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Level 7, 197 London Circuit, CANBERRA ACT 2600
Telephone: (02) 6230 4110

ABN 96 004 349 491
Fax: (02) 6230 4114

TRANSCRIPT OF PROCEEDINGS

CORONER'S 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

10.04 AM, MONDAY, 16 JUNE 2003

THE CORONER: Yes, good morning. Please be seated. Yes, the Inquest into the deaths of Dorothy McGrath, Alison Mary Tenant, Peter Brabason-Brook, and Douglas John Fraser, and the Inquiry into the fires of January 2003 in the Australian Capital Territory is open.

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Now, before I call for appearances, I wish to make some brief opening comments, and I should indicate that these comments will be available for distribution. This directions hearing represents the opening of the Coronial Inquest and Inquiry concerning the tragic fires which ravaged Canberra in January of this year. It is already a matter of public record that four people died in those fires. Many people were injured, some 500 homes were destroyed, and substantial other damage was done to forests and public infrastructure.

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The situation reached such a serious level, that on 18 January 2003, the state of emergency was declared by the Chief Minister of the Australian Capital Territory. The Inquest and Inquiry which I will conduct, and it will follow later in the year, will be a detailed public and independent examination of those fires and their consequences. I'm conscious of the need for these hearings to provide not only a detailed understanding of what occurred, but also recommendations which might help to avoid such an event in the future.

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The Inquest involves an inquiry into the manner and cause of the deaths of the four persons who died during those fires, apparently as a result of them. In this Inquest I will, under Section 13 of the Coroners Act, enquire into the manner and cause of death of those four persons. This hearing will also be an inquiry into the cause and origin of the fires which damaged and destroyed much property during the Canberra firestorm.

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Such an Inquiry is occurring under the provisions of Section 18(1)(b) of the Coroners Act, because I have formed the view that it is very much in the public interest that such an Inquiry should be held. Under Section 52 of the Coroners Act, my findings will deal with the manner and cause of the death of the four persons concerned, and the cause and origin of the fire.

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Under Section 52(2)(b), I will also make finding about the circumstances in which the fire occurred. Section 52(4) of the Act also permits me to comment on any matter connected with the deaths and/or fires that I inquire into concerning public health or safety, or the administration of justice. Within reason, I will make such comments.

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Finally, pursuant to Section 57, I will report to the Attorney-General of the Australian Capital Territory, on both the deaths and the fire, and I

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intend to make appropriate recommendations to the Attorney-General on relevant matters connected with those events, which possibly will include matters relating to public health and safety.

5 It is important that this Inquest and Inquiry be completed within a reasonable time, however there is a significant volume of information already available to the court, which must be processed, incorporated into the brief, where it is relevant, and distributed to parties. That process is continuing.

10 I should also make it clear that the decision about which witnesses will be called during these hearings will be made by me, in consultation with counsel assisting me. Counsel assisting will call all the witnesses. I will not permit other parties to call witnesses. If a party wishes to have a witness called, they should liase with counsel assisting.

15 I anticipate that the hearing of evidence will commence on 1 September, and I also anticipate that because of the need to examine the substantial volume of material, the taking of evidence will extend beyond the middle of next year.

20 Yes, Mr Lasry?

25 MR LASRY: Yes, if your Worship pleases, with my learned friends Mr Woodward and Ms Cronin, I seek leave to appear to assist you.

30 THE CORONER: Thank you, Mr Lasry. Leave to appear to you, Mr Lasry, and to the members of your team is granted. All right, we'll just adjourn briefly, and then we'll reconvene the court.

ADJOURNED [10.08 am]

35 **RESUMED** [10.13 am]

40 THE CORONER: Yes, please be seated. Are there any members of the family of the people who died in the fires? Any of the family of those persons present? Yes, thank you. Call for appearances from other persons who wish to seek leave to appear. Perhaps ACT Government Solicitor. Mr Bayliss?

45 MR BAYLISS: May it please the court, my name is Bayliss. I'd seek leave to appear on behalf of the Australian Capital Territory and I

foreshadow that in relation to those employees of the territory who are called as witnesses, that leave to appear on their behalf would also be sought. Until I see a witness list and we know which individuals may or may not be called, I can't put it any higher than that, but as employees of the territory, we would act for them in the usual course and as individuals are called decisions can be made about the need for representation and I've had discussions with counsel assisting in that regard and I have had some discussions already with counsel assisting. But beyond, at this stage, seeking leave to appear on behalf of the territory, that's as far as we go at this stage.

THE CORONER: Thank you. So you're not really in a position to indicate individuals at this stage, but I note from the comments that you provided, Mr Bayliss on 11 June in your submission, that you do nominate certain some authorities and bodies such as - - -

MR BAYLISS: Yes, certain agencies which are administrative sub-units with the territory. They are not - they don't have any legal persona, and therefore would not have a right to be represented before you - before this court. It's only a person, and the person who governs those agencies, under whose umbrella those agencies come is the territory.

THE CORONER: All right, thank you. Yes, Mr Lasry, do you wish to make any comment?

MR LASRY: Your Worship, our position, as I think my learned friend knows, is that we don't object to the grant of leave to the entity of the Australian Capital Territory at this stage. Our concern and it's been expressed to my learned friend, and no doubt will be again, is that as the hearing develops, there's a significant prospect that individuals and groups within that broad entity will have different interests and I think that's clear from the issues which have been raised on the public record about these fires. But I agree, with respect, that at this stage, they may not be clear.

As I've said to my learned friend, your Worship, our concern is that in the event of an individual or some other entity requiring representation, separate from our learned friend, that that not result in a loss of time. It can often happen where someone needs to be separately represented, where the whole hearing needs to be stopped while a fresh lawyer or a new lawyer to the case is required to become familiar with it, and we'd be anxious to avoid that happening. This is going to be a time consuming exercise as it is, and we'd be anxious to expedite it. But at this early stage, and with those caveats, we don't object, if your Worship pleases.

THE CORONER: Yes, thank you, Mr Lasry. Yes, do you wish to say anything in reply to that, Mr Bayliss?

5 MR BAYLISS: No, I agree with what my friend's had to say, that I think once a witness list is made available to the parties, then decisions can be made at that stage, which I presume would be well before the - those persons had to go forward to the witness box and discussions can be held at that stage whether there's potential for conflicts or a variance of interest.

10 THE CORONER: I'm sure that you had turned your mind to the prospect of conflict and it certainly would be very undesirable for the hearing to be adjourned for any length of time to enable counsel to be briefed. It would also be - it would be a very costly exercise, it would be an exercise that would cause some delay in the proceedings, and particularly where there is some issue of conflict. The sooner that that issue is resolved, the better, and I leave it to you, Mr Bayliss, to inform counsel assisting and certainly to inform me, if you do perceive, during the course of the proceedings, that there is a potential conflict. And I suppose the more timely fashion you can do that, the better for the progress of the Inquiry. But on that basis, leave is granted to the ACT Government Solicitor to appear in these proceedings.

25 Yes, Mr Bartlett, you've also made a submission?

MR BARTLETT: I have, your Worship. I'd be seeking leave to appear under section 42 - I'd be seeking leave to appear on behalf of the members of the United Fire Fighters Union of Australia, ACT Branch, who may be called. I understand no summons has been issued yet, so I don't know which members will be called.

30 The other legal entity that I seek leave to appear on behalf of is the United Fire Fighters Union of Australia, ACT Branch, which is a registered union under the Workplace Relations Act, it has a legal persona because of that registration and I'm instructed to seek leave to appear on behalf of them. Do you wish to hear my reasons?

THE CORONER: I do, particularly in relation to the union.

40 MR BARTLETT: Yes, your Worship.

THE CORONER: And just if you could, Mr Bartlett, please, I would indicate that I have received your letter dated 17 May, which also attached statements and submissions from various firefighters. Do you seek to represent those firefighters listed and where submissions have been

received or are there other firefighters as well who have put in submissions? I think there is in 17.

5 MR BARTLETT: The firefighters listed, your Worship, have given statements which have been forwarded.

THE CORONER: Yes.

10 MR BARTLETT: I don't know if those people are going to be called, if they're called I would seek to represent them. There may be other firefighters who are called who haven't given statements. I will inform the court, all members of the ACT Fire Brigades, bar Commissioner Bennett, are members of the union.

15 My appointment was on the basis of a meeting of members and it was a unanimous appointment. It was a unanimous decision to appoint a solicitor to represent the interests of the members at this Coronial Inquest. So my instructions are quite clear. Any member who is called who has to give evidence, the union certainly want their interests protected. It will
20 depend on the individual person, but at this stage, that's the basis of my application.

The union itself is also seeking leave to appear, as I've indicated, it is a legal entity because it's registered as a union. Now the reasons for that
25 are this. The section I'd rely on to seek leave for the union would be 42B, "The Coroner may grant leave to a person who in the opinion of the Coroner has sufficient interest in the subject matter of the Inquest or Inquiry". Now it would be my submission the union does have a significant interest in the subject matter of this Inquiry. And the reasons
30 are these.

As I've indicated, all members of the brigade are union members. Union members provided the main professional response to the fires of January 18, once they entered the urban areas of Canberra. Well over 100
35 union members were involved in fighting the fires, many in communication section, and in management and support roles.

Now the union - the ACT Fire Brigade, under the Fire Brigade Act, is legally under the control of the Fire Commissioner. My instructions are that one of the main concerns of the union is that in the ACT in effect, the
40 ACT Fire Brigade is currently no longer actually under the control of the commissioner, it is under the control of bureaucrats employed by the Emergency Services Bureau, and my instructions are that that was the case on January 18, and it was the case for a long period of time leading up to
45 the fires.

5 Now the union considers that that effective control had an impact on the way the brigade was able to respond to the fires and fight the fires and it had an impact - it may well have had an impact on the extent of the fire once it got into the city.

10 My instructions are that on the day, on January 18, rather than the brigade being under the control of the commissioner, what occurred was; there was a meeting held on that day in the office of the Chief Executive Officer of the Emergency Services Bureau, those present included senior executives of the bureau, Mr Castle, the Chief Fire Control Officer, Mr Lucas-Smith, the Chief Police Officer, Mr Murray, and there were others present, the Fire Commissioner, Mr Bennett, was present and the Chief Minister, Mr Stanhope was present.

15 Now decisions were made, appointments were made, and I believe a state of emergency was declared in that office. My instructions are that the union would seek that if those persons give evidence, the union would seek representation so that they could be questioned about what happened in that office, what decisions were made and why they were made. My instructions are that the members of the brigade, the members of the union fighting the fire received no instructions from that meeting. There was a complete breakdown in leadership and certainly the union is of the view that if the union itself is not represented, the union does not know, cannot know, whether those persons, if they give evidence, would be questioned by any other party.

20 The union considers that the sort of evidence that could come out of this incident, if it comes before the Inquiry, could well affect the findings of the Inquiry, it could well affect the recommendations that you can make under section 52(4). Now those recommendations could affect the union membership as a whole. It could affect how the brigade is managed, and certainly, I'm instructed to seek leave on behalf of the union and the legal entity to ensure that those sort of issues can be answered by the union, can be addressed by the union through their legal representative.

25 That's the basis of my seeking leave on behalf of the union itself your Worship.

30 THE CORONER: Well thank you, Mr Bartlett. Yes, Mr Lasry, do you wish to make some comments?

35 MR LASRY: Your Worship, if I can deal with the union. First I should say, formally that we have filed an outline of submissions in relation generally to the attitude that we would urge you to take in relation to this,

and in the last - - -

THE CORONER: You've seen those Mr Bartlett?

5 MR BARTLETT: Yes, your Worship. If I could - your Worship, I do
have a - I did wish to comment on those submission. Do you wish to hear
that now?

10 THE CORONER: I'll just wait to see what Mr Lasry has to say first, and
then I'll ask you to reply, if you wish.

15 MR LASRY: I was going to take your Worship to the last paragraph,
which is an odd place to start, I suppose, but it's perhaps most pertinent to
the points being made in relation to the representation of the union. A
party, if we are a party before this Inquest, that would be most interested
in the matters that my learned friend has just raised would of course be
counsel assisting you.

20 Our function is to explore issues such as the one that my learned friend
has raised, and to question witnesses about them, and as that paragraph
makes clear, we are available to be informed, because we are independent
of any particular party, of issues that relevantly should be taken up with
you during the course of the evidence, and in my submission, that is, in a
sense, a complete answer to what my learned friend says.

25 We would submit that it's not appropriate for the union to be represented,
because, in paragraph 17(a), on the previous page of our submissions, we
have submitted that the appropriate test should be one which results in
leave being granted to any person who can demonstrate, to the satisfaction
30 of you, that their rights, interests, status, or legitimate expectations might
be directly, and adversely affected by a finding, comment, or
recommendation by the coroner.

35 Now, your Worship, there's no question that organisations such as the
United Firefighters Union have an interest, have a significant interest in
these proceedings. But it's not at all obvious to me at the moment, that on
the issues, or on the material, or on anything that one could base an
argument on, that the union are likely to be the subject of any adverse
comment or recommendation.

40 On the other hand, and I emphasise this isn't suggesting that this will
occur, but on the other hand, the individual members of the union, who
have made statements which have been supplied to you, and which, as I
understand it, your Worship has read, and which we have read, certainly
45 raise issues in relation to the management of the fire, and it seems to us,

with respect, that those issues may well generate, as it were, counter-criticisms of some of these witnesses, either as witnesses, or as to some of the things they say, and therefore it would be appropriate, from time to time, during the course of the Inquest, as members of the UFU are called,
5 for my learned friend to be permitted to represent them, and it may be appropriate, on occasions, for him to be granted leave to cross-examine witnesses who are critical, or in some other way giving evidence that might be adverse to those individuals, so that that evidence can be tested.

10 But I want to emphasise, your Worship, that we're anxious, as counsel assisting you, to keep this Inquiry as contained as possible, and that's why we have sought to apply the test that we have, that is, that the people who are granted leave are people whose rights, interests, et cetera, might be directly and adversely affected by a finding.

15 We acknowledge, as we have in these written submissions, that there are many people other than fall into that category who have a direct interest in this Inquest. But the function of counsel assisting, and there are three of us, is to ensure that issues raised by such people, who haven't been able to demonstrate to you they have a sufficient interest to be granted leave, can
20 nonetheless be ventilated, and that's the process that we propose to follow, if your Worship pleases.

25 THE CORONER: Yes, thank you, Mr Lasry. Yes, Mr Bartlett?

MR BARTLETT: Just on the point of the written submissions that learned counsel assisting has relied on. I've received a copy of those, and I've read them, and considered them. It would be my submission that
30 paragraph 17(a), that is, the test that learned counsel assisting has formulated to give leave, that test is in fact not in accordance with the Act, and not in accordance with law, it's too narrow.

My submission would be this: your discretion to grant leave is set out under Section 43 (a) and (b), and certainly, at this stage, as I understand it,
35 and certainly no union members have been summoned, so I can't rely on (a), and I rely on (b), and as I've already read that section out. You have a discretion to allow representation under Section 42. Under Section 55, there's another procedure there where someone who may be subject to adverse comment, notification has to occur, and the person may answer the criticism, make a submission, or give a written statement about the
40 matter.

That test, in 17(a), namely that a person can demonstrate to the satisfaction of the Coroner their rights, interests, status, or legitimate
45 expectations might be directly and adversely affected, is not in the

legislation, and in fact, your Worship, it would be my respectful submission that if you were to apply that test, you would in fact be fettering, you would be fettering your own discretion under the legislation, and decisions made on that basis would not be in accordance with law.

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So it would certainly be my respectful submission that you should not follow that test, you should follow the test set out in the legislation, which is quite clear, and is quite broad, and make a decision on that basis, and my respectful submission, the submissions I have made, clearly raise an issue that the union itself has a sufficient interest in the subject matter of the Inquest or Inquiry.

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THE CORONER: How do you see yourself representing, if indeed individual firefighters are called to give evidence, and I would anticipate that certainly some would be called to give evidence, how do you see yourself representing the interests of the individual firefighters, as opposed to the interests of the union.

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MR BARTLETT: They're not in conflict, in my - your Worship. There's no conflict between them.

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THE CORONER: You're able to say that, are you?

MR BARTLETT: Certainly, at this stage, I'm confident.

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THE CORONER: Then by representing, if I do grant you leave to represent, on a case by case basis, individual firefighters, why would you then need to also put the interests of the union forward, if there is no conflict between the firefighters, who indeed make up the union.

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MR BARTLETT: The reason is because I'm concerned that if I'm not granted leave to appear for the union as a legal entity, witnesses may be called who the union would want cross-examined for good reasons, associated with management of the brigade, which impacts on the members as a whole, not individual members per se, and if I'm not granted leave to appear for the union itself, I may not - I just may not be here to cross-examine them.

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THE CORONER: But if there is any criticism, say, of individual members, would that not also be criticism of the union?

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MR BARTLETT: The situation I'm concerned about is - - -

THE CORONER: Can you see a situation where the union, per se, may be criticised, as opposed to the actions of individual firefighters on this

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day, or in the days preceding or around the fires.

5 MR BARTLETT: No, I don't envisage the union itself to be criticised, but I don't know. The problem I'm concerned about is that meeting I've raised, that occurred on 18 January, which was really the management meeting for the fire, in my view, in my view, and I may be wrong, but in my view, that was the management controlling meeting for the fire.

10 That doesn't involve the evidence of individual firefighters, it may not involve criticism of individual firefighters, if I am not appearing for the union as a legal entity, I simply may not be able to cross-examine people who give evidence about that meeting, and we - my instructions certainly are that the full content of that meeting should be fully aired. Of course my client is concerned that if I'm not here to ask questions, that may not occur.

15 THE CORONER: Do you not see this, though, as being the role of counsel assisting? To fully air these sorts of matters?

20 MR BARTLETT: Well, I don't control counsel assisting your Worship.

25 THE CORONER: Well, I'm of the view, Mr Bartlett, that the concerns that you have, or the concerns that you've expressed, if indeed, they are real, in relation to the union, they are matters that can certainly be put before me, and properly put before me, by counsel assisting. So therefore I do not propose to grant you leave to represent the union, but I do propose to grant you leave, but on a case-by-case basis, to represent individual firefighters who may be called to give evidence, and also leave to cross-examine witnesses who may be called to give evidence which may be critical of the individual firefighters.

30 MR BARTLETT: If it please the court.

35 THE CORONER: Thank you.

MR BARTLETT: Excuse me, your Worship. The issues I've raised are contained in submissions I made to another Inquiry in this matter, run by ...(indistinct)... , I'll send them to your Honour.

40 THE CORONER: Yes, thank you, I'd appreciate that, Mr Bartlett. Yes? Someone representing the Australian Federal Police?

MR BEGBIE: Yes, may it please your Worship, Begbie.

45 THE CORONER: Mr Begbie?

5 MR BEGBIE: I appear to seek your Worship's leave for the Australian Federal Police to be represented at the Inquiry. I don't propose to address your Worship at any length on the briefings for that, I think it's sufficient to note that the Australian Federal Police played a central and extensive role in the management of the whole crisis, and the grant of leave to that body, should, in my submission, be fairly self-evident.

10 THE CORONER: Yes, Mr Begbie, you're seeking leave on behalf of all the members of the Australian Federal Police, and also the Chief Police Officer, Mr Murray, in his capacity as Territory Administrator or?

15 MR BEGBIE: Yes, no, can I clear that up? Your Worship has had foreshadowed the possibility of the Chief Police Officer being represented, my instructions don't go that far today, and I don't seek that leave for the Chief Police Officer. Can I say that that's an issue which will likely be raised again, and if it's not too inconvenient, your Worship, we'd ask that that be dealt with at a later time, when some other matters are being resolved, and perhaps the position is a little bit clearer. For the time being, I simply seek leave for the Australian Federal Police, as the body constituted under the Australian Federal Police Act.

20 THE CORONER: All right. Yes, thank you, Mr Begbie.

25 Yes, Mr Lasry.

30 MR LASRY: Your Worship, we agree that leave should be granted to the AFP. And I should say, so that it's clear, why. My learned friend is right, the AFP were inextricably involved in the events of 18 January, and indeed before. And police played a significant role in several aspects including evacuations and things of that kind. And it's not difficult to see how issues may arise in relation to either the general conduct of the AFP or individual members of the AFP as the evidence unfolds. And for that reason we would agree that it's appropriate that leave be granted.

35 THE CORONER: Yes, all right.

40 Yes Mr Begbie, leave is granted to the Australian Federal Police to be represented during the hearing of this matter.

MR BEGBIE: Thank you, your Worship.

45 THE CORONER: You're representing Mallesons Stephen Jacques in relation to the utilities.

MR STITT: May it please, your Worship, my name is Robert Stitt. I seek your Worship's leave to appear for ActewAGL partnerships and their associated entities. We wrote a letter - or my instructing solicitors wrote a letter on 30 May expanding that to indicate the basis upon which leave would be sought. It's my submission we have a sufficient interest in the subject matter of the Inquest.

THE CORONER: Yes, I have that letter Mr Stitt. I have read that.

Yes, Mr Lasry.

MR LASRY: Your Worship, we agree, perhaps with some level of limitation. My learned friend's client clearly is involved in - will be involved in issues that I suspect will arise during the course of the Inquest in relation to water, gas, and electricity. Issues on the public record I suspect make at the moment gas one of the most important ones of those. There appear to be, at least anecdotally, problems in relation to aspects of the gas supply. And for that reason it's clear that my learned friend's client should be given leave to be represented in these proceedings.

Perhaps I should add when I say limited that wouldn't necessarily involve, and perhaps this also goes to our attitude to the AFP, it wouldn't necessarily involve broad ranging examination or cross-examination of every witness in the Inquest. There are particular issues that arise in relation to particular groups who have an interest that satisfies your Worship they should be represented. And we'd anticipate submitting that my learned friend on behalf of his client should, to a reasonable extent anyway, restrict himself to that particular interest.

THE CORONER: Yes.

Do you wish to be heard on that issue, Mr Stitt?

MR STITT: Not really. Section 42 deals with the right to examine and cross-examine. I don't wish to be heard at this stage. I can assure your Worship that I will not be doing anything to prolong or hinder this Inquiry. My client wishes to co-operate. We believe that we have information and can assist. I certainly would wish to be involved in any relevant aspect of the Inquiry to which my clients interests are directed, but I don't see it necessary at this moment for your Worship to impose at the threshold some kind of restriction or fetter because who knows where this is going to go.

THE CORONER: Thank you. Yes Mr Stitt, on that basis then I grant leave to you to represent ActewAGL, and various partnerships in relation

to those utilities.

MR STITT: The court pleases.

5 THE CORONER: But that's granted on the same limitation I suppose that you yourself have imposed, that it won't be based on a free ranging inquiry - or rather cross-examination of all the witnesses, but limited to the interests of your clients. But I won't put any further limitation on it than that at this stage.

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MR STITT: The court pleases.

THE CORONER: Yes, thank you Mr Stitt.

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Representative from Lamond Howard & Associates.

MR LIVINGSTON: Your Worship - - -

THE CORONER: Yes, Mr Livingston.

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MR LIVINGSTON: Yes, I seek leave to appear in the Inquiry on behalf of the clients of the firm instructing me, Messrs Lamond Howard & Associates. Your Worship has the correspondence that we've invited - - -

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THE CORONER: I do.

MR LIVINGSTON: The firm acts for 170 affected victims of the fire, both residents and businesses your Worship. I had asked for a list of the various individuals to be made available to me, it's in the course of preparation but I don't have it currently. I'd seek your Worship's leave, the interest of those individuals is fairly apparent. Obviously the Inquiry concerns the loss of property by fire, and all of the 170 individuals unfortunately are in the situation that they have experienced that loss., or they've experienced the loss of property.

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Your Worship, I don't know because I haven't asked my friend precisely what the attitude of counsel assisting is to our representation, but given the written submissions I anticipate the prospect that it will be opposed. In my submission the proposition that's advanced in the written submissions that your Worship ought not allow representation - or leave to be represented to any party who is unable at this stage to demonstrate that their rights, interest, status, or legitimate expectations might be directly and adversely affected by a finding, comment, or recommendation by you is too narrow.

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I'm simply repeating to some respect the submission of Mr Bartlett at the moment. I was going to refer your Worship to Mr Waller's book, the 3rd edition is the edition that I have access to. There doesn't seem to be much law in relation to this area. Certainly there seems to be a practice, as your
5 Worship would be well aware, for persons such as those people that I represent to be given leave in such matters. Mr Waller wrote at page 104 under the heading, "Representation at Inquests or Inquiries", a section of his book that commences on the previous page:

10 "Persons who have a substantial financial or other interest in the outcome of an Inquest or Inquiry may be permitted representation. Such persons include insurers, assurers, owners of property or premises, lessors and lessees, occupiers,
15 employers, and sometimes contractors and subcontractors in industrial matters. The manufacturer of a machine or article suspected of being faulty may be permitted representation. In the more controversial cases it is not uncommon to have four or five persons legally represented. The purpose of restricting
20 appearances is to avoid untoward length of hearing and to prevent an inquisition being used merely to lay the foundation for later civil proceedings".

So that certainly in the exercise of your discretion your Worship is entitled to have regard to the prospect of the proceedings becoming unnecessarily
25 lengthy or unworkable as a result of perhaps a multiplicity of parties. But notwithstanding in my submission it's a matter for your Worship to consider whether significant interest is demonstrated. It's a bit hard to - perhaps I'll withdraw that. In my submission given that we seek leave to represent a substantial number of the individuals who are actually
30 directly affected by the loss of property in the fires at this stage that is sufficient in my submission to demonstrate that interest.

THE CORONER: What sort of issues do you see arising over and above the obvious issues of personal and financial hardship that I'm sure your
35 clients have experienced?

MR LIVINGSTON: It's clearly - our primary interest is in ascertaining the facts. Now it's very difficult at the outset of a lengthy inquiry to be
40 very specific. I don't know what witnesses will be called, I've seen no brief of evidence - if one exists, I suspect it doesn't - or certainly it would not be complete at this stage.

It's difficult to respond in a meaningfully direct way to that proposition at this early stage. But in my submission the approach that would be taken
45 would be an approach that wouldn't waste the time of the Inquiry. And in

5 those circumstances - and it may be that the involvement of my clients would be a minor, if that, role in the matter but - in a sense in my submission the approach that seems to be taken by counsel assisting in relation to applications for leave is putting the cart before the horse. It's obvious that this Inquiry is going to take a long time.

10 My clients have an interest to ensure that the facts do come out and would wish to participate and to assist to ensure that that does happen. That's not to suggest that counsel assisting will not proceed to ensure that just that occurs but given that the interest that we do have in the outcome of the matter we'd seek to be involved.

THE CORONER: Yes. Thank you Mr Livingston.

15 Yes, Mr Lasry.

20 MR LASRY: Your Worship, my learned friend correctly predicts our position based on the submissions. And I might say our position is formulated after careful thought because we are conscious of the fact that the people who suffered significantly in these fires were the people who were directly affected by their houses being destroyed. But of course there were something like 500 of those, not just 170.

25 It seems to me with respect that the obvious answer to my learned friend's point is that the person who's most interested in ascertaining the facts is your Worship in these proceedings. That's why you are conducting this Inquiry and these Inquests. And we are determined to assist you to do that as much as possible.

30 And I should add to that that virtually since the fires finished a significant police investigation team within the AFP was established and is accumulating a very large amount of information about these fires in all their respects. And there is a significant amount of material already in existence which will become part of the brief.

35 Because of the wide ranging nature of the event, covering a large number of days, indeed weeks, and the large number of witnesses and the large number of people affected, we would submit that it is simply not practical to have every person with an interest in the outcome because of the fact that their house was destroyed or damaged represented in this Inquest. It simply isn't feasible. And if my learned friend is right then the other 230 householders would be entitled to come to the court and individually seek representation and be granted it.

45 Your Worship, all I can say is that at this stage we propose to ventilate as

many of the issues that are relevant to this Inquiry as we can by reference to the material that's provided to us. And I mention again the concluding paragraph of the submissions which would urge people in the position of my learned friend or those instructing him to liase with us to provide us with information and to raise issues with us if they think there are issues that should be raised.

And I should also perhaps add that obviously because this is an early stage of the proceedings if your Worship were not to grant leave to any party at the moment that's a decision that no doubt you would review when confronted with, or if confronted with, information that demonstrated that particular parties, whether they be householders or other people, could bring themselves within the test.

But the Act gives you a discretion. It doesn't say you shall, it says you may grant leave in certain circumstances. And the test we've formulated is essentially a test based on the judgment of Brennan J in *Annetts v McCann* to which we've referred during the course of the submissions. And in order to keep this Inquiry within bounds and within control, and in the absence of a specific issue that my learned friend can point to to bring his clients within the test we've formulated, we would urge your Worship, not at this stage anyway, to grant the leave that he seeks.

MR LIVINGSTON: If I could be heard in relation to several - - -

THE CORONER: Yes, Mr Livingston.

MR LIVINGSTON: It was put to your Worship that it's not practical, given the number of people affected, to have everyone represented. And indeed that may well be relevant to the question of granting leave to my clients were that the situation. But I'm not aware that it is, I'm not aware that any other injured party is, and I'd ask your Worship to bear in mind that whilst 500 or more homes were lost in the fire, and no doubt a large number of people are affected, 170 people is still a substantial number of that total. And what is the problem if it is only that group that are seeking leave in the matter?

And the test that my friend has referred to is extracted, as I understand his submission, from the High Court decision of *Annetts v McCann*. However, that case did concern a somewhat different question. And I note from the judgment of the majority in that case that the background to section 24 of the West Australian Coroners Act, which is in quite similar terms to our own section 42 and uses the expression in connection with leave to appear of sufficient interest.

And the background to the enactment of section 24 is referred to at page 168 of the Australian Law Journal Report which is the one that fortunately I have. It notes that:

5 *Against this background the terms of section 24 of the Act provide*
 no ground for concluding that the Act evinces any intention to
 exclude the operation of the principles of natural justice. The
 evident purpose of the section was to abolish a Coroner's
10 *discretion and to give interested parties the absolute right to*
 attend the Inquest, to examine and cross-examine witnesses, and
 to be represented by counsel.

15 The High Court didn't concern itself with a situation of persons who may
 be able to demonstrate a sufficient interest to appear in the proceedings
 such that - but falling short of having an absolute right to appear because
 of the extent to which natural justice would demand that they be given that
 right. In my submission there's little, if any, authority arising out of
 Annetts, or any other case, that assists your Worship in determining how
 to exercise this discretion. And in my submission *Annetts* doesn't assist
20 your Worship in the way that was put by my friend.

THE CORONER: Thank you, Mr Livingston.

25 When I say to Mr Livingston that at this stage, I have read every single
 submission that has been put to me, as a result of the advertisements that
 were placed in the paper, I have not read every statement that has been
 provided, and has been obtained by the police, but I have certainly read
 every single submission that has been put and sent to me from the public,
 many of those persons presumably you represent, and I understand very
30 well their interest, and I am very sympathetic to their loss, your clients in
 particular, and other persons who have suffered losses, both personal and
 financial losses.

35 Some of the persons who you represent, Mr Livingston, may be called to
 give evidence in this Inquiry. Now they, or indeed you, Mr Livingston,
 are free to attend the hearings at any stage that you wish, and subject to
 suitable arrangements regarding costs and availability, transcripts of all or
 part of the evidence will be provided to you and to your clients, and
 indeed, if there is any particular issue which you wish to raise, or any
40 issue, any particular issue that your clients wish to raise, that you feel is
 not being ventilated sufficiently, or facts are not being presented perhaps,
 then it's just a matter of you bringing that to my notice, and also to
 bringing it to the attention of counsel assisting.

45 I do feel, however, though, at this stage, the role of counsel assisting is to

present all the factual evidence before me, and I don't propose, at this stage, to grant you leave to appear in these proceedings.

5 But, as Mr Lasry says, this is reviewable, and if something does occur during the course of the proceedings, where it is indeed advisable, and indeed necessary for you to represent the interests of some of your clients, then that decision - I'm quite prepared to review that decision.

10 MR LIVINGSTON: As your Worship pleases.

THE CORONER: Thank you, Mr Livingston. Yes, Mr Mossop?

15 MR MOSSOP: May it please the court, I appear for Chubb Insurance Company of Australia Ltd., and seek leave to appear on that entity's behalf. I've filed some written submissions, which outline the interests of Chubb, particularly in relation to the Mount Stromlo Observatory, and the almost complete loss of that. I won't repeat what's in the submissions, other than to say that it's a very substantially loss that has occurred, and that the interest of Chubb is in the - in effect, the court functions of the
20 Coroner, namely, in discovering the nature, origins and progress of the fire, at those sites which were destroyed, and the reasons for the damage and the extent of damage, at the Mount Stromlo Observatory, and I just, in anticipation of what is going to be said from the other end of the Bar table, make five points.

25 The first is that Chubb's interest is coincident with the - in terms of subject matter - with the core functions of the Coroner, namely, to discover the facts surrounding the damage, and particularly the extent of damage, at the Observatory.

30 The second point is that the submissions made in the written submissions by counsel assisting effectively are discretionary submission reflecting the concern to keep the Inquiry focused and being able to deal with matters as expeditiously as possible. In my submission the appropriate course, in
35 order to accommodate those concerns, which are real ones, is to grant leave, perhaps limited leave, limited to those issues in relation to which Chubb has - limited to Chubb's real interest, that is, in the damage to the particular facilities, and it's not a case where Chubb's interest on its face falls into the category of some of the other parties that have sought leave
40 today to pursue all sorts of peripheral issues.

The third point is that, as I understand it, the interest which Chubb seeks to represent is not duplicated, in that there is no other party with a specific
45 interest in the damage to the facilities at Mount Stromlo, or the other facility in Weston. So it's not a case where Chubb's interest would

merely be duplicating, and hence trespassing upon the concerns about the scope and length of the Inquiry.

5 The fourth point is that the loss is plainly a significant one. The damage to the facilities at Mount Stromlo is of the order of \$40 million, and the facility in Weston is approximately \$3 million. So the financial interest is a significant one, and is very focused on particular physical localities.

10 The fifth point is that if your Worship has a concern about allowing more parties to - sorry - to grant more parties leave to appear, that should be assessed in the context first, of the number of parties that have been sought to - have sought leave here today, which is not great, and secondly, in the context of your Worship's power to control, first, the grant of leave, and control by way of directions the part that each party plays in the proceedings.

15 In my submission, if the concern of counsel assisting and of your Worship is as to the broadening out of the scope, that that would be more appropriately addressed by, if there was ultimately some real issue that arose in relation to it, by confining the role that Chubb were to play. Now, I wouldn't anticipate that there are actually a practical matter that it would be a problem, but if there was, or if counsel assisting perceived that there was, then that would be appropriately addressed at a later stage, by control over proceedings. May it please the court.

20

25 THE CORONER: Yes, thank you Mr Mossop. Mr Lasry?

30 MR LASRY: Your Worship, the fact that Chubb's interest mirrors the core interest that your Worship has in the proceeding, in my submission, is in a sense an answer to my learned friend's submission, because I can assure him that the events which occurred on Mount Stromlo on 18 January, by which time, as I understand it, the fire was in the form of something close to an uncontrollable firestorm, it's a matter of significant interest to us, it has been of significant interest to the investigation team, and it will be certainly part of the evidence that your Worship will hear.

35

40 So the submissions that I've been making all morning really apply similarly to my learned friend. It's true that your Worship has a discretion, and it is a discretion which we are urging you to exercise, in the interests of keeping the Inquiry focused and confined, and that's primarily so that the main issues of central interest to the Canberra community can be properly ventilated and done in a reasonable time.

45 It isn't appropriate, in our submission, to grant, as it were, a consolation prize by way of limited leave. We ask that you apply a particular test; in

our submission it is clear that my learned friend's client doesn't come within it, and he's in the same category, we would submit, as others, if your Worship were to refuse him leave, which is to say, in the event, for example, that it became clear that there was some issue about his client's conduct which might expose that company to criticism or adverse comment, then of course he could renew his application.

But the parallel interest of his client, being parallel with your Worship's interest, really are an answer, in our submission to his application.

THE CORONER: Yes, do you wish to make any comment in reply, Mr Mossop?

MR MOSSOP: I'll just say that the submission that counsel assisting put, if it were accepted in an answer to representation - to exclude representation by any party who has come along to focus on the issues which your Worship should be focusing on, and in my submission, that is not a reason for declining leave.

THE CORONER: What issue do you see - I mean apart from the obvious, that the cause - the origin and the cause of the fire which ultimately did destroy your client's facilities - what other issue do you see arising that could potentially impact - apart from of course financially - but impact on your client? Because it appears to me that the prime concern - and I'm not making light of it - is the financial interests.

MR MOSSOP: Yes.

THE CORONER: And I know that you don't resile from that?

MR MOSSOP: No, that's right. And as of the portion of Mr Waller's book, Mr Livingston read out to you, that the legitimate interests for the purposes of a Coroner's Inquiry and there may well be some very specific issues relating to the fire management procedures at Mount Stromlo, which are of significance to Chubb. I can't say precisely what they are now, because I haven't had the benefit of the documentation which counsel assisting has available, but the total loss of Mount Stromlo is a matter of direct concern, and it's a matter in relation to which there are - there may well be specific issues that, in my submission, Chubb should be entitled to address.

THE CORONER: Yes, thank you, Mr Mossop. I understand the way that you are putting this submission, Mr Mossop, but at this stage I'm not - I won't grant leave to you to appear to represent the Chubb insurance company. However, I am mindful that you do not have the brief or indeed

perhaps don't even have quite a lot of the information that other parties - or that other persons may have. So I will say to you, that if there is an issue or if an issue does arise, Mr Mossop, where there is some aspect of the fire management procedures or some issue that would directly and adversely impact upon your client, over and above the procedures and the fire fighting issues that indeed impact or potentially did impact on everyone in Canberra who did suffer losses, then I would be prepared to review my decision in relation to leave.

5
10 MR MOSSOP: Your Worship, could I make an application under section 51, in the light of your Worship's ruling, namely that my client be provided with access to the documents held by the Coroner in relation to the emergency response and fire profession measures at the Mount Stromlo Observatory?

15 The management of the Stromlo pine forest and protection of Stromlo Observatory from fire hazards and also the destruction by fire of the buildings, the ANU buildings at Block 7 Section 96 in Weston.

20 And I make that application simply so that my client will then have - - -

THE CORONER: That you are aware.

25 MR MOSSOP: - - - will then be in a position to more clearly articulate if, in the light of that information, the reasons why there should be grant of leave rather than, in effect, being locked out of the process and perhaps having the benefit, after the event, to read the transcript.

30 THE CORONER: It's not my intention to lock anybody out of this process, Mr Mossop.

MR MOSSOP: No.

35 THE CORONER: I want to make that very, very clear.

MR MOSSOP: Yes. I was using it as a phrase to illustrate the difficulty that my client has in that he'd need to have access to the information, so that it will then be in a position to make an informed decision about the extent to which it participates or seeks leave to participate in the Inquiry.

40 THE CORONER: Yes. Do you wish to be heard on that, Mr Lasry?

MR LASRY: Yes, your Worship. We'd urge your Worship not to make an order under section 51 at this stage, but if I can say that our learned friend has made his position clear and it may be that the matter, at this

point, is more satisfactorily resolved by a liaison between he and us.

THE CORONER: Yes.

5 MR LASRY: And his interest is noted. I must say, from memory, and it's only very small because I haven't looked at all the documents, I'm not sure what specifically there is in relation to that particular aspect of the fire, but I'll give him an assurance that we'll find out and if we can remain in touch, we'll make the material available to him informally.

10 THE CORONER: I think that is - - -

MR MOSSOP: If there's any difficulty I can raise it before...(indistinct)...

15 THE CORONER: If there's any difficulty, you can always bring the matter back and always raise it.

MR MOSSOP: Yes, thank you.

20 THE CORONER: But as I say, it's not - it's certainly not my intention to exclude anybody from the proceedings, the public and indeed anybody else who has an interest is welcome and free to come and sit and listen to any aspect on any day of the proceedings, and if there are interests that perhaps aren't represented legally by people being granted leave to appear, then these issues can always be ventilated, if indeed the need for that arises.

MR MOSSOP: Yes, thank you.

30 THE CORONER: Thank you, Mr Mossop. Is there someone representing the ACT Sustainable Rural Land Group?

MR LOWE: Yes, your Honour.

35 THE CORONER: Yes, just come forward please, sir.

MR LOWE: Your Honour - - -

THE CORONER: Just your name, first.

40 MR LOWE: My name is John Lowe, I'm president of the ACT Sustainable Rural Lands Group.

THE CORONER: Is it Mr Lowe?

45

MR LOWE: Yes. I'm - - -

THE CORONER: L-o-w-e?

5 MR LOWE: Yes.

THE CORONER: Thank you.

10 MR LOWE: We wish to have leave on behalf of our individuals, the group itself hasn't suffered any losses - it's an incorporated association. We have a unique situation in that most of our members were burnt out on the way the fire travelled to Canberra and a fair proportion of the fire front on the western side of Canberra passed over the lands of our members ... (indistinct)...

15 There has been suggestions by the ACT director of forests and also by a senior bureaucrat managing the post fire activities, that the management of grasslands as an issue in relation to claimability and the fire passing the pine forest, we don't agree with that at all. There have been assertions made that we're concerned that our members interests be represented satisfactorily to ensure that that suggestion is put to bed properly and we seek leave. All of our members have suffered substantial losses and we find ourselves in a situation where we're at - there are antagonistic interactions with the ACT Government and the people involved in managing the fire and we would wish to make sure that we're fully represented in any issue or any fact that comes forward.

20 Our members were closely involved in the fires, from the initiation of the fire at the Bendora fire itself, right through to the fire in the urban part of Canberra and we believe we can assist the Coroner in some important factors, and we believe our members have already sought and obtained leave to appear for 2001 fires Coroner's Inquiry and made submissions in relation to the McLeod Inquiry and we believe we can assist in framing questions and points of issues in relation to this.

30 THE CORONER: Yes, thank you. Thank you, Mr Lowe. Do you have a list of members, Mr Lowe?

35 MR LOWE: Yes, we do.

40 THE CORONER: And the list, does this include every person who was affected or is it just a list of all the members of your organisation?

45 MR LOWE: Every one of our members was affected.

THE CORONER: Was affected.

MR LOWE: I think there's nearly 100% burn out of properties in our membership.

5

THE CORONER: Yes. Mr Lasry?

MR LASRY: Your Worship, I - - -

10

THE CORONER: I'll keep this if I may, Mr Lowe.

MR LASRY: It appeared to us - I should say that the document that came to us and I think came to you was a document signed by Mr Coonan, the vice president of the Sustainable Rural Lands Group and I had originally intended to say that it seemed to us that this organisation was in many ways in the same category as the residents that Mr Livingston sought to represent.

15

The only hesitation I have about that, and it may be that an appropriate course is to ask your Worship to either refuse leave at this stage or to adjourn the further consideration of it, was that I understood - I thought I heard Mr Lowe say at the start of his comments that there had been some issue about criticism of his members' land management practices.

20

Now I'm not sure if that's that he's said or that's what he intended and he knows better than I do what he was talking about. It might become appropriate at some point in the future for this group, or members of the group to be represented if that issue is being developed before you. And off the cuff to some extent I would suggest that your Worship perhaps at this stage adjourn the application so that perhaps we can speak to Mr Lowe, seeing that he's not here legally represented, and establish whether there is a proper basis for him to make a further application.

25

30

I think not much would be lost if your Worship adjourned the application until 1 September or to a directions hearing before then, if your Worship's intending to have another one. And that by then we should be able to finalise whether there's a proper basis for the application or not. A great deal of what Mr Lowe said, in my submission, puts his members in the same category as the residents. It's just that I detected in the early part of his submission that there was some issue which might arise which you may be interested in which might require the matter to be reviewed.

35

40

THE CORONER: Well, what do you say to that, Mr Lowe?

45

MR LOWE: Your Honour, I say that we've got 9 Inquiries that are

affecting our members at the moment, so we don't wish to be thoroughly involved in any more than we have to. But we do wish to make sure our members' interests are adequately represented.

5 THE CORONER: Are taken into account.

MR LOWE: And we would be happy to work with counsel assisting in any way we can. I think our concern was a lot of these matters in our dealings with the ACT Government is experiencing a great deal of
10 inaccuracy and misrepresentation of circumstances. Indeed, a letter from the Government Solicitor's Office just recently gives a great deal of concern about the extent to which they're reading the files and that's my only consideration. And I think that what's being asked of counsel assisting is a great deal, that they will have to try and assess the merit or
15 otherwise of the questions that should come forth from the witnesses or points to the main cause.

In our experience in a lot of matters dealing with the ACT management of lands and fuels and leasing issues is that those things are very hard to
20 understand it and I would question whether the counsel assisting will have enough staff and resources to do that.

So we don't wish to do anything to delay the - or other than to assist with any Inquiry and however we can we do that I'm happy to be
25 ...(indistinct)...

THE CORONER: Mr Lowe, on issues such as that I'm sure counsel assisting would be greatly assisted by any information that you might have that you feel is not being put forward from any other sources. I think
30 there is merit in what Mr Lasry has suggested, that perhaps you do have some discussion as to exactly what interests, over and above of course the obvious interests about the losses, the personal and the financial losses to your members. Is it your plan to perhaps brief counsel to appear if leave is granted ultimately for you to appear or - - -

35

MR LOWE: Yes.

THE CORONER: - - - how do you see that happening?

40 MR LOWE: Well, that's - we will be doing that, your Honour, and my apologies today. We had a pre-arranged - our valuer and our counsel are working together at the moment and not able to come to court this morning. That's why I'm here.

45 THE CORONER: Well Mr Lowe, if you are willing and if your members

are willing to work with counsel assisting and Mr Lasry's team and provide information then I'll adjourn the consideration of your application for leave to appear until 1 September when the Inquest does start, formally commence. Or at some date that we might wish to nominate prior to that date. You'd be willing to do that, Mr Lowe?

MR LOWE: Yes, your Honour. As we really have a lot to ...(indistinct)... so we're quite happy to do that.

THE CORONER: Thank you very much, Mr Lowe.

Yes, are there any other parties or any other persons wishing to seek leave to appear? Yes, are there any other matters, Mr Lasry?

Any other matters that wish to be addressed, Mr Stitt?

MR STITT: Your Worship, may I just enquire in the light of the fact that the leave which you've granted to my client may be limited or restricted, could I clarify in my mind about a couple of aspects? Firstly, the terms of reference which were publicly disseminated related to the Canberra bushfires and I was interested to know how you propose to interpret that term of reference, whether it's bushfires or fires that arose as a bushfire, or whether it's going to be all fires? Because there are, as my understanding, some fires in Canberra which were not "bushfires". And do you see your Inquiry encompassing those fires? That's the first matter.

The second matter is whether you see your jurisdiction extending outside the boundary of the ACT, bearing in mind that you have a statutory jurisdiction and we would be interested to know if you do, how you propose to deal with the extra territorial aspects that may arise. As I understand it, some of these fires actually started in New South Wales and we would be interested to know how you and counsel assisting propose to deal with that matter.

The next matter is whether or not this Inquiry proposes to apply the rule in *Browne v Dunn*. Some Inquiries that I've been in the judge or inquirer announces at the outset that the rule will apply, such as Giles J, Cole J, whereas other Inquiries have said that the rule does not apply, such as Owen J. And we would like to know, not obviously now but at some point, what your attitude to that is because it will have a bearing on how we approach cross-examination and the like.

And the final thing is that my learned friend, Mr Lasry, in his submission or report which we found quite helpful has quoted and referred to it several times today in relation to paragraph 17(a) about persons directly

and adversely affected by a finding.

5 We would be interested to know how, as a matter of practice, my learned friend proposes to deal with that. For example, how does he propose to deal with the obligation in *Mahon v Air New Zealand* and when is it that he's going to indicate that persons may be adversely affected? Plainly, at this stage, the Inquiry has an open mind and knows nothing about the matter. But for example, in the Owen Inquiry counsel assisting gave a large opening address in which the Inquiry said well parties should listen to counsel's opening address and work out for themselves whether or not they are likely to be adversely affected.

10
15 Whereas Cole J wrote an individual letter to each person and said you are likely to be adversely affected for the following reasons. And I'd be interested to know when and how my learned friend proposes to deal with that aspect of the Inquiry. As I say, I don't need to know any of this right now but these are matter which seem to us, from my point of view I would be anxious to know before 1 September.

20 THE CORONER: Before we start, yes.

MR STITT: If your Worship pleases.

25 THE CORONER: Yes, thank you, Mr Stitt.

Do you wish say anything? Yes, Mr Lasry?

30 MR LASRY: Can I say a couple of things now, as much as I can. We envisage that on 1 September, your Worship, that the first round of evidence will be evidence essentially of a - both a narrative and expert nature. In other words, it will be designed to enable the parties, and anyone listening to the evidence, to understand what actually occurred, and as I understand, will become a scientific reconstruction of the fires, and it will indeed go back to, I think, 8 January, which is, it's commonly
35 accepted, that was the date on which the lightning strikes in the areas - nearby mountain ranges - caused fires, which ultimately became the fires which swept into Canberra.

40 We also anticipate that because of the time involved in processing the documentation that we already have, that at the end of that process, there will probably be a delay, and probably a delay into the early part of 2004, when the balance of the evidence will be presented. The process that I would like to speak to my learned friends about really works this way, that on 1 September, I would open the evidence that we would call during that
45 phase, that at the end of it, we would endeavour to formulate a list of

5 issues. And that we would endeavour to formulate that list of issues in conjunction with those who have been given leave to appear, and indeed, it may be that the formulation of that list of issues involves a debate before your Worship after that evidence has been heard, and after the parties have access to the material. So that we then have a set of parameters for the balance of the Inquest, and when the Inquest resumes, I would certainly anticipate opening on those issues.

10 Now, whether that takes the kind of form that my learned friend has raised, in other words, whether it's at that point that people will come to understand that they are at least at risk of some adverse finding, to some extent remains to be seen. My feeling is that that's probably when those issues will start to be raised, so that that question can be determined, and of course, it will become apparent during the course of the evidence, and in the submissions at the end of the evidence, it will become clear. Those who are at risk will be clearly on notice by the time counsel assisting make submissions to you that they are at risk and should respond.

20 As to the other matters, your Worship, if I may, I'd prefer to take those on notice. I have some preliminary views, but perhaps rather than express them now, I can have a think about them, and respond to my learned friend at some later time. It may be desirable that we have another directions hearing at some time between now and 1 September, at which these matters can be dealt with.

25 THE CORONER: I think that does certainly sound desirable, to have another hearing, another directions hearing, a brief one, just to review the progress of the brief, and to raise any issues that counsel, amongst themselves, have not had an opportunity to discuss. Is that - does that satisfy you?
30

MR STITT: Yes, yes, it's convenient, thank you, your Worship.

35 MR BAYLISS: Your Worship, I've just raised one issue that, after discussions with my friend, I understand that after the September phase of the Inquiry and Inquest, the intention was to adjourn until a date in the middle of January. Now, I'd simply ask that consideration be given for that to be adjourned until the end of January, because those who I represent, it is the bushfire season, and it is - there is some potential that at that time, if there was to be a repetition, or further bushfires, that it would be splitting their attention between attending the bushfires, and attending the matters before the court. It might not be a positive thing, if I could just put it as bluntly as that.
40

45 THE CORONER: Yes.

MR LASRY: We could have a further Coronial Inquiry.

5 MR BAYLISS: Well - so, to that extent I just would ask at this stage the situation, given that perhaps to the first Monday in February, I'm not certain which that is, rather than to the middle of January.

10 THE CORONER: Yes, I'm sure that can be accommodated, Mr Bayliss. Any other issues?

MR LASRY: No, your Honour.

15 THE CORONER: All right, we'll adjourn then, thank you. We'll adjourn until 1 September, or until a date for further directions hearing. Thank you.

ADJOURNED

[11.26 am]

20