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TRANSCRIPT OF PROCEEDINGS

CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

MS M. DOOGAN, CORONER

CF No 154 of 2003

INQUEST AND INQUIRY

INTO

**THE DEATHS OF DOROTHY MCGRATH, ALISON
MARY TENANT, PETER BRABASON-BROOK, AND DOUGLAS
JOHN FRASER, AND THE FIRES OF JANUARY 2003**

CANBERRA

**10.21 AM, FRIDAY, 7 APRIL 2006
(Continued from 1/9/2003)**

HER HONOUR: Yes, we have resumed after we had the adjournment in October for the purpose of checking on dates. The submissions I note have been filed and served by counsel assisting, and presumably each person representing has received a copy of the submissions. Can I
5 presume that that has happened?

Yes, thank you. Mr Lasry.

MR LASRY: Your Honour, also in addition to the hard copy submissions
10 which have been made available, we've also made available the submissions on disc and with instructions on how that disc is to be used, and that program carries with it a hyper-linked arrangement so that the footnotes will take the viewer to the original transcript or original document in the particular case. So they were provided this morning, and
15 if there's any difficulties about how that material is to be used then Mr Woodward, in particular, is available to consult.

HER HONOUR: Driving instructions. Thank you.

MR LASRY: Your Honour, the first thing that's important about our
20 submissions, in our submission, is that they should be the subject of a non-publication order by this court. Obviously it's not desirable that the submissions we make be in any way released publicly until the parties have had an opportunity to make their submissions and we would
25 envisage that there be an order of that kind applying to all submissions until the date on which there was oral argument, where the parties both spoke to their own submissions and respond to the submissions of others. Until that day, if your Honour would order that the written submissions, first of all, of ours but of the other parts not be published until that
30 preparation process was complete.

Your Honour, we've had some what might be described as discussions as to the timetable. We had proposed a timetable which I've provided a copy of to you as our proposal for the particular dates. Everyone will no doubt
35 speak for themselves in a moment, but can I just outline what the area of dispute is and see whether it can be resolved.

We had proposed that under section 6.11 of our submissions further evidence be called which would take about a day, it may take a bit longer,
40 that that occur on 8 May. We've been informed by at least two of the parties that there may be an issue which they want to raise about whether that evidence should be called, whether we should be allowed to call further evidence, that's the first thing. So there will be preliminary objection and argument in relation to that. And as I understand the
45 position of the represented parties, as at the time that your Honour came

onto the Bench, a date which the parties could comply with would be 6 June rather than 8 May, but as I understand it, that's the earliest date that they'll be saying to your Honour they could take part in that process.

5 The next proposal we had was that all submissions by the represented parties be filed by Friday, 2 June. The width of disparity is quite broad here, because we understand that it is the consensus amongst the representative parties that the earliest date by which that could be done would be 21 July. And we have proposed that the oral argument based on
10 those submissions, which would involve the parties speaking to their submissions and, to some extent, replying to others would appear on 19 June.

15 As I understand it, the position of the representative parties is that, first of all, that process would certainly take more than one day, and I understand why that that would be said. And secondly, that the earliest date on which it could occur, from their point of view, would be 31 July.

20 Now, there's a variation on that - and these dates primarily, your Honour, are being discussed in the context of counsels' other commitments, including ours of course. We are also managing a calendar, as they are. So that the other complication that goes with that last date is essentially from Mr Erskine, who informs me that his leader, Mr Walker, would be not be in a position to make submissions on 31 July, but could do so on
25 28 July.

30 Now, dealing with that, for example, and depending on what view your Honour takes of the dates generally, it may well be, given that there's transcript, that we could, for example, in that case, your Honour could convene, hear Mr Walker's submissions, they of course would be transcribed and the other parties would be aware of them, more or less straight away. So it may not be necessary that everybody's submissions be made at a time when everybody can be present, if that assists in accommodating people who have commitments to other cases.

35 I should say at the outset, your Honour, we accept of course that the time that has been taken in the preparations of our submissions has been significant, there's two or more reasons for that. I think the main reason for it, apart from the intervention of Christmas which in itself is probably
40 not a substantial reason, is that our submissions had been compiled on the basis that they contain a factual narrative without argument, that is, without our argument, which intended to be the platform or the basis on which your Honour might proceed further with the Inquest. And in the exercise of preparing final submissions, the preparation of that narrative
45 which is very detailed and fairly carefully referenced, has taken a

substantial time.

5 Now, it's important in our submission that note that, save for checking the detail of that which, with the assistance of the electronic version of our submissions, should be reasonably straightforward. That's not work that will have to be duplicated by the representative parties unless it becomes clear that there are substantial portions of the evidence which have been left out of the narrative, and I think that's unlikely.

10 So submissions and the presentation of argument should be, at least in our view, a less complicated process than the process of compiling the narrative and then putting submissions, as we have, in relation to all of the represented parties, in respect of whom we've thought it appropriate to make submissions.

15 So that's perhaps a significant difference, but the position remains that, on the basis of discussions with our learned friends this morning, there are a number of other complications which they'll no doubt make submissions in relation to in a moment, which includes of course their own
20 commitments, and also a level of uncertainty about how the material which is referred to in portion 6.11 of our submissions will have to be reacted to.

25 We understand of course that there's a difficulty about making forensic judgements about that evidence and what we can make of it, assuming that we are permitted to lead the evidence, in advance of knowing what the evidence is. We do understand that, but on the other hand, we don't think that process is going to be lengthy. The factual circumstances that the witnesses will give evidence about we don't understand to be particularly
30 complex, it's just a question in the end of whether that evidence is capable of supporting in either case the submission we make.

35 The other issue which has been raised with us this morning, and which will no doubt be raised again in a moment, is the way in which the represented parties may wish to react to our submissions in relation to recommended, which we've not yet put in our submissions. All I can say in relation to that, and perhaps I'll say more about it when our learned friends have had a chance to address your Honour, what's been raised with us is the potential, that in response to submissions we might make
40 about recommendations, that some of the represented parties may wish to call further evidence.

45 Our estimation is that such submissions as we do make about the question of recommendations is not likely to be contentious, and we'd be surprised if it resulted in the need to call further evidence. At the moment our

5 learned friends only have our opinion on that and, of course, they're
entitled to know what we actually say that we think our recommendations,
or our submissions on the recommendations that your Honour should
make are not likely to be so contentious as to require that course to be
followed, but of course they are entitled to see what is said before making
that final decision.

10 We would be in a position to provide those further submissions by 8 May
or within 4 weeks. If your Honour was willing to accommodate the
alternative timetable which I've outlined to you which has been put to us
by our learned friends, that would seem of course to be ample time for the
provision of that material and obviously ample time in which to make a
judgement about whether to apply to call further evidence in response to
those submissions.

15 HER HONOUR: So further submissions being recommendations,
submissions on recommendations.

20 MR LASRY: Our submissions on the recommendations that in our
submission your Honour should make.

HER HONOUR: All right.

25 MR LASRY: We would be in a position to provide those, I would think,
and I'm prepared to nominate the Friday prior to 8 May, which would
Friday, 6 May. I think that's a date by which we could easily provide
those submissions. Your Honour, that's the state of play. So far as the
dates are concerned, having had a relatively animated conversation about
it outside the court, it's really a matter in the end for you. We will of
course comply with whatever directions that your Honour makes, but
30 having outlined the issue it's perhaps now appropriate for our learned
friends, to hear their submissions.

35 HER HONOUR: I'll hear what counsel has to say. Thank you, Mr Lasry.

Yes, Mr Archer, perhaps if I just - - -

40 MR ARCHER: As your Honour pleases. I don't necessarily need to say
anything about it, your Honour. I wasn't, at my own failing, involved in
the discussion. I think I'm okay except for one of the dates, but I might be
able to - - -

45 HER HONOUR: Well, what I want is comment from all counsel on this
original proposal and I want to hear why the proposed dates are not
suitable. So what - - -

MR ARCHER: In relation to the original - - -

HER HONOUR: Do you have any difficulty in relation to having submissions available by Friday, 2 June?

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MR ARCHER: No. No, I can comply with the original timetable, your Honour.

10 HER HONOUR: And do you wish to be heard in relation to further evidence being called, Mr Archer, on - I don't know that it would have - - -

MR ARCHER: No.

15 HER HONOUR: The nature of that evidence, I don't know that it would have much bearing on your client.

20 MR ARCHER: I've spoken briefly to my colleague, Mr Woodward, this morning about who those witnesses might be. Without further reflection, I can't really say whether it affects my client or not, but my reaction is that it won't affect the AFP.

HER HONOUR: And likewise, does that date suit you, Monday, the 19th?

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MR ARCHER: Of June, yes, it does.

HER HONOUR: Yes, thank you, Mr Archer.

30 MR TRACEY: Your Honour, can I deal with the matters in the order of - - -

HER HONOUR: You haven't introduced yourself, I'm sorry.

35 MR TRACEY: I beg your pardon, I thought that that had occurred on the last occasion.

HER HONOUR: No.

40 MR TRACEY: If it didn't, I can inform the court that I am now appearing with my learned friends Mr Lakatos and Mr McCarthy, for - - -

HER HONOUR: And do you seek - - -

45 MR TRACEY: - - - the ACT and related interests in lieu of Mr Johnston

who is elsewhere.

HER HONOUR: And just for the record, please state your name.

5 MR TRACEY: Tracey, your Honour.

HER HONOUR: And you seek leave to appear in place of Mr Johnstone, Mr Tracey?

10 MR TRACEY: I am.

HER HONOUR: All right, that leave is granted, Mr Tracey.

MR TRACEY: Thank you, your Honour.

15

HIS HONOUR: Yes, thank you.

20 MR TRACEY: Now, if I can deal with the matters in the order in which our friend, Mr Lasry, has approached them. Firstly, we support his proposal for non-publication orders in respect of the submissions already filed by counsel assisting and for any future submissions they may make, and in addition, for the submissions made by the parties until such time as the submissions are spoken to in open court.

25 Next, as to the issue of further evidence that is proposed to be called in paragraph 13.25 of the submission, our position is this. We don't know what that evidence is; we don't know who the witnesses are, we don't know what it is proposed that they will say. Unless and until we are aware of that information we are not in a position to form a view as to
30 whether it would be appropriate to make any application to you opposing leave to call that evidence.

35 So that the necessary antecedent step for any application by counsel assisting to call that evidence is to, in our submission, inform the parties of what that evidence is, who the witnesses are. It may be that there are statements in the brief that we can be referred to, there may be fresh evidence that is not already in the brief, we don't know. So that all we can do at the moment is reserve our position. It may or may not be necessary to oppose any application to call that evidence.

40

The issue then arises - - -

HER HONOUR: I think that's a reasonable comment, Mr Tracey.

45 MR TRACEY: I'm sorry?

HER HONOUR: That's a reasonable comment that you've made.

5 MR TRACEY: The next issue arises as to when that evidence might be dealt with, first, as to any submissions that may need to be addressed as to whether it ought to be called at all and, if so, when. The present timetable provides for that to occur on 8 May. The difficulty that we face is that both my learned friend, Mr McCarthy, and I are committed on the other side of the lake on that day and will not be available for that week, by reason of that other commitment.

10 The date of 6 June that is proposed as an alternative is the result of some discussions that occurred outside the courtroom this morning and represents a date that all parties involved are in a position to meet, having regard to trial and other commitments. Others will speak for themselves as to the problems that would confront them of dealing with this matter any earlier than 6 June.

HER HONOUR: The calling of further evidence?

20 MR TRACEY: Yes. Well, that and the issue, if it arises, as to whether it ought to be allowed to be called. And as I say, we're simply not in a position to make submissions about that this morning.

HER HONOUR: I see.

25 MR TRACEY: But we don't see any difficulty with the witnesses being on standby for a date that's been fixed. We can have the debate, if there is to be a debate, as to whether leave ought to be granted to call them. If your Honour doesn't grant leave then they're not called. If your Honour grants leave - - -

HER HONOUR: It's my understanding that the witnesses who are due to be called are witnesses or persons who have already put in statements.

35 MR TRACEY: Well, what I had in mind was that they could be put on standby and otherwise not inconvenienced, but there are other ways of handling it, and it may be that the preferable course would be, if there is to be an issue as to whether leave ought to be granted, that a date be found before the date on which it's proposed to call their evidence for the debate to occur.

40 HER HONOUR: The first step is for you to be informed as to what exactly - well, the nature of the evidence. I'm surprised that you didn't glean that from the comments in the submission that - - -

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MR TRACEY: Well, with respect, there is nothing in the relevant paragraph to indicate which witnesses. All it is is a proposal that witnesses be called, and I can tell you that we can make some educated guesses, but we shouldn't have to.

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HER HONOUR: So you want information as to who is proposed to be called and what the nature of the evidence is.

MR TRACEY: Who the witnesses are and what evidence it is proposed to lead from them.

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HER HONOUR: All right.

MR TRACEY: Once we know that we can make a decision.

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HER HONOUR: Well, I'm sure that information can be provided to you fairly quickly.

MR TRACEY: There's no difficulty, we've had discussions about it and I'm sure counsel assisting will let us know as soon as they're able to.

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HER HONOUR: But you're saying that you're not going to be available or Mr McCarthy or Mr Lakatos, or any other member of the ACT Government, and it does have many - - -

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MR TRACEY: Well, I can't speak - - -

HER HONOUR: Many lawyers in that month from 8 May.

MR TRACEY: I can't speak for Mr Lakatos. We are certainly available on certain dates later in that month, but some of those representing others are not.

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HER HONOUR: No, but just in relation to yourself and other lawyers from the ACT Government. So you're not available the week of 8 May but there may be other dates in May that you are available, Mr Tracey.

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MR TRACEY: Yes, there are other dates that would suit us in May, and we've suggested the 22nd as an alternative, but that doesn't suit everybody.

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HER HONOUR: All right, but you're available on that date. Thank you.

MR TRACEY: Your Honour, the next issue, which is not unrelated, is the one to which counsel assisting came last, and that is the question of

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further submissions and recommendations in relation to the material that we filed last November from Mr Dunn which is directed towards assisting the court in knowing what steps had been taken by way of remedial measures in the light of experience of the fires in January of 2003.

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Now, we understand from counsel assisting that it is not likely that there will be any recommendations that might cause us to apply to call evidence on the point, and if that turns out to be the case then nothing more need be said about it and we can deal with any response in our written submissions. However, all I can do at the moment is reserve our position in that regard until we know, as we will on 8 May or thereabouts - or perhaps I think was the 5th was the date Mr Lasry suggested.

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MR LASRY: The 6th.

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MR TRACEY: The 6th is the Saturday.

MR LASRY: Sorry, quite right, I apologise.

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MR TRACEY: The 5th we will know but we're obviously going to have time to read those recommendations and to form a view as to whether there's a need for us to apply to call for further evidence. As I say, from what we hear it's unlikely but I just need to reserve our position in that regard.

25

The next issue that will arise is the making of submissions by the parties. Now, we note that the program does not provide for further submissions from counsel assisting arising out of any further evidence that may be called and, to that extent, the submissions would be incomplete and therefore any response would be incomplete unless and until the represented parties had the opportunity to know what counsel assisting should be made of that evidence.

30

So we would be submitting that at some time between the proposed dates of 6 June and 21 July that there be a date fixed for any additional submissions that counsel assisting may wish to make arising out of that evidence, if it's called. And that will ensure that when the parties' submissions are made, as we propose they will be on or before 21 July 2006, they can be comprehensive and can deal with what's already been provided by counsel assisting, but also any additional material that relates to the Dunn report from November last year and any evidence that is heard in relation to the issues raised in paragraph 13.25.

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HER HONOUR: Are you saying that if you perhaps leave out the calling of the additional evidence that is foreseen on Monday, 8 May, on that

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date, that that discreet part of evidence, are you saying that you're going to have difficulty, based on the submissions that have been filed by counsel assisting now, in making submissions on those and on the evidence by Friday, 2 June?

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MR TRACEY: Well, we could make submissions in relation to the matters that are in the document that we've already seen, but if there's additional evidence called and counsel assisting wish to make further submissions in relation to what you should make of it and what findings you should make as a result of it, we would need to have though - - -

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HER HONOUR: You'll need extra time to handle that.

MR TRACEY: - - - if we're to make comprehensive submissions. So that the short answer to your question is I'm not sure whether it will be possible to do it in the time frame because at this stage we don't know how extensive that evidence is going to be, much less how long the submissions based on it - - -

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HER HONOUR: But that's the extra evidence that we're talking about?

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MR TRACEY: Yes.

HER HONOUR: Yes. But I'm talking about just the submissions based on the evidence as it stands to date.

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MR TRACEY: No, I understand that.

HER HONOUR: Yes.

30

MR TRACEY: And I think what I've said of that is that we could, I think, deal with that - - -

HER HONOUR: By 2 June.

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MR TRACEY: - - - by 6 - yes, we can deal with it by 6 June, I would think, without difficulty.

HER HONOUR: Thank you.

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MR TRACEY: But it would necessarily be incomplete, or possibly incomplete, that's all.

HER HONOUR: Thank you.

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MR LASRY: Your Honour, could I just factor something into that, if I can interrupt Mr Tracey for a moment. In relation to the additional evidence currently proposed for 8 May, we would now say that we'd be confident that we could provide any further submissions that we needed to make in relation to that within 7 days of the completion of that evidence. The discreet issue, and to some extent the submissions in relation to it are already, in a sense, foreshadowed. Ultimately, it would only take us another 7 days to put in writing that which we would submit your Honour could or could not make of that evidence if called. If that assists the timetable.

HER HONOUR: Thank you.

MR TRACEY: Now, as to speaking to final submissions, the timetable that our friends have proposed only allows for one day. You'll be conscious that the present timetable involves 3 days and we would have thought that it was wise to maintain those 3 days, given the large number of parties who will inevitably wish to be heard. We've had an indication, for example, from counsel representing New South Wales' interests that he will need something of the order of half a day. We would anticipate needing no less, and that doesn't leave time for any of the other represented parties, much less counsel assisting, even if they are as short as they anticipate being.

So that what we would be urging on the court would be to set aside 3 days for that process. It may not in the end all be used, but it would be better that it be available rather than go off incomplete as a result of it running longer than expected. And in that regard we would certainly have no difficulty in accommodating a 28 July, 31 July and 1 August range of dates.

HER HONOUR: Well, again I'm currently considering the present timetable, so in relation to Monday - and I do agree with you, Mr Tracey, that I think one day for submissions, for oral submissions, is perhaps a little bit - well, I don't know that they'd be finished in one day.

MR TRACEY: Optimistic.

HER HONOUR: It's a bit optimistic, I would think, and I agree with you that more than one day would certainly be required. But if, say submissions are filed by 2 June, say for argument's sake, and this is just based on your comment that you'd be able to, you think, make submissions based on what is before the court now, what is before me now, then is there any time in that week? Because this also does not factor in at the moment time for counsel assisting to reply to submissions,

there's no time for that.

5 MR TRACEY: Well, all I can tell you is that whilst the week of 19 June was convenient to Mr Lakatos, Mr McCarthy and myself, it was, for reasons that you will no doubt shortly hear, completely inconvenient for other counsel, and it was for that reason that we joined in the proposal for 28, 31 and 1 August.

10 HER HONOUR: All right.

MR TRACEY: But the point that I make at the moment is simply that whenever it is, it should be 3 days.

15 HER HONOUR: Yes, I agree, I accept that, Mr Tracey.

MR TRACEY: If your Honour pleases, that's as much as I wish to say at this stage in response to what's fallen from our friends.

20 HER HONOUR: Thank you, Mr Tracey.

Yes, thank you, Mr Stitt.

(Barrister not on microphone)

25 MR STITT: As your Honour pleases. We don't want to be heard on any dates in relation to the timetable. We will meet any dates that this court is to order. The only thing that we are concerned about is the last line of the submissions. It talks about submissions on recommendations on agency service response to the bushfire risk. We don't know whether that definition catches my client or not and at present I assume that it does, so
30 therefore we are interested in the submissions which my learned friend indicated he would serve by 6 or 8 May.

35 Subject only to those submissions, we have nothing further to say. We will meet any timetable that the court orders.

HER HONOUR: Thank you, Mr Stitt.

40 MR STITT: But I would perhaps ask my learned friend at some stage to indicate whether we do meet that definition.

HER HONOUR: Mr Walker, thank you.

45 MR WALKER: Thank you. Your Honour, dealing with the timetable as originally proposed, I am simply not available on 8 May and I think some

subsequent days to 8 May. Yes, 8, 9, 10 - - -

HER HONOUR: Which dates are you available in May, Mr Walker?

5 MR WALKER: May? The - - -

HER HONOUR: What about that week of the 22nd?

10 MR WALKER: Yes, I am available in that week. Dealing with that part of the timetable, I concur with what Mr Tracey has said about the number of days that ought to be set aside for the evidence. Given that that - - -

(Mobile telephone ringing in courtroom)

15 HER HONOUR: The number of days for the evidence, you mean the number of days for - - -

MR WALKER: The additional.

20 HER HONOUR: For oral submissions?

MR WALKER: No, I thought Mr Tracey said 3 days for additional evidence.

25 HER HONOUR: No, 3 days for - as I understood Mr Tracey, and please correct me if I misunderstood - 3 days for counsel to make oral submissions at the end.

30 MR WALKER: I see. I'm sorry, my mistake. Well, let me put what I envisage could be the difficulty I face in relation to that evidence. That evidence will bear directly on Mr Lucas-Smith and I do not know whether I will be making an application to call any further evidence in response to that evidence. Now, that can either be dealt with by way of an application made at the conclusion of that evidence and we find another time, or there
35 be a little further time put aside so that it might be dealt with on the back of that evidence.

So that's my problem. I'm sorry, I misunderstood what Mr Tracey said. You see the issue that emerges for me.

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HER HONOUR: Yes.

45 MR WALKER: In relation to 2 June, the filing of submissions, your Honour, the present difficulty which I face in relation to that is there are to be further submissions from counsel assisting about recommendations and

5 I also understand there's to be submissions on the Dunn evidence, and the
Dunn evidence has some, again, importance for Mr Lucas-Smith because
it is possible to say, if one looks at the changes which have been made,
one sees the difficulty I would have laboured under with the resources that
I had available to me to bring about certain consequences. If you
understand what I'm saying.

10 That there has been substantial additional resources and changes made
which indicate that it was difficult for Mr Lucas-Smith to achieve certain
results with the resources available to him. So that is, in my view,
important in any submissions that I put in on behalf of Mr Lucas-Smith.
If the date ends up later than 8 May, frankly it becomes extremely tight in
my view to get anything in by 2 June, particularly if it also involves those
additional matters that I have just raised.

15 As to the oral date, I frankly have to concede on 19 June, your Honour, at
this stage I was not proposing being in the country.

20 HER HONOUR: This is 19 June?

MR WALKER: Yes, for the hearing of argument. I'm addressing myself
to the original timetable proposed by counsel - - -

25 HER HONOUR: That's what I wish you to do at this stage, yes.

MR WALKER: Yes.

HER HONOUR: So that's on Monday, 19 June?

30 MR WALKER: Yes. I frankly am not presently - I was not intending to
be in the country at all on 19 June.

35 HER HONOUR: I did get some information from a couple of counsel,
Mr Erskine and Mr Watts, as to their availability but you didn't indicate
that you wouldn't be available in that period of time. But that time frame
wasn't given to you at that stage, I understand that, Mr Walker.

MR WALKER: Yes.

40 HER HONOUR: So you're not going to be in the country on 19 June?

MR WALKER: That's right.

45 HER HONOUR: When are you going to be in the country? When are
you leaving - - -

MR WALKER: Well, later in June. Oddly enough, whilst I must be away on 15 June, the final return date has not been set at this stage, although it was probably a couple of weeks later than that. So I expect towards the end of June.

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HER HONOUR: So you'll be back in the country towards the end of June?

MR WALKER: Yes. And your Honour, I don't need to labour the point, I think one day for oral submissions is probably a bit optimistic.

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HER HONOUR: Yes.

MR WALKER: The dates which Mr Lasry read out, being dates he said to you accommodated most of the other counsel, being 6 June for further evidence, 21 July for submissions and oral submissions on 31 July were the dates I think Mr Lasry read out, those dates are all perfectly okay from my point of view.

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HER HONOUR: So your position, as I understand it, Mr Walker, is that you're not available on 8 May.

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MR WALKER: That is correct.

HER HONOUR: But you are available that week of 22 May?

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MR WALKER: Yes, that is correct.

HER HONOUR: Are you available in the week 15 to 19 May? Any day between 15 and 19 May?

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MR WALKER: The only day is the 19th.

HER HONOUR: 19 May. But you're available on the 22nd, and as I understood - - -

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MR WALKER: 22nd and for the balance of that week.

HER HONOUR: Yes, thank you. And in relation to you filing your submissions, as I understand it, you've indicated that you would be able to meet that 2 June timetable, the original timetable, but not perhaps in relation to the further information and the further submissions that are to be put either on any new evidence that may be called or on the recommendations or any further submissions on the latter part of the recommendations dealing with, for want of a better word, the Dunn

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reports.

5 MR WALKER: Well, your Honour, frankly I think it would be somewhat difficult. If there was a moving back of the evidence I'd really ask that there be a moving back of the submission dates so that they could be dealt with in one go.

10 HER HONOUR: It's not proposed to move back the evidence, as I understand it, it's proposed to call - - -

15 MR WALKER: Well no, you were contemplating, I thought, moving back the additional - at least contemplating, I'm not saying you have agreed to it, but contemplating that there may be some later date picked than the 8th.

20 HER HONOUR: Well, it's just one day for hearing some discreet evidence on a discreet point.

25 MR WALKER: Yes.

30 HER HONOUR: I don't see that that's relevant to addressing the submissions that have been filed. That that might be you might need some little extra time perhaps to address that issue, that discreet issue and the recommendations that haven't been filed as yet, but just as I asked Mr Tracey, if you would just turn your mind to the submissions that have been filed by counsel assisting.

35 MR WALKER: Your Honour - - -

40 HER HONOUR: Would you be in a position to file your submissions on the submissions that you have at the moment by 2 June?

45 MR WALKER: Your Honour, looking at my timetable before then - I mean, submissions don't require a discreet date in the same way a court hearing does, but looking at my timetable I would really ask that they be filed at least 2 weeks later than that. It just will be problematic.

HER HONOUR: Is that all, Mr Walker?

MR WALKER: Yes, thank you.

HER HONOUR: Thank you.

Yes, Mr Whybrow.

45

MR WHYBROW: Your Honour, can I indicate probably the second part first, that in relation to the dates that Mr Tracey indicated had been spoken to amongst the other counsel, those were dates that I were able to comply with. In relation to - I'm probably in some respect the stick in the mud for the taking of further evidence if there's a difficulty with the ACT on 5 8 May - I have a 2-week trial set down commencing 22 May. That date was, as I recall it, set down at a time before counsel assisting had even requested their further time for submissions. So it pre-dated any contemplation of this type of timetable.

10 Indeed, in relation to the filing of submissions by 2 June, before I come to the particular days I would envisage having some difficulties, even were there not further material outstanding and further evidence outstanding, dealing with that, given that for my part - and I understand on the part of 15 many others - much of my work has been directed towards taking briefs subsequent to what the original timetable was, and that means that although there may be 6 weeks between now and 2 June - - -

20 HER HONOUR: Eight, I think.

MR WHYBROW: Eight weeks between now and 2 June, there's at least a 2-week trial in there plus other commitments that had been taken without the expectation that I would be responding to a not insubstantial document which deals in a not insubstantial way with my client, or at least 25 one of their direct interests, one of which, although your Honour talks about a discreet issue the subject of further evidence, that was something that had not, at least to me, been foreshadowed as a possible contemplation by counsel assisting. It is a significant matter. It's a matter that, as I think others have indicated, might require, once we know what 30 the other evidence is proposed, there may well be other evidence that bears upon that issue that had not been considered because it wasn't foreshadowed by counsel assisting until foreshadowed in their submissions.

35 So just in terms of the timetable, the fact that counsel assisting has required - and that's no criticism of them because it's a very significant document that they have produced - 5 months to produce their response, given that for my part much of the period now is taken up with other obligations and that much of this document requires direct response by at 40 least one of my clients, I would have difficulty, irrespective of the fact that there are still other submissions which also bear upon Mr Castle at least, outstanding, and other evidence which bears upon Mr Castle outstanding, in meeting the submission date of 2 June.

45 I am available on 8 May. I understand others are not. I have the

complication from the 22nd until 6 June which I suspect is why 6 June has been proposed by Mr Tracey originally to you as that date.

HER HONOUR: Are you available on 19 May?

5

MR WHYBROW: I am available in that week, yes, your Honour. And I would ask when dates for, particularly the submission of replies by the parties is contemplated, that apart from there needing to be a timetable set that takes into account the not insignificant further material, it might be short in compass but it has a flow-on effect to other submissions, that some further period of time to take into account the degree of work that's going to be required by at least myself, and I suspect the others.

10

In relation to the other dates, I've indicated that those outlined by Mr Tracey are suitable to me. I've I think responded to 2 June in the general sense of it being a short difficult period in which to provide my submissions with - - -

15

HER HONOUR: How much longer do you say you need after 2 June - how much longer from now do you need for your submissions, again based on what you have at the moment?

20

MR WHYBROW: Based on what I have? It's difficult, your Honour, because of the reasons raised by Mr Tracey that the outstanding issues are not directly discreet and cannot be divorced from many of the other responses.

25

HER HONOUR: Mr Whybrow, just based on what you have now and what you know now. Don't concentrate on the extra evidence. That extra evidence, as I understand it, will be short and in a short compass, and I'm not asking you to make any comment on any recommendations. And I appreciate that they will certainly affect you and your client, but just based on what you have. The submissions that you have before you now, how long will you need over and above 2 June to make your submissions, that you will require to make it on this?

30

35

MR WHYBROW: Well, I've heard what Mr Walker says, and ignoring all of those factors, I would seek at least a further 2 weeks, as he has done, given that he's - well, it would be at least another 2 weeks, irrespective of the further material that's still outstanding in my application, your Honour. Unless there's any other parts they're - - -

40

HER HONOUR: Do you have a comment on the publication, the non-publication?

45

MR WHYBROW: That's something to which I understand all the parties are *ad idem* on.

5 HER HONOUR: Well, that's certainly my view.

MR WHYBROW: Yes.

10 HER HONOUR: That any submissions not be for publication, and I'll make that order. If I need to hear from others who don't have that view - - -

MR WALKER: I should have announced my concurrence in that order as well, your Honour.

15 MR WHYBROW: Yes, your Honour.

20 HER HONOUR: Well, I'll do that formally. And I would just urge counsel perhaps to try to limit - I appreciate that you do have to distribute these submissions to some extent, naturally, but I would just appreciate some discretion as to how widely they were distributed because - well, we all know what happens if they're too widely distributed.

Yes, thank you, Mr Whybrow.

25 MR WHYBROW: Thank you, your Honour.

HER HONOUR: But could you just comment on your availability on 19 June for oral submissions?

30 MR WHYBROW: For oral submissions - - -

HER HONOUR: If that were the date, or some date if we, say did set aside 3 days - - -

35 MR WHYBROW: I'd agree that it would take 3 days, 19 June is perhaps the end of the line, dependent on how the other matters fall. I would see no difficulty in the oral submissions being within a week or 2 weeks of whenever the submissions are filed. So - - -

40 HER HONOUR: After counsel has had an opportunity to reply.

MR WHYBROW: Yes. Yes.

45 HER HONOUR: But you're available at that date?

MR WHYBROW: I'm unavailable on the 19th itself, but if it's a period of 3 days then I could, if that were the date, be available within that 3-day period.

5 HER HONOUR: Towards the end of June?

MR WHYBROW: Yes.

HER HONOUR: Yes, thank you. Mr Pike.

10

(Barrister is off microphone)

MR PIKE: Yes, thank you, your Honour. Your Honour, might I first say there are three particular issues which are now very problematic indeed, certainly from my point of view, and the comments I'm about to make I don't intend as criticisms but they're simply the creation of where we are currently and the sequence of those difficulties that have placed us in this position.

20 The first thing is I set aside, and I'm sure others did as well, most of March to prepare things in response for submissions. The timetable of course was stretched out and that time was unable to be utilised in that way. We've now received a document in the nature of 500 pages which I can inform the court I have had the opportunity of reading about 2% of. I've been interstate until Tuesday of this week and Wednesday, Thursday I've been completely flat chat. So I, as yet, don't even have a full grasp of what it is counsel assisting was trying to say in his document, but it is certainly a very large document.

30 My friend says it's factual narrative, and I understand from having done this to date that much of it is factual narrative. Obviously the difficulty that places particularly those like myself who are not with a team, but we're doing more ourselves, is that we have to go through those facts ourselves. We have to take instructions on them and we don't have the situation, as the ACT does and as counsel assisting do, of having a significant team behind them to do a lot of work, and that amount of work, I should say, was done by counsel assisting with their team in that 5-month period. So that's a significant problem that I've got.

40 Those are the preparatory things I wanted to tell your Honour about. Going to the first aspect of the proposed timetable, your Honour was asking about the week of 22 May. The week of 22 May and - - -

45 HER HONOUR: Well, first of all, 8 May, you're not available on the 8th?

MR PIKE: Not available on 8 May. The week of 22 May starts of with me being interstate, when I get back I go straight into a part-heard matter which is continuing the following week. So those 2 weeks starting 22 May I am simply unavailable then.

5

HER HONOUR: Do you appreciate the matter that is proposed to be the subject of further evidence?

MR PIKE: I do, your Honour, but can I say - and I think Mr Watts may say more about this on behalf of Mr Craddock - there does appear to be in addition to that proposal from counsel assisting at least some prospect, and I won't take it any further than this because at the moment it's just a prospect - of other evidence being called in addition to that at that time. I mention that, and I'm sure my friend, Mr Watts - - -

15

HER HONOUR: By whom?

MR PIKE: I'm sorry?

20

HER HONOUR: By whom?

MR PIKE: I'll leave that for Mr Watts to clarify - - -

25

HER HONOUR: All right.

MR PIKE: - - - because I understand there may be some prospect of an application being made, but Mr Watts will explain that in more detail. Sorry, to return to your Honour's question, yes, I do understand what my learned friend has said about that, but I was simply trying to indicate to your Honour what my availability in those dates that you had mentioned might be.

30

HER HONOUR: So you're not available on the 22nd and you're not available for 2 weeks. So you're not available from what, 22 May until - - -

35

MR PIKE: Until 6 June. From 22 May until the end of the week after that, and then the Monday following that, from my recollection, is 6 June. I may be wrong in that, I'll just check.

40

HER HONOUR: So the issue of submissions, what about - - -

MR PIKE: Well, the only difference - - -

45

HER HONOUR: It might be difficult for you to comment, given that you

haven't read the written submissions.

5 MR PIKE: Well, what I can say, your Honour, from what I have read and perhaps more importantly what I can say from just looking at my own diary is that it will need several weeks at least of dedicated time to this task. I won't have that time available until the end of June.

10 HER HONOUR: So you're saying to me that you can't even start thinking about what submissions you're like to be able to make on behalf of your client until the end of June?

MR PIKE: I'm sorry, your Honour, the end of May.

15 HER HONOUR: Of May.

MR PIKE: I won't be able to make any real start. I can look at it at home during the evenings when I get a chance, but I'm going to be in court, back at - - -

20 HER HONOUR: You're not alone in that, Mr Pike, in relation to all the people in this room.

MR PIKE: Certainly not, your Honour, but some of us - - -

25 HER HONOUR: So you're saying that you can't even turn your mind to these submissions of counsel assisting until the end of May.

30 MR PIKE: No, no, your Honour, I'm saying I can't make a real start on it because I have back-to-back commitments until that time. I certainly agree with your Honour in your Honour's observation that I'm not alone in that respect, but those of us who sit back at this table are alone in one respect, that we are alone; we don't have those teams to fall back on, and that is a very real difference, as my friends know I think too well in trying to take instructions and get on top of large documents, go back to the transcript and put in submissions which correct some of the statements
35 made in the submissions, at least to our perspective. Now, I simply cannot do it, I can't get a proper start on that until the end of May.

40 And can I say this. Just going back for a moment, if I could, to 6 June when we were discussing that other evidence, even for me to be available then would mean returning a brief for that entire week, which I'm happy to do, and even making submissions throughout the month of June, with a view to trying to have them by the end of June would require me to return another brief. So I mention these matters, your Honour, to indicate that
45 certainly I, for my part, am trying to be as flexible as I can, to the extent of

returning briefs, in circumstances which aren't caused in any way by what we have done in terms of the timetable.

5 I'm in that position, and I will bend my diary and return briefs so as to be able to comply with the timetable as best I can. But the situation I'm in, your Honour, is either I be frank with you and say when it is I can have submissions or I say "Well, I'll do the best I can", knowing that I'm simply not going to be able to do it in that time and the submissions are received late, and I'd far rather be frank than to place your Honour and myself in that position. Can I indicate to your Honour - - -

10
15 HER HONOUR: So what is the earliest that you can foresee putting in submissions and, as I say, it's perhaps - I must admit, Mr Pike, I am surprised that you haven't had the opportunity to read more than what you say of the submissions to date. So therefore I accept that - - -

MR PIKE: Your Honour, I have been extremely busy.

20 HER HONOUR: I accept that you're not really in a very, I suppose, informed position to know how much of this does directly affect your client and how much is - - -

MR PIKE: Yes.

25 HER HONOUR: - - - how much of this you your clients may or may not have issue.

30 MR PIKE: From what I've seen so far, your Honour, I will need to take a good deal of time to undertake the task of preparing submissions. Can I say, your Honour, that when I talked about flexibility before I have about 3 weeks free in my diary between now and 2 October, so I'm not talking about just suiting my own convenience. That is the situation I'm in, and I'm in that position because as sole practitioners we have to take on the work that is offered to us, with a view to the timetable that we were told about initially. I can't do anything about that, your Honour, and I'm trying to be as flexible as I can.

35
40 HER HONOUR: What is the earliest that you can see, given the state of your knowledge about the submissions and how much you will need to, I suppose - - -

MR PIKE: 30 June.

45 HIS HONOUR: What date?

5 MR PIKE: 30 June. Friday, 30 June. I indicated to my friend 21 July, and given what's fallen from your Honour and the other comments made, I made a decision that I can forego a matter at the end of June - I will forego a matter at the end of June to make that time available to have those submissions by 30 June but I cannot do anymore.

HER HONOUR: And what is your availability in relation to presenting oral argument after that date?

10 MR PIKE: It would depend on - - -

HER HONOUR: Or around that date?

15 MR PIKE: It would depend on when, your Honour. After that date I'll be part-heard in another matter for 2 weeks in the country. The week of 17 July I have another matter but I could forego that in order to be here.

20 HER HONOUR: Just tell me when you are available, not when you're not, I think, Mr Pike, might be faster. When are you available?

25 MR PIKE: Well, all I'm saying, your Honour, is if you wanted to do it as soon as possible after that then I could make myself available in that week of 17 July. But the reason I added that rider was so that your Honour understood that I'm trying to be as flexible as I can, with a view to returning work and being here to accept - - -

HER HONOUR: Well, we all have to make choices, Mr Pike.

30 MR PIKE: Well, I understand that - - -

HER HONOUR: What about 19 June, this original date of the oral submissions, are you available on 19 June?

35 MR PIKE: Your Honour, I can't have submissions in by then.

HER HONOUR: Well, I'm simply asking whether you're available on 19 June.

40 MR PIKE: On the day of the 19th I am, but not thereafter that week. Thank you.

HER HONOUR: Yes, thank you, Mr Pike.

45 Mr Watts, thank you.

5 MR WATTS: Thank you, your Honour. I need to make two sets of submissions on my own behalf and then on behalf of Mr Craddock who is at a hearing in Sydney today. So far as my own convenience is concerned, 8 May I've got a part-heard matter but it's not a matter that - this doesn't concern me. I would not intend to take any part in the calling of the further evidence, so that date can go ahead if it's - so be it, for my part.

10 The rest of the timetable from my own point of view I have no problem with except 19 June when I have a hearing on in Sydney on the Monday and Tuesday, then a hearing here for the rest of the week. The following week is okay for me, the week after is okay for me and the week after that is okay for me, subject to altering a few things, but nothing that can't be altered easily. I join in the submission that I would have thought that one day would be unrealistic, which your Honour seems to have indicated you would agree with.

15 For Mr Craddock's part, he would adopt, in broad terms, what Mr - - -

20 HER HONOUR: Just in relation to submissions, you'll be able to file submissions based on the information that you have - - -

MR WATTS: I could.

25 HER HONOUR: - - - now by the - I'm just looking at the proposed timetable - by 2 June?

MR WATTS: Yes, for my part.

30 HER HONOUR: Yes, and for - - -

MR WATTS: If there be any.

HER HONOUR: If there be any. And Mr Craddock?

35 MR WATTS: Mr Craddock is more complicated, and this is in the interests of Mr McCrae, of course, who is substantially affected, it seems, by the proposal to recall - or to call further witnesses.

40 HER HONOUR: Mr Craddock's indicated that that's what he proposing to do, to have further witnesses recalled?

MR WATTS: No, no, what I was saying was Mr McCrae would - - -

45 HER HONOUR: Would be affected by the - - -

MR WATTS: By the proposal to - - -

HER HONOUR: By that - I see.

5 MR WATTS: And he, like the rest of us, has only just received the
submissions on Monday and of course has not absorbed them in great
detail, but like Mr Tracey who wishes to reserve his position as to whether
he might wish to make an application that no further evidence be called of
10 the nature which is envisaged. Senior counsel assisting has told me this
morning outside the court the names of the people he proposes to call
which I can then pass on to Mr Craddock, but until then Mr Craddock had
no idea who they were and of course will need to look in some detail at
the nature of their evidence before he makes a decision as to whether there
should be an application that they not be called.

15 The calling of them may of course raise a further complication, in that,
Mr Craddock may then wish to call further evidence or even to arrange for
people who have already given evidence to be recalled. That of course is
not a decision he can comment on at the moment, but he will need to
20 reserve his position on that.

I would have thought that if there is to be an argument about whether
these witnesses should be called it might be difficult to deal with that in
one day, because the argument may take some time, I would have thought
25 if the argument runs, about whether they should be called, and then to fit
the - I gather there might be about five witnesses into one day - but I
suppose we'll have to see what happens. Mr Craddock is available on
8 May, he's available on 22 May for that purpose.

30 So far as the date for him putting in his submissions is concerned, his
discussions with me would indicate that I think he would find that 2 June
rather tight and, without him telling me so, but I would have thought he
would wish to adopt the suggestion - I think it was Mr Whybrow - that
perhaps 30 June - or Mr Pike's suggestion - 30 June might be a better time
35 to get it done properly and to deal with what has been put, in terms of
further evidence, in one go.

He and I would both join in the application that the submissions not be
published. So far as 19 June is concerned, that again like myself does not
40 suit Mr Craddock. Can I give you the dates he's available; 13 to 15 June,
the week of 26 June, the week of 3 July, the week of 10 July, all of those
dates, and 31 July which was the date proposed in the amended timetable,
I think, would also suit Mr Craddock. Certainly, I think that covers all of
the - - -

45

HER HONOUR: I think that does.

MR WATTS: Yes, thank you, your Honour.

5 HER HONOUR: Thank you, Mr Watts. Thank you.

Mr Erskine, thank you.

10 MR ERSKINE: Your Honour, subject to two caveats, we might be somewhat easier to deal with. The two caveats are these, the first is that in relation to your recommendation to have a discussion of my learned friend, counsel assisting, this morning and he indicated what we had understood, which is that the question of further recommendations applies only to ACT agencies and the like, and it would not therefore affect us.
15 So on that assumption, we aren't affected by the delay in providing the submissions about that, other than that there might be recommendations for further liaison with New South Wales which obviously is not something that one would normally have a difficulty with supporting, if that's required, something of that kind. In other words, any
20 recommendation that affects New South Wales would do so reasonably innocuously.

25 The second caveat, your Honour, is in relation to the further evidence, counsel assisting in their submissions make it quite clear that they regard the issue of warning, to which this goes, as being an issue of the ACT and we would assume that that continues to be the case. And if that's the case then that further evidence issue doesn't affect New South Wales' interests at all.

30 The only qualification I put on that is that there have been occasions, both in the evidence and in the cross-examination, when it has been rather flamboyantly suggested that in some vague unspecified way New South Wales had some obligation to warn the citizens of the ACT. Now, while we accept that counsel assisting won't be raising any of that sort of issue
35 in this further evidence, if any other party proposes to go down that path then our interests may be affected. But that's why I say I've got the two caveats on, your Honour.

40 With those two caveats on, and assuming therefore that neither of the recommendations on the further evidence affects New South Wales' interests, I can indicate that the further evidence date is irrelevant to us. I can give your Honour dates if your Honour needs them, but on the assumption that it's irrelevant to us I won't trouble you with that.

45 HER HONOUR: Thank you.

MR ERSKINE: In relation to submissions, 2 June we can meet with ease because we won't have all the complications that everybody else has about the additional material. May I say in relation to the written submissions that when your Honour comes in due course to fix a timetable, could we respectfully suggest two things be added to it. First of all, that a week or so after the date on which all parties have to file submissions they should have an opportunity to file a written submission, if required, in response to something that one of the other parties may have said. And secondly, that a week or so after that counsel assisting my want the same opportunity.

Now, the reason that we say that, your Honour, is true it is that we could address such matters on the day of the oral hearings in relation to the submissions, but one suspects that the oral submissions are really going to be directed to the key things, and some of the matters that one might want to respond to in other submissions might be relatively minor and don't deserve having time taken in the oral submission days to deal with them.

So that it may be more efficient for that opportunity to be given to the other parties, just to be able to put in a brief written reply to any other submission that they see, and that some opportunity be given to counsel assisting as well. So that the oral submissions days can then be focused, as with respect they should be, on the major things and the major issues that come out of the evidence that's been before your Honour, rather than being bogged down in relatively minor matters where the oral submissions will be the only opportunity to respond.

Having said that, the proposal for 19 June does not suit either my senior counsel or me, for quite different reasons. Senior counsel is not available, that's Mr Walker senior counsel, is not available in June after the 7th and I'm in much the same position as my friend, Mr Watts, that in that week of 19 June, particularly starting on the Wednesday, there is ironically a 3-day hearing scheduled in the Supreme Court to deal with a civil litigation that's begun arising out of the bushfires, and there's a preliminary matter that's been listed in the Supreme Court to take 3 days that week. So that - - -

HER HONOUR: Starting 19 June?

MR ERSKINE: No, it doesn't start on the 19th, it starts I think the day after or the day after that. It's a problematic week, your Honour, for me. In relation to the other days that have been proposed, Mr Walker is - that's my Mr Walker not Mr Walker down the other end of the Bar table - in July is available on the week 21, 25, 27 and 28 July, and that's the first - - -

HER HONOUR: 21 - - -

5 MR ERSKINE: 21, 25, 27 and 28 July, those are the first that dates he's available. And in terms of my own availability, your Honour, I am out of the country, I'm back on 20 July. I then resume an Inquest for a week on the 24th. So that the dates that have been suggested, 31 July doesn't suit Mr Walker though it does suit me and 1 August does. But the suggestion that has been put which may have, with respect, some merit is that if your Honour was minded to take dates in that period the New South Wales submissions are relatively discreet, in the sense that there is a discreet parcel of evidence that your Honour has which relates to New South Wales issues and it would be quite logical if it had to be, to be dealt with discreetly.

10
15 So the suggestion might be that we deal with the New South Wales submission on 28 July when Mr Walker is free and I can be present on the other two days, the 31st and the 1st when Mr Walker is not free, just in case there's any issue that involves us arising - - -

20 HER HONOUR: 31 July?

MR ERSKINE: And 1 August I'm also available. So that if your Honour were minded to do it this way, we would be suggesting 28 July be the start of the oral submissions and that be explicitly for New South Wales and whatever else could be dealt with on that day, and then to continue on the 31st and the 1st.

25
30 HER HONOUR: And Mr Walker is not available early in July, apart from - he's not available up until the 21st?

MR ERSKINE: He's not available, your Honour, between 7 June and 21 July. So that he could do 7 June and he could do 21 July and not between. And while I'm on my - - -

35 HER HONOUR: The dates that you're both available is 28 July, is that - - -

40 MR ERSKINE: 28 July we can both do, 31st and the 1st I can do as well, in the sense that I would have to be here for the other submissions just in case there's something said affecting New South Wales. But in terms of the substantial presentation to your Honour, Mr Walker would be able to do them on the 28th.

45 May I, while I'm on my feet, your Honour, just ask one logistical question? When we in due course do come to do the oral submissions, is

it intended that all of the paraphernalia will return, so that for example we can do the visual exhibits, for example Mr Chaney's power point presentation, that kind of - is any of that material going to be available - - -

5 HER HONOUR: No.

MR ERSKINE: To have access to? We just need to know, that's all, in terms of - - -

10 HER HONOUR: No, it won't. It won't be available.

MR ERSKINE: So it will be - - -

HER HONOUR: It's not intended to bring that equipment back.

15

MR ERSKINE: No. That's all right, we just needed to know, that so - - -

20

HER HONOUR: It had to be disposed of because there was money being paid for the rental of it and in the interim I wasn't prepared to incur further costs for the ACT Government by having that equipment lying not being used. So no, I don't envisage that that equipment be available.

MR ERSKINE: Your Honour, we're simply asking because it just affects how we may or may not be referring to documents.

25

HER HONOUR: Yes, but - - -

MR ERSKINE: So it will be - - -

30

HER HONOUR: But I'm sure that we can have a fairly large screen television and that I suppose the tape can be played on the television.

MR ERSKINE: If it has to be, yes.

35

HER HONOUR: If you let us know, let my associate or myself or counsel assisting know what you will need then I'm sure we can make some arrangement to produce some visual aid.

40

MR ERSKINE: No, your Honour, we were just simply asking. It may or may not affect how we do the presentation, it may be entirely irrelevant. Just so we know that it will be done in the more traditional sense - - -

HER HONOUR: Yes.

45

MR ERSKINE: - - - with people actually talking and using documents

rather than the audio/visual aids.

HER HONOUR: I suspect that's the way that it will proceed, Mr Erskine.

5 MR ERSKINE: Your Honour, in terms of the non-publication order, we support it and we would assume, with respect, that it would apply also to anybody else's submissions.

HER HONOUR: Yes.

10

MR ERSKINE: And would assume that your Honour would then be minded to publish them on the first day of the oral submissions. We assume that's what your Honour would have in mind, in terms of a publication of those because obviously we assumed your Honour was not
15 intending to suppress them forever.

HER HONOUR: No. No.

20

MR ERSKINE: But if your Honour was minded to make the non-publication order extended to all written submissions until the first day on which the oral submissions are to be presented.

HER HONOUR: Yes.

25

MR STITT: Could I just say something in response to what my learned friend has just said.

HER HONOUR: Yes.

30

MR STITT: We would oppose any suggestion that there be a right of reply in these written submissions. That was the course adopted in the Thredbo Inquiry and it had the effect of extending it by months because we had rebutters and surrebutters and replies and cross-joinders, and I would oppose that. People should simply put their submissions and that's
35 it, and then they address in oral.

HER HONOUR: Thank you, that's in relation to that extra week that Mr Erskine suggested that people have to put in further submissions. Thank you.

40

All right, well - - -

45 MR ERSKINE: Your Honour, may I just say in relation to that, I accept entirely what my learned friend has just said in terms of it being quite undesirable to have vast timetable, but I suspect, with respect, that what

5 we're heading towards is going to have some gap between the date on
which written submissions are filed and ultimately the date for the oral
submissions, so it may be entirely reasonable that that further opportunity
be given, particularly if your Honour is minded to keep the oral
submissions under some restraint, so that they don't have to descend into
fine detail, and it was purely for that reason.

10 We don't envisage a timetable spanning a month, we simply would have
an extra week which wouldn't apply to the timetable at all, but it would
enable people to put a lot of the things in writing, if they needed to, that
don't then have to occupy your Honour's time orally than the oral
submissions. That's the only reason for suggesting it.

15 HER HONOUR: What I might do, I might take the morning adjournment
and just consider it before I ask you to reply.

Do you wish to reply now?

20 MR LASRY: There may be some things that I can deal with and then
your Honour can perhaps give some consideration as to the timetable. As
I indicated during the course, your Honour, of Mr Tracey's submissions,
we would anticipate there being no difficulty in providing such further
submissions in relation to the additional evidence that are necessary,
25 which may indeed only be a page or two, within 7 days of that evidence
being completed, possibly even less than that, depending on the way the
evidence falls. Your Honour, to the extent that Mr Stitt has enquired as to
whether his client comes within the words "agency service response" his
client does not come within that phrase and therefore will not be the
subject of further submissions.

30 I should just say, your Honour, in relation to the preparation of our
submissions, since Mr Pike insisted on referring to it as a team, the
submissions are the product of the work of Woodward and myself. And
for the purpose of responding to the suggestion of some inequality in
35 arms, the vast bulk of the work was done by Mr Woodward on his own.
No one else was involved and was an avis probo for the purpose of
preparing those submissions.

40 Your Honour, in relation to Mr Erskine's submissions, he is correct that
any recommendations made will not affect New South Wales. He is
likewise correct that the issue of warnings, certainly from our point of
view, is not an issue that involves an assertion that there was an obligation
to warn on New South Wales agencies.

45 The only other thing that I wanted to ask your Honour to factor in is that

obviously in whatever form the final submissions are made, we obviously should to first. Now, it may be that in view of the debate that's occurred over the last hour or so that your Honour is tempted, for example, to fragment the hearing to the extent, for example, of whatever other parties are available to take, for example, 27 July, assuming that were a period during which your Honour was considering hearing the submissions.

We could make our submissions on that date, even if other parties weren't able to be present, on the basis that obviously our submissions would be transcribed, they'd be available to the other parties and then, to the extent that your Honour was inclined to do it, the convenience of the other parties could be accommodated. So that, for example, we could make our submissions on, say 27 July. If in dealing with the New South Wales situation Mr Walker, if he were available on the 28th, could attend and make his submission by way of both submission and response to our submissions the following day, and other parties may attend on days other than that. It's not absolutely essential, I suspect, that everybody be together at the same time.

HER HONOUR: I think that's sounding to be quite impossible really.

MR LASRY: Yes. And so long as the represented parties had heard or read on the transcript our arguments speaking to our written submissions, then other days might be located within a convenient timetable to enable them to attend.

Yes, and the final thing that we would ask for, your Honour, is if the first step in this process is passing on to the other represented parties the same information that I gave to Mr Watts before court, as to the identity of the additional witnesses, that upon the represented parties knowing who the witnesses are, reading the statements in the context of the submissions that we've made and understanding the basis on which we seek to call the further evidence, if in fact there are to be objections to that course being taken, that at a date to be nominated by your Honour, but perhaps at least 7 days prior to the date on which that debate is to occur that we be given some written notice of the basis of the objection. So that by the time your Honour comes to hear the argument we will all understand what the events of the day actually are and what the basis of the objection is. I'm sure that will assist the efficiency of that discussion.

Your Honour, as to dates, I'm content to wait until after the morning adjournment. I think really all I should say about it, your Honour, is that we will accommodate, we will fit in with whatever timetable your Honour ultimately decides is reasonable.

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HER HONOUR: All right, I'll give some thought to the comments has been made today by counsel and I'll just take a short adjournment. So not before 12 o'clock.

5

ADJOURNED

[11.41 am]

RESUMED

[12.24 pm]

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HER HONOUR: It's a bit trite for me to say this, but I'm sure you'll all appreciate that there is a rather compelling need for the Inquiry to be brought to finality. I mean, the community has a right to expect this, that it be brought to finality, and this Inquiry has already been subject to several delays and therefore it must be concluded.

15

When we adjourned in October I did indicate to all counsel that the time in between October and when we resumed the directions hearing, that they should have been busying themselves with familiarising themselves, or re-familiarising themselves with the brief and, indeed, working on submissions that they wished to make and other points that they wished to bring to my attention. And I would have expected and, indeed, I do expect that all counsel have turned their minds to the submissions from the evidence and to issues that they'd like me to consider.

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Now, I do accept that all counsel have other work commitments and have throughout the course of the whole Inquiry I have endeavoured to accommodate counsels' other commitments, as much as has been possible. However, that has been almost impossible and, indeed, now we come to a stage where it will be almost impossible to accommodate all counsels' wishes and all counsels' commitments. And I say that I cannot be governed by the competing interests and priorities of 10 or 12 or more individual counsel and their various commitments, even though I do, as I say, accept that they do have other commitments.

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I repeat that I have a responsibility to finish this Inquiry as soon as possible. And as I have said before, there is a very compelling need for me to finish this and to report, and I owe this to the community, and I know this, and this does have to be one of my priorities.

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Now, it has taken me some time and I have considered counsels' comments and I propose to make the following timetable which I trust does attempt - and I do say this in all honesty, I have tried to take into account and I have attempted to meet the comments and the complaints,

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and the concerns rather, that counsel has expressed about their availability and their workloads and the demands of their workloads. So I have endeavoured to do the best that I can, in the light of all of those competing commitments and priorities, but it will require compromise, perhaps on everybody's part to some degree.

So what I propose is the following. And if I have left anything out I would very much appreciate it if all counsel could bring that to my attention. What I propose to do is I propose to make the following directions, that counsel assisting is to prove counsel for all interested parties with information on the witnesses, or the names of the witnesses that they propose to call - this is the additional witnesses that are proposed to be called - and as far as possible, the nature of the evidence that is expected to be called, and that that information is to be provided on or before Friday, 21 April.

Counsel for interested persons is to respond by Friday, 5 May if they wish to raise any objection to the evidence or to the witnesses being called, and advise counsel assisting of the nature of those objections. Now, further evidence, if it is to be called will be taken on Friday, 19 May or Monday, 22 May, and I say either Friday or Monday because I recall that some counsel I think were available - I think Mr Tracey, for example, was available on the 22nd but maybe not on the 19th, and Mr Walker likewise perhaps I think was available on the 19th and not on the 22nd, but I do not have a clear recollection of which counsel was available on which dates.

So I will leave it as Friday the 19th or Monday, 22 May, and counsel who are concerned with the issue, this additional evidence, with that issue are to advise counsel assisting which date is more suitable to them, and then again an attempt will be made to try to accommodate. I would anticipate that not all counsel may wish to be present at that hearing, but those counsel who are interested and, indeed, wish to participate in that are to advise counsel assisting as soon as possible of the date, be it Friday or Monday, 19 or 22 May.

Now, further submissions are to be filed and served by counsel assisting, and this is on the evidence that is to be taken on 19 or 22 May, within 7 days of that evidence being taken. Counsel assisting is to file and serve further submissions on the section referred to currently I think as recommendations on or before Friday, 5 May 2006. Counsel representing interested person are to file and serve submissions on or before Friday, 16 June 2006 and supplementary submissions, if any, regarding the submissions filed and served by counsel assisting on 5 May, being that section called recommendations and on any evidence, if it is called, in May. Those further submissions are to be filed and served by counsel by

23 June, which is a Friday.

5 Now, replies to be filed and served by counsel assisting on or before 30 June. This was not discussed, Mr Lasry, I don't know whether that - that gives you a week, I think, from the last submissions being filed. If other counsel do file submissions on 23 June that gives you one week only in which to consider replies, but you will have had from 16 June in relation to the bulk of the submissions.

10 MR LASRY: Yes. Yes, indeed. My learned friend Mr Stitt opposed the issues of replies, but if replies to be made then yes, we will have had 2 weeks to prepare those, so that won't be a difficulty.

15 HER HONOUR: That's by you. That's by counsel assisting.

MR LASRY: Yes, your Honour. Yes.

20 HER HONOUR: Oral submissions are to commence - and this is perhaps the most difficult part - oral submissions are to commence in the week commencing 10 July and all counsel are to inform counsel assisting of their availability in that week of 10 July, and it may be, as Mr Erskine has foreshadowed, that his availability and Mr Walker's availability is such that their submissions - and I do accept that the New South Wales submissions are perhaps discreet submissions - that they can be made at a later date.

25 And it may well be that I think you indicated, Mr Watts, that Mr Craddock was available in that week. You yourself are available that week.

30 MR WATTS: Yes, that's so, your Honour.

HER HONOUR: Mr Tracey, I didn't take you down as far as July but I would hope that at some stage in the - - -

35 MR TRACEY: I'll have to make enquiries, your Honour, but we'll certainly endeavour to work around it.

HER HONOUR: At some stage in that week of 10 July.

40 Mr Pike, likewise. As I say, it's very difficult to try to accommodate everybody. If you're not available then we might have to make some other arrangement, but I would trust that you would try and endeavour to be available in that week of 10 July.

45 MR PIKE: Your Honour.

5 HER HONOUR: And perhaps the sooner that counsel, once they consult their diaries, the sooner you indicate to counsel assisting your availability then perhaps some order can be determined as to - counsel assisting has indicated an intention to go first in the submissions and then if we can determine an order, dependent on availability of other counsel after that time.

10 And I also make an order that submissions of all counsel, counsel assisting, dated and filed 2 April and, indeed, all submissions that are to be presented by counsel for interested persons that those submissions are not to be published and they are not for publication until a further order is made by this court.

15 MR ERSKINE: Your Honour - - -

HER HONOUR: Mr Erskine.

20 MR ERSKINE: You did specifically advert to the fact that neither Mr Walker nor I will be in the country on 10 July. Would your Honour be minded to make a date now?

HER HONOUR: For your submissions?

25 MR ERSKINE: For the New South Wales' submissions, because 28 July is certainly available.

HER HONOUR: 28 July?

30 MR ERSKINE: Yes, and given that if your Honour was minded to allow us the indulgence of having our own special day - - -

HER HONOUR: For those who are interested in - - -

35 MR ERSKINE: - - - we can fix that quite easily.

HIS HONOUR: And those who are interested in attending can perhaps also note that into their diaries and attend if they wish. Is that a suitable date, Mr Lasry?

40 MR LASRY: Yes, I thought Mr Erskine had said that Mr Walker available on the 21st and 25th.

MR ERSKINE: On the 21st.

45 MR LASRY: On the 21st, and 25th - - -

MR ERSKINE: I'm not actually available myself, so that the 28th would actually be the best to all of us. If your Honour is minded to make that date now, we can then make sure that the court's diary is blocked out for that day and we can - - -

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HER HONOUR: 28 July?

MR ERSKINE: 28 July, and we can then have that fixed.

10 HER HONOUR: That's oral submissions by counsel representing New South Wales' interest to be made on 28 July 2006.

MR ERSKINE: Thank you, your Honour.

15 MR PIKE: Your Honour, while we're discussing that, I have consulted my diary. I'm part-heard in the week of 10 July, in a matter which is destined to take that entire week. It's a matter which commenced last October. As I say, I'm part-heard, that's why I'll have to be there. Will your Honour consider - and at this stage it's difficult to say, but I
20 anticipate - - -

HIS HONOUR: What about the week before then? Because I'm not minded to let the timetable slip.

25 MR PIKE: Well, as I say, your Honour, I don't anticipate that my oral submissions would be lengthy and I was going to ask whether or not your Honour would consider making it my submissions be on the same day as my learned friends.

30 HER HONOUR: No, Mr Pike, I'd certainly hear - - -

MR PIKE: I can't the week before either, your Honour, it's the same matter, a 2-week part-heard.

35 HER HONOUR: No, I'm not going to allow it to slip to that extent, Mr Pike, but certainly if you're available the week before - - -

MR PIKE: Your Honour, I'm part-heard in the same matter.

40 HER HONOUR: - - - for obvious reasons for why. No, not the 28th.

MR PIKE: Your Honour, can I say this without any disrespect, I'm part-heard in the matter. It's not as if it's a fresh matter, and it's starting the week before the 10th, I really can't do anything - - -

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HER HONOUR: I'm sure everyone at this table can say that, Mr Pike.

5 MR PIKE: Well, I don't know if they can, your Honour, but I certainly can and I can't do anything about that. Part-heard matters are different to matters which are not part-heard and I've certainly indicated to your Honour - - -

10 HER HONOUR: You've indicated that you're available for oral submissions on 17 July, that week.

MR PIKE: Pardon me, I'll sitting down, your Honour, to look at my diary.

15 HER HONOUR: Which is the - - -

MR PIKE: 17 July, your Honour, I did say that. That's correct. I do have another matter then and that I can pass to somebody else.

20 HER HONOUR: Mr Pike, it's a long time between now and July, something might happen to your matter. At this stage I'm not going to make any other arrangement, Mr Pike. If you really can't make it on that date well then it may be that you might have to - that means what you're saying then is you're not going to be available to hear the oral submissions made by other parties. This is what's - - -

25 MR PIKE: Your Honour, I can't - if I can just - - -

HER HONOUR: - - - going to happen in relation to your client?

30 MR PIKE: Your Honour, if I could just indicate to you, my part-heard matter recommences in Griffith on 3 July and will continue until 14 July. It's already had 2 weeks and there's no prospect of it finishing in anything less than 2 weeks when it resumes in July. In that particular matter the likelihood is my client will be referred to a prosecution, so it's not a
35 matter that is a light matter or a matter which I'm in a position to pass.

HER HONOUR: Well, at this stage, Mr Pike, all I can say is that you have to do your best endeavours to try to accommodate that timetable, and if closer to the - I mean, things might change, Mr Pike, so - - -

40 MR PIKE: Certainly, your Honour, and if of course - - -

HER HONOUR: We all know that. We all know that. We all know that 2-week matters usually end up settling or - - -

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MR PIKE: Well, this is a - - -

HER HONOUR: - - - finishing a lot earlier, but I'm not going to make an order at this stage or a direction that - - -

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MR PIKE: I understand that, your Honour - - -

HER HONOUR: - - - your submissions wait until the 28th.

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MR PIKE: Your Honour, the part-heard matter is an Inquest, it is not capable of settling.

HER HONOUR: I understand.

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MR PIKE: And it will definitely be on those days, but I'll certainly be in touch with those assisting you, your Honour - - -

HER HONOUR: Please do.

20

MR PIKE: - - - and my expectation, however, is that I will not be available in those two weeks.

HER HONOUR: Thank you. Yes, are there any other issues at this stage? We'll adjourn.

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ADJOURNED

[12.39 pm]