Hayes' view about the function of the planning unit, the preferable course, from an expert's point of view, is to ask him what he thinks, not to put a proposition to him and hope that he agrees with it.

15

A. That's one option.

20

Q. I'm asking you whether you think that is the preferable course to take.

A. Not necessarily.

25

Q. You don't think that's the right way?

A. Not necessarily.

Q. You think it is perfectly okay to put questions like that and get them to agree with it and hope they will agree with it?

30

A. I didn't get them to agree with it. I didn't hope that they would agree with it. I put the question. They weren't under any - or constrained in any way not to answer truthfully what they considered was the right answer.

35

Q. I'm simply putting to you that your approach was to put a proposition like that and ask him, "Isn't it a key function", et cetera.

A. And if he had said no, then I would have accepted that.

40

Q. I am simply suggesting, Mr Roche, that the preferable course is to ask an open question to see what he says rather than put a proposition to him that is your view.

45

A. That is one option, Mr McCarthy.

Q. Do you agree it is the preferable course?
A. Not necessarily, no, I don't.

Q. In what situation would it not be the
5 preferable course?
A. I don't know. You are being hypothetical and I can't answer that.

Q. Mr Roche, your evidence now is not necessarily
10 there may be some occasions where it is not the preferable course to ask an open question of a witness when you are trying to elicit his view. My question is in what circumstances do you think it is appropriate to put a question that suggests
15 the answer?
A. Circumstances where you want an answer, where you believe there is an answer. I mean, there are different ways of questioning different people.

Q. So the circumstances --
20 A. And I don't necessarily say one way is better than the other.

Q. So the circumstances where do you that is
25 where you want an answer of that kind; is that right?
A. No, not where I want an answer of that kind - Mr McCarthy, please don't put words in my mouth.

Q. You tell me in what situation is it preferable
30 to put a question that is designed to elicit the answer?
A. In the circumstances where I put it.

Q. In circumstances where you put it. The
35 question is, on what basis do you suggest that it is appropriate to act in that way?
A. In those circumstances.

40 THE CORONER: Mr McCarthy, please move on. It is just going around in circles now.

MR MCCARTHY: In the circumstances, your Honour,
I tender the questions that have been put together
45 by Mr Roche with respect to his interview plan of Mr Hayes.

THE CORONER: Do you know whether or not all these questions were put to Mr Hayes?

5 MR McCARTHY: I have no idea. I don't tender it for that purpose.

THE CORONER: These questions suggested by Mr Roche to be put to Mr Richard Hayes will become exhibit 0119.

10 EXHIBIT #0119 QUESTIONS SUGGESTED BY MR ROCHE TO BE PUT TO MR RICHARD HAYES

MR McCARTHY: Q. Mr Roche, I won't be long about this, but you took a similar approach, did you not, with questions that you drafted for the purposes of being put to Mr Blinksell, didn't you?
15 A. If you suggest that I took a similar approach on your interpretation of the last document, that
20 may be so, without looking at it.

Q. You prepared a document headed "Suggested specific questions for inclusion by AFP in witness interview plan, witness Graham John Blinksell".
25 A. The name doesn't ring a bell with me.

Q. I'm happy to show you the document, Mr Roche.
A. I'm sorry, yes. I didn't catch the name properly. But, yes, that is correct.
30

Q. On the opening page of that document you put in a box your views about the witness, don't you?
A. In some cases - I may have on that one, yes.

35 Q. In Mr Blinksell's case you wrote:

"It should also be noted that in some aspects eg access and fuel management he will be a valuable witness to support any
40 recommendations that the Coroner may wish to hand down in this regard."
A. Yes.

Q. That is a view you held and which you wanted the AFP to be apprised of when they were going in to interview him, wasn't it?
45 A. Yes.

Q. Then on that basis, you posed a number of questions to be put to Mr Blinksell in order to achieve that result; correct?

A. I would need to look at the questions I put.

5

Q. I am simply putting to you that the questions that followed were designed to obtain the evidence that you thought would be valuable.

A. That could be correct.

10

Q. And as an example, you suggested the police ask the following question:

15 "In his opinion, were environmental policies and finance factors that contributed to a lack of adequate fire trail maintenance and fuel reduction?"

20 That is a question that you posed to be put to Mr Blinksell; correct?

A. Yes.

25 Q. On what basis back in December 2003 did you even understand there to be a lack of adequate fire trail maintenance?

30 A. I can't answer that directly, I'm sorry. It could have been from any sources of information that I had at that particular time. I wouldn't have asked the question if I didn't think it was an issue.

Q. There was nothing that comes to mind as to your knowledge about the fire trail maintenance?

A. No, I can't recall --

35

Q. In December 2003?

A. I cannot recall the basis on which I asked that question.

40 Q. Certainly there was no evidence before this coronial inquiry upon which you built that opinion?

A. I'm not sure whether Mr Cheney's report was in by then and mentioned problems with fire access.

45

Q. Then on the next question you suggested that it be put to him:

"Ask him if in his opinion did the inadequate maintenance of fire trails and lack of prescribed burning in the Namadgi National Park contribute to the inability to contain the fires in the few days following ignition?"

5
A. If I put that question to him, particularly as it mentioned inadequate maintenance, I would assume there was evidence available to me or an opinion available to me that there was inadequate access.

10
Q. But the question, nevertheless, demonstrates that that was your view at the time?

15
A. No.

Q. If it wasn't even your view at the time, why do you presuppose that there was inadequate maintenance of fire trails?

20
A. Obviously because of the other evidence that I had seen or read.

Q. So it was your opinion then?

25
A. No, it wasn't. If I read something and it expresses some view to me, I may want to pursue that matter later. And so, it is appropriate for me, and it has been mentioned on a number of occasions, I should seek to confirm that before I go down that track of exploring that later.

30
Now, that's what I did. I sought to explore that issue. Again, I can't recall whether that question was asked or in fact --

35
Q. Preliminary view or otherwise, you had a view that there was inadequate maintenance of fire trails; agreed?

A. No.

40
Q. Why do you put a question: Ask him in his opinion did the inadequate maintenance of fire trails contribute to the inability, if you didn't even know the status of the fire trails?

45
A. I didn't say I didn't know. I would not have asked that question unless there was evidence that suggested there was inadequate maintenance of fire trails. That's not necessarily the view that I'm saying I believed there was inadequate

maintenance. That's not the case at all.

Q. Mr Roche, if there was evidence before you to that effect then even if that view was
5 preliminary, that was an opinion, tentative or otherwise that you held; correct?

A. No.

Q. How could you possibly put a question about
10 inadequate maintenance of fire trails if you don't even have a view about it?

A. Quite easily. If in fact, for instance, he came back and said, "No, I don't believe that's the case", then I would pursue it no further. If
15 he came back and said, "Yes, it is and these are the reasons", and they were legitimate, I would pursue it no further. It is not a matter of having a view. You seem to suggest I had all of these views and I was looking for things to either
20 support them or not.

The evidence was there and that's why the question was asked. It is not the view that I had formed at all.

25

Q. If the evidence was there, as you put it, and you had read this evidence or become aware of it -- hadn't you?

A. I must have to have asked the question, sir,
30 yes.

Q. Necessarily, you thought, based upon that evidence, whatever it might have been, that there were inadequate fire trails?

35 A. No.

MR LASRY: That is the fourth time.

THE CORONER: He has already explained it. It is
40 not it at all what Mr Roche is saying.

MR McCARTHY: Q. Do you accept, Mr Roche, that you were presented as an expert witness to this court?

45 A. Yes.

Q. I suggest, in that circumstance, your role is

to allow the evidence to be gathered as it comes,
irrespective of how it comes or how it is
produced, and for you then to take that evidence
and form a view about it; would you agree with
5 that?

A. With the greatest respect, Mr McCarthy, I have
been caned while I have been in the witness box
for taking that particular role. And, yes, I do
agree that was primarily my role.

10 Q. That being your role, to receive the evidence
as provided to you as an independent expert, you
should necessarily not have gone out and involved
yourself in the investigative aspect of the
15 inquiry?

A. I don't necessarily agree with that. I mean,
if I can provide - I was requested to provide
support to the AFP on the advice of counsel
assisting, who I asked first whether I should
20 undertake that role - it was suggested that it
would be a positive move to ensure - to assist me
in gaining all of the information.

There are counsel in this room who have criticised
25 me for not asking additional questions. You are
suggesting to me I should have solely looked at
things. This seems to be a counter of the train
of thought of other counsel. But that's what
I did.

30 Q. I am simply suggesting, Mr Roche, that the
better course would have been, as an independent
expert, not to have involved yourself in the
investigative aspects of the inquiry.

35 A. I don't think so.

Q. And that the better course would not have been
to go out there and put closed questions to be put
to witnesses for the purposes of eliciting the
40 information that you wanted to obtain.

A. I found --

Q. Do you agree with that?

A. No, I don't. Your Honour, I found great
45 value --

Q. I'm simply asking whether you agree with it.

You have said no. That is fine. In any event, you did decide not only to be an expert witness but also involve yourself with the investigation of the inquiry; do you agree?

5 A. No, I didn't decide that. I was asked.

Q. And you chose to do so?

A. Yes.

10 Q. I suggest that once you decided both to be an investigator and an expert, that the better and proper course would have been to ask questions or to pose questions to be put to witnesses that did not suggest the answers to be given.

15 A. I was not an investigator, for a start, as you suggest. Secondly, I don't necessarily disagree that some questions may have been constructed differently. Whether the answer would have been different, I don't believe so.

20

Q. Do you agree that you were engaged as an expert?

A. Yes.

25 Q. Do you agree that you posed and prepared a number of questions that you put together for the purposes of the AFP then asking the witnesses those questions?

A. Yes.

30

Q. And you agree that many of those questions were put in a manner designed to elicit an answer to it?

A. To elicit information.

35

Q. I suggest you to that having involved yourself, both as an expert and as participating in the investigative role of the inquiry, the better course would have been to pose questions that did not suggest the answer.

40

A. I have no opinion on that, sir.

Q. No opinion on that. Mr Roche, in September 2003, you expressed the view - I am reading from exhibit 0105 - to counsel assisting, in the absence of any evidence:

45

- "Whilst I have the value of hindsight, I am of the opinion, given these conditions and the obvious threat to Canberra, that these fires presented an aggressive, concentrated
5 fire attack in the period immediately following this and should have resulted in these fires being held."
A. What document are you reading from?
- 10 Q. I am reading from exhibit 0105, your memo to Mr Woodward and Mr Lasry, at paragraph 12.
A. Yes -- as I have gone to great pains to explain in the body of my report.
- 15 Q. That's an opinion you held in December 2003?
A. Yes.
- Q. At that stage, you had not seen any evidence at all, had you?
20 A. Yes, I had.
- Q. Mr Roche, the first piece of evidence, as I understand it, was Mr Cheney's report.
A. No, that wasn't the first piece of evidence
25 that I got.
- Q. Mr Roche --
A. I believe I got some witness statements from officers and employees of the ACT Fire Brigade, is
30 the first evidence I had received.
- Q. So you don't distinguish at all between the statements that counsel assisting refer to you and the evidence in this inquiry?
35 A. I'm not sure the point you're making.
- Q. I'm asking, do you draw any distinction between the statements that counsel assisting send to you and the evidence given in this inquiry?
40 A. I do draw a distinction.
- Q. Do you agree then the evidence in this inquiry had not been given at the time you wrote this report?
45 A. That's correct.
- Q. I repeat my question: Is it true that you

formed this opinion before any evidence had been given in this inquiry?

A. Yes.

5 Q. Mr Roche, in your report is there anywhere that you acknowledge or would allow a reader to understand that you held those opinions before any evidence was given in this inquiry?

A. No.

10

Q. Is there anywhere in the report that the reader would understand that much of the evidence that you rely upon was obtained in some way or other by reference to questions that you had prepared to assist the AFP?

15

A. No.

Q. So, if it hadn't been for the order of the Supreme Court requesting that documents of this kind be produced, no-one would ever have known, would they?

20

A. No.

MR McCARTHY: I have nothing further, your Honour.

25

THE CORONER: On that basis, unless counsel have anything to raise --

MR WOODWARD: Just a very brief housekeeping matter, if I may.

30

THE CORONER: Mr Roche, you are excused. I gather you have to come back on Monday. Is it convenient for you to come back on Monday?

35

THE WITNESS: Yes, your Honour.

MR LASRY: As I follow, we have one more round of cross-examination from Mr Pike and then re-examination, and then Mr Nicholson, so Mr Roche would be required for a fair bit of Monday morning, I would suspect.

40

THE CORONER: Thank you.

45

(The witness withdrew)

THE CORONER: Yes, Mr Woodward?

MR WOODWARD: In relation to the documents that have been referred to in the last few days,
5 I should confirm the position that we propose to take, so all the parties are aware - this may be subject to some finetuning - in respect of the two folders of material that were provided, as was explained, a lot of that material is already in
10 the brief. Some is not in the brief but has been processed and some is new.

To avoid anything slipping between the cracks, it seemed to me the best thing to do, given it is not
15 a huge quantity of material, is to put it all in, in the form in which it has been provided to us in the folders. That will result in a couple of things going in twice. That seems to me to be the safer course. It seems to be the consensus that
20 is the better thing to do because then it will be held in that form, with each document following the one before, as it is in the folder.

That will, of course, include, in some of those
25 cases, some of the documents that have been masked, as was explained. That would mean the material that goes in in the brief will go in in the masked form.

We will add to that -- subject to my checking something with Mr Whybrow -- the handful of documents he has provided. In particular this is the budget proposal brief documents that he has referred to in his cross-examination of Mr Roche.
35 I did still want to check with him precisely - I think there is some doubt about the dating of those documents - to try to find out a little more from him about where they came from.

We will also be responding in the next day or so to a letter that has been received from the ACT Government Solicitor seeking general clarification of the status of documents on the brief and drawing a contrast between documents including
45 statements that have been the subject of evidence and documents that are on the brief but have never been referred to throughout the inquest. So we

will be responding to that. In that context, we will deal with the emails that were tendered on Monday.

5 They will be picked up in that general explanation as to how we propose the parties treat the material.

10 I think that was all, your Honour. I should finally mention for Mr Roche's benefit - he has informed me he is unable to fly into Canberra on the Sunday night that week. He will be on a flight that is due to arrive in Canberra on the morning of the Monday at 9.30, so that there is
15 some chance that he may be a little late. If we get information during the night that it may be more than a little bit late, it may be convenient to start Mr Nicholson before we conclude Mr Roche. We will play that by ear, depending upon when
20 Mr Roche actually gets into Canberra.

THE CORONER: We have definite information that Mr Nicholson will be in town, Mr Whybrow, on Monday morning?

25

MR WHYBROW: He will arrive on the Saturday or Sunday.

THE CORONER: If Mr Roche is here we will continue with him at 10 o'clock. If he is going to be
30 substantially delayed then we will start with Mr Nicholson, just to make sure we get through what we need to get through on Monday, particularly from Mr Pike's point of view.

35

If we can get an agreed version of those folders then we will tender those on Monday into the system.

40 MR WHYBROW: I am assuming Mr Woodward is referring to this letter yesterday from Mr Bayliss asking for clarification of documents on the brief. I have had nothing to do with that document. I know it has been directed to you as
45 the Coroner and it is certainly appropriate for counsel assisting to make some submissions to you as to what the position in their view ought to be.

In my submission, ultimately, given the issues that are raised, it is a matter that, in my submission, your Honour is going to need to make some ruling on as to what is in or what is not or
5 what is the status of the material.

MR WOODWARD: Can I respond to that? The letter was brought to our attention, I think it was yesterday. As I understand it, at that stage it
10 had been intended to provide it to your Honour. Having discussed it with us, the author of the letter thought the better thing to do was to deal with it between the parties and counsel assisting and not to trouble your Honour with it. Whether,
15 ultimately, it is a matter that comes to your Honour may depend on the response that we provide. If the party is not happy with that response then perhaps that would be appropriate.

20 In my submission, what it is seeking is clarification of an existing position. The transcript makes it clear, if I may say so, what the position is in relation to the material in the brief. We will confirm that in this letter in
25 response. If a party is unhappy with it, naturally they will raise it with your Honour. It may or may not need to be so raised.

MR WATTS: I can make clear the response that
30 would be to all parties.

MR WOODWARD: That is certainly the intention.

MR WATTS: I am not an author of the letter and
35 I know what is it in and I would be interested to know.

THE CORONER: I was given a copy of the letter this morning and I haven't looked at it in detail.
40 I understand there was some discussion between the author of the letter and Mr Woodward.

MR WOODWARD: It was certainly intended that we will include in our response a copy of the letter
45 so everyone has both sides.

THE CORONER: I think that is very important. We

will adjourn until Monday morning, at 10 o'clock.

HEARING ADJOURNED AT 4.40PM UNTIL MONDAY, 21
OCTOBER 2005, AT 10 A.M.

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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

15

CF No 154 of 2003

20

CANBERRA

25

INQUIRY INTO INQUEST AND INQUIRY
THE DEATH OF DOROTHY MCGRATH,
ALLISON MARY TENNER,
PETER BROOKE, AND DOUGLAS JOHN FRASER
AND THE FIRES OF JANUARY 2003

30

DAY 91

35

Monday, 24 October 2005

40

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<TREVOR MICHAEL ROCHE, RESWORN

THE CORONER: Mr Pike, are you ready to cross-examine Mr Roche?

5

MR PIKE: I am. Firstly, there are some housekeeping matters and then, secondly, I think Mr McCarthy has an application to make.

10 MR McCARTHY: Your Honour, there is one thing I omitted - you might recall I asked a number of questions about a questionnaire that Mr Roche prepared for Mr Blinksell. I asked him a number of questions about that but I had omitted to
15 tender it. I now do so.

THE CORONER: These questions relating to Mr Blinksell will be exhibit 1020.

20 EXHIBIT #1020 - QUESTIONS RELATING TO MR BLINKSELL, ADMITTED WITHOUT OBJECTION

MR McCARTHY: I seek your Honour's leave to ask a few questions by way of clarification of the
25 evidence Mr Roche gave on the previous occasion.

THE CORONER: How long will that take?

MR McCARTHY: I would imagine about 5-minutes, around that margin.
30

THE CORONER: That is fine. Thank you.

<FURTHER CROSS-EXAMINATION BY MR McCARTHY

35

MR McCARTHY: Q. If I could take you to page 74 of your report, this is where I was asking you questions about the crossing into Bendora Break.
A. Sorry, Mr McCarthy?

40

Q. At page 74 of your report, in the paragraph immediately before the heading "Stockyard Fire", it reads as follows:

45 "Again, it is not difficult to understand why, as a result, the fire crossed Wombat Road to the east and the Bendora Break to the

north on the afternoon of 9 January."

A. Yes.

5 Q. Do you accept that the statement about crossing Bendora Break to the north on the afternoon of 9 January is wrong?

A. I do.

10 Q. The evidence in support of that in Mr Hayes' evidence is also wrong?

A. Yes.

Q. I also asked you some questions about the access to the Stockyard Spur fire.

15 A. Yes, sir.

Q. You remember that I asked a series of questions about the fact that if you couldn't even access the fire, you couldn't thereby contain the fire. Do you remember those questions?

20

A. Yes, sir.

Q. At page 8068 of the transcript, you dealt with the question of Mr McNamara not being able to obtain vehicular access to the fire; do you recall that?

25

A. Yes, sir.

Q. I said to you:

30

"Q. Would you accept that it is the fact that they did not have vehicular access?"

Your answer was:

35

"Not according to Mr Gray at transcript 3696 who indicated in his evidence, the field incident commander advised that had he been able to ascertain the location of the fire he could have driven to the site in a light unit. I can only go to the evidence that Mr Gray gave, Mr McCarthy."

40

Do you remember that answer?

45 A. Yes, I do, sir.

Q. Further on, I put it to you that Mr McNamara

50

had an arduous task to get there and Mr Gray
couldn't get there from the way he came in.

A. Yes, sir.

5 Q. I said:

"Q. Do you accept that?

"A. No, I don't think he said that. He
couldn't find the fire. Once he did locate
10 it that he believed he could have driven to
the site in a light unit."

A. Yes, sir.

15 Q. Further on, I said:

"Q. Do you accept for the purposes of
getting to the fire that access was not
possible in any practical sense?

"A. According to Mr McNamara, yes, but not
20 according to Mr Gray."

A. Yes.

25 Q. You might recall that you were referring to
transcript 3696, which I didn't have?

A. Yes.

30 MR MCCARTHY: Could that transcript please be
brought up on the screen, your Honour? I have
several pages here in hard copy.

THE CORONER: I think that might be faster,
Mr McCarthy.

35 MR MCCARTHY: Q. Having looked at that page, do
you accept that Mr Gray never said any such thing?

A. I accept he didn't say he could drive to the
site.

40 Q. In fact, he said he didn't know whether he
could get there at all, didn't he?

A. Well, no. He says he doesn't know whether he
could have got further than the Morass area.

45 Q. Indeed. When you say on three occasions in
your evidence that he believed he could have
driven to the site in a light unit and he could
have driven to the site in a light unit and that,

50

for the purposes of getting to the fire, access was not possible, not according to Mr Gray, that's simply not right, is it?

A. That's right, sir.

5

Q. You agree?

A. Yes.

Q. Mr Roche, why is it that you misstate the evidence that Mr Gray gives?

A. My recollection of the evidence, when I checked, was obviously wrong, Mr McCarthy. It wasn't the only thing that I based that statement on, that they could have driven in there. I also had photographs of the site of the fire which suggested to me that it was accessible.

15

Q. Mr Roche, my question is: Why did you repeatedly misstate the evidence?

A. I was incorrect, Mr McCarthy.

20

Q. I know you were incorrect. You have acknowledged that. My question is: Why did you misstate the evidence?

A. I have no reason for that. I can't answer that. My recollection at the time, having read the evidence, having read much evidence, and also seeing the photographs, I guess I put the two together incorrectly, Mr McCarthy.

25

30

Q. You see, Mr Roche, you have had an opinion that they could have controlled the Stockyard Spur fire since September 2003, haven't you?

A. I wouldn't be specific about that date:

I gained an opinion throughout the course of this investigation and inquest that --

35

Q. You held an opinion since September 2003 that they could have held Stockyard Spur fire; isn't that right?

40

A. I certainly had a view leaning to that regard, yes.

Q. That was the opinion you held, wasn't it?

A. I had a view leaning towards that regard, yes.

45

Q. You then set about the task obtaining the

50

evidence necessary to sustain that view; isn't that right?

A. No, sir.

5 Q. I suggest to you, Mr Roche, the reason that you chose to misstate Mr Gray's evidence was because that supported the view that you had always held; isn't that right?

A. Not correct, Mr McCarthy.

10

Q. I will repeat my question: Why did you misstate the evidence?

A. I repeat my answer that is on transcript, Mr McCarthy.

15

Q. What was it?

A. As I said, I had read much transcript, I had read the evidence of Mr Gray, both in transcript and in his statement, I had photographs which

20

I referred to. I put the two together and made or formed the view that, in hindsight, misrepresented Mr Gray's statement. However, I don't resile from the fact that the Stockyard fire could have been contained.

25

Q. Do we understand that you have misstated the evidence simply because you relied upon other things; is that the gist of it?

30

MR LASRY: What is the point? This is the third time he is being asked this. He has had the answer to the question two or three times. It may not be satisfactory to Mr McCarthy, but we are back to circular questioning, in my submission.

35

THE CORONER: Is there anything else you want to say on that, Mr Roche? Any other explanation you want to give.

40

A. No, your Honour. I have the photographs here, if it is helpful.

MR McCARTHY: Q. You were asked a question about misstating the evidence.

45

MR McCARTHY: I accept my friend's comment. I leave it at that. Thank you, your Honour.

MR PIKE: I would be assisted if I could impose on my friend, Mr Lasry, and borrow the lectern for a while. I have a few documents to refer to. I am grateful to my friend.

5

MR WATTS: While Mr Pike is getting ready, I have been trying to make a search of the transcript for a particular purpose. The system doesn't seem to be operating.

10

THE CORONER: I think we have always had difficulty in trying to bring pages of the transcript onto the screen. Do you need that?

15

MR WATTS: It is not urgent, but I was trying to find something for a matter I want to raise later.

<CROSS-EXAMINATION BY MR PIKE

20

MR PIKE: Q. Mr Roche, in the course of preparing to give evidence, you tried to say you had to go through an immense amount of material. That's correct, isn't it?

A. Yes, sir.

25

Q. You did have assistance from people in the coronial team, if I can describe it that way - counsel assisting, solicitors, the AFP - from time to time in relation to that material -

30

identification of relevant aspects of it and getting on top of it generally; would that be fair?

A. Yes, sir.

35

Q. You certainly had access to the material held by the AFP. I think you told us that last week?

A. Yes, that's correct.

40

Q. The system in the ACT in the times of bushfire was for resources to be supplied by the relevant agency and/or volunteers?

A. As I understand, yes.

45

Q. The contact, when there is a bushfire event, is made by COMCEN to the agency representative, in the case of agencies, stipulating what resources they are being asked for; is that your

understanding?

A. I don't know, sir.

Q. You haven't gained that understanding from --

5 A. I would assume that is the case, but I can't
say for certain that that's the way it actually
occurs. I would imagine from time to time there
would be phone calls between various officers in
the Emergency Services Bureau and branches of the
10 Department of Urban Services. I am not
necessarily suggesting it is all done by COMCEN.

Q. You have heard the term, during the course of
this inquiry, "agency reps" or "agency
15 representatives"?

A. Yes, I have.

Q. And contact with those persons to organise the
resources?

20 A. Yes.

Q. It is pretty important for an incident
controller to know what resources he is going to
get, isn't it?

25 A. Absolutely.

Q. And if an incident controller is told what
resources he or she will be getting and fewer
resources show up than were promised, it is pretty
30 important for the incident controller to contact
somebody relevant, somebody at headquarters - in
this case, somebody at ESB - to find out where
those missing resources are?

35 A. I am not quite sure who you are suggest is the
incident controller?

Q. I am talking about the incident controller on
the ground in the fire front?

40 A. Yes, sir.

Q. It is pretty important if fewer resources have
shown up than they were told they would be getting
to find out what is going on, where those
resources are, if he can?

45 A. If he believed he was getting a certain
allocation of resources and he didn't get them,
yes, I'd expect he would ask the question, asking

where they were.

5 Q. That is partly because the incident controller is the eyes and ears of, in this case, the ESB at the fire ground. If something has gone wrong, if there has been a miscommunication, as does happen in large fire events from time to time, then that has to be remedied. That's correct, isn't it?

10 A. It is part of the - primary part of the process of gathering and distributing information. Yes. Not the only eyes and ears.

15 Q. No, I am not suggesting the only part. Certainly, if ESB has organised for resources to go to a particular fire ground and the incident controller on the ground receives less than what he has been told he would be getting, it may well be, unless the incident controller contacts ESB to tell them, that ESB wouldn't be aware of that fact?

20 A. I wouldn't necessarily say that would be the case.

25 Q. I didn't say "necessarily". I said unless someone tells the ESB you are not necessarily going to know that fewer resources than were apparently organised have actually show up?

30 A. That's correct. It may not just be the incident controller. I would assume that when resources leave where they are located to go to a fire, that they would let COMCEN know or let somebody know in ESB and their task and logistics - sorry, the planning section of tracking resources would then be saying, "Well, 35 look, this is not the combination we expect to be going" even before they get to the incident.

40 Q. The fact is that resources can sometimes fail to arrive. We had examples here. One thing in fact, it occurs to me, the incendiaries that New South Wales organised, they didn't show up; you recall that evidence?

A. Yes, I do.

45 Q. That is one of the things that can occur?

A. Yes, they do.

50

Q. Particularly if you have a very large-scale operation going on?

A. Yes.

5 Q. Mr Rick Hayes, Park 6 - you recall Mr Hayes?

A. Yes.

Q. His evidence was he was told by COMCEN, on the evening of 8 January, to attend Bendora on the next day; do you recall that?

10 A. Yes.

Q. The transcript reference is at his statement [ESB.AFP.0108.0002] at paragraph 18. I don't need to take you to it specifically, but his recollection was he was told that the fire was, in his words:

20 "About 300 metres by 400 metres and that the details available from COMCEN about the fire, its location and our objectives were sketchy."

Do you recall evidence to that effect?

25 A. Not precisely, but I have got no reason to doubt that is not the case.

Q. I ask you to assume that that is what his statement says at paragraph 18.

30 A. Yes.

Q. He then said - the evidence before this inquiry appears at 3894:

35 "I was never told on the night of the 8th what I was getting. It was to turn up and see what I got. In that list there were two rake hoe teams. I never received them. But I never knew I was getting them until I spoke to Parks 1. Later on the 9th, somewhere on the 9th I spoke to her and they never turned up."

Do you recall that evidence?

45 A. No, I don't specifically.

Q. I ask you to assume that is part of the

50

evidence given by Mr Hayes in this inquiry.

A. Yes.

Q. The reference to "Parks 1" you would
5 understand is a reference to Ms Odile Arman?

A. Yes, sir.

Q. He also says in his statement at paragraph 42
10 that Ms Arman said to him these words:

"I ordered two rake hoe teams for the 9th."

I ask you to assume that is what Mr Hayes recounts
Ms Arman having told him and he recounts that at
15 paragraph 42 of his statement.

A. Yes, sir.

Q. You would be critical if the fact was that
Mr Hayes hadn't been told what he would be getting
20 and you would also be critical if it were truly
the case that the outgoing incident controller's
request had not been actioned?

A. I would be critical on three counts, sir. One
is - the two that you mentioned, plus also for an
25 incident controller going to an incident without
the information and perhaps not asking and seeking
from either planning or the operations officer or
operations manager what resources he should have
had and what the plans were for that day.

Q. Did you listen to the recordings of telephone
30 conversations which took place on 8 January 2003,
as was held by the AFP?

A. I listened to some, not all of them, sir.

35 MR PIKE: Your Honour, I was in the luxurious
position, if I can describe it that way, of having
some time, unlike last year when everyone was
pressed for time. As a result, I have discovered
40 a tape-recording which I would like to have
played. Before it is played, this is from Channel
53. It is a conversation which occurs at 2148 on
8 January.

45 Your Honour, [ESB.DPP.0017.0001] contains excerpts
from Channel 53. Those excerpts, to my
understanding, stop at 2122 hours. This

conversation occurred at 2148. Because it is a telephone conversation, I have had it transcribed. If it would be convenient, could that be played? Before it is played, could transcription be given (a) to this witness and (b) to others interested?

THE CORONER: Who is it between?

MR PIKE: It is between Mr Tony Graham and Mr Rick Hayes.

(Excerpts of telephone conversation played)

MR PIKE: There is then a second conversation, apparently cut out somewhere. While that is happening, there is a passage on the next page which some might think is not specifically relevant to the intentions, it may cause offence to the person involved. I ask, at that point, that it be fast forwarded. That is from the bottom of page 5 of 7 effectively over to the bottom of the next page. It is a bit difficult to juggle using the recording. That is a request I make in relation to that as particularly the middle aspect of page 6 of 7.

THE CORONER: Perhaps if you say, unless anyone has objection, everybody has it in print. Perhaps if you say, "Pause" and "Restart", I am sure the operator will know.

MR PIKE: Thank you.

(Telephone conversation continued to be played)

MR PIKE: Your Honour, can that recording and transcript be exhibited, please? The CD containing the particular two conversations, effectively one conversation but in two halves, is with the technician here.

I have another disk which has ESB telephone lines Channel 53 from 8-15 January here which contains on 8 January that conversation, amongst others. It shows where it takes place, effectively the context of the conversation recorded on Channel 53

50

on that day. I am happy to hand both of them up,
if that is useful.

THE CORONER: Thank you, Mr Pike.

5

MR PIKE: I might have the other one returned to
me and that one identified from the time.

THE CORONER: That recording of Channel 53 on
10 8 January 2003 commencing at 2148 hours and the
transcript of that recording, and that later
recording will become Exhibit 0121.

EXHIBIT #0121 - RECORDING OF CHANNEL 53 ON 8
15 JANUARY 2003 COMMENCING AT 2148 HOURS, TRANSCRIPT
OF RECORDING, AND LATER RECORDING, ADMITTED
WITHOUT OBJECTION

MR PIKE: Q. Mr Roche, you have now had the
20 benefit of hearing that recording and following it
through on the transcript. Have you heard that
conversation before?

A. No, sir.

25 Q. Obviously, it would have assisted you, in the
course of reviewing this matter and preparing your
report, had you heard that?

A. Yes, sir.

30 Q. It is clear from that conversation that
Mr Hayes was told he would be getting two RAFT
teams, two teams of six?

A. Yes.

35 Q. He was given information about the size of the
fire, about 500 square metres?

A. Yes.

40 Q. He was given grid references for the water
source?

A. Yes.

45 Q. And Mr Graham asked for an early sitrep on the
following day as to information and activity of
the fire?

A. Correct.

50

Q. You understand, of course, I am not in any way trying to criticise Mr Hayes for not having recalled that. It is difficult to recall things some time later, as I am sure you found during the course of giving your evidence?

5 A. Yes, sir.

Q. I pass now to another issue, if I might. That is the issue of obtaining information from Mr Dennis Gray on 8 January. You recall having been critical of the SMT for not having extracted information, I think the term was, from Mr Gray as to what level of resources would be needed on the next day, and in the course of making that criticism you quoted Mr Grey's answer to a question that he gave at transcript 3699 where he says:

20 "I could have made some suggestions but I didn't."

Do you recall, generally, that approach that you took it to that issue?

25 A. Yes, I do, sir, yes.

Q. There are a couple of things I would suggest to you which are relevant in that regard. Firstly, there was the fact that Mr Gray, as we know, did not get to the fire ground on that night.

30 A. That's correct.

Q. Secondly, you haven't apparently taken into account Mr Gray's evidence, also at transcript 3699, in relation to the conversation he had with Mr McNamara, who was, as you would recall, going to be the incoming incident controller on the next day where Mr Gray said:

40 "He asked me - "he" being Mr McNamara - "what I could tell him. There wasn't much I could tell him. I hadn't been to the fire."

Do you recall that evidence?

45 A. Yes, I do.

Q. Did you take that into account in --

50

A. Yes, I did. I think my concern was, sir, when Mr Gray in his evidence indicated he could have made a motion to ESB or to the Bushfire Service on what might have been required for the following day, but for whatever reason he chose not to. I am somewhat concerned perhaps he didn't take that lead.

Q. What he did say at transcript 3700 was the suggestions he would have made, if he had been asked, was to send in the RAFT teams and perhaps a dozer. That is the evidence he gave at 3700.
A. If you say so.

Q. I ask you to assume that is so. If that is so, the concept of sending in RAFT teams and, if there is one available, a dozer, would hardly be startling; it is exactly what you would expect, isn't it?

A. Yes.

Q. On the following day, a 12-man RAFT team was in fact sent?

A. On the following day, that's correct.

Q. Of course, at that stage, no dozer was actually available, but in terms of what suggestion Mr Gray says he could have made, namely, send in RAFT teams and, if there is one, a dozer, that is precisely what happened, leaving aside the unavailability of a dozer?

A. I don't know whether a dozer was available. I don't know whether one was attempted to be sourced. I can't comment on that.

Q. You made a number of comments in your evidence and in your reports in relation to the use of heavy plant and dozers. I take it you took the opportunity to familiarise yourself and reacquaint yourself with the heavy plant situation when you made those points in your evidence, both written and in this court?

A. I was aware that ACT Forests had contracted dozers at the time. I was not aware what other steps had been taken by the ESB to source alternative opportunities to get dozers or heavy plant.

50

Q. I take you to another issue. It is the firefighting at night document from the Forest Fire Management Group. Do you recall that document?

5 A. Yes.

Q. I think you said in your report that the position espoused by that group in that document was not a position endorsed by AFAC?

10 A. That's correct.

Q. When I read that, I took it you were saying AFAC disagreed with it, or expressed a different view; would that be correct?

15 A. Not at all. To my knowledge, in all the time I sat in various committees in AFAC, I had not seen or heard of that document coming before AFAC as a suggested practice for rural firefighting agencies within Australia.

20

Q. The situation in relation to AFAC, is it not, is that AFAC have very, very few position statements at all?

A. That's probably correct.

25

Q. As far as you are aware, the paper in question was never put up to AFAC for consideration as to whether it should be adopted or not?

A. That's right.

30

Q. Were you not trying to suggest, when you said in your report it was not a position endorsed by AFAC, that in fact AFAC had rejected it?

A. I'm not aware of that.

35

Q. That's what you were trying to suggest when you said it was not endorsed by AFAC, wasn't it?

A. Absolutely not. I said - I think I may have said if it hadn't been for AFAC - I can't recall.

40

Q. I would ask you to assume, and the record will correct me, that nowhere in your report do you say anything to that effect, Mr Roche.

A. Right.

45

Q. The reality is, as far as you are aware, that AFAC is entirely neutral in relation to that

50

document, it not having been presented to AFAC for consideration?

A. AFAC, as far as I am aware, don't have a view on it.

5

Q. One way or another?

A. That's correct.

10 Q. In all fairness, that would have been the fairer way to say that in your report, wouldn't it, that it hadn't been put up to AFAC for consideration at all?

A. Possibly.

15 Q. Not that it was not a position endorsed by AFAC. That carries a negative connotation. To be fair --

A. Well, it is factual.

20 Q. There are different ways of saying facts, aren't there, Mr Roche?

A. Absolutely.

25 Q. All right. Let us pass on. Your view is that a firefighting body must always give priority to the safety of its own crews over safety of community and community assets; that's right, isn't it?

30 A. Over the safety of community and community assets?

Q. Yes.

A. That's correct.

35 Q. The formal CFA policy is, or was when you were there, that a prerequisite to direct or parallel firefighting is an assurance of firefighter safety?

40 A. The policy of the CFA that I espoused while I was there was that firefighter safety is the first priority in any firefighting.

45 Q. The specific proposition that I would like to put to you and have you address is that the formal CFA policy emphasises that a prerequisite to direct or parallel firefighting is an assurance of firefighter safety.

A. I'd accept that.

Q. You gave evidence in the Linton Inquiry. You have already been asked about that.

5 A. Yes.

Q. That was by way of a statement and oral evidence towards the end of the inquiry?

A. That's correct.

10

Q. There was some discussion in the course of that inquiry as to the concept of the "safe person"; do you recall that?

A. That's correct.

15

Q. In discussion of the concept of the safe person and the limitations to that approach to wildfire safety, you would recall the Coroner in Linton having said the firefighter might be fatigued, might not be aware of the many competing factors affecting safety and may be focusing on getting the job done; do you recall that?

20

A. No, I don't, but if that's what you say he did say that.

25

Q. I would like you to assume at paragraph 23.4.16 of the Coroner's report that is what it said. I don't expect you to have a verbatim recollection of that two-volume, something like 800-page document. I ask you to accept that. I will later be providing her Honour the references to which I have made reference.

30

A. Yes, sir.

35 Q. Do you agree with those concerns that the Coroner expressed there?

A. Yes.

40 Q. You, as chief fire officer, were ultimately responsible for the command and control of all operations and the achievement of satisfactory outcomes; do you agree with that?

A. Yes.

45 Q. Can I suggest to that you an accurate description of your evidence before this inquiry is that it is a counsel of perfection, which is

50

often not achieved?

A. No, I don't think so.

5 Q. The Coroner in relation to Linton made
a number of conclusions in relation to the fire
and to CFA's involvement in it, effectively
concluding that things went wrong in a number of
respects; that's right?

10 A. That's correct.

Q. I am going to read out a number of matters and
see if you recall those particular conclusions
reached by the Coroner:

15 "Boundaries between the CFA regions created
problems."

Do you recall that?

20 A. No, I don't recall that specifically.

Q. That is at paragraph 6.2.9.

A. Given my knowledge of where it was and the
circumstances, I won't disagree with that. But
I don't recall the specifics.

25 Q. I understand, Mr Roche. Let me assure you
that I am not reading out the paragraph numbers
with a view to jogging your memory. It is only
for transcript SOP - when someone reads it later,
30 they can cross-match things with the transcript
reference.

A. Thank you.

35 Q. "The fire was managed under both the old group
system and the AIIMS system".

A. Correct.

Q. "The AIIMS system had significantly failed at
Linton".

40 A. Not correct. I have no doubt the Coroner's
statement is correct but I don't believe that.

45 Q. I would ask you to assume that the Coroner
reached that conclusion. That is a conclusion
with which you disagreed.

A. I don't think the AIIMS system failed. The
application of it failed, not the system itself.

Q. The conclusion that the AIIMS system had significantly failed is a conclusion with which you disagreed?

A. That's correct.

5

Q. You disagreed with it at the time you gave your evidence in the Linton inquiry and you continue to disagree with it now?

A. I'm not necessarily - I couldn't necessarily be satisfied that that is the evidence I gave. The outcome or the finding I don't agree with.

Q. I don't mean to suggest that was the evidence you gave. It was a conclusion - whether you gave it in evidence or not - but you disagreed with it at the time and you continue to disagree with it now?

A. I can't recall whether I disagreed with it at the time but I disagree with it now.

20

Q. You certainly didn't, as far as you can recall, agree with it at the time, did you?

A. You are really taxing the memory now.

25 Q. If you can't remember, just say so.

A. I have to be honest and say I can't remember, your Honour.

Q. Another conclusion the Coroner reached was:

"The tactics used at Linton were inappropriate with the firefighters showing little understanding of forest fire behaviour and using grass fire fighting tactics."

35

That's a conclusion the Coroner reached. Do you recall that?

A. No.

40 Q. Paragraph 8.5.1 - was that a conclusion with which you agreed? I withdraw the question. It is an unfair question. Having now read that to you and asked you to assume that is a conclusion that the Coroner did reach, do you agree with that

45

conclusion?

A. In part.

Q. "There were significant problems of self-deployment causing command and control problems". Do you recall the Coroner reaching that conclusion?

5 A. Yes, I do, sir.

Q. Do you agree with that conclusion?

A. Yes.

10 MR LASRY: May I interrupt for a moment? We can follow the usual procedure and wait until re-examination to find out what the explanation is, but the purpose of this, of course, is primarily to assist you. When the witness says in
15 part he agrees with the proposition, it doesn't seem to me there is any reason why he can't be asked which part do you agree with and why. Rather than wait for another hour to find out the answer.

20

MR PIKE: That presupposes what I am trying to achieve in the cross-examination.

25 THE CORONER: I have a copy of the Linton report here. You asked a question in relation to paragraph 8.5.1. The heading for that particular section is "Expert panel's assessment of tactics following the initial attack".

30 MR PIKE: Yes, your Honour.

THE CORONER: Are you putting your questions in the context of the findings that were made by the Coroner or are you selectively picking bits that
35 were perhaps recommendations that were made by others who gave evidence? Otherwise it could be a little bit misleading. I say this, given that Linton was such a long time ago and Mr Roche himself has said he doesn't really recall what
40 evidence he gave. I think, in fairness to him, if you are going to put much more, you should really identify from where it is coming and whose opinion that was.

45 MR PIKE: Your Honour, there is a difficulty in doing that, in that I don't have the entire Linton report with me at the moment. In a sense, it cuts

across the point of the cross-examination. I am asking the witness if he recalls something. I am then asking him, if he doesn't recall it, to make an assumption. If my assumption turns out to be
5 wrong then there is no harm done. I am certainly not trying to mislead the witness. That is a longer task than I need do for the purpose of what I am trying to achieve here.

10 THE CORONER: What, ultimately, is the relevance of this, Mr Pike? That is the other issue that I wish to know at this point, and how much of the Linton report do you intend to go through? In
15 fairness to Mr Roche, he should have a copy of the document in his hand rather than you collectively quoting from it. I don't know how familiar Mr Roche is with the whole report.

MR PIKE: I have another seven dot points to make.
20 They won't take more than 10 minutes. I am happy, what I intend to do, is hand, up for the sake of ease of transcript reference, and perhaps as a tender if that is required, the pages from which these passages have arisen. That is the
25 intention - it would be entirely inappropriate for me to try to make it into an extended look into issues of Linton. The point was to look at the issues where things, in the view of some, particularly of the Coroner there, had gone wrong.

30 THE CORONER: My concern is that you are suggesting - this is rather the impression that I have - just looking at that latest comment that you made in relation to chapter 8, that is not
35 under the heading of "Recommendations made by the Coroner" but is under the heading of "First response". It is my impression that you are putting to Mr Roche that these are actual findings and recommendations that the Coroner made in that
40 report. That doesn't appear to be the case in relation to the report.

MR PIKE: I don't think that is actually, with the
45 greatest respect, correct, your Honour. None of the propositions that I have put, to my knowledge, and it has been a lot of material to go through, have been positions which have not been adopted by

the Coroner or the positions - all the statements that have been put have been from the report. They appear to be conclusions --

5 THE CORONER: I am sure they are from the report. You are making them sound as though they are recommendations and findings of the Coroner. In relation to chapter 8, that particular part doesn't appear to be the case.

10

MR PIKE: All the chapters are part of the findings, your Honour, not recommendations. Let us separate the two. I am not putting any recommendations. I am talking about findings. That is what I said when I opened this line of questioning.

15

THE CORONER: Chapter 8 is a narrative of what various evidence was given by various witnesses.

20

MR PIKE: I accept the description of the narrative. It is a narrative which appears in the Coroner's report.

25

THE CORONER: As long as you put very clearly what exactly you are quoting and who made those particular comments. I see in that chapter 8 there are comments made by Mr Roche himself that have been quoted in part. Perhaps if Mr Roche does disagree with a part of it then you should clarify what part with which he does disagree. That might be better as well at this stage.

30

MR PIKE: I don't intend to do that. If my friends intend to do that then --

35

THE CORONER: It is not fair to get a half answer. I would ask you to do that, Mr Pike.

40

MR PIKE: It depends on the cross-examination.

THE CORONER: In fairness to Mr Roche and in fairness to the evidence that you are trying to adduce - and you appear to be the only one at this stage who knows what you are trying to get to - then it is fair that you ask Mr Roche to give a complete answer.

45

MR PIKE: If your Honour pleases.

THE CORONER: I would ask you very clearly to put
5 exactly what part of the report you are quoting
and the status of that quote within the report.

MR PIKE: If your Honour pleases.

THE CORONER: If that will assist you, as I say,
10 I have a complete report here.

MR PIKE: Q. One further conclusion reached by
the Coroner, Mr Roche, was that part of the
training for many firefighters had been ad hoc.
15 I specifically draw your attention to this passage
in the Coroner's finding at paragraph 6.5.30:

"Those who had not received training under
the national fire curriculum had to rely on
20 training they had previously received. That
training was largely dependent on the reading
of the operations guidelines that had been
distributed from late 1995 onwards. The
difficulty was the ad hoc nature of the use
25 of this publication."

Having refreshed your memory in relation to that
passage, you now recall that part of the training
for many of the firefighters had been ad hoc?

30 A. I don't necessarily agree with that. I have
to consider the context of that particular -
I find it difficult, your Honour, to make comment
when in fact I haven't read - refreshed my mind,
as you have indicated, on the context of where
35 that statement came from or what it was in
connection with. Certainly, there was different
levels of training using different material, but
prior to the onset, there was training done prior
to the onset of the national curriculum. It
40 doesn't mean to say the training done prior to the
national curriculum was incorrect.

MR PIKE: There may be a fast way of doing this -
I am happy for it to be done - these are passages
45 from findings of the Coroner, Mr Johnson, I think
it is in Linton. In due course, I expect to be
making some submissions in relation to this

50

witness's evidence and I will be making reference, in that regard, to some of these findings. I am quite happy to tender either the whole of the report, knowing its bulk, or my preference would
5 be the pages to which I would be wanting to refer so it is before this inquiry, so when I make submissions in due course it is on material before this inquiry.

10 THE CORONER: It depends on how much of it you want to tender and how much of it is relevant, Mr Pike. I am sure - you are not suggesting the whole report is relevant?

15 MR PIKE: Exactly.

THE CORONER: The whole report looks like that (indicating).

20 MR PIKE: That is why I haven't suggested that course. The difficulty with the other course - I do need this material to be before this inquiry so the submissions I wish to make which address that are before you. The pages in question are in
25 this small one.

THE CORONER: If you intend to rely on that in some fashion then you can tender it. Do you have it in a format that is able to be tendered? You
30 are aware of the format that has to be adopted?

MR PIKE: At the moment I have it in hard copy. It is also available electronically. I can have those pages put on to a particular file so it can
35 be electronically done.

I am happy to do that, but so the Court has a hard copy of those pages, I would tender that now. I am aware of the fact that my friends do not have
40 the opportunity - I do tell my friends that these are pages from the volume that you held up then. That will speed things up because then I will only have one or two things that I need to take this witness to.

45 THE CORONER: You have that material on disk and you can tender it electronically?

MR PIKE: Yes.

THE CORONER: Is there any objection to that course?

5

MR LASRY: In a sense, what is proposed is like tendering a law report when you want to rely on an authority. If my learned friend wants to refer to and rely on the published report of a Victorian
10 Coroner in the Linton Inquest, he can do that in the course of his submission. It doesn't seem to me, as such, to be evidence to be put before you. It is the extracted pages of the report of another
15 Coroner on a different fire. If it has any persuasive value ultimately in Mr Pike's submissions, presumably, it will be in a similar kind of manner, as though he were citing
20 authorities that might compel a particular conclusion. I don't see the point of putting it in as part of the evidence, frankly.

THE CORONER: There will be no barrier preventing you from doing that, Mr Pike, therefore you won't have to limit yourself to quoting or relying on
25 one part of it. I wouldn't prevent you from doing that.

MR PIKE: Let me make quite clear the purpose upon which I am doing it in part.

30

THE CORONER: I am not necessarily bound by findings that another Coroner makes. If you are going to try to convince me that I should be --

35 MR PIKE: You have to make an assessment, in my respectful submission, as to the evidence you receive, and then towards the evidence of Mr Roche, as an expert. There are questions of his judgment. If you are going to rely upon his
40 evidence, you have to make some assessment upon his judgment. These are issues upon which I will be making submissions in due course. It may well be relevant to that issue, namely, judgment. If my friend says I would be hamstrung from making
45 reference to that in submissions by virtue of the fact that the document is not an exhibit before you, then I am content with that.

THE CORONER: Then I will say that to you as well.
I won't prevent you from making any comment you
wish to in relation to that report.

5 MR PIKE: In that case, as long as the material
would be before you in some way so that you can
make some assessment of those submissions then
I don't need to unduly burden the exhibit system
by yet another exhibit.

10

THE CORONER: Thank you.

MR PIKE: Q. Mr Roche, you will recall - this is
the last passage of those series of points that I
15 was going to take you to, Mr Roche - this
conclusion by the Coroner is expressed at
paragraph 22.1.55, under the heading
"Conclusions", so we are left in no doubt as to
what it is. The Coroner concluded that because of
20 the two systems of incident management being
utilised at the time of Linton, there was
dysfunctional command and control. Do you recall
that conclusion by the Coroner?

A. Yes, I do, sir.

25

Q. Of course, you agree with that conclusion,
don't you?

A. Beg your pardon?

30 Q. Of course, you agree with that conclusion,
don't you?

A. Not necessarily.

Q. I didn't ask you necessarily or otherwise.
35 You either agree or disagree or have some other
comment to make about it. "Not necessarily"
doesn't begin to answer the question. Do you
agree or disagree with it?

A. Again, I have a problem with the context, your
40 Honour. Without reading the context within which
that was made, it is difficult for me to say
I agree or disagree. I agree that in some cases
on the fire ground there was dysfunctional command
and control. I'm not necessarily --

45

THE CORONER: I think you have to read the whole
passage, in fairness, Mr Pike.

MR PIKE: Q. It says:

5 "The Linton wildfire was ostensibly being managed by the CFA and DNRE jointly by agreement under the AIIMS system of incident management."

THE CORONER: AIIMS ICS system.

10 MR PIKE: "In fact, two systems of incident management operated side by side during the management of the fire, AIIMS and the CFA's old group system."

15 THE CORONER: Perhaps if we just stop there.

Q. Do you agree or disagree with that part of the position?

20 A. Again I agree on the fire ground that was the case, your Honour.

MR PIKE: Q. "This led to dysfunctional command and control".

25 THE CORONER: Q. Do you agree or disagree with that comment?

A. On the fire ground, I agree with it. At the corporate level and at the IMT level, I don't agree with it.

30 MR PIKE: I am going to be about another 15 minutes. We had a late start. I am happy to keep on going. Someone put a note before me saying, "Morning tea". What would be your preference?

35 THE CORONER: You would be another 15 minutes?

MR PIKE: I would say so.

40 THE CORONER: We might as well take the morning adjournment.

SHORT ADJOURNMENT [11.35 am]

45 RESUMED [11.52 am]

MR LASRY: I appreciate that your Honour started

late because of me and I am grateful for that
indulgence. May I ask your Honour for one more?
I wonder if your Honour would mind not resuming
after lunch until half past 2, if that would not
5 inconvenience either you or the other parties?

THE CORONER: Is that going to cause anybody any
great inconvenience? All right, we will resume at
10 2.30.

MR PIKE: I am grateful to your Honour for taking
the morning break at the time I requested. I hope
I have been able to reduce the amount of questions
for Mr Roche and thus reduce his ordeal.

15 THE WITNESS: Thank you, Mr Pike.

MR PIKE: I don't know if you will ultimately
thank me, Mr Roche. But that is all right.

20 Q. I wanted to take you, finally, to some matters
that arose during the course of your evidence last
week. You were being asked some questions by
Mr McCarthy. At transcript 8010, you were asked
25 this question - I withdraw that. Before I read
this passage out, I take it you agree that it is
a serious thing to express criticisms of others in
the context of a catastrophic fire event that
leads to deaths - that's a serious matter?

30 A. Yes, it is, sir.

Q. You were asked this question:

35 "Q. So you take the view, in writing your
report, that you were given this material and
if you can't find anything in there to
demonstrate something was done or not done
then you conclude to the contrary; is that
right?"

40 That was the question. Do you recall that
question?

A. I believe so, sir.

45 Q. Your answer:

"That's the only option I have."

50

Do you recall saying those words?

A. If that's what the transcript says, that would be correct, sir.

5 Q. The reality is, Mr Roche, the only option, I suggest to you --

MR LASRY: I do object. My learned friend has put the question and answer to the witness as though
10 the answer finished with the words "That's the only option I have". This is really absurd. This witness has qualified that answer throughout his evidence. He has given evidence on the basis of what he says he had available to him. That has
15 always been the qualification to the conclusions he has reached. Where it has been appropriate, he has accepted qualification or additional information. To put the question and answer like that and not to go on and read the rest of his
20 answer is unfair to the witness, I submit.

MR McCARTHY: If I may chime in, since it is arising out of my cross-examination, it is also the case that many of the documents which were
25 brought to Mr Roche's attention for the purposes of this issue were documents that were before him. In many cases, they were not new documents, they were material that was before him. I think that clarification should be made.

30 THE CORONER: That is on the transcript as well. If you could put the rest of that response, Mr Pike.

35 MR PIKE: I would like to be heard. My friend did me the discourtesy of objecting before he heard my question, to which I take offence.

I intend to ask him a question in relation to the
40 issue of options. It was this witness's statement that the approach that he had taken, as put to him in the question, was "the only option I have". I am now exploring the question of options. That is a perfectly legitimate forensic procedure. I am
45 looking at options and I am going to ask my question about that.

THE CORONER: The options in relation to the findings and the comment that Mr Roche made?

MR PIKE: The approach he took. The question was:

5

"Q. So you take the view, in writing your report, that you were given this material and if you can't find anything in there to demonstrate something was done or not done then you conclude to the contrary; is that right?

10

"A. In part. That's the only option I have."

It is the use of the word "option" that I wish to explore.

15

THE CORONER: Is there an explanation? I don't have the transcript in front of me. Is there an explanation to the approach Mr Roche took?

20

MR PIKE: There is no explanation as to the choice of his word "option". That was not explored, to my recollection. It is something about which I went through the transcript over the weekend.

25

THE CORONER: Is there a further explanation to the answer Mr Roche gave to that question?

MR PIKE: There is no explanation of his use of his word "option", which is the only aspect I am seeking to address by cross-examination.

30

THE CORONER: How much more is there in that answer that Mr Roche gave to Mr McCarthy's question?

35

MR PIKE: There appears four lines.

THE CORONER: I think, in fairness, you should put that. I don't think Mr Roche has a copy of that transcript page either.

40

MR PIKE: I am happy to read it. I do maintain that if I am asking a question about options and the rest of the answer doesn't make any reference to options, I am not being unfair to the witness.

45

THE CORONER: I request that you put the whole answer. Then you can certainly ask your questions, if you wish.

5 MR PIKE: Q. You recall the question that Mr McCarthy had put to you, as I read out to a moment ago, or would you like me to read it again?

A. No. I recall it, sir.

10

Q. Your answer begins with these words:

"A. That's the only option I have, and on a number of occasions I have premised my
15 comments with 'on the evidence that is available to me'. I may not have in this case, but in many other cases I have."

20 That answer, having been read to you, Mr Roche, I wish to now ask you a question which relates to your statement in that answer, "That's the only option I have". Do you understand my question?

A. Yes, sir.

25 Q. What I want to say to you by way of a proposition to see if you agree or disagree is this: The only option, and a responsible independent expert has, in such a circumstance, is to fairly and clearly state, "I have seen no
30 evidence to show that this is so", because to state something is not so, on the basis of a lack of evidence, and then failing to disclose in the report that the basis of saying that is because you have seen no evidence to suggest it, is
35 misleading; do you agree with that?

A. Yes, sir.

40 Q. Finally, Mr Roche, Mr McCarthy subsequently at transcript 8024 asked you a series of questions that are fairly brief. I will simply read them to you. It begins at about line 20, and the question begins with the word "No":

45 "What I asked you was why you wrote in your report that this thing should have occurred and then tell her Honour that it didn't?

"A. Because at the time I had gone to great

pains to explain to you on, the evidence that was available to me, there was no evidence that said that it did occur.

5 "Q. Thus you concluded to the contrary; is that correct?

"A. That's correct.

10 "Q. Do you normally conclude things adverse to people's interest when you do not know either way?

"A. I don't think it is a general thing I do at all.

15 "Q. But that's what you have done here, isn't it?

"A. That's what I have done in this particular case, yes.

20 "Q. Why did you do that?

"A. That's what I did, Mr McCarthy."

25 That's all I intend to read to you about that. My question is this: When offered the opportunity to explain your approach by Mr McCarthy, you chose not to; that's correct, isn't it?

30 A. I don't believe so. In that particular exchange I may not have, but without wanting to go back through all of the transcript, I've been at great pains to indicate that my evidence is based on the evidence that was available, or the material that was available to me.

35 Q. Mr Roche, my question was: In relation to this example, when offered the opportunity to explain you chose not to.

A. I didn't believe it was necessary to go over old ground.

40 Q. Mr Roche, you understand that your position in this inquiry is to act as a witness and an independent expert witness; you understand that?

A. That's correct.

45 Q. If a question has been asked which her Honour has not ruled against, it is the witness's job to answer a question; you understand that?

A. Yes, sir.

Q. When Mr McCarthy said to you in five words,
"why did you do that?", you understood it was your
5 obligation to answer that question?

A. That's correct.

Q. Your answer was, "That's what I did,
Mr McCarthy"; do you accept that?

10 A. Yes, sir.

Q. I ask you again - this is the third time:
When offered the opportunity to explain, you chose
not to. You'd agree with that, wouldn't you?

15 A. That's correct. At that particular point in
time.

Q. That's what I am asking about, Mr Roche.
Would you agree with this suggestion, that it is
20 a dereliction of the duty of an independent expert
to reach conclusions adverse to a person when you
have no basis in fact to reach such a conclusion?

A. Read that again, would you please, Mr Pike.

25 Q. I would be happy to. Would you agree with
this suggestion, that it is a dereliction of the
duty of an independent expert to reach conclusions
adverse to a person when you have no basis in fact
to reach such a conclusion?

30 A. Yes.

Q. What you did here was to simply assume
a factual state on which to base your adverse
conclusion, when the opposite factual assumption
35 was both open to you and, as was shown in some
cases last week, was in fact the case; that's
right, isn't it?

A. What are you asking me, Mr Pike?

40 Q. I'm asking you to agree with this proposition:
that what you did when you reached conclusions
based on a lack of evidence was to assume
a factual situation to base that conclusion on,
namely, facts that a certain thing did not occur
45 when, in circumstances where the opposite factual
assumption, namely, that the events did occur, was
one that was open for you to assume. You could

have assumed differently than you did but you chose to assume in a way which produced an adverse conclusion; that's right, isn't it?

A. That's correct.

5

Q. In circumstances where it was open for you to assume otherwise?

A. Perhaps you could take me to specific instances, Mr Pike. In some cases, that may have been a correct suggestion, and in other cases I'm not satisfied that it is.

Q. I can't take you to them right now, but there were some occasions that you were questioned about last week where further material was put before to you which caused you to retract certain opinions that you had reached.

A. In some case, there was further material that was put to me that was, in fact, contrary to previous evidence, that's correct.

Q. In some cases, that was material in relation to which there hadn't been previous direct evidence but you had made adverse assumptions based on no evidence at all?

A. That's correct.

Q. You would agree with me that in judging one's fellow firefighters in circumstances like these, to have assumed a situation of facts in a way adverse to those affected is unfair?

A. Not necessarily.

Q. When you have no basis in fact to reach that assumption it is unfair; you'd agree with that, wouldn't you?

A. Not necessarily.

Q. I guess it follows logically from what you say that there are circumstances when you, for example, are being judged in relation to what you have done when you would consider it fair for people to reach assumptions as to your conduct in the absence of evidence to show that it was so en route to reaching an adverse conclusion. That would be a fair thing, would it?

A. Unfortunately, that is reality, Mr Pike, in my

50

experience.

Q. Would you answer the question, please?

A. I just have.

5

Q. No, you haven't, sir. Would that be a fair thing?

A. In some circumstances, it would be unfair, and in other circumstances it might be fair.

10

Q. So if you were a person being judged in that circumstance, you would have no objection to somebody reaching a conclusion, based on no evidence, reaching a conclusion which was adverse to you; you have no objection to that?

15

A. I would produce the evidence that counted, Mr Pike.

Q. Answer the question, sir.

20

A. I just answered it, Mr Pike.

Q. Would you or would you not have any objection to a person reaching such a conclusion?

25

A. I wouldn't feel one way or the other. If it was incorrect, I would produce the evidence to demonstrate that it was incorrect.

Q. You wouldn't feel one way or the other?

30

A. I've been around in this environment for a long time, Mr Pike. I've taken the ups and the downs and I have no feeling one way or the other. If people want to put propositions to me, your Honour, and I can demonstrate that they will wrong, then I will take satisfaction from that.

35

If I can't demonstrate that they are wrong then I'm afraid I have to wear it.

Q. You seriously, on your oath, suggest to this inquiry that you would feel one way or the other if someone reached a conclusion adverse to you based on no evidence?

40

A. I might be aggrieved by it.

Q. Pardon?

45

A. I might be aggrieved in some circumstances.

Q. You would be aggrieved in every circumstance

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where that occurred, wouldn't you?

A. Not necessarily, no.

5 MR PIKE: Thank you, your Honour. Those are my questions.

THE CORONER: Mr Lasry, re-examination?

10 <RE-EXAMINATION BY MR LASRY

MR LASRY: Q. On that last issue, just refresh her Honour's memory, if you would, as to, in broad terms, the nature of the material that you reviewed before you commenced to write your report, just the categories of the material that

15 you had access to from the time you were first engaged until you finalised the report?
A. I had primary access to witness statements, your Honour, and associated material that was attached to those statements or formed some of the basis of those statements. I had access to the material that was in the brief and I had access to transcript of evidence. They are the primary sources of information that I had. In addition, of course, I visited the sites of these fires on a number of occasions.

Q. You were present during the course of the evidence of witnesses, both in the first phase in 2003 and in the subsequent evidence that was given?

30 A. The majority of it, Mr Lasry, not all of it.

Q. There was some that you missed. Is it possible to estimate, at least in percentage terms, how much of it you missed?

35 A. Probably 95 per cent, 96 per cent, that --

Q. That you missed or that you were here for?

40 A. That I was here for. Please don't hold me to that, though.

Q. Can I go back a year or so. At page 7527, you were asked some questions by Mr Craddock. During the course of that questioning, you were asked questions about the Forest Fire Management Group. The document was shown you to and was quoted to

45

you. At line 20 on that page, Mr Craddock asked you this question:

5 "Q. Do you think there are circumstances where it isn't appropriate to apply direct attack methods to forest fires at night?

"A. Yes, I do."

10 Can you tell us what kind of circumstance you had in mind when you gave that answer well over a year ago - what kind of circumstances might apply that would lead you to a conclusion that it would not be appropriate to directly attack a fire at night, particularly in the context of the first night of
15 a fire?

A. I can't recall that particular evidence, but if I was to turn my mind to it again, I would suggest that where conditions - weather conditions have ameliorated and fire intensity is high, fires
20 are running, crowning, et cetera, then it wouldn't be appropriate either day or night.

Q. Indeed, in fairness to you, at page 7543 you were again asked questions by Mr Craddock. At
25 line 36, this question was asked:

"Q. And you were meaning to suggest, weren't you, that the first night of a fire might present an opportunity for effective direct
30 attack?

"A. In the majority of circumstances, yes.

"Q. But obviously not in all circumstances?

35 "A. No.

"Q. The conditions" - you interrupted with an answer" --

40 "A. I say that on the basis of fire behaviour. I have seen fires crowning at night and I don't think you would be direct attacking those."

That is an example of the kind of circumstances that you had in mind?

45 A. Yes, sir.

Q. We have heard quite a bit of evidence about

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the first night of fires and, indeed, as long ago
as 2004, Mr Lucas-Smith gave some evidence in
relation to that - generally, in circumstances
where the wind drops and the weather is cooler at
5 night and you don't have a strong crowning fire.
Are there any other circumstances you can think of
where, on a first night of a fire, you would not
directly attack it?

A. No.

10

Q. Mr Craddock asked you questions at page 7549.
The questions were being directed to the role of
the incident controller, in the broad context of
the first night of the Bendora fire. At the top
15 of page 7539, this question was asked of you:

"Q. Now, it may be, depending on
circumstances, that an incident controller
might or even should seek advice from others
20 either at the fire ground or elsewhere in
relation to the decision that is to be made;
do you agree?

"A. Yes, I do.

25 "Q. But in the ultimate it must be a decision
made by that incident controller?

"A. That's correct. On the basis, sir, if
I could, if the senior officer may not agree
with that decision then another incident
30 controller may be appointed."

Do you recall giving that answer?

A. Yes, I do, sir.

35 Q. Can you give us some idea of the kind of
circumstances where that decision might be made?
If I can preface the question by asking you: Is
that a significantly serious decision for a senior
officer to appoint another incident controller in
40 particular circumstances?

A. Yes, it is.

Q. In what kinds of situations might that occur?

45 A. Where there was a general weight of opinion
that indicated that the incident controller's
strategies and objectives were, in fact, not
appropriate.

Q. In your experience, has that happened anything like regularly?

A. No, sir.

5 Q. Are the physical logistics of that - that the incident controller in such a situation would be informed that their decision was not agreed to by senior officers and they were to be relieved of their position as senior controller of that fire -
10 is that what would have to happen?

A. Your Honour, I think that is an ultimate conclusion. I don't think that would occur without significant discussion and consultation prior to that happening. If there was still
15 disagreement then that could occur.

Q. An earlier step in the process might involve the incident controller being persuaded to change his or her opinion?

20 A. Yes, sir.

Q. At page 7544 - I think you have been taken to this since - you were asked questions about the photograph which is shown on page 66 of your
25 report. It is the photograph by Mr Cutting.

A. Yes, sir.

Q. Taken apparently at about 9pm on the night of 8 January.

30 A. That's right.

Q. To give the questioning some context, at page 7544 Mr Craddock asked you this question:

35 "The photograph taken by Mr Cutting, which you have been good enough to include at page 66 of your report, represents one snapshot of the fire behaviour on the night of 8 January; that's so?

40 "A. Yes.

"Q. Of course, what you don't gain from a view of that photograph necessarily is any real appreciation of the terrain, the slope,
45 the gradient or the ground fuel; is that a fair summation?

"A. Not from that photograph, but you do from

others.

5 "Q. The fire behaviour which is exhibited in
the photograph on page 66 could not, by any
stretch of the imagination, be described as
'benign'?

"A. I would differ with that.

10 "Q. So you would describe the fire behaviour
which is exhibited in the photograph on
page 66 as 'benign', would you?

"A. Yes, I would."

15 Why do you say what is shown in that photograph
fits within the description of "benign"? What is
it that you can see in the photograph that leads
you to that view?

A. It is not only the photograph, it is the other
evidence that was given to her Honour.

20

Q. You were asked specifically by Mr Craddock
about what that photograph shows.

25 A. Very low flame height, your Honour. The
flames that are climbing the trees you would
expect in any situation where there is stringy
bark forest involved. Even in the most mildest
conditions, on stringy bark you always get runs up
the bark of the trees. That is not an indication
at all of a severe fire. I am mainly concerned
30 about the ground fuel and the shrub layer
involvement. There is very little, if any, shrub
layer involvement and the ground fire is
relatively benign.

35 Q. Are issues such as wind and wind direction and
ambient temperature relevant to questions of
whether a fire is benign, for the purpose of
directly attacking it?

40 A. Yes, certainly. That time of day, your
Honour, when there has been a - particularly when
there has a change in the overall weather
condition - the wind has changed, temperature had
dropped significantly by that time, humidity was
increasing and over the next few hours, with that
45 increasing humidity and lower temperatures then
the ground fuels would have taken on more
moisture. With a higher fuel moisture content,

the fire would have dropped down even further. In fact, that is supported by the evidence of a number of people who attended, and I can take you to that, if you like, Mr Lasry.

5

Q. In relation to that broad topic, on page 14 of his report, Mr Nicholson - who is yet to give evidence but will follow you - has indicated a conclusion. I don't need to take you to the document. As I read his conclusion, he takes the view that in the circumstances in which Odile Arman found herself, for her to have decided to stay at Bendora on the night of 8 January 2003 would have been a decision which he describes as "reckless - "would have been reckless had she decided to do it". What do you say about that?

10
15

A. I don't agree with that at all.

Q. Why not?

20

A. On the basis of what I have already indicated to you and the other evidence, that this was a relatively benign fire, except it wasn't in easy country, by any stretch of the imagination. But most fires in remote areas are not easy anyway. So that I think, all things being declared equal, in a proper appreciation, then I don't think what is stated in there as "reckless" at all.

25

Q. At page 7549, Mr Craddock was asking you to place yourself in the position of the incident controller at 11am on the morning of 18 January 2003 and to then describe the warnings that you would have given to the community at that stage, having outlined that that is what he wanted you to turn your mind to. At line 37 you say, in response to that:

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"That is a difficult question for me because I would have been giving out information before 11am on the 18th."

40

Can I ask you to briefly say what information and how long before 11am on the 18th?

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A. I think, your Honour, what I was trying to get out there and what I have indicated in my report, that information relative to fire safety and the welfare of the community is a continuing and

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ongoing process from year to year and doesn't just occur when a fire occurs; that, in my view, there would normally be extensive pre-season, ongoing information provided to the community in
5 preparation, trying to again personalise this issue, as I have spoken about, with them. Once the fire occurs, to continue to update them on what was occurring with the fire.

10 I recognise in some cases that was done. Certainly, as we move toward the 18th, and on the information that was available, that the fires weren't contained, there would be difficulty containing them, weather was beginning to
15 deteriorate, then well before the 18th there should have been - my belief - material, or information provided to the community there was an increasing risk to individuals and their property in the rural areas and on the interface.

20 Q. This may or may not be easy to answer, but one of the issues that has arisen in the course of this case, and it seems to have arisen in the course of your evidence and may yet continue to
25 arise, is at what point a risk is realistic enough or real enough to warrant advising, particularly the suburban edge of Canberra, to be informed that the fires might actually burn to that area? At what point do you make a decision that people are
30 entitled to be aware that there is a genuine risk that that could happen? Please use the context of these fires to answer that question.

A. Well, I think around, as I think I have said in the report, around the 15th or 16th it was
35 becoming increasingly evident that there was a high likelihood, given the weather that was forecast, that those fires would not stay within their containment lines. On that basis, and given the position of the fire, then I think it was
40 appropriate then to begin to indicate to the community that there was a good chance, or an increasing chance, that there would be some risk to areas to the south-east of where those fires were, including the interface areas. And I think
45 by - certainly by the night of the 16th and 17th in particular, then to me it was very clear that that risk was almost certain to materialise.

Given my experience of fires burning across what ostensibly was light or sparsely vegetated country in the Murrumbidgee corridor, my experience is that would not necessarily stop the major run of
5 a fire once it has momentum. I have seen that on a number of occasions. Those factors taken into consideration, I believe that was the time when the risk was immediate and realisable.

10 Q. Thank you. At page 7842, Mr Roche, you were being asked questions by Mr Phillip Walker. He referred you, in the course of questioning, to page 16 of Mr Nicholson's report - indeed, he read to you a portion at line 16 or line 17 on
15 page 7842. He refers you to the document and invites you to go to paragraph 2:

"In dealing with the preparation and issue of warnings and advice to community, it is
20 important to avoid instilling panic which may cause people to flee into certain danger."

He then put a question to you:

25 "Q. There is presumably a risk if a warning is put out too early or in inappropriate terms. That is a potential consequence, is it not?

30 "A. Not in my experience, sir.

"Q. You disagree with paragraph 2?

"A. Yes, I do. I think the panic arises if the warning is given too late and people flee in the face of the fire."

35 When you say, "Not in my experience", I take it your answer to that question is that an early warning has never caused panic?

40 A. Early and progressive information and warnings to the community, in my experience, does the opposite.

Q. Have you yourself ever seen situations where panic has occurred because of the timing of
45 a warning issued to people? Does that happen, or has that happened in the past?

A. I think the evidence, your Honour, is there in

relation to many of the deaths that have occurred - community deaths that have occurred during wildfires, during the progression of a wildfire has basically been due to either no
5 warning, or a lack of early warning, and then people again panicking and fleeing in the face of fires. I think I have quoted a number of instances where that has been the case.

10 Q. More recently, you have been asked questions by Mr Bret Walker. At page 7906, he refers to criticisms made by you, I think, for not taking time constraints into account in the planning of the strategy. The effect of the questioning, I
15 think, is to the effect that it is difficult for you to criticise because you haven't done, in effect, the equivalent calculation. The particular question was:

20 "In your report, when you expressed this criticism about the strategy not taking into account the time necessary, you don't there or thereabouts go on to perform the exercise that you say should have been performed by
25 the people at the time, do you?"
"A. Didn't need to."

Why do you say you didn't need to do that calculation?

30 A. I am trying to think of the context of that particular exchange, but I think it wasn't a complex matter. There were fire that was in the McIntyre's environment that was the western - and I think I explained - boundary of which
35 straddled - I think it was Lowells track or McIntyre's track; it has been variously called a number - but certainly the western edge, which it straddled, or gone over that track by, if my memory serves me, 500 metres or 600 metres, and
40 the eastern side, which had similarly slopped over the Dingi-Dingi Trail, I think it was - but anyway, the eastern side - the Baldy spot fire - it might have been the Baldy Range trail. They were very, very small areas and, in my view, it
45 wasn't a complex matter to work out what would be required to deal with those on that evening.

Q. I may be doing Mr Walker an injustice - and he is not here; Mr Erskine is; he can correct me if I am wrong about this - I understood the thrust of his questioning was in relation to the entire plan of attack, as it were, to the McIntyre's Hut fire, the entire set of containment lines, that there was a question about whether those containment lines were realistic, given the time that was likely to be available to firefighters to actually construct the containment lines and be ready to use them to advantage.

A. I do recall that.

Q. The criticism made of New South Wales, in a sense, was the thing they didn't take into account was how long it would all take. I think Mr Walker was putting to you that if you are going to criticise then you should have done the calculation yourself. I wonder, when you said,

"I didn't need to", whether you were referring to that or whether you were referring in particular to the matters that you have just described to us?

A. I do recall the exchange now, your Honour, and why I indicated that I didn't need to was the fact that the containment lines were so extensive that they needed - given that they had chosen the Goodradigbee River - and I can't recall the one to the east but it was a long way off the fire edge, and so that they were so extensive that to consider that they would have them in, in the period that they did, was - I mean, I just didn't think it was even necessary to try and work that out. It was so out of what I considered to be the ballpark.

Q. Mr Arthur, just on that topic - I just want to ask you this - in giving evidence, said, in summary, at page 4564, in answer to questions from me about this topic, that firefighting is driven by objectives not driven by time constraints. Is that an approach or a doctrine of fire suppression that you are familiar with?

A. Certainly not, no. Perhaps I will qualify that, or add to it. An objective is really a statement about what you want to do. With fire, if I can perhaps associate it with in a military sense, if you are going to undertake some action

against an enemy - in this case, the fire, the
enemy - then you haven't got until the cows come
home to do it. You have a window of opportunity
in which to enact that or implement that
5 particular strategy.

As I think I have mentioned on a number of
occasions, normally the weather will return to
what would be considered to be very high extreme
10 fire danger around every five to eight days, so if
you haven't achieved your objective prior to that,
and that is to get your containment lines around,
get the area burnt out and then consolidate to
make safe those containment lines within that
15 period, then it is doubtful that you are going to
achieve the objective. So all objectives, in my
opinion, have to be timed, have some time
associated with them. Otherwise it is really
a waste of time.

20 The other considerable -- the other important
consideration there is if you don't have time
against the objectives then you can't continually
assess or measure the organisation's capacity as
25 to how they are going and whether you need to
adjust the objective or put in some more resources
or take some out or take some other alternative
steps. Without time, it is impossible to do that.

30 Q. At page 7935, Mr Whybrow was asking you
questions and a question that begins at the very
bottom of the page - you might recall last week he
was referring you to, next a table of results from
the answers to questionnaires. In particular, he
35 drew your attention to it by saying:

"If the analysis indicates that some
86 per cent of the persons who were at home
on the day knew what preparations to take in
40 response to the advancing bushfire threat,
you would agree that that was a very good
indication of the level of community
awareness, would you not, if that is what the
survey indicates?

45 "A. Not necessarily."

He repeated your answer and you said:

"The proof is in the pudding".

Why isn't that a good indication of the proposition that Mr Whybrow put to you?

5 A. I think if there is that level of understanding on the urban/rural interface prior to the incident occurring, it seems to me that the losses that occurred were out of step with the understanding that, I would assume, people would
10 have if there was an extensive pre-season information publicity campaign, that the right information had been provided leading up to the 18th, and then on the 17th and 18th that the warnings had have been given.

15 If you went through that process, and in fact Mr Nicholson, in his information in the article that he put in Fire Australia in 2003, I think, captures that very succinctly, in that he says:

20 "We should understand and accept that effective bushfire risk mitigation not only requires a technologically advanced and well-trained and resourced fire response
25 capacity, but a well-informed, prepared and empowered community which is well aware of the bushfire threat it faces and prepares accordingly is also fundamental to achieving bushfire mitigation."

30 Now, I agree with that completely. I believe that had there been that level of understanding to that extent in the community then the losses may have been, and should have been, significantly less.

35 Q. Do you know, from looking at the results of that survey, in how many cases people who said they knew what to do to preserve their homes - that is, the people who were there - also went on
40 to complain that they weren't given enough warning?

A. I don't know that, sir. I have not done that analysis.

45 Q. During the questioning by Mr McCarthy - and we went over this a number of times - he was asking you about the list of things in your report, to

which I won't take you, except in one specific instance - the list of things that you said would have been appropriate to do - I think it is at page 39 - "examples of actions that should have occurred would have included". Could I just be clear about one thing? It is right, isn't it, to say that in your report you say these are actions that should have occurred; you don't say in your report they weren't done. Is that right?

10 MR McCARTHY: With respect, I object. The evidence, on oath, was that the list should be understood as things that should have occurred which Mr Roche regarded as not done. It is not fair to put a proposition that contradicts that evidence on oath by Mr Roche.

MR LASRY: Such impatience. I was coming to his evidence. Mr McCarthy knows why I am doing this. He put a number of propositions to the witness that the witness said in his report these things were not done. That is not in the report. It perhaps doesn't any longer, in view of this discussion, need to be the subject of evidence. I accept I was about to take the witness to the fact that he gave evidence that his belief was, in fact, that they weren't.

THE CORONER: That these had not been done. I think that is right.

MR LASRY: Q. You have heard that exchange. I take it that you agree?
A. Yes, sir.

35 Q. In relation to the fifth dot point, you were asked questions about that. I notice, in the dot point that appears in the report, you refer not to heavy plant and prepositioning options - forget prepositioning options - you don't refer to heavy plant being available. You refer to hire of heavy plant?
A. Yes.

45 Q. Have you used the word "hire" deliberately?
A. Yes.

Q. Why?

A. My experience is that you - it doesn't matter how much you ring up prior to a season or prior to a fire occurring and saying, "Will your plant be
5 available this year?" Then my experience is that answer is always qualified on the basis, "Yes, if it is not doing something else." No-one is going to leave expensive machinery sitting idle just in case an agency may need it.

10 The only way, in my experience, of being sure that it will be available is, in fact, to contract it, so that the operator or the owner is realising a return on his investment. Otherwise, there is
15 no guarantee it will be available. If he has another contract, and particularly nowadays, your Honour, that heavy plant is not as readily available as it used to be, certainly, heavy plant operators would experience in the forest
20 environment is significantly reduced than it used to be, primarily because of the mechanism of the - the mechanisation of the industry and new machines, that dozers and the such have vanished out of a lot of forest agency inventories, and if
25 you want to make sure it is available then you pay to have it available, otherwise it might be available - it could be many, many kilometres' distance from where you need it from its local home-base.

30 And on top of that, it may not be the equipment available to float it to a fire. The dozer might be there but the float could be two or three kilometres away. There are plenty of dozers
35 around that are not matched by an equal number of floats.

Q. The other thing I wanted to ask you a little bit more detail about is the question of
40 operators. Of course, heavy equipment like this works in various kinds of circumstances. It might be flat grading freeways or it might be somewhere else. I assume that the operation of heavy equipment in this kind of country - I am now
45 referring to the areas where these fires began - is something that requires a fair level of skill in the operator?

A. Yes.

Q. Is the question of availability of experience and skilled operators also an issue that needs to
5 be considered?

A. Another significant factor in not only their availability but a decision as to whether you actually use them or not at the time. And not
10 only that, your Honour, it is the configuration of the machine. Nowadays, with occupational health and safety, they need to have roll over structures, they need to have operator protection, they need to have lights if you are going to use them at night, and a whole raft of other safety
15 features, which is not unreasonable. But general construction machinery that might be used in constructing roads and freeways don't have those additional features, which makes it increasingly difficult, of course, to obtain them.

20

Q. An entirely different topic - at page 8055, you were being asked question by Mr McCarthy again about the photograph on page 66 of your report. The question was asked at line 43:

25

"Q. You are not going to stop a fire like that from continuing to burn just with a rake, are you?

"A. Yes, you are. I have seen it done
30 hundreds of times.

"Q. Are you trying to tell the court that firefighters, by putting a rake around that fire" - I am sure he meant a rake hoe line -
35 "around that fire are going to stop it from continuing to burn?

"A. That's correct."

40 Do you recall giving that evidence?

A. Yes.

Q. Why are you so confident about that?

A. On the basis of the photograph and on the
45 additional evidence that was given by Mr Ingram, by Ms Arman, by Mr McRae.

Q. When you say you have seen that done hundreds of times, do you mean literally hundreds of times?

A. I have seen it done on many occasions.

I couldn't count - if you ask me whether it was
5 100 or 80 or something, but it is not uncommon
that an initial direct attack will be through rake
hoe in difficult country. In fact, in some cases
it is the only thing you can do because of the
type of terrain, and in other cases it is the only
10 thing that an agency may permit you to do because
of other environmental factors that come to play.

Q. The last thing I wanted to ask you - I can't
remember whether this came from Mr McCarthy or
15 Mr Pike, but a proposition was put to you in
relation to Victorian CFA policy which referred to
firefighter safety assurance. I think you agreed
with the proposition, which was to the effect that
firefighters' safety needed to be assured before
20 a fire was attacked - or something to that effect,
but the word "assurance" was used. I think you
agreed that that was an appropriate policy or
a correct statement of it. You have said,
however, on a number of occasions, that
25 ultimately, theoretically, you reach a point where
you wouldn't do any firefighting at all because
firefighting is an inherently dangerous
occupation.

A. Yes, that's right.

30 Q. How do you rationalise that approach with the
use of a word like "assurance"? In other words,
is it realistic? Can firefighter safety always be
assured?

35 MR PIKE: I object to that. The question that
I put was whether this witness agreed that the CFA
policy was only to do these things if firefighter
safety could be assured. He agreed with that. He
40 may have expressed personal opinions elsewhere in
this inquest which may or may not be in agreement,
in partial disagreement. The issue is not whether
he had expressed the opinion as to the assurance
of firefighter safety. I was asking him to agree
45 with the proposition that it was CFA policy. The
basis of the question is flawed.

THE CORONER: He did that. Mr Roche did agree with the proposition that you put.

5 MR PIKE: He agreed that that was CFA policy. Now it is being suggested effectively to him how do you reconcile holding both positions. He never said he held the CFA position. All he did was to agree that that was CFA policy.

10 THE CORONER: Perhaps it could be clarified as to whether or not Mr Roche agreed with that.

15 MR LASRY: We are not on the commercial causes list. I assumed that you would be assisted by knowing how this witness might rationalise that problem. The answers, hopefully, will be of some assistance to you. If they won't be then, of course, I will desist.

20 THE CORONER: I will allow the question and allow Mr Roche to answer it.

25 MR LASRY: Q. Do you recall the question, Mr Roche?

THE CORONER: Mr Pike, you are sitting there shaking your head. I think you should remember that it is the role of all of you here, including you, Mr Pike, to try to give me as much assistance in formulating the findings.

MR PIKE: Absolutely. May I respond to that --

35 THE CORONER: It is not a contest. It is not a matter of tripping up witnesses. This is not litigious. It is not meant to be litigation.

40 MR PIKE: May I respond by saying the question was flawed because this witness has not given evidence of holding these two different views. My point was simply that he gave evidence as to what the CFA policy was. Mr Lasry now wants him to help clarify how these two positions can be held, but there is no evidence that this witness has ever held those two positions.

45 I tried to make that very clear in my submission

on the objection. Mr Lasry either didn't understand it, because I hadn't expressed it adequately, or chose not to address it. That is the circumstance I find myself in, having drawn
5 that distinction and having the question simply proceed on the basis that the distinction doesn't exist. I did try to assist your Honour. I did try.

10 THE CORONER: Thank you.

MR MCCARTHY: If I can perhaps comment, it isn't an objection, it is simply an observation that ought to be put in context when the question is
15 answered. I took Mr Roche to extensive evidence about the Ku-ring-gai fire, the Thirty Mile fire and the Linton fire. Mr Roche agreed to a series of propositions that I put regarding the fact that
20 whenever someone is in charge or the operational incident field controller on a fire, they have to look at a range of unique situations pertaining to that fire and that judgment has to be exercised by that person on that fire ground.

25 In respect of the questions that have been asked by my learned friend, the issue was that safety is paramount; if in doubt, pull out. Mr Roche agreed with all of that. In my submission, it is
30 apparent from that answer that whilst firefighting should occur, the priority is the safety of the firefighters conducting the activity. In my submission, that was quite clear and it effectively answers the question that has been
35 asked. Again, I offer that to put the question in context.

THE CORONER: Thank you, Mr McCarthy.

40 MR LASRY: I accept that. That is a logical response, but if I can perhaps put the question in simpler terms.

45 Q. Mr Roche, all I am seeking to do is ask you this question: Whatever your view is, although obviously you would agree with the view that firefighter safety is an extremely important consideration, how does one assure firefighter

safety in circumstances where the activity is inherently dangerous?

A. It is certainly no different to any other option, whether it is hazardous or not. There are
5 steps that can be taken in a range of ways that go a long way to assuring a firefighter's safety - of having people that are competent and understand what they are doing and understand their
10 environment and what is likely to occur; to have people again that are competent leading them and taking the appropriate steps; such as the adoption of the standard fire orders and the watch-out provisions; of using the best machinery that is available at the time; by ensuring that the
15 resources are adequate to be able to perform the task that is being asked of the team or asked of the crew; by wearing the appropriate protective clothing; and maintaining situational awareness constantly over the environment in which people
20 are operating in. I believe if those things are done and done well then, in my view, you have done as much as you can to assure firefighter safety.

MR LASRY: Thank you, your Honour. I have no
25 further questions. May Mr Roche be excused?

THE CORONER: Thank you, Mr Roche, you are excused. You are free to leave. Thank you.

30 <THE WITNESS WITHDREW

THE CORONER: I note the time. Mr Nicholson is available to give evidence. We will resume at
2.30.

35 MR ERSKINE: Might I raise a matter of housekeeping. In the last week, we have had two pieces of evidence which have come out very late in the piece. As far as we can see, neither of
40 them are terribly significant but they do impact upon those for whom we act in New South Wales. They are Mr Roche's evidence last week of a need to get corroboration before you go and make an operational plan. That was in the context of the
45 night of the 8 January meeting in Queanbeyan. Your Honour might recall that line of evidence.

The second is a statement that was derived this morning from Mr Brandston, who was, at the time, the mayor of Yarrowlumla Shire Council, and talks of a meeting he went to.

5

THE CORONER: That is not in evidence.

MR ERSKINE: We were asked, in relation to that, what sort of response we wish to make. We note
10 counsel assisting, in some correspondence to other parties, have made a comment with which we agree. For a variety of reasons, we would be very reluctant to recall other witnesses or have further oral evidence.

15

We would propose, at this stage, if it suits your Honour's convenience, that any response we make to those issues might be by way of a very brief additional statement, and if your Honour were
20 minded, in due course, to pick up any of that material and use it as a possible criticism then we would have the comfort of knowing that your Honour would have the statutory obligation of notifying us about that and give us the
25 opportunity to lead any evidence about that.

It seems to us, at this very late stage, it is probably not necessary to anticipate that will happen. Neither of these matters is terribly
30 significant. Probably the safer course, if your Honour accepts that, is simply to say we can put in the written statements, they will be brief, if any, and leave it in due course to see whether your Honour needs the assistance of any further
35 evidence later in the piece.

If that suits your Honour's convenience, we would be happy to do it that way.

40 THE CORONER: That seems to be a sensible course. I don't know what Mr Woodward's view is on that. That complies with the letter. I have read the response that has been prepared to Mr Bayliss.

45 MR WOODWARD: I would agree with my learned friend's summary in relation to those matters. I should say, in relation to Mr Brandston's

50

statement, that was taken admittedly at the last
minute, because of some information that was
contained in a letter that was sent to us care of
your Honour, which we considered, having received
5 it and read it, needed at least to follow up to
find out what was behind it. It turns out that
the position is not as the letter had indicated.

10 Again, to ensure that all parties were informed,
it seemed appropriate to circulate that statement
and the letter. We hoped it happened last week.
For some reason, a number of parties only saw it
for the first time this morning. During the
15 course of the morning, I have been canvassing the
views of various parties to ascertain their
attitude to Mr Brandston's statement. For our
part, at this stage, we don't consider it is
something, that is the material in this statement,
20 upon which we would be seeking to rely in our
submissions to your Honour.

Perhaps I can say, because I know I haven't spoken
to all parties, if there is any party who
indicates that they are likely to rely on what is
25 in the statement, if they could let that be known.
If that were the case, it may be perhaps necessary
for at least Mr Erskine's client to be aware of
that so they can consider whether they wish
Mr Brandston to be called.

30 In the event that no party is concerned to rely on
it, my proposal would be that it become part of
the brief, in the same way that many other
statements are in the brief but have never been
35 the subject of oral evidence dealt with - they are
in the "Not make available" category. Having done
that, in addition to any statements that
Mr Erskine has produced, they could be dealt with
in the same way.

40 If that were done, and as Mr Erskine has
suggested, those were then relied on by some party
in some way, the comfort that the parties
ultimately have is the comfort he has described.
45 That would be my suggestion for way it be dealt
with, both this statement and anything Mr Erskine
wishes to produce. If there is a party who can

say at the moment they will positively want to rely on the information in that statement, if they can let us know, we may need to reconsider that position in the light of that.

5

Subject to, that I would certainly endorse what Mr Erskine has said about it.

10 THE CORONER: I presume all counsel do have the original letter and the response from the person to whom Mr Woodward is referring. If you let counsel assisting know - it has always been open that in relation to anything that has occurred very recently in relation to the emails, the
15 recent emails from Mr McRae and certainly in relation to this latest information, if counsel wish any person recalled, as I have said right from the start, all you have to do is indicate that a witness needs to be recalled and
20 consideration will certainly be given to that. We will adjourn until 2.30. Thank you.

LUNCHEON ADJOURNMENT [1.05 pm]

25 RESUMED [2.27 pm]

MR LASRY: I call Mr Nicholson, please.

30 MR LAKATOS: Before that is done, there is one housekeeping matter arising from the letter which my learned friend Mr Woodward caused to be placed on the Bar table, a response to our letter of 17 October 2005.

35 The situation is my learned friends have said in relation to certain categories of material that if, in effect, something arises as a result of the submissions made on behalf of counsel assisting, there will be liberty to call witnesses and/or
40 evidence. We understand and we accept that situation.

There are two categories which are accepted. One is the make available witnesses, and my learned
45 friends refer to transcript 3944 and Mr McRae's emails. One of the statements raised in the letter of 17 October, for example, is a statement

of Mr Jeff's, which is a voluminous document containing a lot of material.

5 Our position is this, that in the event that an issue comes from, as it were, left field, from some of these make available statements, we have always considered that these are lower order witnesses, the main ones having been called by my learned friends, if some issue comes from left
10 field, we seek to reserve the right, in the very limited circumstances, to respond to that material, if required.

15 We don't want to be sitting here silent and taken as having accepted this as the be all and end all. There may well be circumstances where - natural justice - the right to be heard is necessarily only accorded by a right to respond. Of course, we treat that in a limited way and a way which is
20 necessary to vindicate the Territory's position.

THE CORONER: I understand what you say. If the parties want to have further discussion on this document we will do so. I don't really intend to
25 do that now. I would rather get onto the evidence of Mr Nicholson.

MR LAKATOS: I understand that. I just wanted to make those two points.
30

THE CORONER: Thank you.

MR LASRY: Mr Nicholson.

35 <JOHN DAVID NICHOLSON, SWORN

<EXAMINATION BY MR LASRY

MR LASRY: Q. Mr Nicholson, would you tell her
40 Honour your full name, please?

A. John David Nicholson.

Q. Is your professional address care of Post Office Box 91 in Sunbury in Victoria?

45 A. That's correct.

Q. You conduct a business under the title of

Community Safety; is that correct?

A. Community Safety Services Pty Limited.

5 Q. At the request of solicitors Hill and Rummery, did you prepare a report in relation to certain aspects of this case in October of last year?

A. That's correct.

10 Q. In addition to that, did you then prepare what I think has been described as a supplement to your report dealing with some further matters, which I think is dated 11 October of last year; is that correct?

A. That's correct, yes.

15

Q. You understand, no doubt, Mr Nicholson, the process in this case that those two reports effectively stand as your statements in the matter?

20 A. Yes.

Q. Have you had an opportunity to read through those recently?

A. Yes, I have.

25

Q. Are the contents of them true and correct?

A. There are two corrections I would like to make.

30 Q. By all means. The first of those documents probably has an electronic number now. It was Exhibit 99. It is now [HIL.DPP.0001.0001]. Let us deal with the first report first, Mr Nicholson, if we can.

35 A. There are two minor typographical issues. The first is on page 16, "community warnings", as I recall, was numbered 2. In fact, it should be "6".

40 On page 18, the last paragraph, first line:

"The other matter to consider when issuing warnings to the community is: what is it we want."

45

No doubt there will be other typos I have missed.

Q. I think we are less concerned with typographical corrections. As far as the substance is concerned, there are no amendments to make?

5 A. No.

MR LASRY: I am not sure if the supplement was given a number.

10 THE CORONER: It has the same number. It is part of what used to be Exhibit 99.

MR LASRY: As I understand, the agreed procedure having introduced the witness, he in fact having
15 been called at the request of solicitors for Mr Castle and Mr Lucas-Smith, it is probably appropriate for them to deal with any matters they wish to expand upon in relation to the two reports, and then we will resume in the usual
20 procedure. At this stage, if I might resume my seat and leave it to Mr Whybrow.

THE CORONER: Yes, Mr Whybrow.

25 <CROSS-EXAMINATION BY MR WHYBROW

MR WHYBROW: Q. A couple of things in addition to your report, Mr Nicholson. At page 24 you refer to the task that you undertook, that you were
30 fortunate in being able to quickly familiarise yourself with the issues because you were aided by your involvement with the Canberra Urban Edge Review Project last year, being 2003, at the time you wrote that; do you agree that is in your
35 report?

A. Yes, that is correct.

Q. What was the Canberra Urban Edge Review Project that you have referred to there?

40 A. I was engaged as a subcontractor, if you like, to prepare a report that ultimately went to the Department of Urban Services through ACTPLA, I think was the name at the time, the planning authority that went through a name change. I was
45 engaged to review the urban edge of Canberra with a view to making any recommendations that I thought were appropriate with regard to the

declaration of bushfire prone areas. There is a provision in the Building Code of Australia for areas considered to be higher than the usual bushfire hazard to be declared bushfire prone areas, which then requires an assessment of the site to determine the category of bushfire attack, which calls up provisions of Australian Standard 3959 of 1999, which applies to construction of buildings in bushfire prone areas.

I was engaged to do a survey of the urban edge to see if there were any parts of the urban edge of Canberra that should be declared bushfire prone. That project was subsequently extended to cover the whole of the ACT or the rural areas with regard to future development. So, in the course of that project, I travelled the entire boundary of the greater Canberra and looked in detail at what I believe the fire problem was, assessed fuel, spoke to people, made recommendations concerning vegetation management with regard to fire reduction, those sorts of things. So I consider, in undertaking this project, I had a very good knowledge of the boundary of Canberra and what lay beyond.

THE CORONER: What year was that that you were given that project?

A. 2003.

Q. This is - what - before the --

A. It was very soon after.

Q. Soon after the fire?

A. It was about the June, as I recall, that I became involved.

MR WHYBROW: Q. That was something independent of having been approached at all in any way to give advice or opinion about the fire itself?

A. That was well out of the way before I became involved in this.

Q. To understand the context of that review, if a particular area or blocks and sections of the urban interface were deemed to be at an increased bushfire risk, that would have consequences for

the various types of structures and the design of structures that could be placed in that area; is that correct?

5 A. Basically, the design and materials of construction, the first stage to protect against ember attack and then at the next level, level 2 construction, some high level of radiant heat, heat flux, if you like, and level 3 construction which does involve a little bit of flame contact.

10 I could find no areas, in my opinion, necessitated that. That is around the urban edge.

15 Q. In relation to that, were there areas that, in your opinion, required some activity in terms of hazard reduction?

20 A. Yes, there were. I moved across the ground or around the boundary where the fires impacted on the urban edge - Duffy, where there was some destruction in Chapman, and I can't think of the name of the - over in the centre, over near Woden, I think it was. I have to look at my notes.

25 THE CORONER: Hindmarsh Drive, the road leading that adjoins Eucumbene Drive and Warragamba Drive?

30 A. Yes. There is another road that goes across the main road, Tuggeranong Parkway. There is another road that goes across and around the mountain. I found a shed that had succumbed to some ember attack. There was a fire burnt along the reserve road, well removed from the urban edge. I found no areas that I believe warranted a special level of construction.

35 But in going further north to look at some of the places that were untouched, notably Aranda and Cook, I had concerns, and I expressed them. There was some garden maintenance required, use of vegetative mulch, wood chips, native shrubs in close proximity to houses those sorts of things -
40 the issues that, I believe, led to the loss of some or many of the houses that did go, the same problem existed mid-way through the year in places that hadn't been touched by the fire.

45 I made recommendations about managing fuel, as I recall, there was subsequently some fuel

reduction on Black Mountain and other places.

MR WHYBROW: Q. Was your brief then extended in
relation to providing some advice to the planning
5 authorities about some of the rural areas in the
territory?

A. Yes. That advice then extended out to -
I looked at each of the communities Pierces
Creek --

10

Q. Uriarra?

A. Uriarra, what sort of conditions ought to
apply with respect to buffer zones, construction
of buildings - those sort of issues in those rural
15 settlements if they were to be re-established or
what might happen in the future - recommendations
about building behind major roads. So there was
a road before you got to the settled areas around
Ginninderra, over that side. That sort of thing.

20

Q. Would you look at Exhibit 33? I could hand
you up a copy. They are photographs along
Warragamba Avenue that were tendered earlier in
the inquiry. Was that part of the urban edge that
25 you would have visited during your review in June
2003?

A. Yes, I do.

Q. Do you recall particularly that stretch of the
30 interface at the edge of Duffy?

A. Yes, I do.

Q. There has been evidence in this inquiry from
a number of sources indicating the types of
35 setback that are apparent in those photographs are
quite wide and significant. I think Mr Crosswell
has used the term "utopian" in terms of comparing
them to other setbacks upon urban interfaces in
other areas of Australia. Are you able to comment
40 as to your opinion of the nature of that, at
least, interface?

A. I think it is quite significant that the width
of the road and the setback from the pines or the
distance between the pines to the road, then the
45 width of the road, then the eucalypts on the east
side of the road, that in most cases the canopies
are intact, which would indicate to me that they

were subjected to high level thermal radiation. They dried off after the event. Many of the houses behind remain intact. In fact, the width of the road and the fire break prevented the
5 actual flames of the fire getting to the dwellings.

To use the word "utopia", it is desirable to have that sort of gap between the wild land and the
10 houses.

THE CORONER: Q. What are you looking at?
Eucumbene or Warragamba?

A. I think that is Warragamba, running south. I
15 have some photographs of the other road.

MR WHYBROW: Q. Eucumbene?

A. Eucumbene, which shows two runs of hardwood power poles up against the plantation. When
20 I looked at the poles in about June 2003, the poles had been singed where they had been in the flame zone but they were still in service, which is an indicator of the short range of the intensity of the fire.

I thought it was quite significant that the poles were in service. Up close to the top, they replaced the cross arm. The poles were still in service, yet there were houses lost across the
30 road, which indicated to me the width of the power easement and the road reserve means it wasn't the fire itself that got across the road.

Q. Mr Nicholson, in terms of that setback, there
35 has been some evidence in the inquiry, and you have referred to in your report, that there was some confidence by authorities, feeling they might be able to stop the fire approaching the suburbs at that, for example, urban edge because of the
40 width of it and because of the history of efforts by the Rural Fire Service in the ACT over the preceding years. From your examination of the setbacks and the history - you refer to the successes in previous years - do you believe that
45 was an unreasonable view for the authorities to take, that they could be confident of being able to stop fires approaching at that type of

interface?

A. With the break or bare ground of that width, which to me appears to have performed appropriately, on the worst case day was
5 a reasonable expectation that those wide breaks, in my view, reasonable expectation, that those wide breaks would bring the fire to a halt.

10 Q. You have already referred to - I think the phrase was they had been too good at their job for a number of years, the ACT or the Bushfire Service. What did you mean by that?

A. The fire that comes to mind the year before, as I recall, ran into the back of the Mint. Not
15 significant losses, as I recall, and the firefighting agency is really good at its job if there is no loss of life and property loss is kept to a minimum.

20 Q. Could I ask you to look at these photographs, sir. These are some photographs taken during and the aftermath of the Christmas Eve and Christmas Day bushfires of 2001. In relation to that
25 comment about the successes in that firefight, do you wish to make any comment in relation to any of those photographs as indicative of the type of comment you are making there? You should have eight photographs there.

A. What is the question you are posing, please?

30 Q. These are some photographs showing the extent of the December 2001 bushfires. As I understand the evidence, there were no actual losses of property in terms of residences or commercial
35 residences - a couple of sheds that were lost in that fire. They seem to depict in photograph 3 the fire extending significantly close to private residences; in photograph 2, significantly close to the Royal Australian Mint.

40 A. I think the Mint is probably somewhat of a fortress, as far as fire is concerned. I think - not only as far as fire is concerned. I think photograph 4 is the most telling. That shows fire in and around houses. A fire of that
45 magnitude, coming into the built-up area for which there is no loss, significant losses, indicates the brigade must have performed pretty well, when

50

you consider the smoke plume on page 1.

Q. I understand this fire was the largest fire that the Emergency Services Bureau had been
5 involved in fighting since its inception. You had spoken about, generally speaking, a watershed fire needing to occur before there is systemic change or a capacity for systemic change in a bushfire fighting authority. Was this type of fire that
10 the ESB dealt with in December 2001 the type of thing that you meant as a "watershed fire"?

A. Not really. I consider a watershed fire to be a turning or a defining event. My experience in
15 other places is that a watershed fire, a defining, turning event has been where there has been loss of life, and maybe not just one life but significant loss of life. In South-Eastern Australia, I think 1939 was a watershed because that is when government in Victoria got involved
20 through a Royal Commission and eventually led to the CFA being formed - Country Fire Authority - and bringing the Forest Commission more into the fold.

25 There was another watershed event in 1962, major fires across Victoria. 1969, 1977 you might have heard of the Streatham fires in Western Victoria. 1983, Linton - the Linton fire. There was another
30 fire in East Gippsland - I can't remember the year - subsequent to that. Then in 2003, the fires in North-Eastern Victoria and East Gippsland provoked or resulted in a most significant change that I am aware of in recent years as far as re-organisational - the way an organisation
35 functions.

Those major fires, where significant losses occur or cover huge areas and impact dramatically on people's well-being, economics, those sort of
40 issues, they provoke change. They tend to loosen the government's purse strings.

Q. You are aware of and have referred to in your report in this case, following the December 2001
45 fires, the Emergency Services Bureau was asked, as I believe all areas of Territory administration were asked, to find a 2 per cent budget cut and

there were requests, that were not funded, for increased aerial firefighting capacity and community education.

5 A. I'm aware of that. In the course of the work that I undertook, I wanted to inform myself to the greatest extent that I could on what was actually involved here. I'm a great believer in community participation. To have effective community participation, community preparedness, you need to
10 have good education programs. They need to be funded. I was surprised to see - I guess what I looked for was to see how Canberra had responded to some of the lessons in other parts of the country with respect to loss of life and moving
15 toward community safety, community education, self-reliant communities, how they had responded to that.

I was surprised when I saw that the funding
20 submissions that had been requested, or the funding submissions had been actually refused and they were asked to hand money back. I thought that was, with the wisdom of hindsight, particularly strange.

25 THE CORONER: Is that between the 2001 and 2003 fire?

A. That's my recollection, but I venture to suggest, even if it wasn't, to not be able to
30 learn from the experience in other parts of the country - for the last several years now, there has been a shift from intervention, reliance on emergency response to greater community involvement, and I expected to see that reflected
35 here.

When I worked for CFA, I had in fact been approached by ESB to see what they could pick up from the way we did things in CFA. I would be the
40 first to say the ACT, in a budgetary sense, is quite different to the State of Victoria or New South Wales or even South Australia or even Western Australia. There was a move to move toward a community safety approach. That is what
45 I looked for and that is what I found in regard to funding.

MR WHYBROW: Q. Putting funding aside, you were provided with a folder of material that Mr Castle was taken through earlier in his evidence about some of the actual community initiatives that had
5 been undertaken by ESB. You are familiar with that material?

A. That's the community education material, yes. Yes.

10 Q. Taking into account factors, if you deem it relevant, such as the limited budget or the lack of personnel, are you able to comment on your opinion as to the extent of this community
15 education that was undertaken within the community leading up to the January 2003 bushfires?

A. I am of the view that given the size of the organisation and budgetary limitations, incentive on part of governments to make finances available, I thought, collectively, ESB, and reinforced to an
20 extent by Environment ACT in the material they were provided to explain what they were wanting to do around the urban interface, fuel reduction burning, and the lengths that I believe ESB went to bring the media on board and providing media
25 releases and getting the media to deliver the message that wasn't costing anything other than turning out the media release, I thought they were a - if you will forgive me - a loaves and fishes exercise.

30 Q. What do you mean by that?

A. They were getting as much as they could for a very small outlay. It is quite slick to use the media to deliver your message, actually.

35 Q. Following the 2001 fires, although they were quite successful, have you seen the documents that outline the debrief procedure that Emergency Services underwent examining the way of the form
40 following the Christmas 2001 fires?

A. Yes, I have.

Q. The outcomes later in the year that have been achieved or were still being worked on?

45 A. I can't say that I memorised all that, but I did look for key features. I saw the issues that they address and what they tried to achieve. It

is my expectation that is what you would do after
an incident of that nature, or any incident for
that matter. There were matters for coordination,
emergency management coordination, and those sorts
5 of issues that came forward.

Q. I was going to ask you, in your opinion, is
that the appropriate response a large organisation
should have, in facing a fire, indeed the largest
10 the organisation had ever faced, notwithstanding
there was success and no property destroyed. Is
that the type of exercise that you would expect to
occur?

A. Yes, I should. They should all be viewed as
15 learning experiences.

MR WHYBROW: I tender the photographs of the 2001
bushfire.

20 THE CORONER: Do you have them on a disk?

MR WHYBROW: No, I don't.

THE CORONER: That is the appropriate way.
25 Otherwise they have to be scanned into the system.

MR WHYBROW: They are not on a disk. I have been
provided with them. I have made three colour
photocopies so they can become part of the
30 material before your Honour. I can try to have
them scanned.

THE CORONER: That is the difficulty we are having
with all this material being tendered at the last
35 minute and not being in the appropriate format.
It is a very expensive exercise to put it on to
the system. That certainly doesn't make these
photographs not admissible. If you could get them
into the proper format, I would be grateful for
40 that.

MR WHYBROW: At this stage of the proceedings,
I don't necessarily request that they go on to the
system, because they are images. I can have
45 further colour copies made of them.

THE CORONER: That is fine. These eight

photographs relating to the December 2001 fires
will become Exhibit 0122.

5 EXHIBIT #0122 - EIGHT PHOTOGRAPHS RELATING TO THE
DECEMBER 2001 FIRES, ADMITTED WITHOUT OBJECTION

MR WHYBROW: Q. Mr Nicholson, you have referred
to some material in your secondary report that you
had access to in forming some of the opinions that
10 you have expressed. You outline on page 25 such
things as extracts of advice to the Canberra
community about bushfires, transcripts of the ABC
666 Radio from 6am to 4pm on 18 January. That
last one at least, I think, is exhibited as
15 Exhibit 34, the full transcript of the ABC
broadcasts.

Mr Nicholson, you also indicated that articles
from The Canberra Times had been taken into
20 account in terms of forming an opinion as to the
level of the message going out to the community
during the period 8 January to 18 January?
A. Correct.

25 Q. I think you were in court just before lunch
when Mr Roche proffered the opinion that, in his
view, in the period as we move towards 18 January,
he would have expected the following three, in
particular, messages to be getting out to the
30 community: One, the difficulty in containing the
fires; two, the weather was deteriorating; three,
there was an increasing risk to rural areas and to
the urban interface. Do you recall Mr Roche
indicating that was the type of message he would
35 expect to be getting out to the community?
A. Yes.

Q. If I can take you through The Canberra Times
articles that you have had access to --

40 MR WHYBROW: Might I approach, your Honour?

THE CORONER: Yes.

45 MR WHYBROW: Q. Rather than make repeated trips
back and forth, I will try to give you a full set.
You have there colour photocopies of Canberra

Times articles from 9 January through to 18 January that deal with the subject of Canberra bushfires. Do they represent the various articles to which you refer in your report as having seen?

5 A. Yes, they do. I have them in the form that I printed them off The Canberra Times website. I'm really sure they were photographed and submitted when I was asked to provide all the papers I referred to.

10

Q. These are, in fact, the pictorial representation of the actual papers?

A. Correct.

15 MR WHYBROW: So that your Honour can follow, I have a copy for your Honour. There are at least two or three other copies that I will distribute along the Bar table. It might be that people need to share. I do intend to tender these articles.
20 They have not been scanned in. Again, the value of their being scanned to somebody accessing the computer is probably very limited as opposed to the hard copy in colour form. I will basically tender, at the completion of this exercise, what
25 Mr Nicholson has before him.

Q. Mr Nicholson, you see the first one is noted to be The Canberra Times on 9 January 2003 and has a photograph, at that stage, of a view towards the
30 Brindabellas and the smoke cloud coming probably from the McIntyre's Hut area. Do you see the photograph on front page?

A. Yes, I do.

35 Q. The next article you have there is The Canberra Times on 14 January, which is dominated by the rescue of the helicopter pilot who copped a crash in the Bendora Dam; do you have that?

A. Yes, I do.

40

Q. On page 2 is a headline, "Namadgi fires pose fresh threat", and a large photograph of the area; do you see that?

A. Yes, I do.

45

Q. This is Tuesday, January 14. I take you then to Wednesday, 15 January. There is a headline on

the front page of The Canberra Times, "Bushfires may burn for weeks". In a small box there is a further series of dot points setting out other bushfire stories inside the paper, including one dot point, "No weather relief"; do you see that?
5 A. Yes.

Q. The first paragraph is:

10 "Authorities have confirmed that the out of control fires in the Namadgi National Park may continue to burn for weeks and cause damage that may take 40 years to regenerate."

15 This is Wednesday, 15 January. In your opinion, is this type of, first of all, article in the daily newspaper of a particular area relevant towards the community gaining an appreciation as to the level of risk of a bushfire that is burning
20 in the area?

A. I think so. They are quite graphic. Headlines such as "Bushfire may burn for weeks" and authoritative sources such as Peter Lucas-Smith, Dr Cooper, they should be taken as
25 authoritative dissemination of important information.

Q. At least in relation to difficulties of containing fires and weather deteriorating, do you
30 agree there at least appears to be some information consistent with those themes expressed by Mr Roche, that there is some difficulty in containing these fires and there is no weather relief forecast in the immediate future? Do you
35 agree that message is at least available?

A. Yes. I think it is quite graphic. Quite upfront.

Q. On 16 January, again there is a story on the
40 front page of The Canberra Times. The headline says "Fires set to turn on Capital as wind shifts north-west". In your opinion, would such a headline tend to provide an indication that there is a difficulty in containing the fires and
45 there is an increasing risk to the capital?

A. Yes, certainly, and I would expect that people would see that as a trigger.

Q. The first paragraph of that article indicates:

5 "Bushfires on Canberra's doorstep are the
worst in 20 years are expected to be turned
back towards the city tomorrow by wind change
in a day of horror weather conditions".

10 It would appear that the three things that
Mr Roche suggests should be getting out to the
community - that is, difficulties in containing
fires, deteriorating weather conditions and
increasing risk - are covered in that first
sentence of that article?

15 A. Certainly.

Q. There is, firstly, an ACT forecast in that
column and then there is a quote from
Mr Lucas-Smith referring to the fires burning out
of control and "were likely to be worse than the
20 1983 blazes which destroyed 33,000-hectares in the
Namadgi over six weeks". At page 7 you see there
is a continuation of the page 1 story with
a headline, "Fires set to turn on Sydney"?

25 A. Yes.

Q. Is this part of the material that you had in
mind when you gave your opinion there was, in
fact, an indication to the residents of Canberra
that there were difficulties in containing this
30 fire, the weather was deteriorating and there were
increasing risks flowing from these fires?

35 A. Well, I think there were two messages,
actually. One was the smoke column out on the
mountains, which should have been obvious to
everybody, and there was an explanation on a daily
basis, ramping up towards D-Day, of what was
actually happening out there. So I think good use
of the media - or good involvement of the media.

40 Q. The 17 January Canberra Times headline is
"Next 5 days critical". "All forests closed as
firefighters battle around the clock". The first
paragraph reads:

45 "The weather conditions now facing
firefighters in the ACT and surrounding New
South Wales were worse than those that

preceded the 1983 Ash Wednesday disaster in South Australia and Victoria local fire authorities admitted yesterday..."

5 The article goes on to refer to the number of
firefighters in country New South Wales, forests
have been closed and a quote from Mr Lucas-Smith
that over the next five days, the temperatures
10 worsen on Monday and Tuesday. Again, does this
appear to be an increasing of the level of these
fires in the messages that are getting to the
community, at least through anybody who picks up
The Canberra Times?

15 A. That it is coming from an authoritative
source. It is not, with due respect, the media,
something that someone has picked up. It is
coming from an authoritative source. It has to be
viewed as a very effective means of getting the
20 message through to the community in a broad sense,
in my view.

Q. Again on 18 January the headline across the
entire front of The Canberra Times is "Bushfires
25 break through".

"Fires have escaped containment lines in the
ACT and are running out of control. With
rural properties along the Namadgi National
30 Park now at risk in the continuing ferocious
conditions."

Do you have that headline?

A. Yes.
35

Q. Do you agree that headline and the first
paragraph would indicate to somebody who was
picking up and reading it that there is difficulty
in containing these fires, the weather is
40 deteriorating and there was an increasing risk?

A. Yes, I agree with that.

THE CORONER: I don't seem to have that one,
Mr Whybrow. That is the 18th?
45

MR WHYBROW: Yes. There are some articles within
it. I don't have copies of all of those. I am

50

sorry I don't have coloured copies of the entire articles. I only have a colour copy of the front page.

5 THE CORONER: Do you have that, Mr Nicholson?

A. I only appear to have the front page.

MR WHYBROW: Q. Mr Nicholson, you are aware there has been much criticism and comment in the Inquiry
10 as to the lack of timely warning that was given to residents that the fires were approaching?

A. Yes, I am; yes.

Q. Indeed, Mr Roche, again before lunch,
15 indicated that when asked what warning he would have given at 11 o'clock on 18th responded by saying, in effect, by the night of the 16th or 17th it was clear that the risk was certain to materialise and he would have been giving warnings
20 at that stage. From your examination of the development of the fires and taking into account some fires were in New South Wales and some were within the ACT, have you got any comment to make to her Honour about the types of warnings that
25 could and should have been issued and at what times by Emergency Services?

A. I am of the view that warnings are an issue that need to be very carefully considered. If you are going to issue a warning to the community, if
30 you are going to issue a warning to a community, in my view they need to know: (1) what they are being warned about or against; and (2) what you want them to do; and (3) that you have set up processes to receive them and look after them.

35 I'm of the view that to issue warnings too early can have people on the move doing things that, in hindsight, you might not have wanted them to do. And I think of - I recall from the ABC transcript
40 or the ABC records that I looked at on the day that people in fact were being urged to go home to places like Duffy and prepare to defend their homes against ember attack. If a warning is issued --

45 Q. Just to stop you there. I think the transcripts indicate those first occurred from

about 12 noon onwards?

A. Yes. To issue a warning when there has been no community preparedness for it I think is fraught with hazards. There are a couple of recent issues - you can please yourself, your Honour, as to whether you take them into consideration or not - one is the mass evacuation out of New Orleans, didn't tell them where to go; just told them to get on the road. The more recent one closer to home, I can recall the Prime Minister at pains to urge the community not to panic over bird flu.

If we are going to issue warnings we need to think about what is likely to happen. It worries me that if we issue warnings before we think we need to - sorry, before we really need to, we might get people reacting in a manner that is inappropriate. If we alerted people to be on the move, we issued warnings two days before the event, some people would hear the word "evacuation", or some people would hear one or two words and link it to something else and be on the move when they didn't need to. I would expect the Emergency Services would be confronted with lots of telephone calls and other forms of request asking "what do we do".

I think warnings need to be quite targeted, and the first time you use one it needs to be backed up by some solid procedures in place so that people know what is expected of them.

Q. Do they also need to be linked to an expectation that a certain event is going to occur?

A. Yes.

Q. Here you have examined the urban edge and you have also examined the previous history of success by the Emergency Services at fighting fires on the urban interface. I think I already asked you were the authorities entitled to take into account these recent successes as part of an expectation, should fires break out and head towards the city, they may be able to contain them at the urban edge; you indicated that that was a reasonable approach. Mr Roche is recommending some sort of

warning. He doesn't specify what, could have been given on 16 and 17 January. In terms of the issues that you have identified, is there any sort of specific warning that could have been issued as early as 16 January above and beyond what you have seen was going out?

5
A. I think that would be fairly difficult, because at that stage I expect that the fires that ESB and the other agencies involved, and
10 Environment ACT, but basically ESB, their field commanders probably had a feeling they were going to get on top of these fires, or they were going to contain them - that's what I mean by contain them. What might be happening across the border,
15 my understanding is that the flow of information may not have been all that comprehensive. But on the 16th, personally, would want to be a pretty desperate situation to be saying, "Look, we are going to lose this. Get ready for it on the 18th
20 or on the following Monday". I think what has been happening in the media, coming from an authoritative source, is conditioning triggers, if you like, in expectation that people would see what was happening, read what was happening, and
25 start to take measures to prepare themselves. Then again, it may never arrive.

Q. You refer to Monday. You are aware that the weather reports at least on the Wednesday and
30 Thursday were that the Monday could be the most severe of the weather approaching. Can I just read you a piece of transcript from the evidence of Julie Crawford, who was one of the senior firefighters from New South Wales down at
35 McIntyre's Hut. She was asked by Mr Lasry at page 4512:

"One of the benefits, I take it, of early warning to people who are residents and
40 potentially affected by a fire is to be able to give that warning in circumstances where you know there has been some education as to what they should do with that information?

"A. Yes.

45
"Q. And also you don't want to cry wolf either. You don't want to go too early.

I mean, then by the time the fire comes everyone is sick of it. It is coming. It is coming. And everyone ignores your warning. You have to time it. The timing is very
5 critical."

Are they comments that you agree with?
A. Basically.

10 Q. Ms Crawford was also asked:

"What types of warning could have given at about 1pm on Saturday the 18th of January, given the position of McIntyre's Hut as it
15 was then".

Her comment at page 4514 was:

"It's a difficult question to do in hindsight
20 because there has been so much about the fires, and everyone has an opinion. If I try to cast my mind back to the morning of the 18th when this was happening, that's where the fire was at 1 o'clock, the people doing
25 the planning in ESB would have been doing their rate of spread under their worst case scenario to work out when it would hit the suburbs, you would try to time into that.

30 They also would have the fact that the ACT has had an excellent reputation for holding fires on the urban edge of Canberra. They have a really good setback. So I can remember right back in the early '90s where
35 we actually evacuated some people from O'Connor, but in my mind no residences actually burnt down.

I think the ACT worked out that it wasn't
40 actually going to hit until 6 o'clock that night. But if you just look at it, there is the Murrumbidgee River to cross, there is a huge amount of rural paddocks which were in the middle of drought. There were no fuels
45 in them. A lot of them were just dust bowls."

She then indicates:

5 "What happened when it came out into the
cleared country, from discussions I had with
people who were there at the time, they
couldn't believe it had hit the cleared
country and just took off. It was a wall of
flame across paddocks that had nothing in
them. The rate of spread was far more
10 excessive than what people expected. You
were also then having where fires were
combining and things so you get much more
erratic fire behaviour. You would have to
work out, well it is there. What are you
15 going to tell the people of Canberra? That
it is coming and, yes, you will get it in the
cleared paddock, which is what everyone was
hoping would happen."

20 She was asked again:

"What would be the type of warning she could
haven't given at 1pm".

25 She indicated at the bottom of 4515:

"We now have X amount of fires. McIntyre's
Hut is now entered into the ACT. At the same
time fires are also moving out into New South
30 Wales from the ACT, we will keep you up to
date with what has happened."

Do you have any comment to make about those
observations, that difficulties of giving
35 warnings, for example, on Saturday when the fires
are just starting their runs?

A. She has mentioned a number of issues being
recorded there, erratic fire behaviour, going
through the paddocks, it is very difficult to know
40 where it is going to hit. And the more - the
longer the perimeter that you indicate where the
fire may impact, the more people that you have
involved, and the more people likely to be on the
move or doing erratic things. I think it is quite
45 a dilemma to actually know where it is going to
be. The fact that she has mentioned erratic fire
behaviour, and we know there was erratic fire

behaviour, it is matter of keeping people informed.

5 My recollection is at about that time that was starting to happen anyway.

10 Q. You have read the transcripts. I think the SEWS was issued at 5 minutes past 2 on the afternoon, although I think the process of issuing it occurred earlier and there was a problem with technology at the point at which it was issued. According to Mr Cheney's fire spread map, the McIntyre's Hut fire was still to the west of Murrumbidgee River, but obviously travelled a long way in a short period of time. Taking the hindsight aspect out of it, do you have an opinion as to the appropriateness of the warnings that were provided to the community in all of the circumstances that they had at the time?

20 A. Going back to the newspaper articles which were ramping up the situation from fire out on the hills on the first day to breaking through on the last day, and a couple of days before that, certainly triggers are in there to what was actually happening. And I have no doubt the visuals out to the west were quite graphic. Big fire. Big smoke. And then once the people on the ground were confident, a fairly high degree of confidence where the fire might impact, then they started to notify people. That's reasonable. To be any better than that is highly desirable. It is a matter of not wanting to push the button until you know exactly where you want the cannon pointed.

35 MR WHYBROW: I tender that group of articles. They are photocopies from the original 'Canberra Times'.

40 THE CORONER: I need to get from you the articles that accompany 18 January.

45 MR WHYBROW: There are a couple of pages of articles behind the 18th that I will have copied and provided. There is a black and white full set with Mr Nicholson.

THE CORONER: That set of 'Canberra Times' articles from 9 January to 18 January will become exhibit 0123.

5 EXHIBIT #0123 SET OF 'CANBERRA TIMES' ARTICLES FROM 9 JANUARY TO 18 JANUARY TENDERED, ADMITTED WITHOUT OBJECTION

MR WHYBROW: Q. Finally at this stage from me,
10 Mr Nicholson, Mr Lasry and myself have neglected to take you through your CV, or your experience. I don't propose to do that unless anyone particularly wants me to do so. Those matters are set out there. Presumably you are able to answer
15 any particular questions about your background and experience if required to by her Honour or any of the parties here?

A. Yes.

20 Q. Like some of the witnesses in this inquiry, I don't know if it is reported in your report, you are also a recipient of the Australian Fire Service Medal?

A. Yes.

25 MR WHYBROW: They are my questions, your Honour.

THE CORONER: We will just take a short break, and resume shortly.

30 SHORT ADJOURNMENT [3.26 pm]

RESUMED [3.37 pm]

35 THE CORONER: Mr Whybrow, have you finished?

MR WHYBROW: Yes, your Honour.

40 MR PIKE: Mr Lasry is allowing me the indulgence of asking a few questions now as I can't be here tomorrow.

THE CORONER: I was going to offer you that opportunity.

45 MR PIKE: I will be very brief, your Honour.

<CROSS-EXAMINATION BY MR PIKE

MR PIKE: Q. You are familiar with the Forest Fire Management Group, are you not?

5 A. Yes, I know what it is.

Q. You are familiar with AFAC as well. In fact, as I understand, you have sat on committees of AFAC over the years.

10 A. That's correct.

Q. Is it the case that the Forest Fire Management Group is comprised of representatives of agencies which are also represented on AFAC?

15 A. I'd ask you to bear in mind that it is some five years or so since I was involved with AFAC when I retired from CFA. I still keep contact with a few people. It was my experience at the time in 1998/99 that as AFAC continued to bring
20 the urban and the rural fire services together, of which the forestry or land management agencies were a large part of the rural fire services, if you like, that, yes, the key players who I would consider to be the key players or all the players,
25 for that matter, in the fire control group were in fact part of AFAC.

Q. When you say "the fire control group", I think it was the case that the Forest Fire Management
30 Group changed its name to the Fire Control Group. When you said "fire control group", you are referring to the same body?

A. I am referring to the same body.

35 Q. You have had the opportunity of looking at the group's position paper called "Firefighting at Night"?

A. Yes.

40 Q. In your view, does that position statement represent a prudent set of guidelines?

A. Have you finished?

Q. Yes.

45 A. Yes - a crude set of guidelines?

Q. Prudent.

A. A prudent set of guidelines on working a fire in a forest environment at night? Yes, certainly.

5 Q. In your view, both from your experience and familiarity with AFAC, and in relation to your own experience generally, were that position paper to be put before AFAC for consideration and endorsement, would it be likely to be endorsed by AFAC?

10 A. I think so. I can't see any reason why they wouldn't - conducive to improve firefighter health and safety.

15 MR PIKE: If your Honour would excuse me.

THE CORONER: Yes, certainly. Thank you, Mr Pike.

MR LASRY: I think I am next. The idea is we resume the original order.

20 <CROSS-EXAMINATION BY MR LASRY

MR LASRY: Q. Mr Nicholson, I take it that you would adhere to the principle that one thing that is important in relation to the conduct of firefighting authorities is that they must be honest with people concerning the risks they face?
A. Firefighting personnel, certainly.

30 Q. No, firefighting authorities might be honest with people about the risk that people face during a bushfire?
A. Which peoples?

35 Q. The people who are facing the risk, residents, the populace generally?
A. Certainly.

40 Q. It is also important, isn't it, that firefighting authorities give them advice on measures they need to take to protect themselves and their property?
A. Yes.

45 Q. That advice needs to be timely, that is, it needs to be useful advice; do you agree with that? Perhaps forget "timely" at the moment. It needs

to be useful advice?
A. Useful advice?

5 Q. It needs to be given at a time when the advice
can be put into effect?
A. Certainly.

10 Q. There is no point in giving people warnings
about something when they have no opportunity to
implement the substance of the warning, is there?
A. In principle, yes.

15 Q. For example, as you make the point, it is
a bit late to be warning people that a fire is
going to strike their property or their area as
the fire is actually striking the area, thus
causing people to vacate into perhaps certain
disaster; you have made that point yourself?
A. Agreed.

20 Q. It is your opinion, isn't it, that recent
history is littered with unprepared communities
who suffer enormous losses because governments and
what might be described as inwardly focused
25 emergency management agencies keep problems to
themselves and fail to recognise their limitations
and then are overwhelmed when the disaster hits?
A. Agreed.

30 Q. You know why I am asking you that question,
don't you?
A. I'm waiting to hear.

35 Q. Because it is your statement of the principle
issued on your website.
A. Right.

40 Q. You agree with that, don't you?
A. Can't dispute that.

45 Q. You also take the view, as published on your
website, that particular use must be made of the
media to help develop an awareness of the
environment in an interface community, as you
describe it, including fire behaviour and how to
prepare to survive?
A. Correct.

Q. In relation to the issuing of warnings, it is your opinion, isn't it, that the co-operation of radio and television is essential with a fire management agency in providing timely and factual briefings?

5 A. Correct.

Q. Have you reviewed the radio and television media in relation to, say, the week leading up to 10 18 January in this case?

A. Yes, I have.

Q. Is it your opinion that the information that was issued during that period was adequate and 15 timely?

A. I think they were offering the best information that was available to the media. Now, I'd like to add to what you have asked me, because I think they form the context of almost yes/no 20 answers. In saying that these news articles were or are or were a trigger, my expectation is that they would have been raising the awareness or initiating action in a prepared community, and in doing what I did, I was very keen to see what ESB, 25 and indeed the other agencies with fire prevention/fire management responsibilities in the ACT had done. I was particularly concerned to look at the material that had been distributed. The principal document, as far as I am concerned, 30 is this "Will you survive?". I understand it started to be distributed in copious quantities back as far as 1993, I think it was.

Q. Where do you understand it was being 35 distributed?

A. Fairly broadly across the community.

Q. But where? What areas?

A. The whole of Canberra. Certainly in the 40 urban/rural interface - in the interface areas.

Q. In the suburbs, as a whole?

A. In schools - that's my understanding.

45 Q. From where do you get that understanding?

A. From discussions with people.

Q. Who?
A. From ESB people.

Q. They say that document has been distributed
5 widely throughout suburban Canberra?
A. That's my understanding - and outside as well.

Q. That was told to you, was it, by
Mr Lucas-Smith or Mr Castle?
10 A. Both, as I recall.

Q. Do you refer to that in your report?
A. I don't know whether I do.

15 Q. Perhaps you would care to look, to see whether
you have.
A. In the course of trying to determine what had
been handed out, I asked for all information and
that's, I think, all the information I was
20 provided with was produced back to be copied and
circulated, as requested of me.

Q. So that I am clear about what you are saying,
Mr Nicholson, you are saying that an important
25 part of the information, if you like, as lawyers
are fond of calling it the basal information, is
the distribution of that document over a period of
years, as you understand it?
A. Yes. And other documents.
30

Q. Do I understand you are saying that is
a foundation on which the newspaper publicity
during the fires be built?
A. It is my expectation that the sort of
35 information that is disseminated in the newspapers
is a trigger for the implementation of what is in
here. I was particularly keen to see what it said
about - looking at some of the photographs here
about the smoke and the fire behaviour and what
40 impacted on the boundary of Canberra in that
afternoon/evening, that there was some
understanding within the community, or at least
the community had been provided with information
to tell them what the fire behaviour would be
45 like. I see it is in there.

Q. Can you point out where in your report you

refer to the importance of that document you have in front of you now?

A. I don't know that I do.

5 Q. You don't.

A. No.

Q. While we are dealing with a couple of aspects of your report, in your supplement, at page 25 of 10 28, at the bottom of the page, you say that Mr Roche is wrong on two counts:

"The ESB had been providing situation reports to Canberra radio and television broadcasters 15 during the period 8 January to 17 January which should have alerted the community of the gravity of the situation developing to the west of Canberra. Indeed, on 17 January there is direct reference to the danger of 20 spot fires threatening Canberra and the need for property protection."

I'm sure because I have missed it. Can you just point me to the portion of the publicity on 25 17 January that refers to that?

A. My recollection, it is in the media releases. I might have to dig around in my case to find it.

Q. You don't footnote that to anything. I was 30 trying to understand where there is a direct reference to the danger of spot fires threatening Canberra and the need for property protection. You can't put your hands on that at the moment?

A. Not immediately. I wouldn't have dreamed that 35 up.

Q. I wasn't accusing you of having dreamed it, Mr Nicholson. I was asking you where it came from. The other point that you make in relation 40 to this publicity is that what is important about it is that comments are being made during the course of these articles from authoritative sources, and you particularly refer to Mr Lucas-Smith.

A. Mmm.

Q. You were taken by Mr Whybrow to these various

articles. Among others, he referred you to The
Canberra Times article of 17 January. Do you have
that in front of you? It is the one with
Mr Peters from New South Wales on the front with
5 a smile on his face.

A. Yes, I do.

Q. You were taken to the first paragraph or so of
it. You work on the basis, don't you,
10 Mr Nicholson, that people read these articles
through and act on their contents; that is what
you hope would happen?

A. That's what I hope would happen.

15 Q. You see in the second column in that article,
about halfway down the second column, a quote from
Mr Lucas-Smith:

20 "'At the moment, I don't think there is any
threat to the urban edge of Canberra',
Mr Lucas-Smith said. 'We'll certainly see
a lot more smoke than what we have seen in
the last few days'."

25 You see that? You'd assume people would read
that?

A. All those that are interested would.

Q. I thought you were saying about these
30 articles, Mr Nicholson, that they were the
trigger.

A. They should be.

Q. What trigger do you think would be created by
35 the Chief Fire Control Officer being quoted on
17 January saying that he doesn't think there is
any threat to the urban edge of Canberra at the
moment?

40 A. I guess it's a matter of how close you are to
the issue, but if that sort of thing is happening
to the west of you and there is - I can't think of
the word - when the wind changes, as the weather
pattern moves through and the wind goes around,
there is a possibility that that fire might get
45 away. I would expect that people would take some
notice of that.

Q. Where does it say in here anywhere that there is a possibility that the fire might get away?
A. I don't think it needs to be said, your Honour. I think if you live in an environment,
5 you are conscious of what goes on around you, and I think the people of Canberra/ACT had the advantage of major fires, the most recent in the Sydney region with fires burning into the back of
10 Lane Cove - quite graphic television - fires in other parts of Australia, that it should have been a trigger. I don't know that it needs to be spelt out chapter and verse. It should be a trigger, "Hey, there's something going on here." There should be some linkage with the bushfire
15 educational material that has been distributed.

Q. How would the bushfire educational material, that you say is so important but doesn't appear in your report, link to the particular quotation
20 about which I have asked you?

A. Because it is an alert that there is a major event occurring to the west.

Q. With Mr Lucas-Smith saying, as quoted in The Canberra Times, "At the moment I don't think there is any threat to the urban edge of Canberra"; that's what it says, isn't it?

A. I don't think he is giving a categorical that it will never happen.
30

Q. Mr Nicholson, you understand, don't you, that there is a difference between educating people who are living in a genuinely rural environment and who may indeed be more fire-conscious than people
35 who believe they are not susceptible to fire attack because they live in what they regard as a suburb? You understand the difference, don't you?

A. I understand that.
40

Q. People who were living in the suburbs, as opposed to people who were living in the more rural environment around the edge of Canberra, would be entitled to read that quotation from the
45 Chief Fire Control Officer, authoritative, as you point out, and the man in charge, and say, "Well, we don't have anything to be concerned about. The

Chief Fire Control Officer says at least at the moment there is no threat to the urban edge." They would be entitled to assume that, wouldn't they?

5 A. I think so.

Q. So people who perhaps might not have left their houses over the weekend of the 18th and 19th to go to the coast or to do other things which
10 involved them being away would be entitled to look at that quote and say, "Well there is no reason to stay around. We are not under any immediate threat and we can go about our business"?

A. I think, with the experience in other places,
15 that is a fairly risky option.

Q. Are they, do you think, supposed not to believe it?

A. That's one conclusion you can draw. I still
20 maintain it was a trigger to people who had been provided --

Q. Mr Nicholson, which part of this article is a trigger?

25 A. "Next 5 days critical", right across the headline.

Q. What should that trigger, "Next 5 days critical"? The ordinary suburban person living in
30 Duffy reads that headline. What do you say, as an expert, that that "Next 5 days critical" headline is telling them?

A. My expectation that people ought to be thinking about the fire. And clearly some of them
35 did. There were people who stayed with their houses and saved them. There were people who responded to this.

Q. It is fair, isn't it, to imagine that people
40 down the western side of the urban area would want to know whether or not the urban area was at risk, people in Duffy and so on? They would want to know whether they were at any real risk?

A. It is fair to say that.

45 Q. What do you get from that article that indicates to them that they are?

A. At that particular time, they must have felt that they were on top of it.

5 Q. So, a reader and a resident of Duffy would be entitled to look at this article and say, "There is no immediate risk to us"; is that right?

A. Yes.

10 Q. That's the day before the fires hit Duffy, nine days after they started.

A. (Witness nods.)

15 Q. Mr Nicholson, have you been informed about the evidence in this case indicating that in relation to this issue, at 9.30am on 16 January 2003, the Cabinet of the ACT Government was being briefed on these fires?

A. Not in great detail.

20 Q. There is plenty of evidence about it. That evidence includes an expression of a view during the course of that briefing that there was a potential at least for a serious impact from these fires into the urban area. That was part of
25 the material that was put before the ACT Cabinet.

A. Right.

30 Q. You wouldn't see any reason why, would you, any information given to the Cabinet to that effect shouldn't also be given to the community?

A. I'd want to see the information.

35 Q. Let us take it as I have put it to you, that in the estimation of Mr Lucas-Smith, and the Cabinet was being informed, that there was at least the potential for a serious impact into the urban area; assume that that is amongst the material that was put before the Cabinet.

40 MR WHYBROW: May I object to the question and say there is an appropriate way to put this. If my learned friend wants to put that material, rather than put it in summary form he should take him to the evidence. I am sure he has the references
45 there. That is the approach that Mr Lasry took with Mr McCarthy. I think it is appropriate, especially with a witness who has not had the

opportunity to sit here and listen to the evidence, that that is the way it should be done, in fairness to the witness.

5 THE CORONER: That is a fair comment, Mr Lasry.

MR LASRY: The page I am referring to is at page 1061. I might have to come back to it. I don't have the page actually in front of me. I will go
10 on to something else and go back to it - assuming I have the right page reference - I have.

Q. I will pick up the evidence a bit earlier than that, Mr Nicholson. I am at page 1061, at about
15 line 8 on the page. I am asking questions of Mr Lucas-Smith, and starting three lines in, in order to pick up this topic:

"In relation to the fires themselves on
20 page 2" - I think I was asking Mr Lucas-Smith about his statement - "dealing first of all with the New South Wales fires - this is the day after your discussion with Mr Koperberg - the dot points indicate" - then there is
25 a quotation - "both the ACT fires have crossed into New South Wales, Mt Morgan fire to the south-west has been contained by New South Wales, McIntyre's fire to the north-west has secure containment lines to
30 the south and east following back-burning operations. However, with stronger winds from the north-west there is always the potential for spotting over the containment lines which has the potential of serious
35 impact to the ACT forest pines and subsequently the urban area."

I think, in fact, I was quoting from the briefing paper itself:

40 "Q. So I take it by the 16th" - that is of January - "by 9.30am or indeed when this briefing was finalised, it was now recognised that there was a potential serious impact to
45 the urban area of the ACT?"
"A. Well, yes, I suppose - well, yes, I suppose that is the simple answer to your

question, but it needs also to be put in context.

5 "Q. Can I put to you it is the usual context, which is assuming certain things?

"A. Yes.

10 "Q. I'm not suggesting that you're of the view that at this stage" - then Mr Lucas-Smith interrupts - "I am painting a worst case scenario to the best of my ability."

15 The question continues:

"It was all over, Red Rover, as it were, but simply that there was now potential serious impact for the urban area if things went wrong, both in the weather, in the
20 containment lines and a resource set of circumstances.

"A. Yes, that potential existed."

25 That was Mr Lucas-Smith's opinion as at the morning of 16 January 2003. You understand the way in which that evidence is put, Mr Nicholson? Mr Lucas-Smith is not saying it was a certainty, but he now - at that stage - for the purpose of briefing the Cabinet, recognised there was at
30 least the potential for a serious impact on the ACT and the urban area. Given that that was his state of mind, as he has described it, in the course of those answers, is there any reason why the urban community is not entitled to be informed
35 that there was at least potential for a serious impact into the urban area?

A. Pardon me, is there a mouse I can go back to that, please?

40 Q. Sorry?

A. I am reading it on the screen there. I'm a slow reader.

45 Q. The answer is there are mice everywhere, but you are the first one to ask for one.

A. I would just like to go back to before where the bold is and read exactly what it is that he

said.

Q. In the briefing paper?
A. No, it is in here.

5 THE CORONER: It is on the screen, on the transcript.

10 THE WITNESS: Am I seeing something I am not supposed to?

THE CORONER: Mr Nicholson, you have the transcript?
A. Yes.

15 MR LASRY: Q. Why don't I hand you this page and you can --
A. I wanted to go --

20 THE CORONER: What page are you on?
A.
MR LASRY: It should be 1061 to 1062.

25 MR LASRY: Q. What is it that you cannot see that you want to see, Mr Nicholson?
A. I'm just reading it now. "I'm painting a worst case scenario to the best of my ability. "It was all over, Red Rover" - I'm not sure what
30 that means - "as it were, but simply that there was now potential serious impact for the urban area if things went wrong, both in the weather, in the containment lines", and something that is on the next page.

35 Q. Resource --
A. Resource allocation --

40 Q. "... and a resource set of circumstances". I perhaps should read a little further. He says in answer to that:
"A. Yes, that potential existed.

45 "Q. Yes, and obviously I assume members of the ACT Cabinet were interested in it?
"A. Very interested in it."

Then he says he didn't recall a great deal of questioning about that topic. I'm interested simply to put to you that was Mr Lucas-Smith's state of mind at 9.30am on 16 January. My

5 question is: If that is the case, that in his opinion the potential existed for a serious impact on the ACT urban area, is there any reason why occupants of the ACT urban area couldn't be informed that at least that potential existed?

10 A. Could I respond to it by saying, he is painting what he considers to be the worst case scenario, not absolutely convinced it was going to happen. I go back to what I said earlier on - it is a big thing to issue a warning, even of that

15 nature, because what you expect the result to be - I am deducing from what I am reading here, from what you are saying, he hasn't quite made up his mind but he is painting the worst case scenario.

20 Q. And telling the ACT Cabinet that that is the potential risk?

A. Yes.

25 Q. If it is necessary to inform the ACT Cabinet about it, why isn't it appropriate to inform the people who are going to be affected by it that at least there is the potential for that to happen so they can prepare themselves?

30 A. I wouldn't for a minute to presume to operate at the high, exalted levels of government that this is agreeing, but maybe it's because he needs to brief Cabinet or Government as to what may happen, worst case scenario, that they may wish to put some things in place, allocation of finance,

35 blah, blah, blah, but not ready to push the button with the community.

40 Q. That is not consistent with your website principle, Mr Nicholson, is it, that you agreed with before, that it is important for firefighting authorities to be honest with people regarding the risks they face and advise them on the measures they need to take to protect themselves and their property?

45 MR McCARTHY: I object, your Honour. With great respect, I think Mr Nicholson has made it clear on

about three occasions that the manner in which you warn the community, the time at which you warn the community and what you warn the community about needs to be judged in the circumstances which you are in, and the people who you are informing.
5 Mr Nicholson has tried very hard, in my submission, to explain that context when it comes to warnings. What is said to Cabinet is an entirely different factual context, nor does the
10 evidence that Mr Nicholson has given about warnings to the community contradict what he is saying on his website.

15 THE CORONER: That is exactly the question that he is being asked now, as I understand it, Mr McCarthy - how his evidence to date does fit with the comments that he has on his website.

20 MR MCCARTHY: I am only saying that Mr Nicholson has answered about three times now that the fact that the way you warn the community needs to be judged in its context. In my submission, the question has been asked and answered on at least three occasions.

25 THE WITNESS: Can I respond to --

30 THE CORONER: Q. I would like you to answer the question as Mr Lasry asked it in relation to your website, the comments that you have made.

A. Your Honour, I --

35 Q. I do hear what you have said about the warnings and when they should be issued but --

MR LASRY: I am happy to withdraw the question and amend it slightly in order to get to the point. I don't want to get hung up on overarching contexts and all the rest of it.

40 Q. Mr Nicholson, if Mr Lucas-Smith was of the opinion at 9.30 on 16 January that there was a potential for a significant impact on the urban area of Canberra from these fires, is there any
45 reason you can think of, from your experience, as to why that information, at least, would not be provided to the people who are going to be

affected by it?
A. The only - well, the major concern I would have is that the community knew how to deal with the information of what was in place to assist them to deal with the information.

5

Q. Do I understand from your reference to that earlier document distributed far and wide in the '90s, and other information, that you were satisfied that they were ready to deal with that situation?

10

A. I can only take the results of the surveys and I've heard of the level that they were. He must have had a reason not to do that.

15

Q. But it is not obvious to you, is it?
A. Not in a simplistic sense, no. He must have had a reason to do that.

20

Q. The reason for not doing it is not obvious to you as you sit there and from what you have seen?
A. But that should not be a condemnation of what didn't happen.

25

THE CORONER: No, put that --

MR LASRY: Q. No, I am not asking you to condemn anyone. I am asking you the factual question that the reason that that was not done --

30

A. Not obvious to me.

Q. Is not obvious to you?
A. No.

35

MR LASRY: Would that be a convenient time?

THE CORONER: We will adjourn until tomorrow morning at 10 o'clock.

40

HEARING ADJOURNED AT 4.10PM UNTIL TUESDAY, 25 OCTOBER 2004, AT 10 A.M.

45

TRANSCRIPT OF PROCEEDINGS

5

CORONER'S COURT OF THE
AUSTRALIAN CAPITAL TERRITORY

10

MRS M. DOOGAN, CORONER

15

CF No 154 of 2003

20

CANBERRA

25

INQUIRY INTO INQUEST AND INQUIRY
THE DEATH OF DOROTHY MCGRATH,
ALLISON MARY TENNER,
30 PETER BROOKE, AND DOUGLAS JOHN FRASER
AND THE FIRES OF JANUARY 2003

35

DAY 92

40

Tuesday, 25 October 2005

45

<JOHN DAVID NICHOLSON, RESWORN

<CROSS-EXAMINATION BY MR LASRY

5 THE WITNESS: Before we start I would like to
correct what I consider was a misrepresentation in
my position by Mr Lasry yesterday in selectively
quoting from the philosophy page of my website.
It needs to be taken in its full context. I have
10 a copy for you which I would like to present.

THE CORONER: I will see that. Thank you.

15 THE WITNESS: That was my concern, your Honour,
that Mr Lasry was quoting from the section in the
philosophy page of the website that you didn't
have a copy of, and I was relying on my memory.

20 I printed that out this morning because I wanted
to explain that when that was done, that was done
in the context of fire brigades, the police - to
name two key response organisations - slowly
removing themselves from a reactive or "We will
look after you" position, "leave it to us."

25 Some examples are the great expenditure on urban
pumpers when, in effect, on a bad day they might
not do the job.

30 Just going through that, that whole philosophy is
about sharing the risk with the community. To use
it in the context that Mr Lasry used it yesterday,
he's taking a pretty narrow view, in my opinion.
It is a far bigger picture than that. I would go
35 to the final paragraph and say what I was saying
about the newspaper articles being a trigger, that
addresses that issue.

40 While some people may have responded to what,
I suspect, is probably some selective quoting of
Mr Lucas-Smith with regard to his comment about
the urban edge, in fact people should have been
thinking for themselves. I mean, people - no
disrespect when I say that; it is really about
45 accepting some responsibility for one's own
well-being. Thank you.

THE CORONER: That is always providing people are informed and adequately informed --

5 THE WITNESS: That's right - sorry to interrupt you. I take the position the document I referred to yesterday, this Emergency Services document in particular --

10 THE CORONER: The one you say was widely distributed, or the one you believe was widely distributed.

15 THE WITNESS: The one that I believe was widely distributed. I made reference to wanting to be sure to describe what they would be subjected to in terms of fire intensity and the action they should take. That is part of divulging responsibility and knowledge to the community so they can act to look after themselves, if
20 necessary. The circumstances around the urban edge here were particularly of that nature.

THE CORONER: Thank you, Mr Nicholson.

25 MR LASRY: Q. You say I misrepresented you, Mr Nicholson?

A. I do.

30 Q. What I read to you yesterday - was, among other things, this passage:

35 "Our philosophy on disaster mitigation is simple but very effective. It is about being honest with people, regarding the risks they face and advising them on the measures needed to protect themselves and their property."

You agreed with that yesterday.

40 A. Yes, I'm not backing away from that.

Q. Why is that a misrepresentation?

A. Because you quoted my website, one particular section in isolation.

45 Q. In quoting that particular principle in isolation, how does that misrepresent you?

A. Because at one stage, your Honour - I haven't

got access to the transcript, but I remember you saying to me, "Answer the question", and then Mr Lasry said he would withdraw that. Well, I would have welcomed opportunity to answer the question and being denied the opportunity - probably not being fast enough on my feet at the time. I thought that this was the appropriate way.

10 Q. How is reading that passage from your website a misrepresentation of you, Mr Nicholson?

A. Because it is not a full picture of my philosophy.

15 Q. It may not be the full picture but it is an accurate reading of what you publish on your website?

A. It is one interpretation.

20 Q. I take it you adhere to the principle, don't you, that it is necessary to be honest with people regarding the risks they face?

A. Yes, I do.

25 Q. You adhere to that, don't you?

A. Yes, I do.

Q. That means telling them about the risk that they face, doesn't it?

30 A. Yes, I do.

Q. It does mean that, doesn't it? It means telling them about the risk they face?

A. Yes, I do. And if you look at --

35

Q. No, Mr Nicholson, it means telling them, doesn't it?

A. If you look at --

40 Q. I ask that the witness answer the question.

A. If I could draw your attention to the section that says --

45 THE CORONER: No, Mr Nicholson, you have to answer the question, if you would, please.

THE WITNESS: Would you restate the question,

please?

MR LASRY: Q. The principle on your website involves telling people about the risk they face, doesn't it?

A. Yes, it does. Your Honour, could I draw your attention to the section that says "Or fail to recognise their limitations or overwhelmed when the disaster occurred", the third last paragraph? I am not saying they failed to recognise their limitations. I am suggesting they were overwhelmed because of resource and other issues that they were involved with. They did try, hence the articles in the newspaper. Thank you.

MR LASRY: Q. Mr Nicholson, you say on your website, putting yourself forward as an expert, that recent history is littered with unprepared communities suffering enormous losses, don't you?

A. Yes.

Q. I take it you are there referring to your understanding and knowledge of what has happened on occasions prior to the publication on this website?

A. Yes.

Q. You then go on to explain why those things have happened --

A. Correct.

Q. -- don't you?

A. Correct.

Q. You say, "That's happened, in effect, because governments and inwardly focused emergency management agencies kept the problems to themselves or failed to recognise their limitations and were overwhelmed when the disaster occurred"; that's true, isn't it?

A. Yes, I'm not denying that.

Q. That's not a misrepresentation of you, is it?

A. I took it that way.

Q. You took it as a misrepresentation?

A. Yes.

Q. Despite the fact I was quoting from your website?

A. Yes. I wanted to explain in the broad context.

5

Q. By the way, Mr Nicholson, did you find the warning on the 17th that you referred to about ember attack - spot fires, I think? You said you couldn't quite put your hand on it.

10 A. You will need to take me back to that.

Q. I was referring you to your report on at page 25 of the supplement - page 25 of 28, the bottom of the page.

15 A. Yes.

Q. The second last sentence:

20 "Indeed on 17 January there is a direct reference to the danger of spot fires threatening Canberra and the need for protection."

Where do we find that?

25 A. Just bear with me while I go through the press releases. I can't find it on the 17th.

Q. Does that mean that portion of your report is incorrect?

30 A. Possibly due to the date.

Q. Does it appear to be an incorrect statement to say on 17 January there was a direct reference to dangers of spot fires threatening Canberra and the need for property protection?

35 A. Because I can't find it in The Canberra Times, possibly in a radio transcript that I will need to go through.

40 Q. Perhaps look at it at the break. Have you read the transcriptions of the media conferences that were given on 17 and 18 January?

A. I can't recall those.

45 Q. You know that Mr Castle and Mr Lucas-Smith on those days, indeed also on 16 January, put themselves in front of the media, made media

statements and answered questions about the circumstances of the fires?

A. I understand that happened. I can't recall the detail.

5

Q. You agree, of course, that the use of radio and television is an effective way of getting a message across?

A. Yes, I do.

10

Q. It is important, I take it, because you would accept that people may, on a day-to-day basis, pay more attention to what they see on television as opposed to, for example, ensuring they read every word of a newspaper article. Some read the headlines, some read a few paragraphs. If it is on television, it probably gets people's attention.

15

A. Yes.

20

Q. Were you aware that on 17 January, Mr Lucas-Smith was asked questions by the media about the circumstances - I am referring to [DPP.DPP.0003.0476] at page point 0480. There was a news conference on that day. A number of questions were asked and in fairness to Mr Lucas-Smith, I will read to you the paragraph before the one I want to ask you about.

25

A. Can I have that on the screen, please, your Honour?

30

THE CORONER: Yes, it is coming up.

MR LASRY: Q. Mr Lucas-Smith is quoted as saying this:

35

"I think there is certainly, from an ACT point of view, the ACT firefighters have been there a fair while now. And although we're having a great deal of difficulty filling all the seats that are available in our fire trucks, and we've got a very good strong commitment from our volunteers and departmental resources, we still need it very much resources from New South Wales to assist us because we are now talking about what large parameters will have to be patrolled

40

45

and we have to work from. I think that the threat from the conditions over the next few days is going to be 'significant' for our firefighters on the fire line. Safety and welfare of our people is paramount in our minds at all times and we are ensuring that our people on the fire ground always have escape routes, always understand exactly what the fire behaviour is around them and what it is they're doing and how they can get out of where they are and look after their own welfare.

15 "Q. How far are the fires from Canberra and what are the chances it will reach - probably should say - the edge?

20 "A. Well, the fires are a fair way. I have measured it in kilometres and they are a fair way away from the edge of the urban area of the ACT. Under a north-west wind conditions the chances of meeting the urban edge is pretty slim."

Have you seen that before?

25 A. Not that I can recall.

Q. Anyone watching that on the news, on 17 January, would be entitled, in addition to what appeared in the newspaper on that day to which I referred you yesterday, to act on that opinion?

30 A. That would be reasonable.

Q. And would be entitled to conclude that any impact on the urban edge of Canberra was "pretty slim"?

35 A. That's what it says.

Q. You would agree people would be entitled to act on that?

40 A. Yes.

Q. Mr Nicholson, you prepared your report in October of last year; is that right?

A. That's right.

45

Q. I take it that when you prepared your report, what you thought would happen was that some time

shortly thereafter, you would be called as a witness in these proceedings.

A. Correct.

5 Q. And other events intervened and a year went by?

A. Correct.

10 Q. How quickly that seemed to happen. Have you, as a result of having an extra year that you didn't know you were going to have, taken the opportunity to read more of the material, for example, the evidence given by the witnesses in this case?

15 A. No, I haven't.

Q. Is that because you didn't want to or weren't asked to or didn't have time? What is the reason?

20 A. A range of issues. I felt that my brief had finished as far as what I did was concerned, and I had a business to run, which I am flat out trying to stay in front of, as it is. It is not through lack of interest.

25 Q. As I am sure you know, Mr Roche has given evidence that he read a great deal of the material and I think his evidence yesterday was that he sat through something like 90 per cent to 95 per cent of the evidence. You haven't had the that
30 opportunity, of course?

A. No.

35 Q. You haven't been provided with all that material to read. No-one has contracted you to read evidence from particular witnesses, for example?

40 A. I selected - with the topics that I chose to address in a very short space of time, looked for particular information and looked for reference at the start point and other interview records, transcripts, the police media tape when they took Ms Arman to Bendora, those sorts of things. I tried to look as much as I could without being
45 diverted, if you like, because it is all of interest. And if there are errors of date in my report, it is because I was working probably from 6 o'clock in the morning till 10 o'clock at night

for several days. So I was fairly limited in what I looked at. I realise there may be some --

5 Q. You have read Mr Lucas-Smith's evidence, for example?

A. No, I haven't actually. Not all of it.

10 Q. Do you know that he says in his evidence that on the issue of warnings, the media arrangements and advice to the community were sadly lacking? Were you aware he has given that evidence?

A. No.

15 Q. I will take you to the detail of it. At page 1047 he is asked questions about the issue of warnings.

MR LASRY: Your Honour, I don't want to spend a long time reading large amounts of this.
20 I think I can give it sufficient context. I should make the point that at page 1047 in particular I am asking him about warnings that were offered to the community on and after
25 15 January on the basis that the risk to the Canberra urban area was no longer simply theoretical. I did ask him a question at page 1047 about whether warnings were issued to people who lived in the rural properties in the relevant area. He asked me what was meant by
30 "warnings". I went on to explain that on page 1047.

Perhaps I will pick up the evidence in the middle of that page, or a bit above the middle.
35 Mr Lucas-Smith says --

MR WHYBROW: Could I just ask that my friend also clarify that Mr Lucas-Smith is answering in relation to the Bendora and Stockyard fires, which
40 are the fires for which he had responsibility in the ACT, in case there is any confusion that the answers may be relating to the fire that was then burning in New South Wales.

45 MR LASRY: Q. Mr Lucas-Smith said:

"I'm not aware of any direct things that were

put in place to provide those warnings other than the media stuff that was already in place, and the fact that a lot of those rural people were a part of our volunteer brigade system anyway.

5

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

10

"A. I'm not aware of any warnings that were issued.

15

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

"A. I think there should, yes.

20

"Q. And there weren't any?

"A. There weren't any.

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

25

"A. I assume it's mine.

"Q. All right. Who else in the ordinary course of - you can't do everything obviously - the procedures at ESB should be in charge of issuing warnings such as that?

30

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

35

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

40

"A. I think our media arrangements and our advice to the community were sadly lacking."

45 Were you aware that Mr Lucas-Smith held that opinion?

A. No.

Q. He would, of course, be in the best position to judge the effectiveness of those arrangements, wouldn't he?

5 A. I have no doubt about that. Whether he was being overly self-condemnatory or self-critical --

Q. Is a matter for her Honour?

10 A. Is a matter for your Honour. I would venture to say that he is possibly gilding the lily on the basis --

15 THE CORONER: You can't really comment on what he meant and what he thought at the time he made the comment, Mr Nicholson. Thank you for trying.

20 THE WITNESS: I believe there were some warnings issued. Somewhere in the ABC transcripts I can remember some people in certain areas being warned. I need to check that.

25 MR LASRY: Q. These are difficulties that you have, not having looked at all of the material. That is no criticism, Mr Nicholson; it is simply the fact, isn't it?

A. Correct.

Q. You are not in a position to make any real evaluation of the total situation because you haven't examined the total situation?

30 A. Only from what I have looked at, your Honour.

35 Q. I understand that. Mr Roche made that point as well. Am I right in assuming that the first formulation of your report was completed on 1 October? That was a date on which you provided a draft of your report, I think to the lawyers who had briefed you; is that correct?

A. I can't recall that.

40 Q. I want to show you a document which I think is your first draft. It carries the watermark "Draft". I ask you to look at that document. Just flick through it and see if you recognise it as being a document that I think you are likely to have provided to Hill and Rummery on or about 45 1 October. Do you agree with that?

A. That's correct.

Q. You did that on the basis that this was, I take it, your first attempt at a final report based on the material you had examined?

A. Yes.

5

Q. By the time you wrote this document, you had examined everything you thought you could examine for the purpose of writing the report; is that right?

10 A. That's correct.

Q. Then I think some things were added, which related to your CV and some other details. Indeed, there wouldn't be any dispute about this - the document in draft form, although without the watermark to which I have referred, was provided in a letter addressed to Ms Helen Drew on the same day, 1 October. Just to complete that particular picture, 1 October is on the footer of the bottom of the page?

15

20

A. Yes.

Q. That is automatically generated by the computer you are working on?

25

A. That's correct.

Q. You can be confident on that day --

A. It is not automatically generated. It is the date I put as part of the header and footer arrangements.

30

Q. You can accept from me, I take it, that we were provided on the same day also with the document in draft, minus the watermark, that is the word "Draft" which appears on the page?

35

A. Minus the watermark.

Q. That is a watermark, isn't it?

A. Yes.

40

Q. It says "Draft" on it but we received a document that represented your report. Could you go to the one with the watermark on it? If you could turn to page 2, for example, and also keeping your final report in front of you, you see on page 2 you are dealing with Mr Roche's criticism, as you describe it, of Ms Odile Arman.

45

A. Okay, it is page 7 in my report.

Q. Under the heading "Mr Roche"?

A. Correct.

5

Q. The reason - it will become apparent to her Honour when she sees it in a minute - for the difference in page numbers is that in the subsequent document you incorporated information about yourself which occupied five or so pages; is that right?

10

A. That's correct.

Q. Under the heading in the watermarked document, at the bottom of the page, in the last couple of sentences you say:

15

"In my opinion, the incident controller ultimately recognised her responsibility and accountability for the well-being of her people made her decision accordingly."

20

Then going on:

"For Cliff Stevens to state that 'a significant number of those present would have been willing to stay' is that male bravado with the wisdom of hindsight."

25

Q. Do you see that at the bottom of the page?

30

A. I see that, yes.

Q. Did that go into the final report?

A. No, it didn't.

35

Q. Why not?

A. Because I thought it probably should come out.

Q. Why?

40

A. Because it was a personal opinion.

Q. Why was it in the first draft of the report? Your report is full of personal opinions, isn't it?

45

A. Yes, but I thought that was inappropriate.

Q. Why did you put it in the draft that you

submitted to the solicitors?

A. Because when I did the first draft, it all came out, and then as I recall, I received the request to provide all of my notes, et cetera, naturally I included the first draft.

Q. But why did that sentence go into the first draft in the first place?

A. Because I thought it was inappropriate.

Q. No, no, why did it go in? That's why it came out. Why did you put it in? Did you think Mr Stevens' expression of a willingness to stay represented nothing more than "male bravado"?

A. That was my view on the time.

Q. What did you base that view on?

A. Just my reading of the notes.

Q. If it was male bravado and you thought Mr Stevens' performance was no more than that, why didn't you leave it in the report?

A. Because I thought it was appropriate to leave it there.

Q. Is it what you think?

A. Clearly not, because I removed it.

Q. It was your opinion but it is not now?

A. When I thought it through. That is the first draft. When I thought it through, I thought "Wrong thing. Take it out". But at the time --

Q. Go to page 9, please, the second last paragraph.

A. Which would be --

Q. Under the heading "Community Warning", the second last paragraph on page 9. You say this in the draft:

"Clearly, as far as advice and warnings regarding the 18 January fires were concerned, the Canberra community, including its Emergency Services, were not well prepared. However, going back to Mr Roche's comment at the start of this section, he is

wrong to refer to this as a failure of the
SMT."

Is that in the final report?

5 A. No, it's not.

Q. Why did that come out?

A. Because I'm thinking about what I'd done and
all of the information that I looked at, I came to
10 the conclusion I was being unfair.

Q. All in one day? This draft, Mr Nicholson, was
written on 1 October and on 1 October your first
draft report said "the Canberra community,
15 including its Emergency Services, were not well
prepared" in relation to advice and warnings. On
the same day, it comes out.

A. My report is dated 3 October, the one that I
have signed.

20

Q. You agree, don't you, that on 1 October you
provided another document to the solicitors Hill
and Rummery which was provided to us. I can tell
you that doesn't include this passage, so it had
25 to have been amended on 1 October.

A. That's possible.

Q. What was it on 1 October that inspired you to
change your mind about your assertion in the first
30 version that in relation to advice and warnings,
"the Canberra community, including its Emergency
Services, were not well prepared"?

A. Because in between first draft, second draft,
second iteration, I came to the conclusion I was
35 being unfair. I took a broader picture. My final
report is my position.

Q. What was it on 1 October that led you to
include in that draft that you thought "the
40 Canberra community, including its Emergency
Services, were not well prepared"?

A. At first - that first draft, in fact, may have
been prepared over a series of days and finished
on 1 October.

45

Q. Never mind "may have been".

A. That's what I'm talking about.

Q. On what information did you rely to lead you to express the opinion on 1 October that the community of Canberra were not well prepared in relation to advice and warnings? Why did you put that in?

A. Probably because that's how it appeared to me initially.

Q. Based on your analysis of the material?

A. The material I looked at.

Q. Based on the newspapers?

A. Yes.

Q. Based on everything --

A. Yes.

Q. -- you came to that conclusion?

A. Initially, and when I thought about it, I thought it was unfair, so I removed it.

Q. What is it that made you think it was so unfair on 1 October?

A. Probably because - this is very difficult, this is a long time ago. Probably because I looked at what was happening at the time, all of those other issues I was required to address, the fact that Mr Lucas-Smith was wearing three or four hats, and thinking about that, I thought, well, they have done the best that they could do, and there are a number of factors, resourcing --

Q. No, Mr Nicholson, that's not the point, is it, and I suspect you know it is not the point. In this first draft, you were offering an opinion of how well prepared the Canberra community were, including its Emergency Services, in relation to advice and warnings. That doesn't just include ESB, it includes everything. You were expressing the view in the first draft that, overall, the Canberra community were not well prepared.

A. Okay.

Q. On 1 October of last year, did you have a discussion with the lawyers of Hill and Rummery or Mr Walker or Mr Whybrow about the drafting of your first report?

A. Not that I can recall.

Q. You submitted it in this form, didn't you?

5 A. Because of all the papers I was asked to submit.

Q. No. On 1 October, having prepared this first draft, you submitted it to the lawyers, and presumably, they read it?

10 A. It would appear so.

Q. Then by 4.54 on 1 October, which is when it was faxed to the solicitor instructing us, that passage had gone from the report. Can you explain how that happened?

15 A. I removed it.

Q. Did just a light come on or did you remove it as a result of consultation? What was the process of removal?

20 A. I thought it was appropriate to remove it.

Q. Can you be any more specific about it than that?

25 A. Well, let's separate the two things. Clearly, as advice and warnings regarding the 18 January 2003 fires are concerned "the Canberra community, including its Emergency Services, were not well prepared", and I wouldn't back away from that. But then the next sentence, I don't believe it was a failure of the SMT. They were dealing with an issue at the time, and I would say that I have looked at that and removed it.

35 Q. If the truth is your view is that the first sentence is correct, clearly, as far as advice and warnings regarding the 18 January 2003 fires are concerned, "the Canberra community, including its Emergency Services, were not well prepared", if that is your view and remains your view and you now don't back away from it, why didn't it stay in the report?

40 A. Probably because I've had a chance to think about it again since you've raised it with me.

45

Q. Why did you take it out?

A. Because at the time I thought it was

inappropriate. But I would now separate the two.

MR LASRY: I tender the document which might be described as the first draft report of 1 October 2004 which bears the watermark "Draft".

THE WITNESS: Your Honour, could I endeavour to make, well, an explanation that relates to this?

10 THE CORONER: I think that is what Mr Lasry has been trying to get you to do, Mr Nicholson.

15 THE WITNESS: I would like to add this was done with great haste, with the short lead time I had to do it and the delivery date. I expected to be called to give evidence almost immediately after I finished it. I was trying to produce the best product I could as to how I felt about issues.

20 THE CORONER: The draft of your report, Mr Nicholson, which is the first of your attempts, of 2004, will become Exhibit 124.

25 **EXHIBIT #0124 - MR J.D. NICHOLSON'S FIRST DRAFT REPORT OF 1 OCTOBER 2004, BEARING WATERMARK "DRAFT", ADMITTED WITHOUT OBJECTION**

MR LASRY: I can probably provide you with a copy that can become the exhibit. I would imagine there is no dispute about this - the next iteration of the document, which is the trendy word now used in this kind of description, was also dated 1 October. It was forwarded to us as a draft unsigned I think by Mr Nicholson from Hill and Rummery. The fax stamp is that which I put to the witness earlier as 1 October 2004 at 4.54pm from Hill and Rummery to Ms Helen Drew. The document which originally became Exhibit 99 is that document with, I think, some further attachments.

THE CORONER: The date on that document is?

MR LASRY: 3 October.

45 THE CORONER: Do you agree it is the same document?

A. I haven't seen it, your Honour.

MR LASRY: Q. Mr Roche has given quite a bit of
evidence in relation to the question of warnings.
5 It is all there to be examined. I don't want to
go through it in detail. As I follow much of what
he said, he has expressed the opinion that in
order for warnings to communities to be effective,
as he put it, the risk which people face needs to
10 be personalised. That is, as I follow his
evidence, people need to be made to understand
that they are at risk in order to inspire them to
do the things that have to be done, to protect
themselves and their homes rather than simply see
15 it as a risk that might befall somebody else but
not them. Do you accept, in broad terms, as
a matter of principle, that is correct?

A. I think I know what you are asking. My
understanding, and I wouldn't dispute some of what
20 Mr Roche has said, my understanding if you really
want to reach the target you almost have to
personalise it, street corner meetings, even
getting into people's homes.

Q. That is the word he used, "personalising" it.
I think he referred not only to face-to-face the
need to speak to people but also to get people to
understand that the risk is theirs, it is not
somebody else's risk; do you agree with that?

30 A. Ultimately, it is their risk.

Q. Your opinion was, in relation to the citizens
of Canberra, that hadn't been achieved, at least
at January 2003?

35 A. Not to the extent that it could have been.

Q. Because in the attachments that you have to
your addendum - by all means turn to this - you
attach an article which you wrote which touches on
40 this issue, under the heading "Bushfire shock and
awe, will we ever learn?" In the middle column of
the first page you say:

45 "And what of the average citizen? Probably
the majority of Canberrans prior to the fires
in early January 2003 at risk from bushfire
where the country meets the urban area? From

the extensive and sometimes graphic television coverage of the run of the fires into Duffy and other suburbs, newspaper photographs and discussions with people with homes directly involved, it seems most people had not given any thought to how a bushfire might affect them, particularly those residents abutting the open space surrounding and within greater Canberra."

That was your opinion when you wrote that article?
A. Yes.

Q. It is an opinion to which, I take it, you adhere?

A. I still have that opinion. Your Honour, do you have that report?

THE CORONER: I do. Yes.

THE WITNESS: I think the next paragraph is important, and the last paragraph in that column is important, too. It is just a sad fact of life that until people are subjected to what I have called "a watershed event" or directly impacted, they tend not to take notice. That is human nature. That is very sad, actually.

MR LASRY: Q. I want to come to the other question that you considered, which was the issue of the withdrawal from the Bendora fire on the night of 8 January. As I follow it, your conclusion is that the right decision was made to withdraw personnel from that fire on the night of 8 January, and to do otherwise, that is to have remained, would have been, as you say in your report, would have been reckless; is that right?
A. That's correct.

Q. You don't anywhere in your report deal with the consequences of that withdrawal. That is to say, you don't deal with the consequences so far as the fire behaviour and the consequences for the following day flowing from the fact that nobody stayed with that fire on 8 January, do you?
A. I will need to go through my report. But I recall in it making some comments about benign

weather conditions for the next few days and Ms Arman having acknowledged that she received the weather, and I felt would have been in possession of that information. And when I looked at it
5 I was looking purely at the decision to withdraw on that first night.

Q. You know, don't you - and there is an abundant amount of evidence in this case about this - that
10 there had been a very, very substantial drought in this area in the period leading up to these fires, that the fuel loads were high and extremely flammable, and that everybody was predicting that if fires started in this particular season, that
15 they would be likely to be substantial, just because of the nature of the environment and the fuel load; you understood that, did you?

A. Yes, I understood that.

Q. You understand, I take it, the importance of early containment or early suppression of fires in those kinds of situation?

A. Yes, I do.

Q. But you haven't in your report, and other people have, so I don't want to take you through the analysis - you haven't actually turned your mind in the report to what, from a firefighting point of view, the consequences of withdrawing the
30 troops from that fire on the night of 8 January would be or would likely be?

A. Well, I would have to say, your Honour, that I did consider that. Whilst I haven't gone to that length in my report, in making the judgment
35 at the end that Ms Arman made the right decision, I considered what might have happened and took into account the weather forecast and the conditions underfoot, the difficulty out there and decided that it was the right call.

Q. But you haven't dealt with that in any detail in your document, have you?

A. No.

Q. Have you read the evidence, for example, of Mr Cheney --

A. Yes, I have.

Q. -- in relation to that?

A. Yes, I have.

Q. You don't provide any commentary in your
5 report on what he says about the consequences of
not fighting the fire on the night of 8 January,
do you, beyond saying it would be unfair to
criticise Odile Arman for the events of
10 18 January, which is a fair enough observation,
but you don't analyse, in turn, his analysis of
the consequences of not fighting the fire that
night, do you?

A. I considered what Mr Cheney had to say and
I make reference to that. And whilst I may not
15 have expressed it in here, and I have the benefit
of the wisdom of hindsight, although I tried not
to come from that position, I tried always to come
from the position of what was reasonable at the
time. I still think she made the right decision.

20

Q. Yes, I do know you do. My question is, you
don't conduct any analysis, for example, of
Mr Cheney's reasoning?

A. In my report?

25

Q. Yes.

A. No. There is a time issue.

Q. Were you aware that Mr Lucas-Smith has given -
30 again I will take you to the detail of it - the
Chief Fire Control Officer has given evidence that
if he had been in Odile Arman's position, he
thought he would have made a different decision?

A. I'm not aware of that.

35

Q. At pages 834 to 835 of the transcript --

A. Can I have that on the screen, please?

THE CORONER: Yes.

40

MR LASRY: Q. Mr Lucas-Smith is asked questions
about the decision that was made and his role in
it, such as it was, which involved I think
a telephone conversation with Tony Graham and the
45 fact that the decision was made by other people
and that he was advised about it or discussed it
with Tony Graham, and picking up in the transcript

near the bottom of page 834 the question:

5 "Yes, but in paragraph 26 of your statement,
if you have a look at it on page 7 - I'll
give you a moment to read that through and
then I will ask you a question about it - in
that paragraph you are really condoning the
decision, aren't you? You are condoning the
decision and justifying it?

10 "A. They made the decision. I have
confidence in those officers.

15 "Q. I know they did. But I'm asking you what
your statement says. In paragraph 26 of your
statement you are effectively condoning the
decision, aren't you?

"A. Yes.

20 "Q. But that is not really a state of mind,
is it?

"A. No. As I said, with people with more
experience in highland firefighting under
those sorts of conditions, they might have
made a different judgment. If I had been
sitting in Odile Arman's position --"

25 A. Pardon me. Are we on to a new page now?

Q. Yes. We are on page 835:

30 "If I had been sitting in Odile Arman's
position I think I would have made
a different decision, but I was not."

35 Do you accept that Mr Lucas-Smith gave that
evidence?

A. I can't dispute that.

Q. So the answer is "Yes", is it?

40 A. In fact, in fairness, I suspect I've seen
that.

45 Q. Mr Lucas-Smith's position was although he
supported the position, as he said, made by
officers in whom he had confidence, his view was
that if he had been in Odile Arman's position,
that is out at the Bendora fire and being the
incident controller in that circumstance, he

thought he would have made a different decision. Are you surprised he gave that evidence, bearing in mind your view that to continue to fight the fire that night would have been reckless?

5 A. I'm not surprised he said that. I've had personal experience of the situation where I went forward in the aftermath of the Ash Wednesday fires in 1983 south of the town of Gisbane, where
10 some of my senior volunteers were dithering on the edge of the tracking into the bush where I wanted them to construct a control line to enable them to back-burn, to clean out between the new control line and the main fire, the only way I could get them to go down there was to grab a rake hoe and
15 go down the hill in front of them.

I accept what Mr Lucas-Smith has said. If I had been required to perform that function over a considerable parameter of the Ash Wednesday fire
20 that I had involvement with, I couldn't be everywhere at once. That is a reasonable statement.

Q. It is not a statement that he would have
25 thought it would have been reckless to have remained at the fire, is it?

A. Apparently not.

Q. No.

30 A. But he is not criticising her either, from what I understand.

Q. Mr Lucas-Smith apparently provided you with a document for the purpose of your report writing.
35 Just before I come to that document, I take it, like any other profession, firefighting people know each other and have contact with people from time to time?

A. Certainly.

40

Q. I take it that Mr Lucas-Smith was someone whom you knew before you embarked on this process?

A. Through my involvement with the AFAC rural committee.

45

Q. Did you know him reasonably well? Did you have more than a passing relationship with him, or

was it just an occasional --

A. I think he would pop in on occasion. I had a meeting when I came here. He was not in the position that he holds now. I came to see
5 a person called Roger Good who was working for Parks Service in Cooma and I think I met Peter Lucas-Smith for the first time there.

Q. Have you socialised with him from time to
10 time?

A. Not particularly, no.

Q. "Not particularly" - did you or didn't you?

A. Probably known to have a beer in the bar after
15 an AFAC conference day.

Q. I will show you this document, if I may, Mr Nicholson. We have some copies for your Honour. Do you agree that is a document that you
20 received from Mr Lucas-Smith?

A. Yes.

Q. And a document that he wrote, both the typing and the handwriting?

A. I presume the typing is his. But I couldn't
25 dispute the handwriting.

Q. At what point of the preparation of your report did you receive this document?

A. That is a big ask.
30

Q. You were engaged in something like August of last year. Was it soon after, or was it in the initial process as you were being, in effect,
35 briefed on the circumstances and what you were being asked to do, for example?

A. I think it was when I was requesting information, I was asking people. You will have seen that, your Honour. I have made a point of
40 trying to speak with people who had some involvement rather than draw conclusions from things that I had read.

Q. The document is not dated, so that doesn't
45 help us, I suppose?

A. The document is dated 8 January.

Q. The document has the date on it "8 January". I must say, on reading it, Mr Nicholson, I took it to mean that that document refers to the events of 8 January. It is, in effect, a heading under
5 which he then makes certain comments; do you follow?

A. Yes, I do. And in thinking about it, it could have been something that was prepared for some other purpose and he has pulled it out of a file
10 and written his comments across the top. I didn't question that. I just accepted that as information I was looking for as to what happened that day.

15 Q. He puts it forward as a document which sets out reasons why the fire was not resourced overnight on 8 January. That's as you understood it, wasn't it?

A. Yes.

20

Q. It opens with the paragraph which says:

"Night-time firefighting is a valuable technique and should be used when
25 appropriate. Working at night under favourable weather and terrain conditions while the fire intensity is low can reduce the area and time required to contain the fire."

30

Pausing there, you would agree with that, wouldn't you?

A. Hmm.

35 Q. You have to say "yes". However, you don't have to say yes, you can say no. A "hmm" doesn't qualify.

A. I realise that. That is why I said yes.

40

Q. It continues:

"However there are some safety requirements additional to those for daytime fire fighting caused primarily by reduced visibility."

45

I take it that you agree with that as well?

A. Yes.

Q. We can take it you agree that it is appropriate to work at night if the weather and terrain conditions are favourable and when the fire intensity is low?

5 A. Yes.

Q. And the benefit of doing that is that it can reduce the area and the time to contain a fire?

10 A. And probably one of the principal issues involved there is usually when the fire is at its most quiet.

Q. Yes. The first night is an opportunity to be capitalised on, if possible, isn't it, because it is, as you say when the fire --

15

A. Possible.

Q. If at all possible?

A. I had done that personally.

20

Q. He lists a number of things that indicate why the firefighting wasn't undertaken on the night. The first thing he says is:

25

"Because the fires were small, direct attack was the best strategy."

If the fires were small and direct attack was the best strategy, that would be an overwhelmingly strong reason to attack the fires on the first night, if at all possible, wouldn't it?

30

A. If at all possible.

Q. Going down a couple of - I don't mean to leave out the others, I want to refer to a couple - everyone has the document in front of them - the fourth dot point:

35

"Intensity was medium due to the available large fuels, but within direct attack conditions along the fire edge."

40

As an expert, do you take that to mean that direct attack overnight on 8 January on the fire edge in the circumstances would have been feasible assuming other favourable conditions; is that the way you read that dot point?

45

A. Yes. But he is talking about more than one fire, too, I just realised, isn't he? He is talking about one fire.

5 Q. The handwriting refers specifically to Bendora.

A. But that's a note. That's a note that he's given me this information. Reading this again, he is talking about all of the fires, the fires
10 within the ACT. I made a judgment on one particular fire in one particular time.

Q. Two dot points down, he is saying:

15 "The time of day, which meant that additional resources would not be there until well after dark, and in fact the resources sent to Stockyard Spur could not get to the fire in the daylight left for that day due to the
20 long walk-in required."

That pretty clearly indicates he is not talking about all the fires, doesn't it?

A. Well, I don't have intimate knowledge of
25 Stockyard, Broken Cart, although I did have a good look at the Broken Cart Fire. I'm surprised that is not included in this. But anyway, so be it. I looked purely at the Bendora fire.

30 Q. Mr Nicholson, you know, don't you, from the information that you have been given, that there is an issue in this coronial proceeding which concerns the withdrawal of firefighting personnel from the Bendora fire on the night of 8 January;
35 that's one the issues you are dealing with in your report?

A. That's correct.

40 Q. Whether the decision made, whether by Odile Arman or by Odile Arman in consultation with others, was the right decision or not?

A. That's correct.

Q. You know very well --

45 A. I'm not evading that.

Q. You know very well that this document is aimed

at that issue?

A. I'm not evading that.

Q. It is not talking about all the fires, it is
5 talking about the Bendora fire, isn't it?

A. It is one of the fires he is talking about.

Q. When this document says "reasons why fire not
10 resourced overnight", "fire", singular, you know
is referring to the Bendora fire, don't you?

A. Yes. But when I looked at it again I thought
it was talking about more than one fire. But
I accept that.

15 Q. Thank you. The next dot point he refers to
is:

"The weather conditions at the time suggested
minimal growth overnight."

20

I take it you would assume that meant that the
weather conditions did not involve high ambient
temperatures or wind. If there isn't going to be
substantial growth overnight, we can assume, can't
25 we, as the other evidence indicates, on the night
of 8 January, temperatures dropped, humidity
increased and wind also dropped; you would agree
with that?

A. Yes.

30

Q. Then Mr Lucas-Smith goes on to explain the
other things which he says operated on somebody's
mind - I'm not sure, probably on Odile Arman's,
but it is not can absolutely clear from this
35 document, I don't think - but the other factors
that relate to firefighter safety; right?

A. Yes.

Q. Did you use this to come to your conclusion
40 about, or at least in part to come to your
conclusion about the withdrawal from Bendora on
8 January?

A. It was one of the documents that I looked at.

45 Q. But not Mr Lucas-Smith's evidence in detail?

A. No. I acknowledged a little earlier that
I recalled seeing what my attention had been drawn

to. I apologise for the fact that I needed to be reminded of that. Clearly - maybe it is not clear - I did not have the time to go through everybody's evidence. Someone might have mentioned that in another statement. That's why I have sought it out and looked for it.

I looked at boxes and boxes of information and tried to draw from those boxes and files. I was asked a question yesterday that I immediately couldn't put my hand on, something that is in my report, Mr Lasry's question. It is in the report. I said I wouldn't have dreamed that up. If it is in the report, I would have seen it somewhere. Given time, I could probably find it.

MR LASRY: Could I tender the document which might be described as "Both typed and handwritten notes of Mr Peter Lucas-Smith provided to Mr Nicholson"?

THE CORONER: The document dated 8 January 2003, "Reasons why fire not resourced overnight" with the handwritten annotations signed "Peter", will become Exhibit 0125.

EXHIBIT #0125 - DOCUMENT DATED 8 JANUARY 2003, "REASONS WHY FIRE NOT RESOURCED OVERNIGHT" WITH HANDWRITTEN ANNOTATIONS SIGNED "PETER, ADMITTED WITHOUT OBJECTION

MR LASRY: Q. I want to refer you to another portion of Mr Lucas-Smith's evidence to see if you have any comments to make about it. Asking him about this topic of overnight firefighting and questioning started with a reference to --

A. I am sorry to keep interrupting you. Can I have it on the screen?

Q. Yes. It is pages 837 to 838. I'm starting at about line 8 on 837:

"Mr Cheney refers to a photograph taken by Mr Cutting of the Bendora fire which is amongst his material, which I can perhaps dig out over lunchtime, showing flame heights of about point 3 of a metre. Was cool of course over night, the wind was from the east?"

"A. Yes."

Pausing there, you would be familiar with that photograph?

5 A. Yes.

Q. It appears in Mr Roche's report on page 66?

A. It shows fire running up the candles.

10 Q. Exactly. You would have heard Mr Roche's evidence about that yesterday?

A. Yes.

Q. Going on:

15

"Q. Conditions overnight would have been cold?

"A. Not cold. It would have been cool, yes.

20

"Q. The intensity of the fire obviously would have diminished as darkness fell and the temperature dropped?

"A. Yes.

25

"Q. And the wind dropped as well. Where would the falling trees come from, where would falling branches come from, do you think?

30

"A. I don't know. It could be a number of different things. I don't know whether falling branches were referring to areas inside the fire or external to the fire. But inside the fire it is the larger fuels that actually burn through as part of the residual fire, not the actual fire spread. And as they burn through the trees and branches will fall."

35

Pausing there, I take it you agree with that?

40 A. Yes.

Q. Then it continues.

45

"Q. Is it right to say that at night, in a sense, that is somewhat easier to predict because you can see which trees are blowing and which have been more savagely damaged

than others by the fire that has been passed through?

5 "A. Not always. If it is burning internally in the hollow of the tree you may not see it, but generally yes.

10 "Q. If you were keeping yourself to the fire edge, either for the purpose of break lines or some direct attack with water and working back to the centre of the fire, are the risks significantly greater at night of those sorts of things happening than they are during the day?

15 "A. No, I don't think so. If the fire intensity is such that you can do direct attack with hand tools then that is fine. The only caveat I would put on that is that we have fire that is burning in large fuels, and we are not only talking about fine fuel
20 cleaning up on the edge but talking about large fuel clean as well and large fuel fire fighting tools, generally chainsaws and things like that. There is an increased risk in using those overnight."
25

I take it, Mr Nicholson, you agree with that evidence?

A. The increased risk of working at night?

30 Q. I'm asking you whether you agree with that evidence that Mr Lucas-Smith gave?

A. Yes.

35 Q. Which includes the answer to the question that I asked which was:

40 "Q. If you were keeping yourself to the fire edge, either for the purpose of break lines or some direct attack with water and working back to the centre of the fire, are the risks significantly greater at night of those sorts of things happening than they are during the day?

45 "A. No, I don't think so."

Mr Lucas-Smith then goes on to qualify that answer in relation to questions of fire intensity, large

fuels and the use of chainsaws. In its entirety, do you accept that what he says about firefighting at night in those circumstances is accurate?

A. Not entirely.

5

Q. You don't?

A. Not entirely.

Q. Where is he wrong?

10 A. Can we run back from the top of this again, please (referring to the transcript on the screen):

15 "As the wind dropped as well where would falling trees come from? Where would falling branches come from, do you think?

"A. I don't know. It could be a number of things. I don't know whether falling branches..."

20

You can see that for yourself. He expresses an opinion. I have expressed an opinion in my report about the danger of falling trees. In fact there is a photograph on page 23 toward the end of the report which shows a situation where there is a tree propped up by another tree that is falling before the fire.

25

Q. Before the fire.

30 A. Before the fire it is not uncommon, as I have sought to explain, it is not uncommon in eucalypt forests for trees to drop at any time.

Q. That is a 24-hour danger, isn't it?

35 A. That's right.

Q. What else do you disagree with?

40 A. Can we keep rolling down, please. Makes a comment about "it's easy to see which trees are glowing, if you can see them. Not always. If the burning is internal". Can we keep going down please. "If you keep yourself to the fire edge", use of chainsaws at night.

45 Q. You agree with all of that?

A. Yes.

Q. I thought you were saying you didn't disagree with all the evidence?

A. I went back to the business about the trees.

5 Q. That is the only part you don't agree with?

A. I don't think he covers it all. I have raised issues about the ground. I understand you have been on the site, your Honour. I went onto the site. It was a wet morning. In my report I used
10 a climometer to measure slope and the most steep slope you are probably familiar with. As I recall, I measured that slope as 26 degrees, which is pretty steep. I actually fell down the hill under circumstances that I suspect would not
15 have been all that dissimilar to what would have occurred at night if they were fighting the fire up that slope with hose lines.

I was moving very carefully down the slope to get
20 back onto the road and I slipped on the wet ground and slid the rest of the way on my backside. If I had not fallen so heavily and my head hit the ground as I fell I probably would have knocked myself unconscious on a large log that I fell
25 under. I found the ground quite treacherous. That is part of first-hand experience of falling down the hill. That was in the daylight.

Q. That can happen, Mr Nicholson. When you
30 walked around the entire perimeter of the fire what did you discover about the way the topography changed?

A. It went from reasonable slope to a very steep slope.

35

Q. You walked around the whole area?

A. I don't know that I went over the whole area. I did a vertical cross-section, if you like. I walked up what I thought was about the centre of
40 it.

Q. I thought you just said you did walked around the whole perimeter, in answer to that question?

A. I'm not sure. If I said that I didn't mean
45 that.

Q. You didn't walk around the whole perimeter of

it?

A. No, I didn't. Not that I recall. I'm not sure we knew where the perimeter was at that stage.

5 Q. You were out there with Odile Arman?

A. Yes.

Q. And she knew where the perimeter was, didn't she?

10 A. I don't know that I pressed the perimeter point with her.

Q. You didn't press it?

15 A. It might be the wrong expression. I'm confident that I didn't go around the whole perimeter of the fire area.

Q. She did on the night, apparently. She got around the whole perimeter. Took rests from time to time but she didn't fall over.

20 A. Yes.

Q. You are aware of that?

25 A. I am. I don't know if she didn't fall over or not.

Q. There is no evidence that she fell over. On one view we are entitled to conclude that she didn't and if she had of, she would have said so.

30 A. Maybe I shouldn't be so open and frank about my fall.

MR LASRY: I see it is quarter past 11. Would that be a convenient time? I could get myself slightly better organised in the next 10 minutes.

THE CORONER: We will take the morning adjournment.

40 **SHORT ADJOURNMENT** [11.13 am]

RESUMED [11.32 am]

45 MR LASRY: Q. Mr Nicholson, I want to refer you to a portion of Odile Arman's statement in relation to the topography at the Bendora fire. The particular document is the statement which is

[ESB.AFP.0111.0001] at page 0007, which is at page 7 of the witness's statement. Do you have Odile Arman's statement there?

A. Yes, [ESB.AFP.0111.0001].

5

Q. If you turn to page 7 of that document, paragraph 36 - you have obviously read that for the purpose of your report?

A. Yes.

10

Q. You see she there describes walking up the southern flank of the fire with a crew member from Forests, assessing fire behaviour, taking little rests:

15

"They'd probably have been about a minute or two each, with a couple of rests. I was at the same time marking the fire ground on my 1:100,000 map although this would not make it particularly accurate. I can't find the map. The extra task meant that I was not walking rapidly the whole way around the fire. The slope was moderate, but the debris on the ground was difficult to negotiate."

20

25

Do you agree with that, the slope was moderate?

A. Near the top, yes.

Q. Pardon?

30

A. Up near the top, yes. Further up the ground, yes.

Q. Of course, when you went there it was wet, you said, and you slipped and fell over?

35

A. It was a greasy morning. It had been raining the night before, apparently.

Q. Those conditions wouldn't have applied on the night of 8 January?

40

A. No. But I did add where I fell it is reasonable to expect, if they had been using hose lines up the slope, it would have had water running down at that particular point.

45

Q. Going on:

"The slope was moderate, but the debris on

the ground was difficult to negotiate. The slope flattened toward the top of the fire."

Do you agree with that?

5 A. I wouldn't dispute that.

Q. Did you go to the area which she describes as "the top of the fire"?

A. Close to it.

10

Q. It continues:

"The southern edge of the fire was burning very slowly and not noticeably spreading further south."

15

A. Yes.

Q. It continues:

"The flame height of the edge of the fire for most of its circumference was about half a metre. The western flank was on an uphill slope and in more open terrain, flatter than the southern flank."

20

25

Did you go to the western flank?

A. We started on what I understood to be the western flank.

30

Q. It continues:

"There was less understory and debris underfoot. The fire was again burning very slowly in the upslope western direction."

35

You would accept that was her description of what she found on the night of 8 January?

A. Yes. In fact, I have copied that into my report.

40

Q. Did you make more than one visit to the Bendora fire?

A. No, I didn't.

45

Q. Did you express the desire to make a second visit because you had made some errors in some of your readings on the first visit?

A. Yes, I did express a desire but it never came to pass.

5 Q. The areas were in your climometer readings, were they?

A. No. The areas were in the GPS.

Q. In the GPS?

10 A. On reflection, and the time constraint that I had, I decided it wasn't an issue anyway.

Q. What was the effect of the errors that were made?

15 A. Probably it put where I was standing on the ground, as far as the GPS is concerned, as I recall, was further west. I'm not sure by how much, but it didn't affect the fact that where I took the readings I knew where I was standing on the ground.

20

Q. Mr Nicholson, on page 8 of your report, you were dealing with Mr Roche, and in particular, as you quote him, the assertion that:

25 "Withdrawal from overnight firefighting is not a position commonly adopted within the wildfire industry as a whole."

You are quoting from page 69 of his report.

30 A. Yes.

Q. You go on to say that that is simplistic against the following position of the CFA, a significant member of the industry. Then you quote an operations update, which is in fact number 1 of 2002 from Russell Reeves, the then-chief officer of the Country Fire Authority; correct?

40 A. Correct.

Q. I will ask you to look at the complete document. That's the document from which you quoted at that page of your report; is that correct? This is, in fact, the operations update to which you refer on page 8.

45 A. Yes.

Q. I think I understand the point you are making, but the fact is that there is nothing in this operations update anywhere, is there, about night-time firefighting?

5 A. It talks of principles of safety regardless of day or night.

Q. I'll just ask you to attend upon my question, Mr Nicholson. This document does not refer specifically to any issue in relation to night firefighting?

10 A. No.

Q. Your position in your criticism of Mr Roche is purely based on your understanding of principles of safety as set out in this document; is that right?

15 A. And in other documents.

Q. Does the CFA have a particular document of which you are aware which deals with the peculiar safety issues involved in night-time firefighting?

A. I can't answer that since I did this because I haven't been that close to it.

25

Q. You know, of course, don't you, that night-time firefighting occurred I think from 10 January onwards in these fires?

A. I understand there was some - not in great detail - I understand there was some night-time firefighting.

30

Q. A point is reached, obviously, where the fires develop to a stage where you simply can't afford to pack up and go home when the sun goes down. You have to continue fighting the fire 24 hours a day. That is obviously correct, isn't it?

35

A. It is correct, yes.

Q. It happened in this case?

40

A. Sorry?

MR CRADDOCK: I object. If he is going to put "it happened", night-time firefighting, in my submission, he really needs to distinguish between direct attack and indirect attack. Inherent in the question, as it is put, is the proposition

45

that there was direct attack. On those other days, I'm not sure that that was the case.

THE CORONER: Are you able to do that, Mr Lasry?

5

MR LASRY: I am happy to amend the question. I didn't mean to convey the impression.

10 Q. Mr Nicholson, you know that from 10 January onwards, firefighters were engaged in overnight operations to suppress these fires or to contain these fires, don't you?

15 A. I understand there was some night firefighting. There was some fire control operations at night.

Q. You, I take it, also understand that on nights subsequent to 8 January, the fires had developed to a much more substantial extent than they were as at 8 January, don't you?

20 A. Yes, I do know that.

Q. You understand that these overnight operations were occurring in the same area, in the Brindabella Ranges where the fires had begun?

25 A. I don't have intimate knowledge of that, but I know that there was some firefighting going on, yes.

30 Q. So you would accept --

A. Unfortunate limitations of what I did.

Q. You would accept, of course, Mr Nicholson, wouldn't you, that sometimes, notwithstanding the risks, night-time firefighting becomes an absolute necessity?

35 A. I would be the first to agree with that. I have done that. Always the case on its merits. There have been occasions in the bush where the reconnaissance has been done overnight so that the plans can be developed in the early hours of the morning and the people and machinery in position to go to work at first light. It's a reasonable position, too.

45

Q. Mr Nicholson, one of the things that you did was to prepare a list of questions that you wanted

to ask Odile Arman; is that correct? You had notes of questions that you wished to ask her?

A. I suspect I did.

5 Q. Do you recall --

A. Are you able to show them to me?

Q. I am asking you whether you recall it. There is no trick to it.

10 A. I am sure I did. There were things I wanted to know.

Q. I ask you to look at this document.

15 MR LASRY: Before I go on, I should tender the operations update, to which I have just referred the witness.

THE WITNESS: I may have a better copy of that.

20

MR LASRY: Q. By all means get it out.

A. I will see if I can find it in the break.

25 THE CORONER: The operations update number 1 of 2002 will become Exhibit 0126.

EXHIBIT #0126 - OPERATIONS UPDATE NUMBER 1 OF 2002, ADMITTED WITHOUT OBJECTION

30 MR LASRY: Q. As I follow it, these questions were questions formulated around 17 or so of September of 2004; am I right about that?

A. The first one is headed 8 September. Yes.

35 Q. I'm interested to take you to a document which seems to start substantially with a date of 16 September. It begins with a telephone call to Garry Morgan. If you go over the page, "17 September questions for Odile Arman". Do you
40 see that?

A. Yes.

45 Q. The pages aren't numbered but it is probably halfway in the bundle. You see question 4 at the bottom of that page:

"Take me to where the tanker crew wanted to

sit overnight. Want to look at slope aspect and fuel types..."

I am not quite sure what that next bit is:

5

"... [something] and ground undergrowth."

Is it?

10 A. "Slope aspect and fuel types and ground underfoot - "if they had to chase a fire that got over the road."

Q. That's what you wanted Odile Arman to do?

15

A. To take me to that spot.

Q. The answer to the question is a couple of pages on, I take it, under the heading "Odile's responses to JDN questions" at pages 2 and 3. Do you see that?

20

A. Yes, I do, yes.

Q. Does the answer read:

25

"Did not get there, but Odile did comment that they probably could have chased" - something - "they could have chased a fire that got over the road, chased it with hose line. JDN did not pursue finer details re this, ie in all the circumstances."

30

I take it that means what it says. First of all, you didn't get to where you wanted to go?

A. No.

35

Q. Secondly, she told you that they probably could have chased the fire over the road with a hose line and you then note that you didn't pursue the finer details in all the circumstances. What does that mean? Why didn't you?

40

A. Probably that's my way of saying I didn't pursue it any further.

45

Q. I understand that's what it says. That message is clear from the words you used. I want to know why not. Why didn't you?

A. Probably because I didn't consider it an issue at the time.

Q. This is Odile Arman telling you, in effect, what she thinks she could have done, isn't it?

A. Yes.

5 Q. When I say "she", she and her crew?

A. Yes.

Q. Bearing in mind the topic that you were being asked to examine, why wouldn't you pursue the
10 detail of that answer?

A. It's a long time ago.

Q. Was it because you thought the answer didn't fit with the charter that you had been engaged to
15 carry out, Mr Nicholson?

A. No. Certainly not. I'd like to think I'm more professional than that.

Q. Wouldn't the professional thing to do be to
20 pursue with her those details so you were fully informed, by the person who was there, about the capability she was describing to you in answer to your question?

25 A. As I recall, these were questions that I asked her as we travelled up and I think as we travelled back, and I probably had enough, in the sense of felt I knew enough about it and had enough.

Q. So is that what didn't pursue the details "in
30 all the circumstances" means?

A. Yes. It does not mean that I was not - it does not mean that it didn't suit what I was doing.

35 Q. The next question that you wrote down to ask her, going back to the questions, was question 5, back a couple of pages:

40 "Can you take me around the perimeter you walked ... "

That is probably "near to":

45 "Can you take me around the perimeter you walked or ... "

A. "Or near to".

Q. Then the answer, a couple of pages on:

5 "Yes, but JDN ultimately decided that was not
necessary as the mission was to assess the
slope, state of the ground, and vegetation
pre/post-fire."

Is that right?

A. Yes.

10

Q. Do I understand from that question and that
answer that you originally thought it was
appropriate for you to walk around what was at the
time, that is 8 January, the perimeter of the fire
15 in order to be fully informed as to the basis on
which Odile Arman made her decision but you
ultimately decided that it wasn't necessary to do
it?

A. They were questions that I formulated before
20 going out, information I was seeking. When I got
on to the ground and the area that we did cover,
I came to the conclusion that I'd seen what
I wanted to see.

25 Q. You wanted to see the slope?

A. And what was underneath and the tree cover.

Q. But you weren't interested in how the slope
flattened out further up the hill?

30 A. Well, we did walk up to where the slope
started to flatten out.

Q. But you decided it wasn't necessary to walk
the perimeter?

35 A. I draw that conclusion from what I could see
on the ground.

Q. Mr Nicholson, criticism has been made of other
witnesses in this case, including Mr Roche, about
40 the completeness of these inquiries. Surely, if
you had gone to the trouble of going to the site
with the person who was the incident controller on
the night, intending to walk around the perimeter
of this fire, as Odile Arman could recall it for
45 you, you should have done so?

A. I formulated these questions so that I would
go there with an organised mind. When I got on to

the ground I decided that where she took me, what I saw, was sufficient.

5 Q. I suggest to you, first of all, that doesn't answer the question, in my submission, but --

A. I'm not sure what your question is.

10 Q. You should have walked the entire perimeter of the fire to fully inform yourself about the complete perimeter in order to be informed enough to make a judgment about the decision that Odile Arman took; do you agree with that or not?

A. No.

15 Q. You don't.

A. I felt I saw enough. I covered the ground quite extensively, had a good representation of what the ground was like, took photographs - took photographs quick extensively, of which only
20 a small portion appeared in the report.

Q. Mr Nicholson, I preface what I am about to put to you by saying that I'm not suggesting there is anything inappropriate about communications
25 between you and the lawyers who engaged you; do you understand? You had a number of exchanges by email in relation to your report; right?

A. Tell me, please.

30 Q. I will. I'm coming to it. In the course of some of those emails, made arrangements to visit the Bendora fire - this is an email of 8 September 2004. The first email you see is Wednesday, 8 September, 12.36, from Mr Whybrow to you, which
35 is just giving you information. Do you follow?

A. Yes.

40 Q. That is, in effect, a response to an email from you. If you go to the second page, an email sent by you on 8 September 2004 at 9am. It is from you to Mr Walker, Ms Bird and Mr Whybrow, do you see that, "Good morning all"?

A. Yes.

45 Q. It says:

"Some thoughts and requests from yesterday.

[Paragraph 1:] visiting the site of the ignition of the Bendora fire with Odile Arman would be very beneficial to me in dealing with the criticisms concerning the first and second night and possibly to Odile's 'peace of mind'."

What was it about your role as an expert that had any connection with Odile Arman's peace of mind?
10 A. I had a personal view that she had been somewhat traumatised by all of this. You have pulled me up on saying this earlier this morning. I just had a view that I wanted to talk with her in a calm sort of way to see how she really felt
15 about some of these things.

Q. Did you believe that her peace of mind would be assisted by you making a visit to the site of the Bendora fire?
20 A. No, certainly not.

Q. Even as you go on to say to Mr Walker, "to the extent of a picnic"?
A. I don't think I raised a picnic.

25 Q. The next sentence says:

"Yes, Philip, even to the extent of a picnic".

30 Mr Nicholson, was this exercise in part about you assisting Odile Arman to gain some peace of mind, in the knowledge that you would at least be on her side?

35 A. No.

Q. Why then do you refer to that in that email?
A. Because it was something that occurred to me. I was not out there to defend her. I just wanted
40 to see what the circumstances were.

MR LASRY: I tender the email which I have just shown the witness.

45 THE CORONER: The email dated 8 September 2004 between Mr Whybrow and Mr Nicholson will be Exhibit 0127.

**EXHIBIT #0127 - EMAIL DATED 8 SEPTEMBER 2004
BETWEEN MR WHYBROW AND MR NICHOLSON, ADMITTED
WITHOUT OBJECTION**

5 MR LASRY: Q. Mr Nicholson, the last thing I want
to ask you about is about a question you were
asked yesterday by Mr Whybrow at page 8157. I
will start reading it. It will probably come up
on the screen as that is happening:

10

"Q. Mr Nicholson, in terms of that
setback, there has been some evidence in the
inquiry, and you have referred to in your
report, that there was some confidence by
15 authorities, feeling they might be able to
stop the fire approaching the suburbs at
that, for example, urban edge because of the
width of it and because of the history of
efforts by the Rural Fire Service in the ACT
20 over the preceding years. From your
examination of the setbacks and the history -
you refer to the successes in previous
years - do you believe that was an
unreasonable view for the authorities to
25 take, that they could be confident of being
able to stop fires approaching at that type
of interface?

25

"A. With the break or bare ground of that
30 width, which to me appears to have performed
appropriately, on the worst case day was
a reasonable expectation that those wide
breaks, in my view, reasonable expectation,
that those wide breaks would bring the fire
35 to a halt."

35

Do you recall giving that evidence yesterday?

A. Yes, I do. Can you take it down a bit,
please - next page (referring to the transcript on
40 the screen).

40

Q. What you are saying, as I understand it, is
the wildfire that burnt out of the mountains and
burnt up to the urban edge would be stopped
45 because of the setbacks, the wide break?

45

A. Yes.

Q. So that you would be entitled to think, as I follow what you are saying, that you could have some level of confidence that radiant heat from the fire itself might not cause houses to burn down?

A. Yes.

Q. But, of course, in advance of that, I take it, you accept, there was always going to be, from a fire of this size, a massive ember attack?

A. Severe ember attack.

Q. As you have understood from what you have read, the cause of the destruction of the houses that were burnt down was, I think in every case, a result of ember attack rather than radiant heat?

A. There was - my understanding from the Leonard Report was that there was house-to-house spread, too.

Q. House-to-house spread, of course --

A. Which was direct flame contact and high level thermal radiation, and there were houses outside the interface, in the bush - or on the bush side of those wide breaks that were lost due to flame contact.

Q. The point that you were making in answer to Mr Whybrow was that firefighters would be entitled to have some confidence that that width of setback would actually stop the fire itself from reaching the houses; is that what you are saying?

A. Yes. It's a reasonable expectation.

Q. A massive ember attack was always on the cards. There is nothing unusual about that, is there?

A. No.

MR LASRY: I do tender the notes, the questions and answers between the witness and Odile Arman.

THE CORONER: Those pages, being the questions and answers of questions for Ms Odile Arman, will become Exhibit 0128.

EXHIBIT #0128 - QUESTIONS AND ANSWERS TO QUESTIONS

FOR MS ODILE ARMAN, ADMITTED WITHOUT OBJECTION.

THE CORONER: Mr Archer, any questions?

5 **<CROSS-EXAMINATION BY MR ARCHER**

MR ARCHER: Q. Mr Nicholson, in your evidence today, you have indicated that the process of preparing this report was, to some extent, done in
10 haste. Is that a fair summary of --

A. I had to apply myself.

Q. The pressure was on you, wasn't it?

15 A. A lot of the pressure is self-imposed.

Q. I gather that you were approached by perhaps Mr Walker or others in the days leading up to
8 August 2004?

20 A. Sorry, I can't hear you.

Q. I gather you were approached by Mr Walker, perhaps, or others, in the days or a week or so before 8 August 2004 with a view to determining whether or not you would accept the consultancy in
25 respect of which you are now giving evidence?

A. That's correct.

Q. You run your own business, you had work on foot. At that stage, you were given a limited
30 number of documents, perhaps the Roche report, perhaps a few others, and asked to indicate to Mr Walker and others as to whether or not you were prepared or could provide a report in relation to the matters raised in the Roche report?

35 A. Yes.

Q. At that stage, and I think you might be looking at the letter that you wrote to Mr Walker on 8 August --

40 A. Actually, I don't have that in front of me.

Q. I will show you my copy. Is that the letter that you wrote to Mr Walker on 8 August, acknowledging that you had read the Roche report
45 in detail and a series of matters that you could possibly venture an opinion on?

A. Yes.

Q. The engagement that happened thereafter didn't happen immediately. There was a period of time, and probably most of August, I think, where you were both negotiating the terms of your retainer and also narrowing down the areas that you might want to look at; is that right?

A. Each day that went past compressed me.

Q. Eventually, as far as your report is concerned, how many matters are listed there as possible subjects in the letter that you have in front of you?

A. I came back to - the draft Mr Lasry put forward in fact had three issues and I struck one of them out because it was just not possible.

Q. How many subject matters had the draft identified there?

A. I covered a number - health and safety of firefighter consideration, community safety and warnings; looked a bit of the resourcing. I swept some of those issues into two basic subjects. It's hard to scope something like this. I had access to the Roche report, which is what I was provided - "What have you got to say about this?" Boom, boom, boom. So I looked at some issues.

Q. So, from an initial impression, where quite a few subjects are identified over time, realising the scope of what you had undertaken, one reaction to the pressure you were under was to limit the number of subjects you actually addressed. In your final report, there are two different subjects, the Bendora fire on the 8th and 9th and the community warnings issue.

A. Yes, but you would be aware from my report that I covered other issues within there.

Q. But in broad outline, they are the two subject matters that you covered. Is it fair to say, as the days of September went by, that the preponderance of your effort went to the issue concerning the Bendora fire rather than the community warnings issue?

A. No. I realised that I had reached the point with the Bendora fire as an example of decisions of incident controllers and people on the fire

ground have to make, and I also realised that community warnings were a significant issue, the education of the community.

5 Q. At the time that you sent to your instructors, or those who had retained you, your draft report, in relation to the community warnings issue, what did you actually have available to you, at that time, by way of material?

10 A. I'm not sure what you mean by that.

Q. For example, did you have Mr Castle's statement?

A. I don't know that I read all of that.

15

Q. Did you have a transcript of what Mr Castle said during these proceedings?

A. Not in its entirety.

20 Q. Would you have had any of it?

A. I would have to hunt.

Q. You're not sure?

A. Not sure.

25

Q. In relation to Mr McRae, did you have his statement?

A. Rick McRae?

30 Q. Yes.

A. Yes, I've got his statement in my bag.

Q. Did you have any of the transcripts of the evidence he gave?

35 A. Not sure. I'd have to look.

Q. As of the time of the delivery of the draft report, I take it that you did not have available the various transcripts, some of which have been shown to you today, from press conferences, from the ABC Radio, those weren't available to you as of 1 October?

40

A. Press conferences dated when?

45 Q. The transcripts of the press conferences that Mr Lasry, for example, took you to this morning - did you have any of those transcripts at all, as

of 1 October?

A. No, I don't think so.

Q. If I could skip forward now, in your report,
5 under the heading "Community Warnings", do you
agree that you have taken a fairly narrow approach
to that issue in the first report that you
produced of 3 October? That is, you concentrate
almost exclusively on the issue of go early or
10 stay.

A. Fundamental position.

Q. So far as the heading "Community Warnings" is
concerned, you would concede, I think, fairly
15 readily, that that involves quite a range of
topics. Community warnings is not about just
telling people to go early or stay, is it?

A. No. It is quite --

Q. It is quite a broad subject matter, isn't it?

A. Quite a broad subject.

Q. In time, it would take us back a year or two
years or three years to see what was done in
25 relation to readying the people of Kambah in
relation to the general concept of risk?

A. Yes.

Q. Public education campaigns, television
30 campaigns and the like - you are nodding there?

A. Yes.

Q. In relation to the days leading up to the
fire, say, from 8 January onwards, that might
35 involve consideration of the use of the media --

A. Yes.

Q. -- et cetera. It is quite a large topic to
cover, isn't it?

40 A. It certainly is.

Q. I say it without criticism, but your report
concentrates on a very narrow portion of it, that
is, the go early or stay policy?

45 A. Yes.

Q. Can I suggest to you that so far as --

A. And background, some of that, too.

Q. Predominantly - I can take you to it, if you like - your report of 3 October deals
5 overwhelmingly with that issue?

A. Yes.

Q. You draw on your experience in Victoria to make - I'm going to ask you in a moment what you
10 would ask to us draw from it - you draw from your experience in Victoria to say that is an important issue; that is, that the community needs to be told about that issue early and often, as it were?

A. Well in advance and reinforced.

15

Q. In respect of that issue here, in your draft report, do you agree that your treatment of that issue varied slightly from, to use Mr Lasry's word "iteration" - there were three iterations of your
20 first report or the report dated 3 October? There was a draft that you have in front of you with the watermark "Draft"; there was a copy then sent to Hill and Rummery; then there was a third version of it that to which eventually you put your name
25 on 3 October; do you agree with that?

A. Yes.

Q. In relation to your first draft, you have the watermarked version of that there with the word
30 "Draft" across it. In relation to that particular draft, there are not, for example, the examples that you ultimately used in your final report dealing with the experiences of residents in a number of suburbs, Kambah and Holder, I think,
35 in relation to evacuation; do you agree with that?

A. That is references to the book?

Q. Yes.

A. Yes.

40

Q. At the time of the preparation of that draft report, the first version, did you have available to you these materials: The statement of Mr John Murray, the Chief Police Officer?

45 A. I must have had something, because I found that - maybe I got that from Mr Roche's report. I don't remember reading Mr Murray's statement.

Q. I put to you that the material suggests to me you never had it. Do you agree with that?

A. I couldn't disagree with you.

5 Q. Did you read the statement of Commander Newton?

A. I think I did, actually. But I can't be sure of that.

10 Q. Why do you say you think you read it?

A. Because I think I did.

Q. Do you have that in your bag, for example?

15 A. No, I don't. It is possibly in the plethora of statements that I read, but I can't be sure of that. It seems to ring a bell.

Q. In relation to the AFP members who may have had a role to play in the command structure at the forward command post on 18 January, did you read the statement of Superintendent Lines, for example?

20 A. No.

25 Q. Did you read the statement of Sergeant Fittler?

A. No.

Q. Sergeant Spence?

30 A. No.

Q. In relation to the role the Fire Brigade might have played in decision making on the afternoon of the 18th, did you read the statement or any of the transcripts of Superintendent Prince?

35 A. No, I don't think so. No.

Q. Did you read any of the transcripts - I think he was interviewed three times - of Mr Thornthwaite, the senior Fire Brigade officer at Duffy that afternoon?

40 A. No.

Q. You didn't read that?

45 A. No.

Q. Do you have your report in front of you?

A. Yes, I do.

Q. If I can take you to page 16 of your report, could I get you to affirm initially that the
5 community warnings aspect of your report occupies pages 16 to 19 of your report?

A. Yes.

Q. The report is a 25-page report, that of
10 3 October anyway?

A. It's possibly more than that with the photographs because of the way I have put the report together.

Q. In relation to community warnings, you, first
15 of all, extract a passage from Mr Roche's report. Do you agree, in relation to that passage that is extracted, that Mr Roche is directing the
20 attention of the reader to the wider issue in relation to warnings. He wasn't just talking about advices to evacuate; he was talking about the larger issue of warnings to the community?

A. Yes.

Q. You take up, I suggest to you, the wider
25 aspect of what Mr Roche was talking about in the two paragraphs that follow.

A. Yes.

Q. In the passages that follow, you narrow your
30 focus to a concentration on the stay or go early policy?

A. Yes.

Q. Which is, I think you have agreed already,
35 a subset, and I suggest a smaller subset of the larger issue in relation to community warnings?

A. Yes.

Q. You talk about your experiences as the CFA
40 director of risk management in a couple of paragraphs there. You talk, in the last full paragraph, in these terms:

45 "... and effectively implementing stay or go early was further complicated by CFA firefighters and police who took it upon

themselves to tell people to leave."

I may have misunderstood the tenor of what you have put there. It reads as if it is a criticism.

5 Was it intended as such?

A. Say that again.

10 Q. Was that intended as a criticism of CFA firefighters and police who took it upon themselves to tell people to leave? Is that what you intended to imply?

A. I'm not sure it is a criticism but it is one of those issues that caused problems.

15 Q. That is, were you implying that contrary to the stay or go early policy, CFA firefighters and police were doing things inconsistent with that policy?

20 A. Yes, and that was due to the amount that it took to feed that stay or go policy through the Emergency Services community and more widely. It took a long time to get through the system. It needed to be constantly reinforced.

25 Q. The CFA policy on that issue seems to have achieved a like statement in the AFAC position paper in relation to that issue?

A. Yes.

30 Q. You don't set out the CFA policy, but I assume that the CFA policy is a like policy to the AFAC position paper; is that right?

A. The principle is the same.

35 Q. You then associate with those sentences extracts from, one, a book and one response to a questionnaire. What was your intent by doing that? Why do you put those extracts in your report? What do you intend to convey by that?

40 A. To show there are various reactions. One concern I have was that unless the message to evacuate, and that is questionable, unless that message is conveyed effectively, there will be people who will not get the full message or not
45 understand what they needed to do.

All I was seeking to do was to show that there was

at least one person in the community who had that position.

Q. Which one are you talking about?

5 A. The first one. Driving around with a megaphone, page 16.

Q. So --

A. I'm talking about both of them, actually.

10

Q. What is it that you want her Honour to take from those two examples? What is the principle or evidence or point that you would ask her to draw from those two examples?

15

A. You are placing me in a very difficult position, because with the greatest respect, your Honour, my understanding is that out of this process, the coronial inquest process, with the greatest of respect, is to make findings and to
20 make recommendations to improve the situation into the future. What I have sought to do in this particular instance is to highlight what I would call some uncertainty or some confusion in the community that you might consider when you are
25 making your findings and formulating recommendations.

30

I have made three recommendations in the back or toward the end of my report. It may appear to some people that I have set out on a witchhunt. I haven't really. I tried, particularly in the community warnings area, is to highlight some issues where there could be improvement. I have tried to approach this exercise on that basis.

35

Q. In relation to those two examples - I don't think you have answered my question, with respect - what is it that you would invite her Honour to derive from the inclusion in your report
40 of those two examples?

40

A. That there was, dare I say it, an ad hoc approach to putting the message through the community, through people travelling in a car with a loud hailer. I have seen that television tape
45 in another state. I call it an ad hoc approach. And the other one is that the agencies into the future, I would suggest, need to think very

45

earnestly about resources going into informing the community. And in fairness, out of the McLeod Report there has been some work done on community groups. I did witness that when I was doing the first job that I talked about yesterday.

I'm seeking to provide a couple of examples to reinforce the need to continue that.

10 Q. What you invite her Honour to recommend or find --

A. I'm sorry?

15 Q. What you would invite her Honour to find or recommend is that in relation to evacuation issues, for example, the community is aware of the circumstances in which evacuations may be required?

20 A. Yes. Could I suggest, "evacuation" is a word that we need to choose carefully. Part of the process is people being informed, which I believe the agency had tried to do, but resources were an issue - is to give people the information. And I believe it is happening now, because of the
25 influx of funding with community groups so that people know what to expect.

I personally don't like the word "evacuation" because the media pick that up.

30

Q. "To stay or go early", if I could use that more neutral expression - you would want her Honour to make a recommendation that that policy be made known in the community?

35 A. Yes.

40 Q. I take it that you would also want her Honour to recommend that in relation to triggers, if I can put it that way, that if that issue arises, people be told early and clearly?

45 A. I would go back to the final paragraph in the philosophy page that I handed up this morning. The process should really be about empowering individuals or giving individuals information so they can make that judgment for themselves on the basis that something may happen where the formal communications from the agency doesn't occur.

We shouldn't just isolate that to follow. That could be other circumstances, too.

5 Q. You would also want her Honour to find or recommend that in relation to warnings that are given, that they are given early and clearly, so that people can make informed decisions about stay or go early?

10 A. Yes. As I recall, there are three levels of SEWS in Victoria. I'm not sure what they are here. If you are in Victoria, in the summer months, at the onset of the outbreak of fire on a bad day, the national broadcasts are - at the local level will give - from CFA will give advice
15 to people in a particular area to implement their fire prevention plan.

Q. As you said there, do you understand the chronology of the process that happened on 18
20 January, whereby a decision was made to evacuate - your reference to Kambah there but we are more concerned perhaps with Duffy. Do you understand the chronology and process of decision-making in relation to a decision to evacuate some of the
25 residents from that suburb?

A. I'm of the opinion that there was some conflict. I'm not sure how the decision was made.

Q. What steps did you actually take in the
30 preparation of your report to inform yourself as to how the decision was made or who made it?

A. Well, I read a lot of material. I understand that from the --

35 Q. What material did you read in relation to that?

A. I'm about to tell you that. From the ABC transcript, ESB was recommending that people in those areas go to - home to defend against ember
40 attack. I understand at the same time the police were seeking powers to evacuate people - "declaration of a state of emergency", I think the expression was.

45 Q. Did you actually go into the fine detail of the chronology that happened on 18 January to sort out how it was that a direction was given to

evacuate some people from Duffy?

A. I can't recall that.

Q. I suggest you didn't.

5 A. All right.

Q. You agree with that?

A. I can't recall. I can't recall everything
I read. But I came to certain conclusions. My
10 conclusions are enunciated in my report.

Q. In relation to that decision, you have agreed
with me that - did you not read, for example, John
Murray's statement?

15 A. Yes.

Q. He was the Chief Police Officer?

A. Yes.

20 Q. And his contributions that day, inputted into
a process by which a certain decision was taken at
a point in time to evacuate some people from
Duffy. You didn't read his statement, did you?

A. No.
25

Q. In relation to --

A. Probably didn't even know it existed, to be
honest.

30 Q. In relation to Commander Newton, did you read
it or didn't you read her statement?

A. I can't recall reading it. That answer must
be a "No".

35 Q. She played a role in informing a decision
eventually taken to order evacuation of some
people from Duffy. You didn't read that
statement?

A. I read what was happening.
40

Q. You assume that that reflected reality; is
that what you are saying?

A. Yes.

45 Q. In relation to the decision to evacuate some
people, you don't know, do you, what role fire
authorities played in informing that decision to

evacuate?

A. No. I can only go on what I read in the transcript of the ABC on the day, alerting people to return home - at the head of the agency level, if you like; I don't know what was happening on the ground.

Q. Not only on the ground but in many middle and senior management of the Fire Brigade, for example, you don't know what they were saying?

A. No.

Q. What they were doing, what they were telling people?

A. No. I was dealing with the principle.

Q. In relation to your report, I gather that you were anxious about the state of it in the days leading up to the time it was due to be filed; is that a fair --

A. That I was what?

Q. Anxious about whether or not you could produce a document that you would regard as professional and capable of being persuasive, that you were uncertain about whether or not you could do that in the time that was allocated to you?

A. As I read more, I had to quite deliberately withdraw from getting more and more involved in the literature because I had a deadline, I had to deliver on it. And that affected - I was very concerned about that. I can remember working some enormous hours here, trying to get as much in there that I felt was factual. And when I say "enormous hours", enormous hours, your Honour.

Q. I suggest to you, notwithstanding the obvious fact that you worked very hard on it, you had bitten off a huge task, and as the date of the required filing of this report approached, you were concerned, if I can put it that way, that the document that you may produce was not going to meet your expectations of what a professionally prepared report might look like and may not be persuasive in its form or content.

A. I don't know that that ever entered my head.

Q. Can I suggest that you emailed Ms Bird and Mr Walker and Mr Steve Davis - I'm not sure who he is - on 23 September 2004.

5 A. Steven Davis is one of my clients for other business. The address is in Microsoft Outlook. When I was putting addresses in, Steve Davis got on the address meant for Steven Whybrow.

Q. That explains "Good thing I was nice."

10 A. Yes.

Q. I understand that now. You say this:

15 "Good morning all. I have quickly scanned through Day 79 and settled on pages 7294, 7295 and 7296. I need more time to prepare a report that could ultimately put me in the witness box, indeed, get my report accepted by the Coroner. Delivery next Friday will
20 not give me sufficient time to apply the rigour that will satisfy me. Delivery on Monday would be more helpful. Even then it is too soon. This concerns me greatly, given what seems to be a growing level of
25 expectation (from others at the inquiry?) on what I may deliver. Please respond. Who is Archer representing, please? Regards John Nicholson."

30 A. I was reading "Mr Archer" in the transcript but I wasn't quite sure.

Q. I was looking forward to your report. The response from Mr Walker:

35 "I assume you were told Archer acts for the Australian Federal Police. As to the report, I cannot see that it will be possible to get any more time at this stage. The best that
40 I can suggest is that you supplement your report orally when you give evidence. This will give you some extra time between filing and giving evidence. If you find something that requires some amendment to your report
45 between the date of filing and the date of giving evidence, you can just say that you wish to amend part of your report owing to the discovery of further evidence, that this

was a consequence of the time frame you were working under. P Walker."

5 First of all, do you remember the email that you sent?

A. No, I don't.

Q. I suggest to you, in fact, being --

10 A. That email? Do I remember it?

Q. Yes.

A. Oh, I do now.

15 Q. When, in fact, it was the case, wasn't it, that you were anxious about the quality and integrity of the report that you were preparing, given the, admittedly, very tight timeframes that you were facing?

20 A. Can I ask you what was the date of that email, that final email from Mr Walker?

Q. The one you sent was on 23 September 2004 at 8.47am and Mr Walker replied on the same day at 10.29am, that being 23 September.

25 A. Pardon me. With all due respect to Mr Walker, when I look at the date on my addendum it was after that date anyway.

30 Q. In fact, you seem to have taken advantage of Mr Walker's suggestion that it was available to you to add to your report in light of other information that was given to you later and you took advantage of that?

35 A. Or other information that I gained, yes.

40 Q. Included in that other information, I suggest to you, at the time of the first drafts of the 3 October part of your report - at that time, you did not have available, for example, the ABC warnings transcripts?

45 A. That's correct, I think. I need to clear up, or try to clear up 1 October in the footer. That work may have actually started before I put header and footer on it anyway.

Q. So far as those transcripts, for example, were concerned, they weren't reflected in any of the

drafts of the 3 October portion of your report?

A. No, because that was --

5 Q. You say in your 11 October report, at page 25
of 28 under the heading "Addendum":

10 "Having now had an opportunity to examine the
following documents provided to me by Mr Mike
Castle, information on where to find relevant
documents, I'm now in a position to comment
further on warnings."

15 You do point the material that was given to you.
Taking it as true on its face, I take it,
therefore, that as of the time of the preparation
of your reports of 3 October, in their various
iterations, that you didn't have those things
available to you?

20 A. That's correct.

Q. Going back to the issue in relation to
evacuation, when you drafted those passages in
your report of 3 October, you didn't have even
that context of the transcripts dealing with
25 communications over the radio?

A. Which radio?

Q. 666.

30 A. Oh, ABC?

Q. Yes.

A. Correct.

35 Q. Even there, in the context of decisions taken
by people to evacuate people in Duffy, you didn't
even have that context available to you when you
drafted the 3 October report?

40 A. I believe that I had an understanding of what
had happened.

Q. From where?

A. From things that I had read.

Q. What?

45 A. What's in that big box - boxes of stuff that
I read.

MR ARCHER: Thank you. I will tender that email - it is actually two emails of 23 September from Mr Nicholson and the reply from Mr Walker. I will tender my version of it.

5

THE CORONER: Two emails between Mr Nicholson and Mr Walker of 23 September 2004 will be Exhibit 0129.

10 **EXHIBIT #0129 - TWO EMAILS BETWEEN MR NICHOLSON AND MR WALKER OF 23 SEPTEMBER 2004, ADMITTED WITHOUT OBJECTION**

MR LAKATOS: We have no questions.

15

THE CORONER: Mr Watts and Mr Craddock?

MR WATTS: No questions.

20 MR CRADDOCK: No questions.

THE CORONER: Mr Walker?

25 MR WHYBROW: Mr Walker is not here. I have some questions on behalf of Mr Walker, and some arising from the cross-examination of Mr Lasry.

THE CORONER: Is Mr Walker going to --

30 MR WHYBROW: He is unable to be here today and tomorrow, I am told. I have had some discussions with him about the areas. I think he indicated on the transcript during the directions hearing that that would be the case. With your Honour's leave,
35 I would put some questions on behalf of Mr Lucas-Smith.

40 THE CORONER: I recall that. You are now examining or asking questions of Mr Nicholson on behalf of Mr Walker or your matter - it makes no difference.

45 MR WHYBROW: I don't intend to make a specific difference. There are matters that touch on evidence relating to Mr Lucas-Smith and there are some that relate to Mr Castle. I don't understand myself to be restricted in the sense of

re-examination.

THE CORONER: I just thought that if you were going to distinguish, that is fine.

5

MR WHYBROW: The questions should make it obvious.

<CROSS-EXAMINATION BY MR WHYBROW

10 MR WHYBROW: Q. Firstly, Mr Nicholson, you were cross-examined by Mr Lasry about a reference in your report to spot fires on 17 January. You weren't able to put your hand on the reference but indicated it wouldn't be something that you
15 dreamed up. Do you recall that?

A. Yes, I do.

Q. May I show you this document, please. You see that appears to be a set of documents that were
20 faxed to you in October last year from Mr Castle?

A. Yes.

Q. And that they appear to be a table of extracts of advice to the Canberra community about
25 bushfires 8-17 January 2003; that is its heading anyway?

A. Yes.

Q. Do you see the tagged page has an entry
30 "17 January 666ABC Radio, 2.55pm news" and in the final column an entry:

"Castle says the ACT is now in a state of emergency. He comments that there are no
35 fires in the Canberra suburbs yet but he is worried about spot fires. He wants people to prepare their homes immediately and says it is better if residents stay at their properties."

40 A. Yes, I see that.

Q. Could that be the reference upon which you were basing that comment about an indication of spot fires on 17 January?

45 A. Yes, it is, because I have actually highlighted it.

MR WHYBROW: Does the Court have readily available exhibit 26? If not, I can indicate that it is an exhibit which is "Rehame Newslines" documents relating to Mr Castle. Unless there is any
5 dispute by anybody, can I indicate that there is a mistake in the document that has been provided to Mr Nicholson because obviously - it is reflected in exhibit 26 - that entry relates to 2.55pm on 18 January, which I think will be
10 obvious from the reference to "a state of emergency".

THE CORONER: Not on 17 January.

15 MR WHYBROW: Not on the 17th. If that indeed is the area where it came from - it is an error in the source documents provided to Mr Nicholson.

THE WITNESS: That is indeed the document.
20

THE CORONER: What is the time of that? Is there a time on that, Mr Whybrow, or Mr Nicholson?

THE WITNESS: The 17th, 2.55.
25

THE CORONER: We should read that as being the 18th at 2.55.

THE WITNESS: That is news to me, your Honour.
30

MR WHYBROW: That entry is, word for word, reflected in Exhibit 26 - rather than go to the trouble of pulling that up.

35 MR LASRY: We accept that.

MR WHYBROW: Q. In exhibit 126, you were shown a CFA operations update by Mr Lasry.

A. Yes.
40

Q. I want to suggest to you that there is no reference to firefighting at night in that document, and I suggest that the strategies there are equally applicable to all firefighting.

45 A. Yes.

Q. Do you have that document in front of you?

A. Yes, I do.

Q. Could you turn to the last page? You see the scenario set out there:

5

"Working with hand tools and equipment
wildfire hazards."

A. Yes.

10 Q. The second paragraph says:

"Using hand tools and other small equipment
can also be hazardous while working on
a slope in dusty or smoky environments when
15 darkness is falling and areas where there is
potential for falling rocks and trees."

A. Correct.

Q. Is that something which you had in mind when
20 making reference to this document?

A. Yes, I did. But I couldn't remember it this morning.

Q. Could [DPP.DPP.0003.0476] be brought up?
25 Whilst that is being done, Mr Nicholson, you
understand that as of 17 January there were three
major fires in the area of Canberra - one being
the McIntyre's Hut fire burning in New South
Wales?

30 A. Right.

Q. One the Bendora fire burning within the ACT,
and also what was known as the Stockyard fire
burning within the ACT?

35 A. Yes.

Q. Is it your understanding that the ACT
resources, supplemented by that stage with some
additional resources from New South Wales and I
40 think even from Victoria, were involved in
fighting the Bendora fire and the Stockyard fire,
and that New South Wales resources were involved
in fighting the fire that at that stage was still
in New South Wales?

45 A. I wouldn't claim to have intimate knowledge of that.

Q. You were asked some questions about a transcript of the press conference held on 17 January where Mr Lucas-Smith was answering questions to the press?

5 A. Yes.

Q. Do you see that on the screen there, sir? This is a transcript of that press conference. In going through this document, I first suggest to
10 you, as I have indicated, that there was a fire in New South Wales, known as the McIntyre's Hut fire, being fought by New South Wales resources.

A. Right.

15 Q. At this press conference was a gentleman by the name of Cameron Wade, who was a representative of the New South Wales Rural Fire Service and a media liaison officer.

A. Yes.

20

Q. Indeed, we will come to it. Following the interview with Mr Lucas-Smith, he answers questions in relation to his jurisdiction, so to speak.

25 A. Can we roll down through that, please?

Q. I will take you through it, Mr Nicholson. You see the first entry for Mr Lucas-Smith:

30 "The fires in the ACT are still within the containment lines and we've established over the last week in our efforts to contain these fires."

35 Do you see that?

A. Yes, I do - very small. Can you - a bit more?

Q. It is page 476. We will go through this. Could I ask you to assume that Mr Lucas-Smith is
40 answering questions in relation to the fires for which he was responsible, being the fires within the ACT, Bendora and Stockyard?

A. Right.

45 Q. Mr Lucas-Smith says:

"The fires in the ACT are still within the

containment lines that we've established over the last week in our efforts to contain these fires."

5 If you go to page 478 now, do you see in the middle there is a question:

"Media: Is it likely you will have to evacuate property?"

10 A. Yes.

Q. The answer:

15 "Have to evacuate properties, did you say? No, at the present time the fire is under - the current weather conditions, if the fire does not escape our current containment lines it will burn in a south-easterly direction further into the Namadgi National Park.
20 However, I think that under the current conditions, the conditions we're likely to face in the next few days, it is very prudent to ensure if you live adjacent to Namadgi National Park in any way, you need to be
25 making sure that you're taking precautions around the property to ensure that you've cleared around your household, you have decided what it is you are going to do should the fire start approaching that way or if you
30 will stay or if you will evacuate. If you are going to evacuate, you need to do that earlier."

Is that, in your opinion, the appropriate type of
35 advice to give to persons who may be potentially in the path of an approaching bushfire?

A. Well, it is certainly alerting the people in that area that they may be confronted with a fire situation.

40

MR WHYBROW: I note the time. Rather than go through slowly - Mr Nicholson has never seen this document. It might be a lot quicker, I don't intend to be very long - certainly shorter if
45 Mr Nicholson has had a chance to read this transcript - to take the luncheon adjournment.

THE CORONER: Yes, we can do that.

MR WHYBROW: For the benefit of everyone, I can indicate I will be less than half an hour.

5

THE CORONER: We will take the break now.

LUNCHEON ADJOURNMENT [12.56 pm]

RESUMED [2.06 pm]

10

MR WHYBROW: Q. Mr Nicholson, do you agree that over the luncheon adjournment I asked you to read some of the media releases issued by the New South Wales Rural Fire Service and ESB on 17 January 2003?

15

A. That's correct.

Q. Also to go through the formal transcript of the press conference held at the Emergency Services Bureau on 17 January 2003?

20

A. That's correct.

MR WHYBROW: For the purposes of the transcript, the transcript of 17 January 2003 is document [DPP.DPP.0003.0476]. The New South Wales Fire Service media release of Friday, 17 January 2003 at 1200 hours is [NSP.AFP.0047.0409]. The ESB media update, ACT bushfire status 12 noon, Friday, January 17, 2003 is [ESB.AFP.0110.0900]. An ACT Emergency Services Bureau media update at 3.45pm, 17 January 2003 is [ESB.AFP.0110.0910]

25

30

Q. Mr Nicholson, during the break you were also shown exhibit 81, a copy of which now appears on the board behind you, which is Mr Cheney's pictorial representation of the fire spread and where the various fires were, on his calculations, at particular points from 8 January through to 18 January.

35

40

A. Yes.

Q. You familiarised yourself with that reconstruction and are familiar as to the positions where the Bendora, Stockyard and McIntyre's Hut fires are on that map?

45

A. Yes.

Q. Taking you back to the press conference on 17 January, from your reading of that document, and also by reference to the press releases that went out about the same time, do you agree that

5 Mr Lucas-Smith makes comments confined to the bushfires burning within the ACT, particularly Stockyard and Bendora?

A. Stockyard and Bendora.

10 Q. Do you agree with that?

A. Yes.

Q. Do you agree that following the comments of Mr Lucas-Smith, there was an interview conducted

15 with a Mr Cameron Wade, from the Rural Fire Service, who gives the media information initially about the McIntyre's Hut fire and then makes some comments about other fires burning in the Snowy Mountains region of New South Wales?

20 A. Yes.

Q. Have you, by reference to Mr Cheney's map, given yourself some idea as to the fire status around the time of this press conference on

25 17 January, by reference to the key and the colour coding?

A. Yes, I have.

Q. Mr Lucas-Smith indicates, as I put to you

30 before lunch, whether there should be an evacuation of properties. He makes comments that people who are living adjacent to Namadgi National Park should take precautions; do you recall that?

A. Yes, I do.

35

Q. He also, at page 13 of the document, which is 0480 of the brief copy, is asked the question:

40 "Q. How far are the fires from Canberra and what are the chances it will reach the edge?

"A. Well, the fires are a fair way. I have measured it in kilometres and they are a fair way away from the edge of the urban area of the ACT."

45

First of all, according to your understanding of Bendora and Stockyard at that time, does that

appear to you to be an accurate statement, that they were a fair way from the urban edge of the ACT?

5 A. What's "fair" and what's "reasonable"? That's a fair way away from the urban edge.

Q. Do you see where the urban edge is on the map?

A. Yes, yes.

10 Q. There is a scale there --

A. Yes.

Q. -- which should indicate they were something over 15 kilometres or more?

15 A. Yes.

Q. He then says:

"Under a north-west wind conditions ..."

20

- which you understood to be the predicted wind conditions for the upcoming period:

"... the chances of meeting the urban edge is pretty slim."

25

In relation to your knowledge and experience in firefighting, the position of those fires, Bendora and Stockyard on 17 January, do you agree that under north-west conditions, the chances of those fires meeting the urban edge were pretty slim?

30

A. If that's the direction - if the map is north and that is north-west (indicated), that's correct.

35

Q. If Mr Lucas-Smith was purporting to make comments about McIntyre's Hut, that would be a different issue, would it not, in relation to that fire under a north-west condition?

40

A. Clearly.

Q. The next question Mr Lucas-Smith is asked is:

"How far are the two fires away?"

45

Do you understand that, in the context of Mr Lucas-Smith's role as the controller of the ACT

fires, to relate to Stockyard and Bendora?

A. These two.

Q. The answer is:

5

"They're about 7, 5, 6 kilometres apart."

Again, from your observation of Mr Cheney's map, does that appear to be the distance those fires were apart at about lunchtime on 17 January?

10

A. Yes.

Q. You are aware that Mr Lucas-Smith goes on to expand on his warnings to those who live in the rural areas and the potential impact on those persons from the Stockyard and Bendora fires, at the bottom of page 17 of the transcript?

15

A. Yes, I have that.

20 Q. At page 18 he is asked:

"How many people would be affected by this?"

He indicates he certainly does and they are already looking at who is involved and to make sure contact is being made with those people. Do you see that comment is made on page 18?

25

A. Yes.

Q. You are now aware that the evidence before this inquiry is on the evening of 17 January, the rural lessees in the southern part of the Australian Capital Territory were all individually contacted, or at least efforts were made to individually contact all those leaseholders?

30

35

A. That's my understanding.

Q. Keeping those comments in the context of the fires on which Mr Lucas-Smith was commenting, do you see anything inaccurate or misleading about those comments in relation to the position and status of those two fires?

40

A. No, I don't believe so. And in fact, could I add that in having a look at this map, that something that was read in here yesterday - can't recall who it was - but I certainly commented it was reasonable to expect that natural barriers and

45

the width of the break around the town - sorry, around Canberra, would bring the fire to a halt - not stop ember attack but bring the fire to a halt.

5

It is very interesting to note here that the Murrumbidgee River is - actually acted as a fire break and stopped the --

10 Q. You are talking about Mr Cheney's continued spread for the Bendora fire on the afternoon of the 18th?

A. Yes.

15 Q. Following Mr Lucas-Smith's comments, we have transcribed the comments of Mr Cameron Wade at this press conference and you have had a chance to see those?

A. Yes.

20

Q. In Mr Wade's first answer, he gives some information about the McIntyre's Hut fire burning to the direct west of Canberra and that:

25

"... containment lines on the southern-eastern side are only very small really. We're expecting those to be tested fairly extensively today".

30 He goes on to nominate the fact that with the wind conditions up in that area have strengthened from the north-west:

35

"... which means fire crews at the moment on the south-eastern side of the McIntyre's Hut fire are working very hard as we speak at the moment to try and contain those containment lines. The fire is about 2 kilometres from the pine plantations in the ACT".

40

Do you see that?

A. Yes, I do.

45

Q. Mr Wade then says:

"At this stage there is not threat to any property in the area. It is more those pine

plantations we're keeping a close eye on."

Do you see that?

A. Yes.

5

Q. You were questioned yesterday about the comments of Mr Lucas-Smith in saying that there was not a threat to the urban edge of Canberra at that moment when he made those comments. If one understands those comments to be made in the context of the ACT fires, do you agree that they, as you have already said, were accurate and proved to be well-founded comments, even with hindsight?

10

A. Well, having had the opportunity to look at this information and look at the map of the fires, that's reasonable. "Reasonable" mightn't be the right word. He's talking about those two fires. From where they are, what he is saying is correct.

15

20 Q. On page 20 of Mr Wade's comments, he indicates:

"The fire activity is being described as fairly intense and fuel loads that they're experiencing, there are also wind conditions picking up as we speak, are making the situation more desperate as the day goes on." [He notes] extra resources have been brought in from all around New South Wales to those fires."

25

30

Do you see those comments?

A. Yes, I do.

35 Q. On the final page, page 22, you will see Mr Wade comments that:

"Aircraft operations are running fairly strongly. As I said, some 13 or so aircraft working on the McIntyre's Hut fire and of course the ACT have aircraft working on the fires that they're dealing with."

40

Do you see that?

45 A. Yes, I do.

Q. Do you agree that the general tone of

Mr Wade's comments emphasises the number of resources that are on the McIntyre's Hut fire?

A. Yes.

5 Q. Especially the aerial resources?

A. Yes.

10 Q. He indicates that, at that moment, the concern is for the ACT pines and that there is not a threat to any property in the area?

A. Yes.

15 Q. That was on Friday at the time this interview took place. Could I ask you to turn to the media release from Emergency Services at 12 noon? Do you have that there, sir? Do you see that that provides a fire status information for the Bendora and Stockyard fires?

A. Yes, I do.

20

Q. Underneath that fire status information, the statement:

25 "Information on the McIntyre's Hut fire and Mt Morgan fires in New South Wales can be obtained from the Rural Fire Service media unit."

A. Yes, I see that.

30 Q. This document does not at any stage purport to provide information about that McIntyre's Hut fire then burning in New South Wales?

A. Correct.

35 Q. Could you turn to the New South Wales Rural Fire Service media release for 12 noon that same day? Do you have that?

A. I have that.

40 Q. Halfway down the page, do you agree that what is reported there is:

45 "Containment lines on McIntyre's Hut fire will be tested, Brindabella National Park. Containment lines are complete on this fire, however they will be tested today. There is currently no immediate threat to any

property. Firefighters are concerned that strong wind gusts could cause spotovers which could impact major pine plantations in the ACT."

5 A. I see that. Correct.

Q. Do you agree that on the face of those documents, it would appear that each jurisdiction is undertaking the role of providing information
10 to the community about the status and potential impact of each of its fires?

A. Within their jurisdictions.

Q. Do you agree that's what it appears to be?

15 A. Yes, yes.

Q. Do you agree that if one was to have reference to the material coming from the New South Wales Rural Fire Service at noon or thereabouts on
20 Friday 17th, there are no indications of any particular imminent threat to any residents at the Australian Capital Territory?

A. Correct.

25 Q. You were asked questions by Mr Lasry about a failure of Mr Lucas-Smith to provide sufficient warning to the residents of the ACT, such as they could feel secure to go down the coast and things of that nature. Given the apparent way in which
30 each jurisdiction was providing information for each of its fires, do you have any comment about that particular criticism of Mr Lucas-Smith's failures?

A. Well, having seen this information and looking
35 at the map and knowing where north, south, east and west is - north-westerly wind - sorry, north-westerly wind is going to take these fires in that direction, away from the urban edge. That is what he is reporting on, which it seems to me
40 from what I have seen, Stockyard and Bendora. That's what he is reporting on.

Q. Could you turn to the last document, which is a media update at 3.45pm? Do you see that is
45 a reference to that:

"Emergency Services said today that smoke is

today currently blanketing the ACT. It is coming from the McIntyre's Hut fire in New South Wales and that residents should not be unduly concerned as the New South Wales Rural Fire Service reports that the fire is still within containment lines."

It goes on to say:

"Because of prevailing winds, ash and burnt materials may be deposited in some suburban areas of Canberra."

Do you see that?

A. Yes, I do.

Q. Firstly, do you agree that that seems to indicate that the ACT Emergency Services Bureau, in providing this update, is relying on information coming from New South Wales about the status of that fire?

A. It does.

Q. Secondly, that there are indications that there may be ash and burnt materials being deposited into suburban areas of Canberra at 3.45pm on Friday, 17 January?

A. Otherwise known as spotting.

Q. You say that that can be seen as a risk of spotting fires into Canberra?

A. Yes.

Q. Were you aware before today that on the afternoon of 17 January 2003, Mr Cameron Wade, who was present at this media conference at Emergency Services, was relocated into the Snowy Mountains region by the New South Wales Rural Fire Service?

A. No, I don't think so. Today is the first I have become aware of that.

Q. Do you see that as having any particular impact, or potential impact, on the sharing of information and the issuing of warnings as between the various services, given that there seems to have been this ostensible arrangement that ACT will discuss ACT fires and New South Wales will

discuss the status of the fires it is fighting?

5 A. It would have reduced the ability for both organisations to interact, and as ACT was interested in McIntyre's Hut, it must have made it a lot more difficult for the flow of information to have occurred. It might also have been a signal that it is no longer an issue, too.

10 Q. In terms of no longer being an issue --

MR LASRY: Sorry to interrupt. I have to pose the question and indeed make the submission that I can't see how you would be in the slightest bit assisted by this. We now have Mr Whybrow
15 endeavouring to give as much evidence as he can, punctuated from time to time by a yes or no from the witness and some speculation from him about information contained in questions which this witness, who has had a year to consider this
20 material, is hearing about for the first time today.

The weight and value of this evidence is so low, in my submission, as to not be useful to you.
25 Indeed, much of the material and what can be made of it, can be deduced from the documents themselves without this leading commentary in which the witness is playing now only a minor role. I object to it because, in my submission,
30 it is not useful.

THE CORONER: What is the point of it? Mr Wade's evidence is in. All the information that you are now putting to Mr Nicholson is already before the
35 inquiry. Now you are asking Mr Nicholson to, with hindsight, comment on information of which he wasn't aware at all.

MR WHYBROW: Not in hindsight at all in relation
40 to the comments made by Mr Lucas-Smith. With hindsight, they appear to be accurate. Your Honour, Mr Roche does not make a single mention in his report of the role of any warning or the role of the New South Wales Rural Fire Service in the
45 provision of information to Canberra. We all know that the major impact on the suburbs of Canberra came from a run of the McIntyre's Hut fire

on January the 18th.

Your Honour, it is obviously extremely relevant to the question that you have to consider as to how
5 warnings can be properly managed for any future incident to know information relating to which organisation was undertaking which role --

10 THE CORONER: That evidence is already before the inquiry.

MR WHYBROW: It is appropriate for a man with this experience to give his opinion of the appropriateness of comments made by Mr Lucas-Smith
15 when they are under attack. I was going on to ask him about the weight that can be placed upon Mr Roche's comments, in his opinion, about the warnings that the ESB did or did not make when he has not considered the role of New South Wales,
20 when the evidence that I am putting to him indicates that they did play some role.

25 THE CORONER: I will let you go on a bit longer, Mr Whybrow.

MR WHYBROW: Q. Mr Nicholson, you have heard to that point. Mr Roche has made some comments and criticisms about the failure of the ACT
30 authorities to give timely warnings to the residents of Canberra about approaching bushfires. Having read his report, do you agree that that's a theme that he deals with?

A. I don't believe so.

35 Q. Sorry, you don't believe so?

A. That he doesn't deal with it. He - let me restate that. The focus is on what ESB didn't do. In fact, ESB or Mr Lucas-Smith issued warnings for the fires he was aware of, directly involved with
40 and relied on information from New South Wales with regard to McIntyre's Hut.

Q. In order for her Honour to usefully comment and make recommendations for the future about
45 fires that come across state or territory boundaries, do you believe that it is important that her Honour take into account the relationship

that apparently existed between ESB and New South Wales in providing information on each other's fires?

A. Yes.

5

THE CORONER: Do you agree with the system that appeared to operate, each jurisdiction commenting on its own particular fire, given the proximity of the fires to each other and the proximity of the
10 New South Wales fire, not to mention the Canberra fires on the urban edge? Do you think that is an appropriate way to go, that each just concentrates on its own particular fire?

A. But they were working together, from the joint
15 press conference, and for the ACT to be able to comment on what was happening in New South Wales, they either accepted or be reassured, or otherwise what was happening in New South Wales, they either accepted the information that came from New South
20 Wales or they went forward to have a look themselves and form their own opinions.

That's a big step to take, your Honour, particularly with an agency that is set up and
25 doing the work that they say they were doing, and they have their hands full here anyway.

Q. I am suggesting that if Mr Lucas-Smith was aware of information in relation to the New South
30 Wales fire that could potentially be damaging or destructive to Canberra, present a potential risk to Canberra, would it not be appropriate for him to make some mention of that in his press release to the people of Canberra, or would he simply be
35 content to rely on the press release put out the by New South Wales authority that may or may not make it into the local paper?

A. He was making some comment in this media
40 release of 1545 on Friday, the 17th, providing flow-on of information and warnings of embers and burning material falling within Canberra itself. So he is providing some warnings.

Q. I am talking about the proximity of the New
45 South Wales fire. What does he say in that report, in that press release on the proximity and the potential risk, if any, of the New South Wales

fire encroaching upon Canberra?

A. Well, he is accepting the position from them that it is well back at that time.

5 MR WHYBROW: I think we have established that there is no information about that. It says "Information should be sought from Rural Fire Service."

10 THE CORONER: That is what I am asking - is that an acceptable position? That, again, is based on this jurisdiction question.

MR WHYBROW: Q. Are you aware that subsequent
15 to January 2003, a memorandum of understanding was entered into?

A. Yes, I have the memorandum of understanding. I have had the memorandum of understanding and it was amongst the issues that I might have talked
20 about had the line of questioning led me there. I am aware of the memorandum of understanding. It is signed by Keady, Stanhope, Koperberg and Kelly. It is undated, but I understand it was signed on
25 the eve of the appointment - or the new structure of the new Emergency Services. It is after the fire. It talks about jurisdictional issues and operations.

THE CORONER: I am aware of what it says.

30

THE WITNESS: They sought to address that.

MR WHYBROW: Mr Nicholson, I am not suggesting that what occurred wasn't the best system. In
35 relation to the information that New South Wales was providing which, it would appear at noon on Friday, 17 January, was that there is no immediate threat to any property, do you say it was reasonable or unreasonable for the ACT
40 authorities, who were then stretched on their own fires, to act on that information?

A. To take this as valid information?

Q. Yes.

45 A. Yes, I do.

Q. Is it reasonable for the ACT to act

consistently with that information being provided from New South Wales?

A. Yes.

5 MR WHYBROW: Your Honour, they are my questions.

THE CORONER: Mr Nicholson, on page 26 of your report you make reference to the comment by Julie Derick on the ABC at 2.40 on 18 January. Is that
10 the first reference or the first information that you had of a radio broadcast to the people of Canberra of the fire, 2.40 on 18 January, or is that just one example of information that was put out on the radio?

15 A. I would need to go through it again, but it started very early in the morning, at about 6 o'clock. It was constant.

Q. That is your recollection, is it?

20 A. No. I have it here.

Q. There are various suburbs listed just below that on page 26. I note that, for example, Stromlo and the forestry settlement are omitted
25 from that. Would you have a comment on that and how that information was passed on as to why certain areas were listed and other areas weren't? What would you say to that if places like Stromlo, for example, and the forestry settlements weren't
30 included in a warning that is being given at 2.40 on 18 January?

A. From my reading of the ABC transcript, it is quite extensive, those warnings - my understanding is that those warnings were being issued as it is
35 becoming apparent as to what is actually happening.

Q. Is there in the information that you have any reference to a warning in relation to Stromlo or
40 the forestry settlements being in danger of an impinging fire, an increasing risk of fire due to spotting? Have you been able to find that in any of the transcripts to which you have had reference?

45 A. I would need to go through it.

Q. I am asking. You don't recall any of it. You

don't make reference to it. I am asking if you have any independent recollection of those areas being mentioned?

5 A. No, but relying on a memory that has been subjected to 12 months of other things. Although I did go through this again.

THE CORONER: Thank you, Mr Nicholson.

10 MR LASRY: I think, reverting to the old system, I have a right of re-examination, if I might raise a couple of matters with the witness.

<RE-EXAMINATION BY MR LASRY

15

MR LASRY: Q. If we could have on the screen [ESB.AFP.0110.0905]. I don't know whether you have this, but I am going to refer you to a media update dated 8.50pm, Friday, 17 January 2003.

20 A. All I have is 1545.

Q. This will come up on the screen in a moment. I want to direct your attention to the fourth dot point, because it appears to indicate in that
25 media release or in that media update that the ACT would be co-ordinating with New South Wales to manage a spot fire from the McIntyre's Hut fire close to the ACT border. Do you see that?

30 A. No. It's gone.

Q. Start at page 1, please.

A. Okay. Can you take it a bit higher, please? Right.

35 Q. See that fourth dot point?

A. Yes, I do.

Q. That does seem to indicate, doesn't it, that the ACT, according to that media release, were
40 co-ordinating with New South Wales, at least in relation to that particular effort?

A. Yes.

Q. If it were the fact that that media update was
45 issued following a meeting an hour or so beforehand at which the opinion had been formed within ESB that the McIntyre's Hut fire was likely

to burn to Narrabundah Hill by 8 o'clock the following night, and ESB had that information and held that opinion, that would be information which they would be obliged to disseminate to the public, wouldn't it?

5 A. Certainly.

THE CORONER: Q. Did you know where Narrabundah Hill is, Mr Nicholson?

10 A. I have a rough idea.

Q. Where do you think it is?

A. In here somewhere (indicating). I have a rough idea.

15

Q. That is a bit too rough, Mr Nicholson. In fact, it is just outside the suburb of Duffy.

MR LASRY: Q. Mr Nicholson, I referred you to some transcript earlier when I was asking you some questions, but you have been asked a number of questions by Mr Whybrow in the course of emphasising that what Mr Lucas-Smith appeared to be dealing with was the Bendora and Stockyard fires. Do you recall those questions being asked of you recently?

20

25

A. Yes.

Q. I wonder if I could have pages 1046 to 1047 of the transcript, please. Do you have page 1046 in front of you?

30

A. Yes, I do.

Q. You see a question at about line 38 on that page asked by me of Mr Lucas-Smith:

35

"Q. I know I keep harping on this and I'm sorry to be repetitive about it, but a risk to the Canberra urban area was not simply theoretical on Wednesday the 15th. It was a distinct possibility that certain things happened?

40

"A. In relation to the Bendora and Stockyard fires..."

45

Are we clear about that? We are referring to the ACT fires.

A. Yes.

Q. Continuing:

5 "If they were under a north-west wind
influence, they are going to be pushed
further to the south and south-west. If they
went due west, the Bendora fire certainly had
the potential to impact upon the southern
10 suburbs of Canberra and rural properties,
which is our first concern."

A. Yes.

15 Q. If that was Mr Lucas-Smith's state of mind as
at 15 January, the people of Canberra were
entitled to know that he held that opinion,
weren't they?

A. I believe so.

20 Q. The last thing I want to ask you about is you
were shown by Mr Whybrow exhibit 126, the
operations update from the CFA. You were taken to
page 4 under the pretext of referring to
"Night-time firefighting" and you were referred to
25 three or four words under scenario 5, "Working
with hand tools and equipment" where there are the
words "when darkness is falling". Do you remember
being taken to that phrase in that document?

A. Yes, I do.

30

Q. Do you say that that is some kind of CFA edict
on night-time firefighting?

A. No. It is an issue to be taken into
consideration.

35

40 Q. But the point that you were making comes from
the passage you quoted in your report, doesn't it?
That is on page 1 of the operations update. You
set out the message from the chief officer in this
document. You reproduce it in your report; right?

A. Right.

45 Q. You don't quote the reference to "when
darkness is falling", to which Mr Whybrow referred
you, do you?

A. No.

Q. For the purpose of making the point you wanted to make about what this says, you in fact did not rely on those words when you were formulating your report, did you?

5 A. But I had it in mind.

Q. Why didn't you quote it?

A. Didn't need to.

10 Q. How would people who were trying to understand how you had come to a conclusion be able to work out that in the context of criticisms about night-time firefighting, one of the things in this document you replied upon were the words "when
15 darkness is falling"?

A. One of the issues I was aware of. I used that as one example. I also referred to the ACT little green book, I think it was, talking about safety. I used that message from the chief officer to
20 illustrate that the fire services - as an example that the fire service was starting to place more emphasis on firefighter health and safety, and it was incumbent upon everybody to take into
25 consideration the circumstances, and darkness must be part of the circumstances of that dynamic risk assessment.

Q. When you were deciding which portions of this operations update that you would refer to for the
30 purpose of expressing your conclusion in your report, do you say that you were particularly conscious of the phrase to which you were taken by Mr Whybrow this morning, "when darkness is falling"?

35 A. That was one of the issues I considered.

Q. At the time you were formulating your report?

A. Hmm.

40 Q. You say that seriously, do you?

A. Yes, I do.

Q. But you chose not to quote it in your report?

A. There are a lot of things I haven't quoted in
45 my report.

Q. Just concentrate on the question. You chose

not to quote it in your report; right?

A. Correct. I don't know if it was a deliberate choice.

5 MR LASRY: Thank you.

THE CORONER: Thank you, Mr Nicholson. You are excused.

10 THE WITNESS: Thank you.

THE CORONER: I think you are our last witness at as well, Mr Nicholson, at this stage.

15 **<THE WITNESS WITHDREW**

MR LASRY: We have some housekeeping matters. Mr Woodward will deal with the first of them, then I will deal with the second of them.

20

MR WOODWARD: You will recall that your Honour asked a question of Mr Whybrow in relation to some documents that he provided comprising - if I can describe all of the budgetary information and its
25 origins. At my request, Mr Whybrow's instructors prepared a letter which sets out their instructions in relation to this material. It seems to me to be reasonably uncontroversial. In order to provide a reasonably complete picture of
30 that material, which is in part referred to in Mr Nicholson's report, I propose, if Mr Whybrow is content with this, to tender the covering letter, together with a bundle of budgetary information so that is part of the material.

35

THE CORONER: The covering letter dated 25 October 2005 and accompanying budget information will become Exhibit 0130.

40 **EXHIBIT #0130 - COVERING LETTER DATED
25 OCTOBER 2005 AND COMPANYING BUDGETARY
INFORMATION, ADMITTED WITHOUT OBJECTION**

45 THE CORONER: I thought there were some other documents.

MR WHYBROW: There were emergency committee

management minutes. I am not sure whether they went in before or not.

5 MR WOODWARD: I should explain, your Honour, that
the two folders of material which have been
produced and referred to during the
cross-examination of Mr Roche, together with some
material which Mr Whybrow had produced - and
10 I referred to that last week - has gone onto the
system, or is in the process of becoming part of
the brief. In those circumstances, as I have
described, I don't think that needs to be
tendered.

15 THE CORONER: That will become part of the brief?

MR WHYBROW: Yes.

20 THE CORONER: It is a matter of comment as to
where we go from here.

MR LASRY: Mr Nicholson has the distinction, I
think, of being the last witness to be called. It
is probably appropriate for me to announce that,
25 subject to the correspondence which has passed
between the parties in relation to this, I
formally, as it were, tender the balance of the
brief - as I say, subject to the discussions and
understandings as to what that amounts to. Your
30 Honour has been apprised of the nature of the
correspondence between us and the parties, what it
consists of.

The next step in the process is obviously for us
35 to present our final submissions. Had we been in
this position in October of last year, it would
have been potentially feasible to announce that we
could do that by some time in December. However,
by virtue of the proceedings which were brought,
40 we have effectively lost a year. We are now in
the position where we need to go back and review
information which was much fresher in our minds
in October of last year than it is now.

45 We are also conscious of the fact that our
submissions need to be a detailed and complete
account of the case that we will put in relation

to the findings that we would urge you to make and the comments that we would urge you to make.

5 It has been made clear to our learned friends that those submissions will, to the extent that it is possible, represent the entirety, with all of the detail and evidentiary basis, of what we would be putting forward by way of submissions on those matters.

10

That means that we think, realistically, to complete that task we will need until the middle of February next year. We propose a timetable along these lines: The submissions of counsel assisting be filed and served on the represented parties by 17 February of next year; that the submissions in reply by represented parties be filed and served on each other and of course on us by 17 March of next year; and that by - it is hard not to hear the moans and exhalations - I would pause to say that I would have thought that, to all of the represented parties, many of the issues would have been obvious at this stage.

25 It is clear many of the areas that have been litigated. It is clear many of the areas which have been the subject of criticism. If my learned friends are huffing because they think that they can now do nothing until they get our submissions and then begin the task, with great respect to them, I'd urge them to think again. There is a great deal of work that they could now be doing on the submissions that they would propose to make for their clients from now on.

35

I appreciate that they are entitled to know the particularity of what we would be saying, but it wouldn't be appropriate for them now to wait until they get that document before work commences. Work should commence, and can commence, on each of their submissions, at least pulling the material together, I would have thought, in dealing with the kinds of criticisms that have been litigated with Mr Roche and Mr Nicholson, by way of example, which are obviously going to be issues for submission, without waiting to see what we say.

45

Of course, there needs to be a period of adjustment, once they know in particular what we say and what conclusions we will be urging. A month, in our submission, is long enough to do that.

That is the reason that we put forward a month from the time of our submission to the time of the submissions in reply.

We would then propose that a hearing be conducted probably between 27 March and 29 March. The intention of that is primarily to enable the public to be aware of the submissions and the competing arguments.

We would envisage that during that hearing, each of the parties would have an opportunity to, as it were, speak to their submissions, without of course reading them out in detail, but would be able to, in effect, make submissions which would encompass the major gist of each of the particular points that each of the participants wishes to make, so that the people with an interest in the case can know what the competing arguments are, and also, of course, inevitably there will be issues of reply. We would presumably want to raise issues in reply to some of the issues that are made on behalf of some of the represented parties and they may wish to do the same thing in relation to each other.

Your Honour, we do have to go back and, in a sense, re-assemble our thoughts and re-assemble the material. We would urge our learned friends to do the same between now and the middle of February next year. That is the timetable we propose.

THE CORONER: Thank you, Mr Lasry. I must admit I had hoped that the process could have been a bit faster than that. I appreciate the reason and the intervention of Christmas and, I suppose, the holiday period in January.

In any event, I certainly would expect counsel, all counsel representing interested persons, to be

putting their minds to submissions, and not just
to be waiting, as Mr Lasry said, for submissions
to be put in reply. I would be assisted by
various submissions made by counsel representing
5 interested parties in my deliberations.

As I say, counsel should not just look at their
roles simply as being to provide a response. Of
course, that is one role and it is a very
10 important role.

Another very important role - you have all been
here through this very lengthy and arduous
process; you have all listened; you have all had
15 access to the brief and have all participated in
the total process. I do expect each of you to be
of assistance and to make submissions, not just in
response but submissions on matters that
particularly, as you see them, are relevant to all
20 the issues. And not just the inquiry into the
fire, and perhaps sadly, and I can understand why
appropriately, but the inquiry into the fire has,
to some extent, overshadowed the inquest into the
deaths.

25 The fire is also very relevant. The consideration
of the fire is also very relevant into the deaths
of the people who died. I urge you all to look at
it as a total package - not just the fire but to
30 look at it as the fire and the deaths and to turn
your minds to making comments and submissions to
assist me in formulating and making
recommendations.

35 MR LAKATOS: Of course. With respect, what has
fallen from Mr Lasry is accepted. From the
Territory's point of view, it was never the
position that we would be sitting on our hands
until we received my learned friends' submissions.
40 It remains so that we will continue to work on the
submissions between now and when we receive those
of counsel assisting.

45 However, there are two issues which arise. My
learned friends have the same problem we do, which
is to say that a year has gone past and many of us
have done different things and we also need to get

our heads around what has happened since that time. That is the first issue.

5 The second is, the Territory is in perhaps the most similar position to counsel assisting, in that the other representatives at the Bar table may have a narrow range of issues that they need to deal with. Counsel assisting will obviously have to deal with all of them and the Territory
10 will have to deal with most, if not all, of them at some point.

The focus of any submissions prepared by the Territory, of course, will gain much of its
15 pointed nature from what falls from our learned friends. We, of course, will do the generality submissions on the facts as to how the fires developed and matters of that nature, much of which probably will be common to many parties.

20 In my respectful submission, the position is really that until we receive the submissions of counsel assisting, the more controversial areas will not have a matter of definition until such
25 time as that is received.

In my respectful submission, to allow my learned friends the time that they need, which I think is a fair thing, it is all right, but to allow the
30 second party with the next biggest task, the ACT, four weeks, in my submission, really is not enough. We will do the best that we can, but the fact is that there is no guarantee that within the four weeks we will be able to discharge what we
35 need to be able to discharge.

The submission that I propose to put is an alternative, which is to say, that a week after my learned friends file and serve their submissions,
40 that there be a directions hearing to determine the position. It may well be that we have done 90 per cent of what needs to be done in advance. But, of course, much of how one formulates one's response really is down to, on the issues of
45 intention, how they are actually put against you. Of course, we know the issues. We have an issues list of five or six or 10 pages - I have now

forgotten how long it is. They raise the issues. They don't particularly raise how my learned friends will ultimately put them; the slant, the weight and so on to be put.

5

In my submission, as a matter of fairness to all of those, I propose that there be a directions hearing and then shortly thereafter, a pointed response is an appropriate way to deal with the matter in a fair and even-handed way. That is my submission.

10
15 THE CORONER: Yes, there is merit in what you say, Mr Lakatos. I can see that. I suppose the reason to try to set a timetable is to get some certainty.

MR LAKATOS: I accept that.

20 THE CORONER: And also for parties - it is important also to set a time for this oral argument and supplementation of submissions. Given the history that we have had, and I accept it is difficult for a variety of counsel to always be available on the same day, but as much time as we can give or can be given to counsel to put time aside, that is another very important consideration - just to put you on notice.

25
30 MR LAKATOS: Of course.

THE CORONER: It may be that four weeks is well and truly sufficient time if you start work on them now. As I say, you have to look at not having just four weeks, you have to look at it as having the time from now and then have the extra four weeks.

35
40 MR LAKATOS: We appreciate that. That is accepted. It is a fair comment by my friend. We are well aware of that and we will not be sitting on our hands.

45 THE CORONER: I can see merit in what you are saying, to have a directions hearing a week later to give the parties an opportunity to consider the submissions made by counsel assisting.

MR LASRY: I would urge your Honour to persist with the program on the basis that it is still expected that the replies will be filed by 17 March. At that directions hearing, only if the
5 circumstances were able to be demonstrated to be exceptional, that you would extend that date, bearing in mind the time that lies between now and then.

10 I would have thought, your Honour, that an analysis of the transcript will point to, not with absolute precision but with pretty clear indicators, the way in which we would be
15 formulating our submissions. I would have anticipated that that month would be used simply to understand whatever refinements or particularity we give to what is already clear
20 from the way the matter has been conducted. With respect, your Honour would take the view that you wouldn't extend that date unless there were particularly good reasons for doing so that are not presently foreseeable.

MR WHYBROW: Could I make a comment in relation to
25 a related issue? If your Honour is minded to set a timetable where there is four months for counsel assisting to prepare, and albeit the other parties will be in the process of putting together their material but one month before the response,
30 I raised on 17 August the issue of when we get to submissions what matters do counsel assisting take the view, within the jurisdiction of your Honour, to make pronouncements on. If we are to be preparing responses, it would be very useful if
35 there is some indication, sooner rather than later, by counsel assisting, as to their attitude to various matters that deal with the question of jurisdiction.

40 The issues list, as has been canvassed, is wide-ranging, and views vary as to what matters are properly within the purview of the Coroner and may not be. I am not here to make any argument as to any particular view. But certainly it will be
45 of assistance to the role of representing my clients that I have as to the view and the arguments put forward by counsel assisting as to

what areas they are going to make submissions on.

5 Your Honour indicated that you were not proposing
to make any decision about jurisdiction before the
end of the evidence. We have now reached the end
of the evidence. I certainly don't indicate that
your Honour should be making a ruling at this
stage, but I would request that counsel assisting
at least communicate to the parties what they see
10 are the issues and the jurisdiction of the inquiry
so that we have at least their view as to the
areas on which they may be commenting.

15 THE CORONER: The jurisdiction of this inquiry is
limited only by the legislation, Mr Whybrow. I
think it is the response that Mr Lasry made on the
last occasion, or Mr Woodward, when you asked.
Interested persons have been aware of the issues.
It is a matter of waiting to see what is contained
20 in the submissions. I don't know whether there is
anything else that you wish to add to that,
Mr Lasry?

25 MR LASRY: I agree with that. It will be part of
our submissions. As your Honour points out, our
position has been reasonably clear about that so
far. I don't propose to give any interim
position. It will be part of our submissions when
they are filed and served.

30 THE CORONER: Mr Lakatos, you are suggesting that
a directions hearing should be held one week
later?

35 MR LAKATOS: Yes. I am sorry, I cut across your
Honour.

THE CORONER: No, I have finished.

40 MR LAKATOS: My learned friend's formulation of
exceptional circumstances, with respect, your
Honour, ought not fetter any consideration of any
application made. Any application made for
extension of time will not be made lightly. They
45 will be made, I expect, made on good grounds. Any
fettering of a discretion of your Honour to do
what is appropriate and just in the circumstances

should not be confined to any artificial test that my learned friend now proposes to formulate from the Bar table.

5 THE CORONER: I will set a directions hearing for one week later, but I will still maintain the timetable as has been proposed. If there is some
10 extenuating circumstance or something to vary that, that can be discussed at the directions hearing.

MR WATTS: Sorry to interrupt things. I would support what Mr Lakatos says. In my submission, there should be no timetable set of four weeks.
15 With great respect to counsel assisting, it is a bit much to say that the issues are obvious to us when they require four months themselves. If the issue is so obvious to counsel assisting, I don't see why they need four months, with great
20 respect.

The second issue is the question of the recall of witnesses. The letter of 19 October refers to the possibility of witnesses being recalled. It may
25 be that after submissions are received there may be an application at that stage to either recall witnesses or ask for witnesses to be called who have not been called.

30 In my particular case, I think a number of Fire Brigade people who are on the "Make available list" who have not been called, who, if there was any submission made, where counsel assisting use those statements as a basis for some adverse
35 comment, there may be an application at that stage for those persons to be called, to be cross-examined on their statements.

40 That, of course, would have the effect of putting the timetable out. I raise that at this stage because it is not clear from that letter at what stage it is envisaged that this application to recall witnesses will be made. I would have thought that it might be when we receive the
45 submissions of counsel assisting, to see how they rely upon those statements, if at all. Of course, this may not arise. If they don't use them, don't

rely upon them, then of course there is no
problem.

5 I would have thought that the safest course,
instead of setting a timetable in concrete beyond
counsel assisting's submissions, is to simply set
a date for directions afterward and then these
10 matters can be sorted out, with a view to perhaps
adopting the kind of timetable, hopefully, that is
being suggested.

15 THE CORONER: The difficulty there is that if
a timetable is not set then there is potential for
the matter just to run on.

In that week, perhaps that week from the receipt
of counsel's submissions and the directions
hearing, you should have a fair idea as to whether
or not you do or do not wish to recall witnesses.

20 I am not inviting counsel to immediately jump to
the recalling witness option. The best way, if it
can be done, to cope with any submission is
putting information in a response. That is not to
25 say that if you feel there is a witness that needs
to be recalled, as Mr Lakatos said yesterday, for
natural justice reasons - and I have always said
that that would happen, if you felt that a witness
had not been heard or had not been given the
30 opportunity to be heard, or for you to not be in a
position to put the view of a particular witness
who hadn't been called in the inquiry, that
certainly would be open, based on the information
and the evidence contained in the brief.

35 I would have thought that if you were going to
make that submission that a witness needs to be
recalled then you would come to that view within
that week.

40 MR WATTS: No doubt about that.

THE CORONER: And make the application at the
directions hearing.

45 MR WATTS: Yes.

THE CORONER: If that does need to happen and if there are a number of witnesses who need to be recalled - and as I say, I would hope that is not the case, because this process does need to come
5 to an end, we all need to see an end to it - arrangements can be made for that to happen and then it may be that the timetable needs to be adjusted. I would rather set a timetable now with a view to adjusting it at a later date than
10 leaving it open at this time.

MR WATTS: I would certainly support Mr Lakatos's view that your Honour should not fetter yourself at this stage by making a predetermination as to
15 particular circumstances where that might occur. It may be a whole range of circumstances. I would think that counsel in this case, no-one would make such an application lightly, so it should not be predetermined now the basis upon which that
20 application should be dealt with at that stage. Thank you.

MR LASRY: The time, of course, needs to be taken, not to work out what the issues are, in case my
25 learned friend doesn't understand that, but to assemble the material. That will take some doing, because it is both obviously the material which is the documents and what is on the brief and in the evidence.

30 As to the recall of witnesses, we have been rather hoping we could work on the basis that the appropriate process by which witnesses would be recalled would be in response to the section 55
35 procedure. We would - I know we are now speaking theoretically - if it came to that, be resisting a process whereby counsel assisting make submissions and requests are then made to recall witnesses in response to those submissions. The
40 submission process is finalised. You discharge your obligations under section 55 of the Act and then more applications are made in response to that to recall more witnesses.

45 It seems to us, in relation to the issues of the requirements of the Act, of natural justice and the rest of it, that the appropriate time for

requesting that witnesses be recalled is in response to the statutory provision that that can happen, after notice has given under section 55.

5 I indicate to your Honour and to our learned friends that that is the position we would expect to take. We would be anxious to avoid a double recall process. We would hope we could avoid a recall process altogether. Only time will tell
10 whether it is necessary or not. To be doing it twice, in our submission, elongates the process beyond what either the authorities or the Act require.

15 THE CORONER: Do you wish to be heard on that? That does make a lot of sense. You wouldn't like to be in a position to have to recall witnesses.

MR LAKATOS: I won't. That would be a last
20 resort, from our perspective. There are, of course, two issues. There may well be critical comments in my learned friends' submissions which have not been properly aired in the hearing which would warrant persons seeking to vindicate their
25 individual rights. So section 55 notice alone would not serve what I submit is a just purpose.

The second matter is, so far as the Territory as a corporate person is concerned, I have to look at
30 the legislation. I concede it may be that there are criticisms of the Territory. A section 55 notice may not be appropriate to the Territory as a "natural person". The only time that we would have an indication of any criticism would be in
35 the submissions. It, therefore, may need to be a two-step process, in any event.

As I say, I have not followed that down its logical rabbit hole. It may well be a problem in
40 that regard.

THE CORONER: I suppose a lot of this information is not going to be revealed until such time as you see the submissions.

45 MR LAKATOS: Quite right.

THE CORONER: Thank you. Mr Lasry,
17 February 2006 is a Friday. For the directions
hearing, if we say 24 February?

5 MR LASRY: Yes, the following Friday would be
satisfactory.

MR LAKATOS: Thank you, your Honour.

10 THE CORONER: Counsel assisting to prepare
submissions and to have those submissions filed
and served by 17 February 2006. Counsel
representing other parties - I say that at this
stage - to have responses prepared, filed and
15 served on me, on counsel assisting and on each
other by 17 March 2006.

At this stage, I will set a date of 27 March to
29 March for counsel to speak to the submissions
20 that have been filed and served, and adjourn to
24 February 2006, at 10 o'clock for a directions
hearing.

MR WATTS: Before your Honour adjourns --
25

THE CORONER: You just want to have the last word,
Mr Watts?

MR WATTS: I do. One minor matter. It may be
30 that submissions are made by the various parties
which in some way impinge upon or are critical of
other parties. I imagine that is a thing to be
dealt with, probably simply by oral submissions on
the 27th to 29th. I don't know whether it is
35 envisaged that would be appropriate, rather than
simply putting another step in of timetables in
reply to those in reply?

THE CORONER: No, that is what is envisaged. That
40 is why the three days are being set down for reply
and comment to other parties.

MR WATTS: All right. I was raising it. It won't
simply be speaking to submissions necessarily but
45 dealing with any issues that are raised.

THE CORONER: That is certainly what is envisaged.

Thank you. We are adjourned.

**HEARING ADJOURNED AT 3.12 PM UNTIL FRIDAY, 24
FEBRUARY 2006, AT 10 O'CLOCK FOR DIRECTIONS**

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